

PLAT NO. S/D 81-75 MAP NO. 6050B

NAME PEPPERTREE

LOCATION: 1/2 Mile West of Webb Road, on the north side
of 21st St. North.

ENGINEER Bill G. Yung Design

OWNER Tallgrass Company

APPLICATION FILED 6-26-81

SKETCH PLAT FILED 6-26-81

PRELIMINARY FILED 7-10-81

S/D ACTION 7-23-81 approve

FINAL FILED 8-31-81

S/D ACTION 9-3-81 approve

MAPC ACTION 9-10-81 approve

BCC ACTION 9-22-81 [Signature]

RECORDED 10/5/81

REMARKS Associated Case: DP-96

S/D 81-75 PEPPERTREE- 1/3 Mile
West of Webb Road, on the north
side of 21st St. North. By:
Bill G. Yung Design.

Recd 7-1-81

POSTED

ACTION

DATE

7-1-81

7-23-81

9-3-81

9-10-81

9-22-81

S/D COMMITTEE

(Pulkin) approved

S/D

(Gmail) approved

M.A.P.C.

approved

B.C.C./B-60-C

approved

REGISTER OF DEEDS
SEDGWICK COUNTY, KANSAS

3D 81-75 n
Case DP 96 n
Map 6050B

~~PEPERTREE~~ ADDITION was
filed for record on October 5, 1981

Boyd J. McCall
Register of Deeds

Return to: Wichita-Sedgwick County
Metropolitan Area Planning Department
(Inter-Office Mail)

T9-328

Peppert

9-10-81

AMERICAN LAND TITLE ASSOCIATION COMMITMENT - 1966

CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Missouri, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

Issued by:
THE SECURITY ABSTRACT &
TITLE COMPANY, INC.
434 North Main Street
Wichita, Kansas 67202
(316) 267-8371

CHICAGO TITLE INSURANCE COMPANY

Alvin W. Long
President.

ATTEST:

Chester C. McCullough
Secretary.

John D. Brown
Authorized Signatory



CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Exclusion from Coverage and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

SCHEDULE A

Number	Effective Date	
302515	September 4, 1981 @ 7:00 A. M.	
1. Owners Policy to be issued:	ALTA Form B - 1970 (Amended 10-17-70)	Amount: Platting
Proposed Insured:		
Metropolitan Area Planning Department		
Loan Policy to be issued:	ALTA Form 1970 (Amended 10-17-70)	Amount:
Proposed Insured:		

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a fee simple and title thereto is at the effective date hereof vested in:

Tallgrass Company, a partnership

3. The land referred to in this Commitment is described as follows:

Morley's plat

A replat of all of Lot 1, Block 2 and a part of Reserve A, Bluestem Village, an addition to Wichita, Sedgwick County, Kansas, more particularly described as beginning at the southeast corner of said Lot 1; thence westerly along the south line of said Lot 1 bearing S 89° 10' 54" W, 1362.73 feet; thence N 44° 10' 54" E, 367.70 feet; thence N 89° 10' 54" E, 901.48 feet to the west line of Greenleaf; thence southerly along the west line of Greenleaf along a curve to the left having a central angle of 11° 47' 30", a radius of 207.00 feet, a length of 42.60 feet and a chord 42.53 feet long bearing S 48° 20' 21" E; thence S 54° 14' 07" E, 148.68 feet; thence along a curve to the right having a central angle of 53° 25' 02", a radius of 125.00 feet and a length of 116.54 feet; thence S 0° 49' 06" E, 42.29 feet to the point of beginning.

SCHEDULE B

Upon payment of the full consideration to, or for the account of, the grantors or mortgagors, and recording of the deeds and/or mortgages, the form and execution of which is satisfactory to the Company, the policy or policies will be issued containing exceptions in Schedule B thereof to the following matters (unless the same are disposed of to the satisfaction of the Company):

1. If an owner's policy is to be issued, the mortgage encumbrance, if any, created as part of the purchase transaction.
2. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.
3. Rights or claims of parties in possession not shown by the public records.
4. Eneroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
5. Easements or claims of easements not shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Taxes or special assessments which are not shown as existing liens by the public records.
8. General and special taxes and assessments as hereafter listed, if any (all amounts shown being exclusive of interest, penalties and costs):
1980 Taxes \$203.89 paid. Key#C-41717 (covers Lot 1, Block 2)
1980 Taxes \$276.55 paid. Key#C-41806 (covers remainder of subject property and other property)
9. Easements, access controls, and building setback lines as established by and as shown on the recorded plat of said subdivision.
10. The floodway, lying outside of subject property, shall be the responsibility of the owners of the property in the subdivision until such time as the governing body exercising jurisdiction elects to assume the responsibility for maintenance and improvement of the drainage, provided further that no building shall be constructed on or within said floodway, nor shall any fill, change of grade, creation of channel or other work be carried on without the permission of the Wichita-Sedgwick County Flood Control Office or their successors in office.
11. It is noted for informational purposes only, and not as an exception to title which will appear in our policy, that captioned property may become subject to special assessments for various capital improvements as evidenced by numerous governmental filings of notice in the form of Certificates, Resolutions, Amended Resolutions and Ordinances.
12. Drainage easement established on Film 458, Page 350, over a portion of subject property.

Shown on plat

Baugtown is suppose to check this out & show on plat or vacate by K.S.A. statute. Fed 9/15/81

WICHITA-SEDGWICK COUNTY

DATE
September 14, 1982


METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert B. Feldner, Superintendent of Central Inspection
FROM Robert A. Lakin, Director of Planning
SUBJECT DP-96 - Tallgrass Residential C.U.P.
Re: Parcel 1, platted as Peppertree Addition.

On August 31, 1982 we received a letter from Ken Bengtson, Mid-Kansas Engineering Consultants, requesting an administrative adjustment to the side and rear yard setbacks in several lots located on the south side of Pepper Tree Circle. After several discussions among staff, it was decided that since some of the roofs of the houses being constructed would overhang the Reserve up to fourteen inches, that the best way to resolve the various problems would be for the owners of Reserve A to deed a portion of the Reserve to the owners of Lots 2 through 6.

As a result of Mr. Bengtson discussing this matter with his clients, a deed was drawn up conveying part of the Reserve to the owners of Lots 2 through 6. The deed states that "It is expressly understood that this conveyance is . . . solely for the purposes of complying with the applicable setback restrictions and that the . . . ownership and use . . . shall be so limited." The deeding of part of the Reserve is to continue to act as a Reserve and no buildings, fences, patios, etc., are to be built in the Reserve. A copy of the deed is attached for your information and files.

I do not feel that an administrative adjustment is required since a portion of the Reserve is being deeded to the lot owners. I would assume that construction of the houses can continue as soon as the deed is recorded. If you have any questions, please call.


Robert A. Lakin
Director of Planning

RAL:ADC:el
Attachment

cc: Ken Bengtson, Mid-Kansas Engineering Consultants, P.A.
260 N. Rock Road, Suite 245, Wichita, Ks. 67206
Bill Binter, Tallgrass Co., Inc., P.O. Box 4048,
Wichita, Ks. 67204
D.L. Van Buskirk, 260 N. Rock Road, Wichita, Ks. 67206
Phil Frick, Attorney, Suite 700, 100 N. Broadway
Wichita, Ks. 67202

Peppertree Addition

1. Need to provide arrows showing extent of 148.65' dimension on east line of plat.
2. Need Binter's name printed beneath his signature.
3. Need to clarify if item # 12 of title binder needs to be shown on the plat

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number 81-75 Name Peppertree
Application & Sketch Filed: 6-26-81
Preliminary Plat Filed: 7-10-81 Approved by S/D: 7-23-81
Final Plat Filed: 8-21-81 Approved by S/D: 9-3-81
Approved by Metropolitan Area Planning Commission: 9-10-81

DESCRIPTION

General Location: 1/3 mile west of Webb Road on the north side of
21st Street North

Surveyor or Engineer: Van Doren-Hazard-Stallings

Owner: Tallgrass Company

Address: P.O. Box 4048, Wichita, Kansas 67204

1. Gross Acreage of Plat <u>6.7</u>	6. Access Control		
2. Number of Lots	St. <u>21st</u>	No. Openings <u>None</u>	
Residential <u>15</u>	St. _____	No. Openings _____	
Commercial _____	St. _____	No. Openings _____	
Industrial _____	7. Req'd Improvements		
Other _____	St. Paving <u>X</u>	Water <u>X</u>	
Total Number of Lots: <u>15</u>	Sidewalk _____	Drainage <u>X</u>	
3. Minimum Lot Area: <u>5400</u> sq. ft.	Sewer <u>X</u>	Other _____	
4. Existing Zoning: <u>AA</u> with C.U.P. (DP-96)			
5. Special Problems Discussed:			

In late June of this year, representatives of Tallgrass Company filed two plats (Woodlands East and Peppertree) which proposed public streets with only 32 feet of right-of-way. A utility easement was proposed adjacent to each side. After several meetings with the applicant and numerous City staff, it was determined that this concept of dedicating only the part of the street which was to be paved would be acceptable provided the adjacent easements were for street and drainage purposes as well as for utilities. This would allow for passage of the 100-year storm and for the posting of street signs. It was required that covenants be submitted prohibiting mass plantings or any change of grade within these easements. Peppertree is proposed for duplex development as provided for in the associated C.U.P. 100% petitions have been submitted for paving (including incidental drainage), sanitary sewer and water. A certificate confirming the petitions has been submitted for recording. Covenants which provide for four off-street parking spaces per dwelling unit, formation of a homeowners' association to own and maintain the reserve, and which limit lot-owner use of the 15-foot street, drainage and utility easements have been submitted for recording.

PLANNING COMMISSION RECOMMENDATION: Approve the plat subject to recording within 30 days after approval by the Board of City Commissioners.

Bayouth moved, Goebel seconded and it carried unanimously.

ACTION: Receive and file the water engineering feasibility report, adopt the resolution of finding and the resolution ordering and directing the water system improvement; accept the petitions and instruct the Director of Law to prepare the necessary resolutions; instruct the City Clerk to file the certificate of petitions and the declaration of restrictive covenants with the Register of Deeds, the recording costs of which shall be billed to the applicant; 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, Tallgrass Company, a partnership, owner and plat-
tor of Peppertree 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. Paving and Incidental Drainage
2. Water
3. Sanitary Sewer
- 4.
- 5.
- 6.
- 7.

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

Signed this 10th day of September, 19 81

W. J. Binter, partner

Tallgrass Company, a partnership

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

Be it remembered that on this 10th day of September 19 81, before
me, a notary public in and for said County and State, came W.F. Binter
to me personally known to be the same person who executed the fore-going instrument
of writing and duly acknowledge the execution of same.

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

Katheryn S. Bauman
Notary Public

My Appointment Expires: Feb. 2, 1983



FINAL

*received
9-14-81*

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
PEPPERTREE TOWNHOUSES

THIS DECLARATION, made this 13 day of Sept., 1981, by PEPPERTREE COMPANY, a joint venture, herein called the "Declarant", for itself, its successors and assigns, declares as follows:

Declarant owns in fee simple and hereby submits to the Kansas Townhouse Ownership Act (K.S.A. 58-3701, et seq.), as now in effect and as hereafter at any time and from time to time amended, the following described land in Sedgwick County, Kansas, together with all rights, easements, appurtenances, and hereditaments pertaining to or belonging thereto, and all buildings, structures, and improvements located and to be constructed thereon and hereinafter more fully described, and all personal property, equipment, and facilities intended for use in connection therewith (all of which real and personal property is hereinafter called the "Property"), to-wit:

Peppertree, an addition to Wichita, Sedgwick County, Kansas

ARTICLE I

Definitions

Section 1. Definitions. The terms used herein and in the Bylaws and all other documents relating to this townhouse development shall have the meanings specified in the Kansas Townhouse Ownership Act (K.S.A. 58-3702, et seq.), unless the context requires otherwise.

a. "Association of Townhouse Owners", referred to herein as the "Association", shall mean and refer to Peppertree Townhouse Owners' Association, a nonprofit corporation organized under the laws of the State of Kansas, to be formed within one year of the date of recording hereof.

b. "Board of Directors" shall mean the Board of Directors of the Association.

c. "Common Area" shall mean any portion of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the Townhouse Unit Owners.

d. "Common Expenses" shall be all sums lawfully assessed against the Townhouse Unit Owners by the Association pursuant to the provisions hereof, including, but not limited to, the cost of exterior maintenance of Units and the cost of all insurance policies purchased by the Board of Directors pursuant to the Declaration.

e. "Declaration" means this document and all attachments and amendments thereto.

f. "Insurance Trustee" shall mean the Association, unless the Board of Directors shall have designated another person, firm, or corporation to be the Insurance Trustee.

g. "Lot" means a portion of the real property that comprises the Property, as shown on the recorded plat of the addition and described by a number, with the exception of any Common Area.

h. "Owner", "Unit Owner", or "Townhouse Owner" means the person or persons owning the Lot or a portion thereof in fee simple on which a Townhouse Unit is, or is to be, located.

i. "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

i. "Townhouse Unit" or "Unit" means one (1) single-family townhouse residential unit which is located on a Lot and may be joined with at least one (1) additional single-family townhouse residence by a common wall or walls and/or roof and/or foundation.

ARTICLE II

Description of Units

Section 1. Townhouse Units.

a. Description of Buildings. There will be constructed a total of fifteen (15) buildings of which ten (10) shall contain two (2) Units and five (5) shall contain one (1) Unit. The ground floor of each Unit, exclusive of porches and garages, shall contain a minimum of one thousand five hundred (1,500) square feet and any two-story Unit shall contain a minimum of one thousand two hundred (1,200) square feet of ground floor space, exclusive of porches and garages. All Units shall include a garage, with a driveway, which together will provide at least four (4) off-street parking spaces. All Units shall be constructed in accordance with the provisions of this Declaration, as well as the Bluestem Community Unit Plan.

b. Numbers and Descriptions of Townhouse Units. The designation of each Unit, as shown on the plat of survey to be filed, is as follows:

Unit

1
2
3
4

Unit .

5
6A
6B
7A
7B
8A
8B
9A
9B
10A
10B
11A
11B
12A
12B
13A
13B
14A
14B
15A
15B

Prior to the completion of construction of the Units, Declarant shall record in the office of the Register of Deeds of Sedgwick County, Kansas, a plat of survey which shall expressly refer to this Declaration and which shall show the location and dimensions of all such units.

Section 2. Description of Common Area. The Common Area shall consist of Reserve "A".

ARTICLE III

Assessments

Section 1. Assessments. All of the Units of the Members of the Association shall be subject to an annual assessment charge to be paid by the respective Owners thereof to the Association annually in advance on the 1st day of January, in each

year. The Board of Directors of the Association may permit the annual assessment charge to be paid either annually, semiannually, or monthly.

Section 2. Determination of Assessments. Each year the Board of Directors of the Association shall, prior to November 1, determine the total amount to be raised by the annual assessment charge for the next succeeding year. This sum so determined shall be divided by the total number of Units, and each Unit shall be assessed an equal amount. Should the Board of Directors of the Association at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Common Area and other common expenses, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

Section 3. Use of Assessment Fund. The assessment fund may be used for such of the following purposes as the Association shall determine necessary and advisable: those purposes set out in Article IV hereof; for improving and maintaining the Common Area and other property of the Association, including a guardhouse, if any; for planting trees and shrubbery and the care thereof; for expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Area; for collecting and disposing of garbage, ashes, and rubbish; for maintenance of the sprinkling system; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs, street lights, and snow removal; for constructing, purchasing, maintaining, or operating any community service; for purchase of insurance; for professional management of the Association; for doing any other thing necessary or advisable in the opinion of the Association for the general welfare of the Members; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

Section 4. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to

interest at the rate of fifteen percent (15%) per annum or the prime rate of The Fourth National Bank and Trust Company, Wichita, Wichita, Kansas, whichever is higher.

Section 5. Lien for Delinquent Assessments. It is expressly understood and agreed that the annual assessment charge shall be a lien and encumbrance on the Unit with respect to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Units, the Owner (not including thereby a mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid to the time of his acquiring the title and all such charges thereafter falling due during his ownership thereof. A certificate in writing issued by the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon said parties.

Section 6. Subordination of Assessment Lien. The lien provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Unit shall not affect the assessment lien. The sale or transfer of any Lot or Unit, which is subject to any such mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7. Right of Association to Enforce Payment of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges.

Section 8. Annual Assessment. The Board of Directors of the Association (the "Board") shall fix the annual assessment

at an amount which shall not be increased during said year, except as may otherwise be provided for herein. Declarant shall not be bound by any assessment charge on any Lot or Unit owned by it until such Unit shall be ready for occupancy.

Section 9. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

Section 10. Additional Assessments. In order to help provide for a comprehensive neighborhood scheme and an integrally related community, Declarant has entered into certain agreements with the owner of the adjoining property regarding the development of a golf course thereon. In order to induce said owner ~~of the adjacent property~~ to develop such golf course, which golf course will affirmatively contribute to the aesthetic and monetary values of the Property and the Lots and Units therein, and in order to assist in providing proper maintenance and care of the green spaces thereon, Declarant has contracted with said owner to provide for the additional assessment provided for herein.

In order to assist in providing for the proper maintenance and care of the green spaces located on the adjacent golf course property, there shall be included in the assessment levied by the Association pursuant to the foregoing provisions of this Article III an additional amount determined as hereinafter provided, which amount shall be due and owing Tallgrass Club, owner of the adjacent golf course, its successors and assigns, to be utilized by it in maintaining the landscaping and green spaces of the golf course; provided, however, that the provisions of this Section 10 shall not apply to Declarant. Each Owner and the Association shall be bound by the provisions hereof as follows:

a. All sums paid by the Association to Tallgrass Club (or any successor or assign) shall be used by Tallgrass Club (or any successor or assign) to help defray the cost of maintenance and care of the landscaping and green spaces of the golf course, such maintenance and care to be performed by it at such times and in such manner as the said Tallgrass Club (or any successor or assign), in its sole discretion, deems reasonable and appropriate.

b. The annual assessment payable to Tallgrass Club, its successors or assigns, shall be in the initial amount as set out in Subsection "e" of this Section 10. Beginning with calendar year 1983, each annual assessment shall be increased pursuant to the "All Items Figure" of the 1978 revised Consumer Price Index-Urban Wage Earners and Clerical Workers-U. S. City Averages (1967 = 100) (the "BLS Index"), issued by the Bureau of Labor Statistics of the United States Department of Labor, with the initial assessment being predicated on such figure as issued for the month of September, 1981. For each succeeding calendar year said assessment shall be in an amount equal to such assessment for the initial year multiplied by a fraction, the numerator of which shall be the BLS index figure for September of the preceding year, and the denominator of which shall be such figure for September, 1981. In no event, however, shall such amount be less than the initial amount. In the event the BLS index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula, or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, by any other nationally recognized publisher of similar statistical information.

c. Nothing herein shall be construed as obligating Tallgrass Club, its successors or assigns, to continue the operation of the golf course; however, the obligation of the Association to pay said sums to Tallgrass Club, its successors or assigns, shall continue only so long as Tallgrass Club, its successors or assigns, shall maintain and operate said golf course. At such time as said property should cease to be operated as a golf course, and such cessation shall continue for a period of more than six (6)

months, then and in that event, the obligation of the Association to pay said sum shall terminate as of the date such golf course first ceased to be so operated.

d. Said assessment shall be levied and collected as a part of the assessment against each Unit as herein provided, but the collection and payment thereof shall also be the binding obligation of the Association to Tallgrass Club, its successors and assigns, and any failure of any Owner to make payment of such Owner's assessment to the Association shall not diminish the Association's obligation to Tallgrass Club, its successors and assigns, for the full amount of such payment. This provision is for the benefit of said Tallgrass Club and its successors and assigns and may be enforced by it pursuant to law.

e. The initial annual assessment for calendar year 1981 shall be in the following amount with the obligation as to each Unit to commence with the first full month after the month in which the golf course or any portion thereof is first opened for play, said assessment to be prorated on a monthly basis for a partial year.

Townhouse Units in Peppertree \$180 per Unit

f. A similar obligation to Tallgrass Club, its successors and assigns, shall be imposed upon all other residential additions of which Declarant is either owner or part owner and platted within any of the parcels located within the Bluestem Community Unit Plan. The minimum initial annual assessment for calendar year 1981 as to any such additional Units or dwelling units is as follows, the same to be prorated as aforesaid.

Single-family detached \$120 per Unit

Duplex, fourplex, townhouse,
condominium, and zero lot line
dwelling units \$ 60 per Unit

Apartment units, being defined
as 15 or more dwelling units
per acre \$ 30 per Unit

ARTICLE IV

Covenants for Maintenance

Section 1. Exterior Maintenance.

a. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon the individual Units as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, and provide lawn and yard care. The care and maintenance of any enclosed yard areas, and interior of the Units, including all appliances, heating and air-conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, and all other maintenance and repair that might be required on the individual Unit not otherwise specifically designated the responsibility of the Association herein, shall be the sole responsibility of the Owner. In addition, each Owner shall be solely responsible for the repair and maintenance of the Owner's patio, driveway, and sidewalks appurtenant to his Unit. In the event any such patio, driveway, or sidewalk should, in the opinion of the Board, become unsightly or dangerous to persons or property, the Association may, after reasonable notice to the Owner affording him an opportunity to make the needed repairs, cause the same to be made at such Owner's expense, and in the event the same shall not be paid by said Owner, the Board may file a lien on said Unit pursuant to Section 5 of ARTICLE III hereof.

b. The cost of the maintenance to be provided above shall be added to and become a part of the annual assessment to which the Units are subjected under ARTICLE III hereof, and, as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided therein.

ARTICLE V

Architectural Control

Section 1. Architectural Control. No building, fence, wall, planting, or other structure or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration to any Unit be made without first obtaining the express written consent of the Board, which shall have complete control of all such matters relating to the property and may consent or withhold its consent on such basis as it deems proper. The Board shall have complete and exclusive control of all such matters relating to the property and may further promulgate such rules, guidelines, and requirements as it deems necessary in order to assure the continued maintenance and operation of the property as a first-class development.

Section 2. No Liability. Neither the Declarant, the Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article V.

ARTICLE VI

General Covenants and Restrictions

Section 1. Structures; Division of Lots; Utilities; Trailers; and Fences.

a. No structure shall be used for any purpose other than that for which it was originally designed;

b. Except for the initial division of Lots 6 through 15, no Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise;

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c. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained;

d. No boat, boat trailer, house trailer, camper, camper trailers, recreational vehicles, or similar items shall be stored in and on any street, the Common Area, or in the open on any Lot or driveway; and

e. No fence shall be erected on any Lot, except those expressly permitted by Section 19 of this Article VI and those specifically approved as to location, size, type, and material by the Board.

Section 2. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 3. Rights of City of Wichita; Off-Street Parking Requirement. Reserve "A" in said Addition has been designated as the "Common Area" and is to be conveyed to an Owners' Association to be formed, which Association shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, as owner, shall be responsible for such maintenance and upkeep. In the event the Association, its successors or assigns, shall fail at any time to maintain the Common Area or fail in any manner to fulfill its obligations relating to the Common Area, the City of Wichita may serve a written Notice of Delinquency upon the Association setting forth the manner in which the Association has failed to fulfill its obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Common Area

from becoming a nuisance, may enter upon said Common Area and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Declarant or the Association may be assessed equally against all the Units within the Addition in the same manner as provided by law for special assessments, and said assessments may be established as liens upon said Units. Should the Declarant or the Association, their successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said Notice, apply for a hearing before the Board of City Commissioners to appeal said obligations, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

No retaining wall, fence, earth berm, or mass planting shall be placed or permitted within the fifteen (15) foot street, drainage and utility easements adjacent to Peppertree Circle, nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement. Any plantings proposed within this easement shall be reviewed by the City Forestry Division prior to installation. Any change of grade is prohibited.

Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit, which shall include the garage and driveway.

Section 4. Trees and Plantings. All trees and plantings shall be the responsibility of the Association and shall not be trimmed or removed by an Owner. In the event an Owner should desire to plant a tree or other planting, he may do so with the permission of the Board, and all subsequent care and replacement thereof shall be at the sole discretion of the Board, and the Owner shall have no further right with regard thereto. Any such planting obtained by an Owner and planted with the approval of the Board shall be at no expense to the Board.

Section 5. Animals. No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for

domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Properties without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Area. Dogs and other animals shall not be allowed to trespass on the adjacent golf course whether on leash or not.

Section 6. Signs. No sign or other advertising device of any nature shall be placed upon any Lot, except as provided herein. The Association may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Association may remove nonconforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner. In addition to the foregoing, so long as Declarant owns any Lot in the Addition, Declarant may require any Owner, real estate agent, or other person desiring to utilize a sign to advertise a Unit for sale, lease, or rent to utilize a standard sign provided by Declarant for which a reasonable rental may be charged by Declarant. The number and location of any such signs shall be subject to reasonable rules adopted by Declarant. Any nonconforming sign may be removed, without notice, by Declarant, and Declarant shall not be liable to anyone in the event of any such removal.

Section 7. Temporary Buildings. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.

Section 8. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any Unit by Declarant. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all

other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Association, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

Section 9. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

Section 10. Association May Trim or Prune. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance.

Section 11. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and bicycle paths, if any, located in the Common Area. Garage doors shall be kept closed at all times except for purposes of entry, exit, or maintenance.

Section 12. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Section 13. Noxious, Dangerous, and Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Maintenance of Drainage Channels and Swales. The Association shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot, in accordance with the master drainage plan.

Section 15. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Board. The Board, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Board, to be compatible with a high-quality residential neighborhood.

Section 16. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot or Unit owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office until all Units in the development are sold.

Section 17. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 18. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, the Bluestem Community Unit Plan, applicable zoning regulations, or this Declaration.

Section 19. Fences. No fence shall be constructed or maintained on any Lot except for privacy fences immediately adjacent to patios which are appurtenant to a Unit and which must first be approved by the Board of Directors as to type of construction, design, and style, except that this restriction shall not prohibit the construction and maintenance of fences constructed only of black wrought iron which do not exceed four (4) feet in height and which do not materially obstruct the passage of light and air.

Section 20. Set-Back Requirements. All building set-back requirements as set out on the recorded plat of Peppertree Addition shall be observed.

Section 21. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the Bluestem Community Unit Plan, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

ARTICLE VII

Enforcement

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VIII.

Easements

Section 1. Easements.

a. If any Unit shall encroach upon any other Unit or Lot or upon any portion of the Common Area, as a result of the construction, settling, or shifting of any building, structure, or improvement thereon, a valid easement for the maintenance and continuation of such encroachment shall exist as long as such building, structure, or improvement stands. In the event any building, structure, or improvement on the Property shall be rebuilt after having been damaged or partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, any resulting encroachment of any Unit upon any other Unit or Lot or upon any part of the Common Area shall be permitted and a valid easement for the continuation and maintenance of such encroachment shall exist as long as such building, structure, or improvement stands.

b. There is reserved for the benefit of each Unit an easement for utility services over, under, and through the Property and each other Unit and Lot. There is further reserved for the Association an easement of entry and of access for the installation and maintenance of utility lines, utility meter boxes, landscaping, and community facilities in the Common Area and for the performance generally of its rights and duties, as provided in this Declaration and the Bylaws of the Association.

c. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 2. Party Walls.

a. The division wall between any two Units shall be a party wall and the respective Owners shall have cross

easements in the wall and the wall shall be used for the joint purposes of the two separate living Units separated by it.

b. Should such wall be damaged or destroyed by the default, negligence, or other act or omission of one of the Owners, such Owner shall rebuild or repair the wall and shall compensate the other Owner for any damages to the property of the other Owner. Should the wall at any time while in use by both parties as aforesaid be injured by any cause other than the act or omission of either, the wall shall be repaired or rebuilt at their joint expense, provided that any sum received from insurance against such injury or destruction shall first be applied to such repair or restoration. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or portion thereof and of the same or similar material of the same quality of that used in the original wall or portion thereof.

The Owner causing repairs to be made shall have the right to enter on the property of the other Owner to the extent legally necessary in performance of the work, provided that he take due precaution not to damage the property of the other Owner.

c. Neither Owner shall use the wall in any manner whatsoever that may interfere with the equal use of the other half of the wall by the other Owner. In particular no structural changes shall be made in said wall by either Owner without the express written consent of the other joint Owner.

d. This covenant shall not operate to convey to either Owner the fee to any part of the land owned by the other Owner, the creation of rights to a party wall being the sole purpose hereof.

ARTICLE IX

Insurance

Section 1. Insurance. The Board of Directors for the benefit of the Association and the Townhouse Unit Owners shall acquire insurance as hereinafter provided. Payment therefor shall be billed to each Unit Owner in such amount as is allocable to such Unit by the insurance company and shall be considered as part of the annual assessment to be levied hereunder. All contents, personal property, and individual liability coverage shall be the sole responsibility of the Unit Owner.

Section 2. Hazard Insurance. The Board of Directors shall obtain and maintain, at all times, a policy or policies of fire insurance as the same are hereinafter more fully set out, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, excluding all foundations and excavations, payable as hereinafter provided, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the Owners, their mortgagees, and the Association, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any. Such limits and coverage shall be reviewed at least annually by the Board of Directors and can be increased or modified in its discretion.

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, or other comparable rating organization, unless such insurance shall be unobtainable or obtainable only at a cost the Board of Directors deems excessive.

b. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors or its authorized representative.

c. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual Owners or their mortgagees.

d. Each Owner may obtain additional insurance at his or her own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time.

e. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000).

f. Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance.

g. The Board of Directors shall be required to make every 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 Board of Directors, the officers of the Association, the Owners, and their respective servants, agents, and guests;

(2) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time;

(3) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time; and

(4) That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

h. The Board of Directors shall conduct an annual insurance review which shall include an appraisal of the improvements by a representative of the insurance carrier writing the master policy.

i. In the event that the Board of Directors should fail to provide such hazard insurance coverage or in the event that a majority of the Unit Owners shall decide not to have the Board of Directors provide such coverage, each Unit Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Unit, excluding land, foundation and excavations. Such insurance shall provide for payment for losses thereunder by the insurer to the Insurance Trustee for the benefit of each Owner, the owner of each first mortgage of record, and the Association, as their respective interests appear and as set forth in this Declaration. The proceeds from insurance received by the Insurance Trustee shall be used to repair, reconstruct, or rebuild the Units damaged or destroyed by said fire or other casualty as otherwise provided for herein.

Section 3. 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 Section 3, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty.

b. Such damage or destruction shall be repaired or reconstructed, unless all of the Owners and their first mortgagees agree in writing not to rebuild.

c. In the event that it should be determined that the damage or destruction shall not be repaired or reconstructed, then and in that event the proceeds of the said insurance shall be paid to the Unit Owners, their mortgagees, and the Association, as their respective interests may appear.

Section 4. Insurance Trustee.

a. Unless the Board of Directors shall designate a different Insurance Trustee, 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 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. Proceeds on account of damage or destruction to Units shall be held in trust for the Owners of the damaged or destroyed Units in proportion to the costs 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 Unit, the share of such Unit Owner shall be held in trust for such Owner and his mortgagee, as their respective 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 costs of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

(2) 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 3 of this Article IX.

(3) The Board of Directors of the Association, on behalf of the Insurance Trustee, shall determine whether the damage or destruction was to the Common Area or one or more Units or both. If the damage or destruction is to the Common Area and is to be repaired or reconstructed, the Insurance Trustee shall 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 Units 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 Unit or Units 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 5. Repair and Reconstruction--Excess Costs.

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 levy a special assessment against all Owners of the damaged Units and against all Owners in the case of damage to the Common Area, 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 Unit Owners for damage to Units shall be in proportion to the cost of repair and reconstruction of their respective Units.

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 4 of this Article IX.

Section 6. Minor Repairs.

a. Notwithstanding the foregoing provisions hereof, in the event of damage by fire or other casualty to either the Common Area or a single Unit 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) 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 Area, 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 Area. 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 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 Area as the Board of Directors, in the exercise of its sole discretion, may determine.

c. If the damage is confined to a single Unit, 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 of such Unit and said Owner's 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 against the Owner of the damaged Unit. Payments for repairs provided for in this Subsection shall be made only after all such repairs have been completed and approved by the Association, the Owner, and his, her, or its mortgagee, if any, which approval shall not be unreasonably withheld.

Section 7. Liability Insurance. The Board of Directors shall obtain a policy or policies of liability insurance insuring the Board of Directors, the Association and its officers and employees, and the Unit Owners and their employees, if any, against any liability to the public or to the Owners of the Units and their invitees or tenants incident to the ownership and/or use of the Property and including the personal liability exposure of the Owners incident to their being a member of the Association, but excluding such liability of such Owners arising from their ownership and occupancy of their individual Units and Lots. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000) for

any one (1) person injured for any one (1) accident, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of a named insured under the policy or policies shall not be prejudiced as respects his action against another named insured.

Section 8. Workers' Compensation Insurance. Workers' compensation insurance shall be provided to the extent necessary to comply with any applicable laws.

ARTICLE X

Transfer Restrictions

Section 1. Transfer Restrictions. An Owner shall have the right to sell, transfer, lease, or sublease his Unit, subject to the following provisions:

a. In the event of a sale, lease, or sublease of any Unit or any part thereof, the Association has and shall have the option to purchase, rent, or lease the same on the same terms and conditions as offered to the Owner by a third party. Any attempt at sale, lease, or sublease of any Unit without prior offer to the Association shall be wholly null and void and shall confer no title or interest whatsoever to the intended purchaser, tenant, or sublessee. Should an Owner wish to sell, lease, or rent his interest in any Unit or any part thereof, he shall, before accepting any offer to sell, purchase, lease, or rent any such interest, deliver to the Association written notice of his intent to sell, lease, or rent, which notice shall contain a true copy of any instrument containing the terms of any such offer. The Association shall, within fifteen (15) days after receiving such notice, either consent to the transaction specified in said notice or, by written notice, indicate the Association's intention to purchase, lease, or rent the Unit, or arrange for such, upon the same terms and conditions specified in the notice to the Association. The Association shall have fifteen (15) days

after the giving of its notice to the Owner to perform the duties and obligations and to make the payments provided to be performed and to be made by the prospective buyer, tenant, or sublessee in the notice to the Association. An Owner shall have no right to sell, lease, or rent any interest in any Unit or any part thereof, except as expressly provided in this Article X. The subleasing of any interest in any Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of an Owner under these covenants shall continue notwithstanding that he may have leased or rented said interest as provided herein.

b. Any Owner who wishes to make a gift of his Unit or any interest therein to any person or persons not members of his immediate family shall within fifteen (15) days prior to the contemplated date thereof to give written notice to the Association of his intent to make such a gift, together with the name and address of the intended donee and the contemplated date of said gift. The Association shall, at all times, have the first right and option to purchase such Unit or interest therein or furnish another purchaser therefor, for cash at fair market value to be determined in the same manner as such fair market value is determined under Subsection "c" below.

c. In the event any Owner dies leaving a will devising his Unit or any interest therein to any person not a member of his immediate family, or in the event any Owner dies intestate and by virtue of the laws of intestate succession, any interest in his Unit should pass to person or persons not members of his immediate family, the Association shall have an option to purchase his Unit ownership or interest therein from either the devisee or devisees named in said will or the heirs at law of said decedent Owner, or from the personal representative thereof, for cash at fair market value to be determined as follows. Within ten (10) days after receipt of written notice of the appointment of a personal representative for the estate of the deceased Owner, the Association shall appoint a qualified real estate appraiser and shall thereupon give written notice of such appointment to the said devisee or devisees, heirs at law, or personal representative, as the case may be. Within ten (10) days thereafter, said devisee or devisees, heirs at law, or personal representative, as the case may

be; shall appoint a second qualified real estate appraiser. Within ten (10) days after the appointment of said appraiser, the two appraisers so appointed shall appoint another qualified real estate appraiser to act as the third appraiser. In the event the said two appraisers cannot agree upon such third appraiser, the Senior Judge of the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, shall appoint such third appraiser. Within fourteen (14) days thereafter, the three appraisers shall determine, by majority vote, the fair market value of the Unit or interest therein devised by the deceased Owner and shall thereupon give written notice of such determination to the Association and the said devisee or devisees, heirs at law, or personal representative, as the case may be. The Association's right to purchase the Unit or interest therein at the price determined by the three appraisers shall expire ten (10) days after the date of receipt of such notice by it. The Association shall be deemed to have exercised its option if it tenders the required sum of money to the said devisee or devisees, heirs at law, or personal representatives, as the case may be, within the said option period or within said period furnish a purchaser who tenders such sum. Nothing herein contained shall be deemed to restrict the right of the Association or its authorized representative, pursuant to authority given to the Association by the Owners, to bid at any sale of the Unit or interest therein of any deceased Owner which is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased Owner's estate which contains his Unit or interest therein.

d. The Association shall not exercise any option hereinabove set forth to purchase any Unit or interest therein without the prior written consent of two-thirds (2/3) of the total vote of the Association. The Association may bid to purchase at any sale of a Unit or any interest therein of any deceased Owner which is held pursuant to an order or direction of the court upon the prior written consent of two-thirds (2/3) of the total vote of the Association, which consent shall set forth a maximum price which the Association is authorized to bid and pay for said Unit or interest therein.

e. Upon the written consent, determined by a majority vote of the Board of Directors of the Association, any

of the options contained in this Article may be released or waived. Failure of the Association to indicate by notice to the Owner or representative its intention to buy, lease, or rent the unit within the specified time period following the notice to the Association and to perform as provided herein shall be deemed a consent by the Association to the transaction specified in the notice, or a waiver of its option to purchase and the Unit or any interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

f. A certificate executed and acknowledged by the acting Secretary of the Association stating that the provisions of this Article as hereinabove set forth have been met by an Owner or representative, or duly waived by the Association, and that the rights of the Association hereunder have terminated, shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or representative who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived.

g. All fees, charges, assessments, interest, penalties, and special assessments levied against the Unit proposed to be transferred, rented, or leased, as provided in this Article, shall be fully paid to the Association before any transfer, lease, or sublease shall be effective.

h. The provisions of this Article shall not apply to the leasing, renting, or transfer of ownership by the Owner of any Unit to a member of his immediate family, or if ownership be held jointly or in common with others, the leasing, renting, or transfer of ownership of a Unit by one of such joint or common Owners to another joint or common Owner, or the leasing, renting, or transfer of ownership to the Owner of another Unit in the subject property, or the granting by an Owner to a friend or relative of the limited license upon receipt of no consideration by way of rent or otherwise to be used and to occupy a Unit for a term of not longer than four (4) weeks; provided, however, that an Owner shall give the Association two (2) weeks' notice in writing of the intended license and of the name and address of the licensee.

1. Regardless of any prior consent theretofore given, no Owner of a Unit nor his executor, administrator, or personal representative, nor any trustee or receiver of a Unit of such Owner, nor anyone to whom interest of such ownership passed by law shall be entitled to lease, rent, or transfer the ownership of any interest therein of any Unit, except upon full compliance with the provisions of this Article.

ARTICLE XI

Power of Assignment and Delegation

Section 1. Power to Assign and Delegate. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers, and authority contained in this Declaration. The initial operation of the Association shall be by Declarant until ninety percent (90%) of all Units have been sold or until such earlier time as Declarant may relinquish such control to the Association.

ARTICLE XII

Severability

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE XIII

Amendment

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of

twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) year. This Declaration may be amended by an instrument signed by the Owner(s) of not less than seventy-five percent (75%) of the votes in the Addition and recorded in the Office of the Register of Deeds of Sedgwick County, Kansas, or any other public office for recording instruments affecting real property located in Sedgwick County, Kansas, as may hereafter be established; provided, however, that ARTICLE VI, Section 3, shall not be amended without the prior approval of the Wichita Board of City Commissioners and ARTICLE III, Section 10, shall not be so amended without the prior written approval of Tallgrass Club, its successors or assigns.

ARTICLE XIII

Revocation of Prior Covenants

Those certain covenants recorded August 29, 1980, on Film 435, p. 1083, are hereby revoked in their entirety insofar as the same affect said Peppertree Addition.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of this 13 day of Sept, 1981:

PEPPERTREE COMPANY,
a joint venture

By: TALLGRASS COMPANY,
a Partnership

By: RITCHIE ENTERPRISES,
Managing Partner

By: E. D. Ritchie
E. D. Ritchie, a Partner

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this 13th day of September, 1981, before me, a Notary Public within and for the County and State aforesaid, came E.M. Ritchie, a partner of Ritchie Enterprises, Managing Partner of TALLGRASS COMPANY, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Declaration of Covenants, Conditions, and Restrictions, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for an on behalf of and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

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



Allen J. Banks
Notary Public

FOULSTON, SIEFKIN, POWERS & EBERHARDT

LAW OFFICES
700 FOURTH FINANCIAL CENTER
BROADWAY AT DOUGLAS
WICHITA, KANSAS 67202
(316) 267-6371

GEORGE B. POWERS*
JOHN F. EBERHARDT
ROBERT C. FOULSTON
HAROLD MILLER
ROBERT N. PARTRIDGE
ROBERT H. SIEFKIN
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LARRY G. RAPP
N. DOUGLAS NEARAN
N. KAY BOYSE
NILA TEDESCHI

*COUNSEL
GEORGE SIEFKIN (1889-1954) ROBERT C. FOULSTON (1889-1947)

September 10, 1981

Mrs. Louise Olivarez
Metropolitan Area Planning Commission
City Hall, Tenth Floor
455 North Main
Wichita, Kansas 67202

RECEIVED

SEP 11 1981

METROPOLITAN PLANNING
ROUTE Louise

RE: Restrictive Covenants for
Peppertree Addition

Dear Louise:

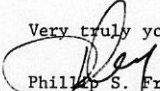
I am enclosing herewith a copy of the final draft of the Peppertree covenants. The original has been sent out to be signed and returned to you.

In regard to changes from the last draft, you will find the matters discussed in your letter to me of September 2nd on page 4 as to paragraph 1; page 2 as to paragraph 2; page 32 as to paragraph 3; and page 13 as to paragraph 4.

In regards to paragraphs I, J, and M of your letter of September 4, 1981 to Van Doren-Hazard-Stallings, see Section 3 of Article VI which begins on page 12.

I think we have covered everything as per your comments but if you have any questions, please let me know.

Very truly yours,


Phillip S. Frick

of FOULSTON, SIEFKIN, POWERS & EBERHARDT

PSF/ms

Enclosure

cc: Dean Ritchie
Dave Ritchie
Denny Van Buskirk
Ken Bengston

September 11, 1981

Van Doren-Hazard-Stallings
Suite 250, 260 N. Rock Road
Wichita, Kansas 67206

Re: S/D 81-68 - Final plat of Woodlands East
S/D 81-75 - Final plat of Peppertree

Gentlemen:

At the regular meeting of the Metropolitan Area Planning Commission on September 10, 1981, the above-captioned plats were approved subject to the conditions in our letters of September 4, 1981. Since most of these conditions have been satisfactorily completed and the tracings and title opinions have been submitted, both Peppertree and Woodlands East have been scheduled for review by the City Commission on September 22, 1981. I hope to receive the final restrictive covenants for both additions by next Monday. Also, please remember that the portion of the original Tallgrass Clubhouse access easement which crosses several proposed lots in Woodlands East must be legally voided. A copy of the document which accomplishes this must be submitted to the Planning Department.

If you have any questions, please call.

Sincerely,

Louise Olivares
Senior Planner

LO:hh

cc: Tallgrass Company, P.O. Box 4048, 67204
Phillip S. Frick, 700 Fourth Financial Center, 67202

September 8, 1981

Mr. Phillip S. Frick
700 Fourth Financial Center
100 N. Broadway
Wichita, Kansas 67202

Re: Restrictive covenants for Peppertree and Woodlands East

Dear Phil:

At the September 3rd Subdivision Committee meeting, the covenants regarding use of the 15-foot street drainage and utility easements were discussed. It was required that retaining walls and any change of grade as well as fences, earth berms and mass plantings be prohibited within these easements. This alteration should be made in the covenant wording. With regard to what type of non-mass planting would be allowed, it was suggested that the City Forestry Division should review any proposed landscaping within these 15-foot easements. I think the wording you already have in the covenants will be adequate because it prohibits any planting which would materially interfere with the flow of storm water run-off and that was the major concern.

If the platters are trying to schedule these two plats for City Commission review on September 22, 1981, I will need to have the original signed covenants by September 14th. All other platting requirements will have to be submitted by September 10th.

Sincerely,

Louise Olivares
Senior Planner

LO:hh

cc: Dean Ritchie, P.O. Box 4048, 67204
Ken Bengtson, Van Doren-Hazard-Stallings, Suite 250, 260 N.
Rock Road, 67206

September 4, 1981

Van Doren-Hazard-Stallings
Suite 250, 260 N. Rock Road
Wichita, Kansas 67206

Re: S/D 71-75 - Final plat of Peppertree

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission on September 3, 1981, the above-captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

- A. As requested by the applicant, the street name "Bainbridge Circle" may be changed to "Peppertree Circle".
- B. The applicant shall guarantee any drainage improvements required by the platting of this property. *incidental drainage included in street paving petitions*
- C. *petition* The applicant shall guarantee the extension of sanitary sewer to serve each lot being platted.
- D. *petition* The applicant shall guarantee the extension of City water to serve each lot being platted.
- E. *petition* The applicant shall guarantee the paving of Peppertree Circle.
- F. *9-10* If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- G. The applicant's engineer has stated that the final plat tracing will show a 15-foot street, drainage and utility easement on both sides of Peppertree Circle as was shown on the preliminary plat.
- H. The platting text shall state that Reserve A is also for utility and drainage purposes.
- I. The applicant shall submit a restrictive covenant which requires 4 off-street parking spaces per dwelling unit.

Van Doren-Hazard-Stallings
September 4, 1981
Page 2

- J. As required in provision 8 of the associated Community Unit Plan, a homeowners' association shall be formed to provide for the ownership and maintenance of Reserve A. The required homeowners' association shall give the City the right to maintain the reserve in the event it is not properly maintained and assess the cost of the maintenance to the property owners within Peppertree Addition.
- K. The Subdivision Committee recommends a waiver of the street width standard of the Subdivision Regulations.
- L. The appropriateness of a joint 20-foot drainage and emergency access easement will be reviewed when paving plans are reviewed. If additional easement width is necessary, the applicant shall grant it.
- M. The applicant shall submit restrictive covenants which call out restrictions for lot-owner use of the 15-foot street, drainage and utility easements adjacent to Peppertree Circle. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings. Any plantings proposed within this easement shall be reviewed by the City Forestry Division prior to installation.
- N. 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 plat. The certificate will be required if petitions are submitted. 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 September 10, 1981, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Sincerely,

Forrest L. Nagley
Junior Planner

FLN:bbh

cc: Tallgrass Co., P.O. Box 4048, 67204
Phil Frick, 700 Fourth Financial Center, 67202
Mike Lindabak, City Engineering

September 2, 1981

Mr. Phillip S. Frick
700 Fourth Financial Center
Broadway at Douglas
Wichita, Kansas 67202

Re: Restrictive covenants for Peppertree and Woodlands East

Dear Phil:

I have reviewed the covenants for Peppertree and Woodlands East and have a few questions or comments as listed below.

Peppertree

1. The description of the common area on page 4, as written, would indicate that the street is included as part of the common area. But since common area, as defined on page 2, means property owned by the Association, the street cannot be included since it is being dedicated to the public. For this plat, common area is only "Reserve A".
2. When will the Association be formed and when will Reserve A be conveyed to the Association? Several references are made to the Association and to the fact that conveyance of the common area will be made, but I find no reference to when either will occur.
3. A statement should be included revoking the Bluestem Village covenants which apply to this property. A similar revocation was made when Bluestem Village superseded Pebble Green.
4. Reference to the use of the 15-foot utility easement adjacent to the street (Article VI, Section 3) will be discussed at tomorrow's Subdivision Committee meeting. The "utility easements" shall be changed to "street, drainage, and utility easements" as this is the notation which will appear on the final plat tracing. Probably some statement will have to be made about no change of grade being allowed within the easement because the proper grade for passing the 100-year storm waters will be established when the street is paved.

Mr. Phillip S. Frick
September 2, 1981
Page 2

Woodlands East

1. Provisions must be made for the ownership and maintenance of all the reserves being platted. If Reserve D is to be owned and maintained by Tallgrass Club rather than the Woodlands East Owners' Association, this should be stated in the covenants along with information as to who will be responsible for Reserve D prior to its conveyance to Tallgrass Club and when it is expected to be conveyed.
2. We have asked that the private drive adjacent to Lots 10, 11 and 12 in Block 2 be designated as a reserve and provisions made for its ownership and maintenance. This can be the responsibility of the entire Association or just adjacent lot owners as the platator chooses. There should be a statement that the private drive will be paved prior to development of Lot 10, 11 or 12, Block 2.
3. The common areas described in Article II, Section 3, should be as follows:

Reserves A, B and C - - - Open space
Reserve E - - - - - Street, drainage and
utility purposes
Reserve F - - - - - Private drive and
utility purposes.
4. Article VI, Section 3 should give the City the right to maintain all the reserves which are common area. The same comment as noted in item 4 above regarding the street, drainage and utility easements applies to Woodlands East.
5. When will the common area be conveyed to the Association?

We will advise you after tomorrow's meeting of any requirements the Subdivision Committee members may have regarding these covenants.

Sincerely,

Louise Olivares
Senior Planner

LO:bh

cc: Dean Ritchie, P.O. Box 4048, 67204
Ken Dangtson, Van Doren-Hazard-Stallings, 260 N. Rock Road,
Suite 250, 67206

FOULSTON, SIEFKIN, POWERS & EBERHARDT

LAW OFFICES
700 FOURTH FINANCIAL CENTER
BROADWAY AT DOUGLAS
WICHITA, KANSAS 67202
(316) 267-8371

GEORGE B. POWERS*
JOHN F. EBERHARDT
ROBERT C. FOULSTON
MALCOLM HILLER
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R. DOUGLAS REAGAN
W. RAY ROYER
NOLA TEDESCO

*COUNSEL
GEORGE SIEFKIN (1885-1994) ROBERT C. FOULSTON (1889-1947)

August 31, 1981

Mrs. Louise Olivarez
Metropolitan Area Planning Commission
City Hall, Tenth Floor
455 North Main
Wichita, Kansas 67202

RE: Peppertree and Woodlands East Additions

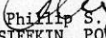
Dear Louise:

I am enclosing herewith drafts of proposed restrictive covenants for Peppertree and Woodlands East. In Peppertree, I think the provisions you are specifically interested in are on page 12 and 13 relating to the rights of the city and page 31 regarding amendment.

On Woodlands East, the same provisions are on pages 15, 16 and 22.

Please let me know if you have any questions, corrections, etc.

Very truly yours,


Philip S. Frick
of FOULSTON, SIEFKIN, POWERS & EBERHARDT

PSF/ms
Enclosure
cc: Ken Bengston
Dean Ritchie

Final plat
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D No. 91-75 Name Peppertree
Date Application Rec'd. 6-26-81 Preliminary Approval 7-23-81
Scheduled S/D Meeting 9-3-81

DESCRIPTION

General Location 1/3 mile west of Webb Road on the north side of 21st Street

Owner Tallgrass Company
Surveyor/Engineer Van Doren-Hazard-Stallings
Address 260 N. Rock Road, Suite 250 Zip Code 67206 Phone 686-7303

- | | |
|--|-----------------------------------|
| 1. Gross Acreage of Plat <u>6.7</u> | 7. Lineal Feet of New Street |
| 2. Number of Lots : | a. <u>32'</u> R/W <u>1100</u> ft. |
| Residential <u>15</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>15</u> | TOTAL <u>1100</u> ft. |
| 3. Minimum Lot Frontage <u>45</u> | 8. Sidewalk adjacent to all |
| 4. Minimum Lot Area <u>5400 sq. ft.</u> | streets <u>yes</u> <u>x</u> no |
| 5. Existing Zoning <u>AA w/CUP (DP-96)</u> | |
| 6. Proposed Zoning <u>AA w/CUP</u> | |
| 9. Is public water available <u>x</u> Yes _____ No, Name <u>City of Wichita</u> | |
| 10. Is sanitary sewer available <u>x</u> Yes _____ No, Name <u>City of Wichita</u> | |
| 11. Has Health Dept. approval been obtained (where applicable) _____ Yes _____ No | |
| 12. City of Wichita <u>x</u> 3-Mile Area _____ Outside of 3-Mile Area _____ | |

STAFF COMMENTS:

- A. The representative from City Engineering should be prepared to comment on the status of the applicant's final drainage plan.
- B. The applicant shall guarantee any drainage improvements required by the platting of this property.
- C. The applicant shall guarantee the extension of sanitary sewer to serve each lot being platted.
- D. The applicant shall guarantee the extension of City water to serve each lot being platted.
- E. The applicant shall guarantee the paving of Bainbridge Circle.
- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- G. The applicant's engineer has stated that the final plat tracing will show a 15-foot street, drainage and utility easement on both sides of Bainbridge Circle as was shown on the preliminary plat.
- H. At the time the preliminary plat was approved a 20-foot continuous utility easement was required adjacent to the rear property lines of Lots 1-5 from the east line of the plat to the east line of the cul-de-sac. Also, a 10-foot utility easement was required adjacent to the east line of Lot 2 and the west line of Lot 3. These requested easements have not been indicated on this final plat. The utility company representatives should be prepared to state if these easements are still required.
- I. The applicant shall submit a restrictive covenant which requires 4 off-street parking spaces per dwelling unit.
- J. As required in provision 8 of the associated Community Unit Plan, a homeowners' association shall be formed to provide for the ownership and maintenance of Reserve A. The required homeowners' association shall give the City the right to maintain the reserve in the event it is not properly maintained and assess the cost of the maintenance to the property owners within Peppertree Addition.

(Over)

- K. A requirement of preliminary plat approval was the submission of a proposed sanitary sewer layout plan to City Engineering. The representative from City Engineering should be prepared to comment on the acceptability of the proposed plan.
- L. At the time of preliminary plat approval, the Subdivision Committee recommended a waiver of the street width standard of the Subdivision Regulations.
- M. The City Engineer's representative shall be prepared to comment on the type of drainage improvement which is proposed for the 20-foot drainage easement between 21st Street and the cul-de-sac and whether or not an emergency access easement can be combined with this drainage easement.
- N. The applicant or his agent shall be prepared to discuss with the Committee the restrictions which will be imposed on lot-owner use of the 15-foot street, drainage and utility easement adjacent to Bainbridge Circle. Restrictions will be necessary to assure ready access to utilities which will be placed in the easement and to assure the flood-carrying capacity of the street and adjacent drainage easement.
- O. Recording of the plat within 30 days after approval by the Board of City Commissioners.

July 24, 1981

Bill G. Yung Design
8225 E. 35th St. North
Wichita, Ks. 67226

Re: S/D 81-75 - Preliminary plat of Peppertree

Dear Mr. Yung:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission July 23, 1981, 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:

- A. The applicant shall submit a final drainage plan to City Engineering prior to or at the time of submitting a final plat.
- B. The applicant shall guarantee any drainage improvements required by the platting of this property.
- C. The applicant shall guarantee the extension of sanitary sewer to serve each lot being platted.
- D. The applicant shall guarantee the extension of City water to serve each lot being platted.
- E. The applicant shall guarantee the paving of the street being platted.
- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- G. The street name "Peppertree" shall be changed to "Bainbridge Circle."
- H. The final plat shall specify the intended purpose of the proposed reserves in the platting's text.
- I. The applicant shall submit a restrictive covenant which requires 4 off-street parking spaces per dwelling unit.
- J. A draft of the applicant's proposed restrictive covenants shall be submitted to the Planning Department for review prior to or at the time of submission of a final plat.

Bill G. Yung Design
July 24, 1981
Page 2

- K. As required in provision 8 of the associated Community Unit Plan, a homeowners' association shall be formed to provide for the ownership and maintenance of the proposed reserves. The required homeowners' association shall give the City the right to maintain the reserves in the event they are not properly maintained and assess the cost of maintenance to the property owners.
- L. The final plat shall dimension the building setback on Lot 6, Block 1.
- M. The final plat shall dimension the "street, drainage and utility easement" on Lots 5 and 6, Block 1, and on Reserve A south of the proposed cul-de-sac.
- N. The final plat shall indicate a cul-de-sac of sufficient size to accommodate the turning radius of large trucks and emergency vehicles.
- O. The applicant shall provide a proposed sanitary sewer layout plan to City Engineering when the final plat is filed.
- P. The final plat shall indicate the easements required by K.G. and E., which are marked on the engineer's copy of this preliminary plat.
- Q. The Subdivision Committee recommends a waiver of the street width standard of the Subdivision Regulations.
- R. 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.
- S. 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,

Louise Olivares
Senior Planner

LO:hh

cc: Tallgrass Company, P.O. Box 4048, 67204
Ken Bengtson, Van Doren-Hazard-Stallings, 260 W. Rock Rd., Suite 250
67206
Mike Lindebak, City Engineering

DATE: July 23, 1981

PROPERTY NAME: Peppertree

LOCATION: 1/3 mile west of Webb Road on the North side of 21st Street.

MAILED TO: Bill G. Yung Design
8225 E. 35th North
Wichita, KS 67226

PREPARED BY: Larry L. Henry
District Conservationist
USDA-Soil Conservation Service
4100 Maple, Wichita, Kansas 67209
(316) 942-8422

REQUESTED BY: Wichita-Sedgwick County
Metropolitan Area Planning
Commission



Scale: 3.2" equals 1 mile

Special Situations

SOILS LEGEND

<u>SYMBOLS</u>	<u>CLASS</u>	<u>SOIL</u>	<u>BRIEF DESCRIPTION</u>	<u>HYDROLOGIC GROUP</u>
Ce	IVe-1	Clime silty clay, 3 to 6 percent slopes.	Moderately deep, sloping, well drained soils on uplands, developed over shales. These soils have rapid runoff and low avail- able water capacity. Permeability is very slow.	C
Rd	IIIe-3	Rosehill silty clay, 1 to 3 percent slopes.	Moderately deep and shallow, gently sloping, well drained soils on uplands. These soils have medium to rapid runoff and low available water capacity. Permeability is slow and very slow.	D
Ia	IIIe-1	Irwin silty clay loam. 1 to 3 percent slopes.	Deep, gently sloping, moderately well and well drained soils on uplands and terraces. These soils have medium runoff and high available water capacity. Permeability is very slow and moderate.	D

SOIL INTERPRETATIONS

<u>SYMBOL</u>	<u>CLASS</u>	<u>SOIL</u>	<u>ITEMS</u>	<u>LIMITATIONS</u>	<u>REASON</u>
Ce	IVe-1	Clime silty clay, 3 to 6 percent slopes.	Dwellings	Moderate	Depth-to-rock Shrink-Swell, Low Strength Low Strength
			Local Roads & Streets Small Commercial Buildings Parks & Playgrounds	Severe Moderate Severe	
Rd	IIIe-3	Rosehill silty clay, 1 to 3 percent slopes	Dwellings	Severe	Shrink-Swell Low Strength Low Strength Shrink-Swell Shrink-Swell
			Local Roads & Streets Small Commercial Buildings Parks & Playgrounds	Severe Severe Severe	
				Severe	

(Cont'd....)

RECOMMENDATIONS:

1. Disturb only the area needed for construction.
2. Remove only those trees, shrubs, and grasses that must be removed for construction; protect the rest to preserve their esthetic and erosion-control values.
3. Disturbing as small area as possible, install streets, curbs, water-mains, electric and telephone cables, storm drains and sewers in advance of home or other buildings construction.
4. Temporarily stabilize each segment of graded or otherwise disturbed land by seeding and mulching or by mulching alone. Permanently stabilize these areas as work on the land is completed. Both temporary and permanent stabilization practices are to be installed according to the Sedgwick County Conservation District Standards and specifications.
5. Stabilize each lot within 60 days after work starts on home or other building construction.
6. Backfill, compact, seed and mulch trenches within 60 days after they are opened.
7. If additional information or on-site assistance is needed relative to soils, seeding procedures, structure design or related problems, call this number: (316) 942-8422

SOIL INTERPRETATIONS

<u>SYMBOL</u>	<u>CLASS</u>	<u>SOIL</u>	<u>ITEMS</u>	<u>LIMITATIONS</u>	<u>REASON</u>
Ia	IIIe-1	Irwin Silty clay loam. 1 to 3 per- cent slopes.	Dwellings Local Roads & Streets Small Com- mercial Buildings Parks & Playgrounds	Severe Severe Severe Severe	Shrink-Swell Low Strength Shrink-Swell Shrink-Swell Low Strength Percs Slowly

Preliminary plat

SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D No. 81-75 Name Peppertree
Date Application Rec'd. 6-26-81 Preliminary Approval
Scheduled S/D Meeting 7-23-81

DESCRIPTION

General Location 1/3 mile west of Webb Road on the north side of 21st Street

Owner Tallgrass Company
Surveyor/Engineer Bill G. Yung Design
Address 8225 E. 35th No., Wichita, Ks. Zip Code 67226 Phone 683-5567

- | | |
|---|--|
| 1. Gross Acreage of Plat <u>6.7</u> | 7. Lineal Feet of New Street |
| 2. Number of Lots : | a. <u>32'</u> R/W <u>1100</u> ft. |
| Residential <u>15</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>15</u> | TOTAL <u>1100</u> ft. |
| 3. Minimum Lot Frontage <u>45</u> | 8. Sidewalk adjacent to all streets <u>yes</u> <u>y</u> no |
| 4. Minimum Lot Area <u>5400 sq ft.</u> | |
| 5. Existing Zoning <u>AA w/CUP (DP-96)</u> | |
| 6. Proposed Zoning <u>AA w/CUP</u> | |
| 9. Is public water available <u>x</u> Yes _____ No, Name <u>City of Wichita</u> | |
| 10. Is sanitary sewer available <u>y</u> Yes _____ No, Name <u>City of Wichita</u> | |
| 11. Has Health Dept. approval been obtained (where applicable) <u>NA</u> Yes _____ No | |
| 12. City of Wichita <u>X</u> 3-Mile Area _____ Outside of 3-Mile Area _____ | |

STAFF COMMENTS:

NOTE: This plat is subject to the general provisions of the Tallgrass Community Unit Plan (DP-96). It proposes the dedication of only 32 feet of right-of-way for a 29-foot paved street. A 15-foot "street, drainage and utility easement" is being platted on each side of the 32-foot street dedication.

- A. The representative from City Engineering should be prepared to comment on the status of the applicant's drainage concept plan.
- B. The applicant shall guarantee any drainage improvements required by the platting of this property.
- C. The applicant shall guarantee the extension of sanitary sewer to serve each lot being platted.
- D. The applicant shall guarantee the extension of City water to serve each lot being platted.
- E. The applicant shall guarantee the paving of the street being platted.
- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- G. The street name "Peppertree" shall be changed to "Bainbridge Circle." This name would be a logical extension of the existing Bainbridge located between Woodlawn and Rock Road.
- H. The final plat shall specify the intended purpose of the proposed reserves in the plat's text.
- I. Since a 29-foot street pavement is proposed for this plat (paving standard of the 58-foot street), the applicant shall submit a restrictive covenant which requires 4 off-street parking spaces per dwelling unit.
- J. The applicant has advised that a restrictive covenant will be filed which prohibits fencing, landscaping and

(Over)

obstruction of the proposed "street, drainage and utility easement" adjacent to each side of the 32-foot street dedication. A draft of this restrictive covenant shall be submitted to the Planning Department for review prior to or at the time of submission of a final plat.

- K. As required in provision 8 of the associated Community Unit Plan, a homeowners' association shall be formed to provide for the ownership and maintenance of the proposed reserves. The required homeowners' association shall give the City the right to maintain the reserves in the event they are not properly maintained and assess the cost of maintenance to the property owners.
- L. The applicant shall be prepared to discuss with the Committee the functioning of the joint drainage and emergency access easement.
- M. The final plat shall dimension the building setback on Lot 6, Block 1.
- N. The final plat shall dimension the "street, drainage and utility easement" on Lots 5 and 6, Block 1, and on Reserve A south of the proposed cul-de-sac.
- O. 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.
- P. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

(1)

Notes from 7/6/81 meeting

Perpetuity
Ritchwood plat

- (1) Need to change Wildwood Street name as there is already a street by this name off of Meridian south of Pawnee.

Ritchwood is not a good substitute name because it sounds too much like Ridgewood.

- (2) Would like to see the cul-de-sac eliminated and the street looped out to 21st Street North.

a. street exceeds the 600' maximum length design standard of the Subdivision Regulations [7-201(R)]

b. provide for looping the water line → better water pressure.

Woodlands plat

- (1) Would like to see the cul-de-sac eliminated and the street looped out to Tougrass. Would gain two additional lots. Eliminate water pressure problem.

- (2) Need to choose new name for Wildwood Street.

- ③ Need to provide turn around for private drive. May need to redesign to eliminate the private drive if adequate turn around for fire truck cannot be made.
- ④ 10-foot utility easement on lots 17 and 18 needs to be increased to 20-feet. How are you going to assure that drive approaches are not going to be constructed off of Penstemon on these lots.
- ⑤ 32 feet of street dedication at the intersection of Penstemon and Penstemon Ct. does not allow enough room for intersection radius.

General Comments & problems identified
regarding proposed 30-foot dedication
and adjacent utility easements.

1. Where would sidewalks go if petitioned for at a later date.
2. What utilities would go in front lot line easement. Tremendous co-ordination problem for utility installation. Who will be responsible for co-ordination?
3. Proposed 20-foot easement needs to also be designated as a permanent street construction easement.
4. Street signs need to be provided for in the 20-foot easement.
5. Curb inlets will extend back into easement and 100 year flood will need to be accommodated in easement. Therefore easement will also need to be for drainage purposes and a grade set for easement. Language will need to be included in plat's text about not changing the grade of the front yard and prohibiting landscaping or construction which might hinder the handling of the 100-year flood.

- 6. How are you going to prevent property owners from landscaping their front yard. Isn't it rather naive to assume they won't since the house will be only 20 feet from the curb.
- 7. Block corners and control corners will all have to be reset because they will be knocked out when the streets are built.
- 8. Repair of utilities may be a problem because they will be too close to the building. Tight squeeze.
- 9. K.G. 9E has advised that if electric goes in the front transformers and switch cabinets will have to go in front of the house. Some would consider this unsightly.
- 10. The private sidewalk from the driveway to the front door will go over some utility company's line.

* Idea: 15' easement + 5' building setback.

Southwestern Bell representative:
Rick Jones.

Also see J.H.G.'s
Woodland East notes in S/D 81-68 file

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

July 1, 1981

TO See Distribution List

FROM Jack H. Galbraith, Chief Planner

SUBJECT Proposed plats with 32-foot street right-of-way widths
(Woodlands East and ~~Wildwood~~
Ritchwood)

Two new Comotara plats, both in the section north of 21st between Rock and Webb, have been submitted to our office for review. The developer proposes to dedicate 32 feet of right-of-way for a 29-foot street. Utility easements of 10, 15, or 20 feet adjacent to each side of the paved streets are proposed. Prior to discussing this design criteria as part of a preliminary plat at a regularly scheduled Subdivision Committee meeting, we would like to have your thoughts on this proposal. What are the major problems, if any, with installing and maintaining water lines, gas lines, etc., in easements rather than in public right-of-way?

This developer advises that they believe this concept is appropriate for areas designed with cul-de-sacs, and where continuous streets leading from one type of housing to another type is not proposed. They also propose to restrict fences from going into the easements adjacent to streets as well as restricting all plant materials except grass from going in an approximately 12-foot area next to the curb. The purpose of this is obviously to reduce overall land area required for development. Each lot will have four off-street parking spaces, 2 in the garage and 2 in front of the garage.

We have had several requests during the past year to try something like this and we expect more requests in the future. I have scheduled a meeting in the Planning Department Conference Room (10th Floor, City Hall) for next Monday, July 6th, beginning at 1:00 p.m., so that we might discuss this issue. If you are unable to attend, please try to send a representative.


Jack H. Galbraith
Chief Planner

JHG:bh

cc: Ray Bruggeman, Director of Engineering
Paul Graves, Design Chief Engineer
Bill McKinley, Traffic Engineer
David Stowe, Director of Operations and Maintenance
Robert Blevis, Kansas Gas and Electric
Carol Ruff, Southwestern Bell
Gene Curless, Gas Service Company
Richard Abraham, Air Capital Cablevision
Bill Otten, Wichita Water Department
Mike Lindebak, City Engineering
Andy Harkness, County Engineering
Walt Campbell, City Fire Department



PO Box 8236 • Wichita, KS 67208 • (316) 681-2112

June 30, 1981

Mr. Ray Bruggeman
Director of Engineering
City Building - 7th Floor
455 N. Main
Wichita, Kansas 67202

RE: Addition of a 32' ROW Street Standard

Dear Ray:

The past few months a group of people consisting of developers, engineers and planners have met together to wrestle with some new ideas. Their ideas have specifically centered around the problems of private streets vs. public streets in small "communities" consisting of duplex, zero lot line or equivalent "multi-family" land uses.

In the past, private streets serving individual residences, have been discouraged because of a multiple of reasons, some of them are:

1. Maintenance of the streets
2. Snow removal
3. Emergency vehicle access
4. Postal service
5. Street names

A large committee has met in city hall several times to work on some of these problems. We have come up with some suggested changes which accomplish what the developer wants, with some compromise, yet eliminates many of the problems with "private streets".

We suggest that a new street standard be added to those presently in use which will reduce the ROW requirements for 29' BB streets under certain special conditions. This proposed standard provides for a 29' BB street constructed within a 32' ROW and the platting of utility easements either side of this narrower ROW to facilitate utility installation.

JUL 1 1981

We feel this new standard provides several advantages worth consideration. Among those are:

1. Reduction in number of private streets whereby potential sub-standard construction in both width and cross section, may be minimized. This would reduce the concern of the maintenance of private streets being later absorbed by the city.
2. This standard will enable site plans to be prepared with less waste land allowing for a more compact form of housing reducing the development cost and reducing the magnitude of the increasing maintenance responsibility.
3. The concept is not substantially different than that currently in use with private streets except that the actual paving width is 29' BB instead of 24' BB and that city standards would be used for the paving section.

*Standard
driveway
paving section
Public utility easements*

4. Comparing area utilized for paving and utilities, the following data is provided:

*Private streets - 20' utility easement either side of a 24' BB street for a total of 64' for paving and utilities.

*54' ROW public street - 29' BB paving with 14' either side for use in utility installation for a total of 54'.

*32' ROW public street - 29' BB street - 20' either side of ROW for a total of 72' for paving and utilities.

From this comparison it indicates a possibility of 21 1/2' either side of the paved section that could be used for utilities instead of the 14' on the normal 54' ROW.

5. Utilities affected - if developed with water and gas in front of dwelling units there would be no additional drives to cross or other obstacles encountered. In fact it would be possible for all utilities to be installed in the front within the additional easement width, thus minimizing the conflict with back yard fences, patios and extensive landscaping. Furthermore, maintenance crews could work off of paved surfaces when maintenance is required, reducing costly down time and inconvenience.

Additionally, we feel that several restrictions should be considered in order to qualify a project for this standard. The following suggestions for implementation will help insure quality development and reduce potential problems that may be of concern.

minimum # of
off-street parking
spaces

1. Require that the reduced standard be used on cul-de-sac streets only - never allowed on thru-traffic streets.
2. Keep all utility installations within 12' of curb and restrict any plantings other than grass in this 12' area.
3. Restrict the use of fences within the front yard 20' easement.
4. Require that only 29' BB streets be allowed on the reduced ROW standard.

We realize that this request does require some re-thinking of current standards regarding street and utility construction, but we feel the possible benefits justify the effort.

If we can be of any assistance in the review of this standard, we would be available at your convenience. We currently have two sketch plats filed with the MAPD showing this standard and how it can be applied and are of course, very interested in an early discussion so that we may stay on schedule to meet the current market demand.

Sincerely,

Dave Ritchie

Dave Ritchie

DR:bb

cc: David Stowe
Director of Operations & Maintenance

Robert Lakin
Director of Planning

Map No.: 6050B
Section: 5
Twp.: 27S
Range: 2E

S/D No. 81-75

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: ~~Woodlands East~~ Ritchwood Pentacore
1/2 mile west of Wilk Road
General Location: 3/4 of a mile east of Rock Road on the North side of 21st North
located with in the Tallgrass CUP

Name of Property Owner: Tallgrass Company
Address: P.O. Box 4048, Wichita, KS Zip Code: 67204 Phone: 838-9301
Name of Subdivider: Tallgrass Company
Address: P.O. Box 4048, Wichita, KS Zip Code: 67204 Phone: 838-9301
Name of Engineer/Surveyor: Bill G. Young Design
Address: 8225 E. 35th North, Wichita, KS Zip Code: 67226 Phone: 683-5567
Date of Application: 26 June 1981

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 6.7 approx
2. Number of Lots:
 - Residential 15
 - Commercial _____
 - Industrial _____
 - Other _____
3. Minimum Lot Frontage 45 ft.
4. Minimum Lot Area 6500 sq. ft.
5. Existing Zoning AA under exist. CUP (DP-96)
6. Proposed Zoning AA w/CUP
7. Lineal Feet of New Streets:
 - a. 32' R/W 1100 ft.
 - b. _____ R/W _____ ft.
 - c. _____ R/W _____ ft.
 - d. _____ R/W _____ ft.
 - e. _____ R/W _____ ft.TOTAL 1100 ft.
8. Are Sidewalks existing?
Yes _____ No X
9. Is a public water supply available? X Yes _____ No, Name City of Wichita
10. Is a sanitary sewer available? X Yes _____ NO, Name City of Wichita
11. Has Health Department approval been obtained (where applicable) NA Yes _____ No
12. City of Wichita X Three Mile Area _____ Outside of Wichita _____

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 for by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: [Signature]

Wichita-Sedgwick County Metropolitan Area
Planning Commission, 10th Floor, City Hall,
455 North Main, Wichita, Kansas 67202

Received by L.O.
Date 6-26-81
Fee Submitted 275.00

(take in as sketch)
Prelim fee paid)

*superceded
rec. 9-11-81*

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
PEPPERTREE TOWNHOUSES

THIS DECLARATION, made this _____ day of _____, 1981, by PEPPERTREE COMPANY, a joint venture, herein called the "Declarant", for itself, its successors and assigns, declares as follows:

Declarant owns in fee simple and hereby submits to the Kansas Townhouse Ownership Act (K.S.A. 58-3701, et seq.), as now in effect and as hereafter at any time and from time to time amended, the following described land in Sedgwick County, Kansas, together with all rights, easements, appurtenances, and hereditaments pertaining to or belonging thereto, and all buildings, structures, and improvements located and to be constructed thereon and hereinafter more fully described, and all personal property, equipment, and facilities intended for use in connection therewith (all of which real and personal property is hereinafter called the "Property"), to-wit:

Peppertree, an addition to Wichita, Sedgwick County, Kansas

ARTICLE I
Definitions

Section 1. Definitions. The terms used herein and in the Bylaws and all other documents relating to this townhouse development shall have the meanings specified in the Kansas Townhouse Ownership Act (K.S.A. 58-3702, et seq.), unless the context requires otherwise.

a. "Association of Townhouse Owners", referred to herein as the "Association", shall mean and refer to Peppertree Townhouse Owners' Association, a nonprofit corporation organized under the laws of the State of Kansas, to be formed within one year of the date of recording hereof.

b. "Board of Directors" shall mean the Board of Directors of the Association.

c. "Common Area" shall mean any portion of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the Townhouse Unit Owners.

d. "Common Expenses" shall be all sums lawfully assessed against the Townhouse Unit Owners by the Association pursuant to the provisions hereof, including, but not limited to, the cost of exterior maintenance of Units and the cost of all insurance policies purchased by the Board of Directors pursuant to the Declaration.

e. "Declaration" means this document and all attachments and amendments thereto.

f. "Insurance Trustee" shall mean the Association, unless the Board of Directors shall have designated another person, firm, or corporation to be the Insurance Trustee.

g. "Lot" means a portion of the real property that comprises the Property, as shown on the recorded plat of the addition and described by a number, with the exception of any Common Area.

h. "Owner", "Unit Owner", or "Townhouse Owner" means the person or persons owning the Lot or a portion thereof in fee simple on which a Townhouse Unit is, or is to be, located.

i. "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

i. "Townhouse Unit" or "Unit" means one (1) single-family townhouse residential unit which is located on a Lot and may be joined with at least one (1) additional single-family townhouse residence by a common wall or walls and/or roof and/or foundation.

ARTICLE II

Description of Units

Section 1. Townhouse Units.

a. Description of Buildings. There will be constructed a total of fifteen (15) buildings of which ten (10) shall contain two (2) Units and five (5) shall contain one (1) Unit. The ground floor of each Unit, exclusive of porches and garages, shall contain a minimum of one thousand five hundred (1,500) square feet and any two-story Unit shall contain a minimum of one thousand two hundred (1,200) square feet of ground floor space, exclusive of porches and garages. All Units shall include a garage, with a driveway, which together will provide at least four (4) off-street parking spaces. All Units shall be constructed in accordance with the provisions of this Declaration, as well as the Bluestem Community Unit Plan.

b. Numbers and Descriptions of Townhouse Units. The designation of each Unit, as shown on the plat of survey to be filed, is as follows:

Unit

1
2
3
4

Unit

5
6A
6B
7A
7B
8A
8B
9A
9B
10A
10B
11A
11B
12A
12B
13A
13B
14A
14B
15A
15B

Prior to the completion of construction of the Units, Declarant shall record in the office of the Register of Deeds of Sedgwick County, Kansas, a plat of survey which shall expressly refer to this Declaration and which shall show the location and dimensions of all such units.

Section 2. Description of Common Area. The Common Area shall consist of Reserve "A".

ARTICLE III

Assessments

Section 1. Assessments. All of the Units of the Members of the Association shall be subject to an annual assessment charge to be paid by the respective Owners thereof to the Association annually in advance on the 1st day of January, in each

year. The Board of Directors of the Association may permit the annual assessment charge to be paid either annually, semiannually, or monthly.

Section 2. Determination of Assessments. Each year the Board of Directors of the Association shall, prior to November 1, determine the total amount to be raised by the annual assessment charge for the next succeeding year. This sum so determined shall be divided by the total number of Units, and each Unit shall be assessed an equal amount. Should the Board of Directors of the Association at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Common Area and other common expenses, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

Section 3. Use of Assessment Fund. The assessment fund may be used for such of the following purposes as the Association shall determine necessary and advisable: those purposes set out in Article IV hereof; for improving and maintaining the Common Area and other property of the Association, including a guardhouse, if any; for planting trees and shrubbery and the care thereof; for expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Area; for collecting and disposing of garbage, ashes, and rubbish; for maintenance of the sprinkling system; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs, street lights, and snow removal; for constructing, purchasing, maintaining, or operating any community service; for purchase of insurance; for professional management of the Association; for doing any other thing necessary or advisable in the opinion of the Association for the general welfare of the Members; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

Section 4. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to

interest at the rate of fifteen percent (15%) per annum or the prime rate of The Fourth National Bank and Trust Company, Wichita, Wichita, Kansas, whichever is higher.

Section 5. Lien for Delinquent Assessments. It is expressly understood and agreed that the annual assessment charge shall be a lien and encumbrance on the Unit with respect to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Units, the Owner (not including thereby a mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid to the time of his acquiring the title and all such charges thereafter falling due during his ownership thereof. A certificate in writing issued by the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon said parties.

Section 6. Subordination of Assessment Lien. The lien provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Unit shall not affect the assessment lien. The sale or transfer of any Lot or Unit, which is subject to any such mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7. Right of Association to Enforce Payment of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges.

Section 8. Annual Assessment. The Board of Directors of the Association (the "Board") shall fix the annual assessment

at an amount which shall not be increased during said year, except as may otherwise be provided for herein. Declarant shall not be bound by any assessment charge on any Lot or Unit owned by it until such Unit shall be ready for occupancy.

Section 9. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

Section 10. Additional Assessments. In order to help provide for a comprehensive neighborhood scheme and an integrally related community, Declarant has entered into certain agreements with the owner of the adjoining property regarding the development of a golf course thereon. In order to induce said owner of the adjacent property to develop such golf course, which golf course will affirmatively contribute to the aesthetic and monetary values of the Property and the Lots and Units therein, and in order to assist in providing proper maintenance and care of the green spaces thereon, Declarant has contracted with said owner to provide for the additional assessment provided for herein.

In order to assist in providing for the proper maintenance and care of the green spaces located on the adjacent golf course property, there shall be included in the assessment levied by the Association pursuant to the foregoing provisions of this Article III an additional amount determined as hereinafter provided, which amount shall be due and owing Tallgrass Club, owner of the adjacent golf course, its successors and assigns, to be utilized by it in maintaining the landscaping and green spaces of the golf course; provided, however, that the provisions of this Section 10 shall not apply to Declarant. Each Owner and the Association shall be bound by the provisions hereof as follows:

a. All sums paid by the Association to Tallgrass Club (or any successor or assign) shall be used by Tallgrass Club (or any successor or assign) to help defray the cost of maintenance and care of the landscaping and green spaces of the golf course, such maintenance and care to be performed by it at such times and in such manner as the said Tallgrass Club (or any successor or assign), in its sole discretion, deems reasonable and appropriate.

b. The annual assessment payable to Tallgrass Club, its successors or assigns, shall be in the initial amount as set out in Subsection "e" of this Section 10. Beginning with calendar year 1983, each annual assessment shall be increased pursuant to the "All Items Figure" of the 1978 revised Consumer Price Index-Urban Wage Earners and Clerical Workers-U. S. City Averages (1967 = 100) (the "BLS Index"), issued by the Bureau of Labor Statistics of the United States Department of Labor, with the initial assessment being predicated on such figure as issued for the month of September, 1981. For each succeeding calendar year said assessment shall be in an amount equal to such assessment for the initial year multiplied by a fraction, the numerator of which shall be the BLS index figure for September of the preceding year, and the denominator of which shall be such figure for September, 1981. In no event, however, shall such amount be less than the initial amount. In the event the BLS index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula, or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, by any other nationally recognized publisher of similar statistical information.

c. Nothing herein shall be construed as obligating Tallgrass Club, its successors or assigns, to continue the operation of the golf course; however, the obligation of the Association to pay said sums to Tallgrass Club, its successors or assigns, shall continue only so long as Tallgrass Club, its successors or assigns, shall maintain and operate said golf course. At such time as said property should cease to be operated as a golf course, and such cessation shall continue for a period of more than six (6)

months, then and in that event, the obligation of the Association to pay said sum shall terminate as of the date such golf course first ceased to be so operated.

d. Said assessment shall be levied and collected as a part of the assessment against each Unit as herein provided, but the collection and payment thereof shall also be the binding obligation of the Association to Tallgrass Club, its successors and assigns, and any failure of any Owner to make payment of such Owner's assessment to the Association shall not diminish the Association's obligation to Tallgrass Club, its successors and assigns, for the full amount of such payment. This provision is for the benefit of said Tallgrass Club and its successors and assigns and may be enforced by it pursuant to law.

e. The initial annual assessment for calendar year 1981 shall be in the following amount with the obligation as to each Unit to commence with the first full month after the month in which the golf course or any portion thereof is first opened for play, said assessment to be prorated on a monthly basis for a partial year.

Townhouse Units in Peppertree \$180 per Unit

f. A similar obligation to Tallgrass Club, its successors and assigns, shall be imposed upon all other residential additions of which Declarant is either owner or part owner and platted within any of the parcels located within the Bluestem Community Unit Plan. The minimum initial annual assessment for calendar year 1981 as to any such additional Units or dwelling units is as follows, the same to be prorated as aforesaid.

Single-family detached \$120 per Unit
Duplex, fourplex, townhouse,
condominium, and zero lot line
dwelling units \$ 60 per Unit

Apartment units, being defined
as 15 or more dwelling units
per acre \$ 30 per Unit

ARTICLE IV

Covenants for Maintenance

Section 1. Exterior Maintenance.

a. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon the individual Units as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, and provide lawn and yard care. The care and maintenance of any enclosed yard areas, and interior of the Units, including all appliances, heating and air-conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, and all other maintenance and repair that might be required on the individual Unit not otherwise specifically designated the responsibility of the Association herein, shall be the sole responsibility of the Owner. In addition, each Owner shall be solely responsible for the repair and maintenance of the Owner's patio, driveway, and sidewalks appurtenant to his Unit. In the event any such patio, driveway, or sidewalk should, in the opinion of the Board, become unsightly or dangerous to persons or property, the Association may, after reasonable notice to the Owner affording him an opportunity to make the needed repairs, cause the same to be made at such Owner's expense, and in the event the same shall not be paid by said Owner, the Board may file a lien on said Unit pursuant to Section 5 of ARTICLE III hereof.

b. The cost of the maintenance to be provided above shall be added to and become a part of the annual assessment to which the Units are subjected under ARTICLE III hereof, and, as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided therein.

ARTICLE V

Architectural Control

Section 1. Architectural Control. No building, fence, wall, planting, or other structure or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration to any Unit be made without first obtaining the express written consent of the Board, which shall have complete control of all such matters relating to the property and may consent or withhold its consent on such basis as it deems proper. The Board shall have complete and exclusive control of all such matters relating to the property and may further promulgate such rules, guidelines, and requirements as it deems necessary in order to assure the continued maintenance and operation of the property as a first-class development.

Section 2. No Liability. Neither the Declarant, the Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article V.

ARTICLE VI

General Covenants and Restrictions

Section 1. Structures; Division of Lots; Utilities; Trailers; and Fences.

- a. No structure shall be used for any purpose other than that for which it was originally designed;
- b. Except for the initial division of Lots 6 through 15, no Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise;

c. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained;

d. No boat, boat trailer, house trailer, camper, camper trailers, recreational vehicles, or similar items shall be stored in and on any street, the Common Area, or in the open on any Lot or driveway; and

e. No fence shall be erected on any Lot, except those expressly permitted by Section 19 of this Article VI and those specifically approved as to location, size, type, and material by the Board.

Section 2. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 3. Rights of City of Wichita; Off-Street Parking Requirement. Reserve "A" in said Addition has been designated as the "Common Area" and is to be conveyed to an Owners' Association to be formed, which Association shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, as owner, shall be responsible for such maintenance and upkeep. In the event the Association, its successors or assigns, shall fail at any time to maintain the Common Area or fail in any manner to fulfill its obligations relating to the Common Area, the City of Wichita may serve a written Notice of Delinquency upon the Association setting forth the manner in which the Association has failed to fulfill its obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Common Area

from becoming a nuisance, may enter upon said Common Area and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Declarant or the Association may be assessed equally against all the Units within the Addition in the same manner as provided by law for special assessments, and said assessments may be established as liens upon said Units. Should the Declarant or the Association, their successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said Notice, apply for a hearing before the Board of City Commissioners to appeal said obligations, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

No retaining wall, fence, earth berm, or mass planting shall be placed or permitted within the fifteen (15) foot street, drainage and utility easements adjacent to Peppertree Circle, nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement. Any plantings proposed within this easement shall be reviewed by the City Forestry Division prior to installation. Any change of grade is prohibited.

Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit, which shall include the garage and driveway.

Section 4. Trees and Plantings. All trees and plantings shall be the responsibility of the Association and shall not be trimmed or removed by an Owner. In the event an Owner should desire to plant a tree or other planting, he may do so with the permission of the Board, and all subsequent care and replacement thereof shall be at the sole discretion of the Board, and the Owner shall have no further right with regard thereto. Any such planting obtained by an Owner and planted with the approval of the Board shall be at no expense to the Board.

Section 5. Animals. No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for

domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Properties without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Area. Dogs and other animals shall not be allowed to trespass on the adjacent golf course whether on leash or not.

Section 6. Signs. No sign or other advertising device of any nature shall be placed upon any Lot, except as provided herein. The Association may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Association may remove nonconforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner. In addition to the foregoing, so long as Declarant owns any Lot in the Addition, Declarant may require any Owner, real estate agent, or other person desiring to utilize a sign to advertise a Unit for sale, lease, or rent to utilize a standard sign provided by Declarant for which a reasonable rental may be charged by Declarant. The number and location of any such signs shall be subject to reasonable rules adopted by Declarant. Any nonconforming sign may be removed, without notice, by Declarant, and Declarant shall not be liable to anyone in the event of any such removal.

Section 7. Temporary Buildings. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.

Section 8. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any Unit by Declarant. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all

other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Association, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

Section 9. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

Section 10. Association May Trim or Prune. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance.

Section 11. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and bicycle paths, if any, located in the Common Area. Garage doors shall be kept closed at all times except for purposes of entry, exit, or maintenance.

Section 12. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Section 13. Noxious, Dangerous, and Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Maintenance of Drainage Channels and Swales. The Association shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot, in accordance with the master drainage plan.

Section 15. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Board. The Board, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Board, to be compatible with a high-quality residential neighborhood.

Section 16. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot or Unit owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office until all Units in the development are sold.

Section 17. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 18. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, the Bluestem Community Unit Plan, applicable zoning regulations, or this Declaration.

Section 19. Fences. No fence shall be constructed or maintained on any Lot except for privacy fences immediately adjacent to patios which are appurtenant to a Unit and which must first be approved by the Board of Directors as to type of construction, design, and style, except that this restriction shall not prohibit the construction and maintenance of fences constructed only of black wrought iron which do not exceed four (4) feet in height and which do not materially obstruct the passage of light and air.

Section 20. Set-Back Requirements. All building set-back requirements as set out on the recorded plat of Peppertree Addition shall be observed.

Section 21. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the Bluestem Community Unit Plan, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

ARTICLE VII

Enforcement

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VIII

Easements

Section 1. Easements.

a. If any Unit shall encroach upon any other Unit or Lot or upon any portion of the Common Area, as a result of the construction, settling, or shifting of any building, structure, or improvement thereon, a valid easement for the maintenance and continuation of such encroachment shall exist as long as such building, structure, or improvement stands. In the event any building, structure, or improvement on the Property shall be rebuilt after having been damaged or partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, any resulting encroachment of any Unit upon any other Unit or Lot or upon any part of the Common Area shall be permitted and a valid easement for the continuation and maintenance of such encroachment shall exist as long as such building, structure, or improvement stands.

b. There is reserved for the benefit of each Unit an easement for utility services over, under, and through the Property and each other Unit and Lot. There is further reserved for the Association an easement of entry and of access for the installation and maintenance of utility lines, utility meter boxes, landscaping, and community facilities in the Common Area and for the performance generally of its rights and duties, as provided in this Declaration and the Bylaws of the Association.

c. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 2. Party Walls.

a. The division wall between any two Units shall be a party wall and the respective Owners shall have cross

easements in the wall and the wall shall be used for the joint purposes of the two separate living Units separated by it.

b. Should such wall be damaged or destroyed by the default, negligence, or other act or omission of one of the Owners, such Owner shall rebuild or repair the wall and shall compensate the other Owner for any damages to the property of the other Owner. Should the wall at any time while in use by both parties as aforesaid be injured by any cause other than the act or omission of either, the wall shall be repaired or rebuilt at their joint expense, provided that any sum received from insurance against such injury or destruction shall first be applied to such repair or restoration. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or portion thereof and of the same or similar material of the same quality of that used in the original wall or portion thereof.

The Owner causing repairs to be made shall have the right to enter on the property of the other Owner to the extent legally necessary in performance of the work, provided that he take due precaution not to damage the property of the other Owner.

c. Neither Owner shall use the wall in any manner whatsoever that may interfere with the equal use of the other half of the wall by the other Owner. In particular no structural changes shall be made in said wall by either Owner without the express written consent of the other joint Owner.

d. This covenant shall not operate to convey to either Owner the fee to any part of the land owned by the other Owner, the creation of rights to a party wall being the sole purpose hereof.

ARTICLE IX

Insurance

Section 1. Insurance. The Board of Directors for the benefit of the Association and the Townhouse Unit Owners shall acquire insurance as hereinafter provided. Payment therefor shall be billed to each Unit Owner in such amount as is allocable to such Unit by the insurance company and shall be considered as part of the annual assessment to be levied hereunder. All contents, personal property, and individual liability coverage shall be the sole responsibility of the Unit Owner.

Section 2. Hazard Insurance. The Board of Directors shall obtain and maintain, at all times, a policy or policies of fire insurance as the same are hereinafter more fully set out, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, excluding all foundations and excavations, payable as hereinafter provided, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the Owners, their mortgagees, and the Association, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any. Such limits and coverage shall be reviewed at least annually by the Board of Directors and can be increased or modified in its discretion.

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, or other comparable rating organization, unless such insurance shall be unobtainable or obtainable only at a cost the Board of Directors deems excessive.

b. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors or its authorized representative.

c. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual Owners or their mortgagees.

d. Each Owner may obtain additional insurance at his or her own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time.

e. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000).

f. Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance.

g. The Board of Directors shall be required to make every 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 Board of Directors, the officers of the Association, the Owners, and their respective servants, agents, and guests;

(2) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time;

(3) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time; and

(4) That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

h. The Board of Directors shall conduct an annual insurance review which shall include an appraisal of the improvements by a representative of the insurance carrier writing the master policy.

i. In the event that the Board of Directors should fail to provide such hazard insurance coverage or in the event that a majority of the Unit Owners shall decide not to have the Board of Directors provide such coverage, each Unit Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Unit, excluding land, foundation and excavations. Such insurance shall provide for payment for losses thereunder by the insurer to the Insurance Trustee for the benefit of each Owner, the owner of each first mortgage of record, and the Association, as their respective interests appear and as set forth in this Declaration. The proceeds from insurance received by the Insurance Trustee shall be used to repair, reconstruct, or rebuild the Units damaged or destroyed by said fire or other casualty as otherwise provided for herein.

Section 3. 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 Section 3, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty.

b. Such damage or destruction shall be repaired or reconstructed, unless all of the Owners and their first mortgagees agree in writing not to rebuild.

c. In the event that it should be determined that the damage or destruction shall not be repaired or reconstructed, then and in that event the proceeds of the said insurance shall be paid to the Unit Owners, their mortgagees, and the Association, as their respective interests may appear.

Section 4. Insurance Trustee.

a. Unless the Board of Directors shall designate a different Insurance Trustee, 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 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. Proceeds on account of damage or destruction to Units shall be held in trust for the Owners of the damaged or destroyed Units in proportion to the costs 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 Unit, the share of such Unit Owner shall be held in trust for such Owner and his mortgagee, as their respective 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 costs of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

(2) 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 3 of this Article IX.

(3) The Board of Directors of the Association, on behalf of the Insurance Trustee, shall determine whether the damage or destruction was to the Common Area or one or more Units or both. If the damage or destruction is to the Common Area and is to be repaired or reconstructed, the Insurance Trustee shall 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 Units 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 Unit or Units 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 5. Repair and Reconstruction--Excess Costs.

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 levy a special assessment against all Owners of the damaged Units and against all Owners in the case of damage to the Common Area, 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 Unit Owners for damage to Units shall be in proportion to the cost of repair and reconstruction of their respective Units.

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 4 of this Article IX.

Section 6. Minor Repairs.

a. Notwithstanding the foregoing provisions hereof, in the event of damage by fire or other casualty to either the Common Area or a single Unit 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) 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 Area, 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 Area. 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 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 Area as the Board of Directors, in the exercise of its sole discretion, may determine.

c. If the damage is confined to a single Unit, 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 of such Unit and said Owner's 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 against the Owner of the damaged Unit. Payments for repairs provided for in this Subsection shall be made only after all such repairs have been completed and approved by the Association, the Owner, and his, her, or its mortgagee, if any, which approval shall not be unreasonably withheld.

Section 7. Liability Insurance. The Board of Directors shall obtain a policy or policies of liability insurance insuring the Board of Directors, the Association and its officers and employees, and the Unit Owners and their employees, if any, against any liability to the public or to the Owners of the Units and their invitees or tenants incident to the ownership and/or use of the Property and including the personal liability exposure of the Owners incident to their being a member of the Association, but excluding such liability of such Owners arising from their ownership and occupancy of their individual Units and Lots. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000) for

any one (1) person injured for any one (1) accident, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of a named insured under the policy or policies shall not be prejudiced as respects his action against another named insured.

Section 8. Workers' Compensation Insurance. Workers' compensation insurance shall be provided to the extent necessary to comply with any applicable laws.

ARTICLE X

Transfer Restrictions

Section 1. Transfer Restrictions. An Owner shall have the right to sell, transfer, lease, or sublease his Unit, subject to the following provisions:

a. In the event of a sale, lease, or sublease of any Unit or any part thereof, the Association has and shall have the option to purchase, rent, or lease the same on the same terms and conditions as offered to the Owner by a third party. Any attempt at sale, lease, or sublease of any Unit without prior offer to the Association shall be wholly null and void and shall confer no title or interest whatsoever to the intended purchaser, tenant, or sublessee. Should an Owner wish to sell, lease, or rent his interest in any Unit or any part thereof, he shall, before accepting any offer to sell, purchase, lease, or rent any such interest, deliver to the Association written notice of his intent to sell, lease, or rent, which notice shall contain a true copy of any instrument containing the terms of any such offer. The Association shall, within fifteen (15) days after receiving such notice, either consent to the transaction specified in said notice or, by written notice, indicate the Association's intention to purchase, lease, or rent the Unit, or arrange for such, upon the same terms and conditions specified in the notice to the Association. The Association shall have fifteen (15) days

after the giving of its notice to the Owner to perform the duties and obligations and to make the payments provided to be performed and to be made by the prospective buyer, tenant, or sublessee in the notice to the Association. An Owner shall have no right to sell, lease, or rent any interest in any Unit or any part thereof, except as expressly provided in this Article X. The subleasing of any interest in any Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of an Owner under these covenants shall continue notwithstanding that he may have leased or rented said interest as provided herein.

b. Any Owner who wishes to make a gift of his Unit or any interest therein to any person or persons not members of his immediate family shall within fifteen (15) days prior to the contemplated date thereof to give written notice to the Association of his intent to make such a gift, together with the name and address of the intended donee and the contemplated date of said gift. The Association shall, at all times, have the first right and option to purchase such Unit or interest therein or furnish another purchaser therefor, for cash at fair market value to be determined in the same manner as such fair market value is determined under Subsection "c" below.

c. In the event any Owner dies leaving a will devising his Unit or any interest therein to any person not a member of his immediate family, or in the event any Owner dies intestate and by virtue of the laws of intestate succession, any interest in his Unit should pass to person or persons not members of his immediate family, the Association shall have an option to purchase his Unit ownership or interest therein from either the devisee or devisees named in said will or the heirs at law of said decedent Owner, or from the personal representative thereof, for cash at fair market value to be determined as follows. Within ten (10) days after receipt of written notice of the appointment of a personal representative for the estate of the deceased Owner, the Association shall appoint a qualified real estate appraiser and shall thereupon give written notice of such appointment to the said devisee or devisees, heirs at law, or personal representative, as the case may be. Within ten (10) days thereafter, said devisee or devisees, heirs at law, or personal representative, as the case may

be, shall appoint a second qualified real estate appraiser. Within ten (10) days after the appointment of said appraiser, the two appraisers so appointed shall appoint another qualified real estate appraiser to act as the third appraiser. In the event the said two appraisers cannot agree upon such third appraiser, the Senior Judge of the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, shall appoint such third appraiser. Within fourteen (14) days thereafter, the three appraisers shall determine, by majority vote, the fair market value of the Unit or interest therein devised by the deceased Owner and shall thereupon give written notice of such determination to the Association and the said devisee or devisees, heirs at law, or personal representative, as the case may be. The Association's right to purchase the Unit or interest therein at the price determined by the three appraisers shall expire ten (10) days after the date of receipt of such notice by it. The Association shall be deemed to have exercised its option if it tenders the required sum of money to the said devisee or devisees, heirs at law, or personal representatives, as the case may be, within the said option period or within said period furnish a purchaser who tenders such sum. Nothing herein contained shall be deemed to restrict the right of the Association or its authorized representative, pursuant to authority given to the Association by the Owners, to bid at any sale of the Unit or interest therein of any deceased Owner which is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased Owner's estate which contains his Unit or interest therein.

d. The Association shall not exercise any option hereinabove set forth to purchase any Unit or interest therein without the prior written consent of two-thirds (2/3) of the total vote of the Association. The Association may bid to purchase at any sale of a Unit or any interest therein of any deceased Owner which is held pursuant to an order or direction of the court upon the prior written consent of two-thirds (2/3) of the total vote of the Association, which consent shall set forth a maximum price which the Association is authorized to bid and pay for said Unit or interest therein.

e. Upon the written consent, determined by a majority vote of the Board of Directors of the Association, any

of the options contained in this Article may be released or waived. Failure of the Association to indicate by notice to the Owner or representative its intention to buy, lease, or rent the unit within the specified time period following the notice to the Association and to perform as provided herein shall be deemed a consent by the Association to the transaction specified in the notice, or a waiver of its option to purchase and the Unit or any interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

f. A certificate executed and acknowledged by the acting Secretary of the Association stating that the provisions of this Article as hereinabove set forth have been met by an Owner or representative, or duly waived by the Association, and that the rights of the Association hereunder have terminated, shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or representative who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived.

g. All fees, charges, assessments, interest, penalties, and special assessments levied against the Unit proposed to be transferred, rented, or leased, as provided in this Article, shall be fully paid to the Association before any transfer, lease, or sublease shall be effective.

h. The provisions of this Article shall not apply to the leasing, renting, or transfer of ownership by the Owner of any Unit to a member of his immediate family, or if ownership be held jointly or in common with others, the leasing, renting, or transfer of ownership of a Unit by one of such joint or common Owners to another joint or common Owner, or the leasing, renting, or transfer of ownership to the Owner of another Unit in the subject property, or the granting by an Owner to a friend or relative of the limited license upon receipt of no consideration by way of rent or otherwise to be used and to occupy a Unit for a term of not longer than four (4) weeks; provided, however, that an Owner shall give the Association two (2) weeks' notice in writing of the intended license and of the name and address of the licensee.

1. Regardless of any prior consent theretofore given, no Owner of a Unit nor his executor, administrator, or personal representative, nor any trustee or receiver of a Unit of such Owner, nor anyone to whom interest of such ownership passed by law shall be entitled to lease, rent, or transfer the ownership of any interest therein of any Unit, except upon full compliance with the provisions of this Article.

ARTICLE XI

Power of Assignment and Delegation

Section 1. Power to Assign and Delegate. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers, and authority contained in this Declaration. The initial operation of the Association shall be by Declarant until ninety percent (90%) of all Units have been sold or until such earlier time as Declarant may relinquish such control to the Association.

ARTICLE XII

Severability

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE XIII

Amendment

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of

twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) year. This Declaration may be amended by an instrument signed by the Owner(s) of not less than seventy-five percent (75%) of the votes in the Addition and recorded in the Office of the Register of Deeds of Sedgwick County, Kansas, or any other public office for recording instruments affecting real property located in Sedgwick County, Kansas, as may hereafter be established; provided, however, that ARTICLE VI, Section 3, shall not be amended without the prior approval of the Wichita Board of City Commissioners and ARTICLE III, Section 10, shall not be so amended without the prior written approval of Tallgrass Club, its successors or assigns.

ARTICLE XIII

Revocation of Prior Covenants

Those certain covenants recorded August 29, 1980, on Film 435, p. 1083, are hereby revoked in their entirety insofar as the same affect said Peppertree Addition.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of this ____ day of _____, 1981.

PEPPERTREE COMPANY,
a joint venture

By: TALLGRASS COMPANY,
a Partnership

By: RITCHIE ENTERPRISES,
Managing Partner

By _____,
a Partner

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 1981, before me, a Notary Public within and for the County and State aforesaid, came _____, a partner of Ritchie Enterprises, Managing Partner of TALLGRASS COMPANY, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Declaration of Covenants, Conditions, and Restrictions, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for an on behalf of and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires:

DRAFT OF 8-31-81

P.13

superseded

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
PEPPERTREE TOWNHOUSES

THIS DECLARATION, made this _____ day of _____, 1981, by PEPPERTREE COMPANY, a joint venture, herein called the "Declarant", for itself, its successors and assigns, declares as follows:

Declarant owns in fee simple and hereby submits to the Kansas Townhouse Ownership Act (K.S.A. 58-3701, et seq.), as now in effect and as hereafter at any time and from time to time amended, the following described land in Peppertree, an addition to Sedgwick County, Kansas, together with all rights, easements, appurtenances, and hereditaments pertaining to or belonging thereto, and all buildings, structures, and improvements located and to be constructed thereon and hereinafter more fully described, and all personal property, equipment, and facilities intended for use in connection therewith (all of which real and personal property is hereinafter called the "Property"), to-wit:

Peppertree, an addition to Wichita, Sedgwick County, Kansas

ARTICLE I

Definitions

Section 1. Definitions. The terms used herein and in the Bylaws and all other documents relating to this townhouse development shall have the meanings specified in the Kansas Townhouse Ownership Act (K.S.A. 58-3702, et seq.), unless the context requires otherwise.

a. "Association of Townhouse Owners", referred to herein as the "Association"; shall mean and refer to Peppertree Townhouse Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of Kansas.

already organized

b. "Board of Directors" shall mean the Board of Directors of the Association.

c. "Common Area" shall mean any portion of the real ~~estate~~ and all improvements located thereon owned by the Association for the common use and enjoyment of the Townhouse Unit Owners.

see p. 4

d. "Common Expenses" shall be all sums lawfully assessed against the Townhouse Unit Owners by the Association pursuant to the provisions hereof, including, but not limited to, the cost of exterior maintenance of Units and the cost of all insurance policies purchased by the Board of Directors pursuant to the Declaration.

e. "Declaration" means this document and all attachments and amendments thereto.

f. "Insurance Trustee" shall mean the Association, unless the Board of Directors shall have designated another person, firm, or corporation to be the Insurance Trustee.

g. "Lot" means a portion of the real property that comprises the Property, as shown on the recorded plat of the addition and described by a number, with the exception of any Common Area.

h. "Owner", "Unit Owner", or "Townhouse Owner" means the person or persons owning the Lot or a portion thereof in fee simple on which a Townhouse Unit is, or is to be, located.

i. "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

j. "Townhouse Unit" or "Unit" means one (1) single-family townhouse residential unit which is located on a Lot and may be joined with at least one (1) additional single-family townhouse residence by a common wall or walls and/or roof and/or foundation.

ARTICLE II

Description of Units

Section 1. Townhouse Units.

a. Description of Buildings. There will be constructed a total of fifteen (15) buildings of which ten (10) shall contain two (2) Units and five (5) shall contain one (1) Unit. The ground floor of each Unit, exclusive of porches and garages, shall contain a minimum of one thousand five hundred (1,500) square feet and any two-story Unit shall contain a minimum of one thousand two hundred (1,200) square feet of ground floor space, exclusive of porches and garages. All Units shall include a garage, with a driveway, which together will provide at least four (4) off-street parking spaces. All Units shall be constructed in accordance with the provisions of this Declaration, as well as the Bluestem Community Unit Plan.

b. Numbers and Descriptions of Townhouse Units. The designation of each Unit, as shown on the plat of survey to be filed, together with the square footage of living area contained in each, is as follows:

<u>Unit</u>	<u>Square Footage</u>
1	
2	
3	
4	
5	
6A	
6B	

<u>Unit</u>	<u>Square Footage</u>
7A	
7B	
8A	
8B	
9A	
9B	
10A	
10B	
11A	
11B	
12A	
12B	
13A	
13B	
14A	
14B	
15A	
15B	

Prior to the completion of construction of the Units, Declarant shall record in the office of the Register of Deeds of Sedgwick County, Kansas, a plat of survey which shall expressly refer to this Declaration and which shall show the location and dimensions of all such units.

Section 2. Description of Common Area. The Common Area shall consist of the entire Property not included within the boundaries of any of the Lots. *(This definition would include the streets which are being dedicated)*

see P. 2

ARTICLE III
Assessments

Section 1. Assessments. All of the Units of the Members of the Association shall be subject to an annual assessment charge to be paid by the respective Owners thereof to the Association annually in advance on the 1st day of January, in each year. The Board of Directors of the Association may permit the annual assessment charge to be paid either annually, semiannually, or monthly.

Section 2. Determination of Assessments. Each year the Board of Directors of the Association shall, prior to November 1, determine the total amount to be raised by the annual assessment charge for the next succeeding year. This sum so determined shall be divided by the total number of Units, and each Unit shall be assessed an equal amount. Should the Board of Directors of the Association at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Common Area, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

Section 3. Use of Assessment Fund. The assessment fund may be used for such of the following purposes as the Association shall determine necessary and advisable: for improving and maintaining the Common Area and other property of the Association, including a guardhouse, if any; for planting trees and shrubbery and the care thereof; for expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Area for collecting and disposing of garbage, ashes, and rubbish; for maintenance of sprinkling system; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs, street lights, and snow removal; for constructing, purchasing, maintaining, or operating any community service; for purchase of insurance; for professional management of the Association; for doing any other thing necessary or advisable in the opinion of the Association for the general welfare of the Members; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

Section 4. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate of fifteen percent (15%) per annum or the prime rate of The Fourth National Bank and Trust Company, Wichita, Wichita, Kansas, whichever is highr.

Section 5. Lien for Delinquent Assessments. It is expressly understood and agreed that the annual assessment charge shall be a lien and encumbrance on the Unit with respect

to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Units, the Owner (not including thereby the mortgagee as long as he is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid to the time of his acquiring the title and all such charges thereafter falling due during his ownership thereof. A certificate in writing issued by the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon said parties.

Section 6. Subordination of Assessment Lien. The lien provided for herein shall be subordinate to the lien of any first mortgage or mortgages. Sale or transfer of any Lot or Unit shall not affect the assessment lien. The sale or transfer of any Lot or Unit, which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7. Right of Association to Enforce Payment of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges.

Section 8. Annual Assessment. The Board of Directors of the Association (The "Board") shall fix the annual assessment at an amount which shall not be increased during said year, except as may otherwise be provided for herein. Declarant shall not be bound by any assessment charge on any Lot or Unit owned by it until such Unit shall be ready for occupancy.

Section 9. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the

Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

Section 10. Additional Assessments. In order to help provide for a comprehensive neighborhood scheme and an integrally related community, Declarant has entered into certain agreements with the owner of the adjoining property regarding the development of a golf course thereon. In order to induce said owner of the adjacent property to develop such golf course, which golf course will affirmatively contribute to the aesthetic and monetary values of the Property and the Lots and Units therein, and in order to assist in providing proper maintenance and care of the green spaces thereon and for other consideration hereafter set out, Declarant has contracted with said owner to provide for the additional assessment provided for herein.

In order to assist in providing for the proper maintenance and care of the green spaces located on the adjacent golf course property, there shall be included in the assessment levied by the Association pursuant to the foregoing provisions of this Article III an additional amount determined as hereinafter provided, which amount shall be due and owing Tallgrass Club, owner of the adjacent golf course, its successors and assigns, to be utilized by it in maintaining the landscaping and green spaces of the golf course; provided, however, that the provisions of this Section 10 shall not apply to Declarant. Each Owner and the Association shall be bound by the provisions hereof as follows:

a. All sums paid by the Association to Tallgrass Club (or any successor or assign) shall be used by Tallgrass Club (or any successor or assign) to help defray the cost of maintenance and care of the landscaping and green spaces of the golf course, such maintenance and care to be performed by it at such times and in such manner as the said Tallgrass Club (or any successor or assign), in its sole discretion, deems reasonable and appropriate.

b. The annual assessment payable to Tallgrass Club, its successors or assigns, shall be in the initial amount as set out in Subsection "f" of this Section 10. Beginning with calendar year 1983, each annual assessment shall be increased pursuant to the "All Items Figure" of the 1978 revised Consumer Price Index-Urban Wage Earners and Clerical Workers-U. S. City Averages (1967 = 100) (the "BLS Index"), issued by the Bureau of Labor Statistics of the United States Department of Labor, with the initial assessment being predicated on such figure as issued for the month of September, 1981. For each succeeding calendar year said assessment shall be in an amount equal to such assessment for the initial year multiplied by a fraction, the numerator of which shall be the BLS index figure for September of the preceding year, and the denominator of which shall be such figure for September, 1981. In no event, however, shall such amount be less than the initial amount. In the event the BLS index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula, or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, by any other nationally recognized publisher of similar statistical information.

c. Nothing herein shall be construed as obligating Tallgrass Club, its successors or assigns, to continue the operation of the golf course; however, the obligation of the Association to pay said sums to Tallgrass Club, its successors or assigns, shall continue only so long as Tallgrass Club, its successors or assigns, shall maintain and operate said golf course. At such time as said property shall cease to be operated as a golf course, and such cessation shall continue for a period of more than six (6) months, then and in that event, the obligation of the Association to pay said sum shall terminate as of the date such golf course first ceased to be so operated.

d. Said assessment shall be levied and collected as a part of the assessment against each Unit as herein provided, but the collection and payment thereof shall also be the binding obligation of the Association to Tallgrass Club, its successors and assigns, and any failure of any Owner to make payment of such Owner's assessment to the

Association shall not diminish the Association's obligation to Tallgrass Club, its successors and assigns, for the full amount of such payment. This provision is for the benefit of said Tallgrass Club and its successors and assigns and may be enforced by it pursuant to law.

e. The initial annual assessment for calendar year 1981 shall be in the following amount with the obligation as to each Unit to commence with the first full month after the month in which the golf course or any portion thereof is first opened for play, said assessment to be prorated on a monthly basis for a partial year.

Townhouse Units in Peppertree \$180 per Unit

f. A similar obligation to Tallgrass Club, its successors and assigns, shall be imposed upon all other residential additions of which Declarant is either owner or part owner and platted within any of the parcels located within the Bluestem Community Unit Plan. The minimum initial annual assessment for calendar year 1981 as to any such additional Units or dwelling units is as follows, the same to be prorated as aforesaid.

Single-family detached \$120 per Unit

Duplex, fourplex, townhouse,
condominium, and zero lot line
dwelling units \$ 60 per Unit

Apartment units, being defined
as 15 or more dwelling units
per acre \$ 30 per Unit

ARTICLE IV

Covenants for Maintenance

Section 1. Exterior Maintenance.

a. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon the individual Units as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, and provide lawn and yard care. The care and maintenance of any enclosed yard areas, and interior of the Units, including all appliances, heating and air-conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, and all other maintenance and repair that might be required on the individual Unit not otherwise specifically designated the responsibility of the Association herein, shall be the sole responsibility of the Owner. In addition, each Owner shall be solely responsible for the repair and maintenance of the Owner's patio, driveway, and sidewalks appurtenant to his Unit. In the event any such patio, driveway, or sidewalk should, in the opinion of the Board, become so unsightly or dangerous to persons or property, the Association may, after reasonable notice to the Owner affording him an opportunity to make the needed repairs, cause the same to be made at such Owner's expense, and in the event the same shall not be paid by said Owner, the Board may file a lien on said Unit pursuant to Section 5 of ARTICLE III hereof.

b. The cost of the maintenance to be provided above shall be added to and become a part of the annual assessment to which the Units are subjected under ARTICLE III hereof, and, as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided therein.

ARTICLE V

Architectural Control

Section 1. Architectural Control. No building, fence, wall, planting, or other structure or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration to any Unit be made without first obtaining the express written consent of the Board, which shall have complete control of all such matters

relating to the property and may consent or withhold its consent on such basis as it deems proper. The Board shall have complete and exclusive control of all such matters relating to the property and may further promulgate such rules, guidelines, and requirements as it deems necessary in order to assure the continued maintenance and operation of the property as a first-class development.

Section 2. No Liability. Neither the Declarant, the Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article V.

ARTICLE VI

General Covenants and Restrictions

Section 1. Structures: Division of Lots; Utilities; Trailers; and Fences.

a. No structure shall be used for any purpose other than that for which it was originally designed;

b. Except for the initial division of Lots 6 through 15, no Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise;

c. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained;

d. No boat, boat trailer, house trailer, camper, camper trailers, recreational vehicles, or similar items shall be stored in and on any street, the Common Area, or in the open on any Lot or driveway; and

*will only
split houses
on lots
1-5*

e. No fence shall be erected on any Lot, except those expressly permitted by Section 20 of this Article VI and those specifically approved as to location, size, type, and material by the Board.

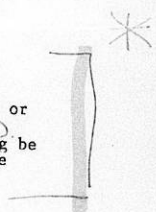
Section 2. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

When?
When?

Section 3. Rights of City of Wichita; Off-Street Parking Requirement. Reserve A in said Addition has been designated as the "Common Area" and is to be conveyed to an Owners' Association ~~to be formed~~, which Association shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, as owner, shall be responsible for such maintenance and upkeep. In the event the Association, its successors or assigns, shall fail at any time to maintain the Common Area or fail in any manner to fulfill its obligations relating to the Common Area, the City of Wichita may serve a written Notice of Delinquency upon the Association setting forth the manner in which the Association has failed to fulfill its obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Common Area from becoming a nuisance, may enter upon said Common Area and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Declarant or the Association may be assessed equally against all the Units within the Addition in the same manner as provided by law for special assessments, and said assessments may be established as liens upon said Units. Should the Declarant or the Association, their successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said Notice, apply for a hearing before the Board of City Commissioners to appeal said obligations, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

Properties

*street drainage
and utility easements*



No fence, earth berm, or mass planting shall be placed or permitted within the fifteen (15) foot utility easements adjacent to the public street, nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement.

Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit, which shall include the garage and driveway.

Section 4. Trees and Plantings. All trees and plantings shall be the responsibility of the Association and shall not be trimmed or removed by an Owner. In the event an Owner should desire to plant a tree or other planting, he may do so with the permission of the Board, and all subsequent care and replacement thereof shall be at the sole discretion of the Board, and the Owner shall have no further right with regard thereto. Any such planting obtained by an Owner and planted with the approval of the Board shall be at no expense to the Board.

Section 5. Animals. No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Properties without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Area. Dogs and other animals shall not be allowed to trespass on the adjacent golf course whether on leash or not.

Section 6. Signs. No sign or other advertising device of any nature shall be placed upon any Lot, except as provided herein. The Association may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Association may remove nonconforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner. In addition to the foregoing, so long as Declarant owns any Lots in the Addition, Declarant may require

any Owner, real estate agent, or other person desiring to utilize a sign to advertise a Unit for sale, lease, or rent to utilize a standard sign provided by Declarant for which a reasonable rental may be charged by Declarant. The number and location of any such signs shall be subject to reasonable rules adopted by Declarant. Any nonconforming sign may be removed, without notice, by Declarant, and Declarant shall not be liable to anyone in the event of any such removal.

Section 7. Temporary Buildings. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.

Section 8. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any Unit by Declarant. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Association, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

Section 9. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

Section 10. Association May Trim or Prune. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance.

Section 11. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and bicycle paths, if any, located in the Common Area. Garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit, or maintenance.

Section 12. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Does this apply to this plot?

Section 13. Noxious, Dangerous, and Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Maintenance of Drainage Channels and Swales. The Association shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot, in accordance with the master drainage plan.

Section 15. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Association. The Association, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Association, to be compatible with a high-quality residential neighborhood.

Section 16. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot or Unit owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office until all Units in the development are sold.

Section 17. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 18. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, the Bluestem Community Unit Plan, applicable zoning regulations, or this Declaration.

Section 19. Fences. No fence shall be constructed or maintained on any Lot except for privacy fences immediately adjacent to patios which are appurtenant to a Unit and which must first be approved by the Board of Directors as to type of construction, design, and style, except that this restriction shall not prohibit the construction and maintenance of fences constructed only of black wrought iron which do not exceed four (4) feet in height and which do not materially obstruct the passage of light and air.

Section 20. Set-Back Requirements. All building set-back requirements as set out on the recorded plat of Peppertree Addition shall be observed.

Section 21. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the Bluestem Community Unit Plan, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

ARTICLE VII

Enforcement

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VIII

Easements

Section 1. Easements.

a. If any Unit shall encroach upon any other Unit or upon any portion of the Common Area, as a result of the construction, settling, or shifting of any building, structure, or improvement thereon, a valid easement for the maintenance and continuation of such encroachment shall exist as long as such building, structure, or improvement stands. In the event any building, structure, or improvement on the Property shall be rebuilt after having been damaged or partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, any resulting encroachment of any Unit upon any other Unit or upon any part of the Common Area shall be permitted and a valid easement for the continuation and maintenance of such encroachment shall exist as long as such building, structure, or improvement stands.

not defined

h. There is reserved for the benefit of each Unit an easement for utility services over, under, and through the Property and each other Unit and Lot. There is further reserved for the Association an easement of entry and of access for the installation and maintenance of utility lines, utility meter boxes, landscaping, and community

facilities in the Common Area and for the performance generally of its rights and duties, as provided in this Declaration and the Bylaws of the Association.

c. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 2. Party Walls.

a. The division wall between any two Units shall be a party wall and the respective Owners shall have cross easements in the wall and the wall shall be used for the joint purposes of the two separate living Units separated by it.

b. Should such wall be damaged or destroyed by the default, negligence, or other act or omission of one of the Owners, such Owner shall rebuild or repair the wall and shall compensate the other Owner for any damages to the property of the other Owner. Should the wall at any time while in use by both parties as aforesaid be injured by any cause other than the act or omission of either, the wall shall be repaired or rebuilt at their joint expense, provided that any sum received from insurance against such injury or destruction shall first be applied to such repair or restoration. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or portion thereof and of the same or similar material of the same quality of that used in the original wall or portion thereof.

The Owner causing repairs to be made shall have the right to enter on the property of the other Owner to the extent legally necessary in performance of the work, provided that he take due precaution not to damage the property of the other Owner.

c. Neither Owner shall use the wall in any manner whatsoever that may interfere with the equal use of the

other half of the wall by the other Owner. In particular no structural changes shall be made in said wall by either Owner without the express written consent of the other joint Owner.

d. This covenant shall not operate to convey to either Owner the fee to any part of the land owned by the other Owner, the creation of rights to a party wall being the sole purpose hereof.

ARTICLE IX

Insurance

Section 1. Insurance. The Board of Directors for the benefit of the Association and the Townhouse Unit Owners shall acquire insurance as hereinafter provided. Payment therefor shall be billed to each Unit Owner in such amount as is allocable to such Unit by the insurance company and shall be considered as part of the annual assessment to be levied hereunder. All contents, personal property, and individual liability coverage shall be the sole responsibility of the Unit Owner.

Section 2. Hazard Insurance. The Board of Directors shall obtain and maintain, at all times, a policy or policies of fire insurance as the same are hereinafter more fully set out, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Area, excluding all foundations and excavations, payable as hereinafter provided, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the Owners, their mortgagees, and the Association, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any. Such limits and coverage shall be reviewed at least annually by the Board of Directors and can be increased or modified in its discretion.

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, or other comparable rating organization, unless such insurance shall be unobtainable or obtainable only at a cost the Board of Directors deems excessive.

b. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors or its authorized representative.

c. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual Owners or their mortgagees.

d. Each Owner may obtain additional insurance at his or her own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time.

e. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000).

f. Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance.

g. The Board of Directors shall be required to make every 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 Board of Directors, the

officers of the Association, the Owners, and their respective servants, agents, and guests;

(2) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time;

(3) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time; and

(4) That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

h. The Board of Directors shall conduct an annual insurance review which shall include an appraisal of the improvements by a representative of the insurance carrier writing the master policy.

i. In the event that the Board of Directors should fail to provide such hazard insurance coverage or in the event that a majority of the Unit Owners shall decide not to have the Board of Directors provide such coverage, each Unit Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Unit, excluding land, foundation and excavations. Such insurance shall provide for payment for losses thereunder by the insured to the Insurance Trustee for the benefit of each Owner, the owner of each first mortgage of record, and the Association, as their respective interests appear and as set forth in this Declaration. The proceeds from insurance received by the Insurance Trustee shall be used to repair, reconstruct, or rebuild the Units damaged or destroyed by said fire or other casualty as otherwise provided for herein.

Section 3. 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 Section 3, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty.

b. Such damage or destruction shall be repaired or reconstructed, unless all of the Owners and their first mortgagees agree in writing not to rebuild.

c. In the event that it should be determined that the damage or destruction shall not be repaired or reconstructed, then and in that event the proceeds of the said insurance shall be paid to the Unit Owners, their mortgagees, and the Association, as their respective interests may appear.

Section 4. Insurance Trustee.

a. Unless the Board of Directors shall designate a different Insurance Trustee, 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 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. Proceeds on account of damage or destruction to Units shall be held in trust for the Owners of the damaged or destroyed Units in proportion to the costs 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 Unit, the share of such Unit Owner shall be held in trust for such Owner and his mortgagee, as their respective 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 costs of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

(2) 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 3 of this Article IX.

(3) The Board of Directors of the Association, on behalf of the Insurance Trustee, shall determine whether the damage or destruction was to the Common Area or one or more Units or both. If the damage or destruction is to the Common Area and is to be repaired or reconstructed, the Insurance Trustee shall 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 Units 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

Unit or Units 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 5. Repair and Reconstruction--Excess Costs.

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 levy a special assessment against all Owners of the damaged Units and against all Owners in the case of damage to the Common Area, 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 Unit Owners for damage to Units shall be in proportion to the cost of repair and reconstruction of their respective Units.

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 4 of this Article IX.

Section 6. Minor Repairs.

a. Notwithstanding the foregoing provisions hereof, in the event of damage by fire or other casualty to either the Common Area or a single Unit 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) 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 Area, 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 Area. 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 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 Area as the Board of Directors, in the exercise of its sole discretion, may determine.

c. If the damage is confined to a single Unit, 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 of such Unit and said Owner's 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 against the Owner of the damaged Unit. Payments for repairs provided for in this Subsection shall be made only after all such repairs have been completed and approved by the Association, the Owner, and his, her, or its mortgagee, if any, which approval shall not be unreasonably withheld.

Section 7. Liability Insurance. The Board of Directors shall obtain a policy or policies of liability insurance insuring the Board of Directors, the Association and its officers

and employees, and the Unit Owners and their employees, if any, against any liability to the public or to the Owners of the Units and their invitees or tenants incident to the ownership and/or use of the Property and including the personal liability exposure of the Owners incident to their being a member of the Association, but excluding such liability of such Owners arising from their ownership and occupancy of their individual Units and Lots. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000) for any one (1) person injured for any one (1) accident, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his action against another named insured.

Section 8. Workers' Compensation Insurance. Workers' compensation insurance shall be provided to the extent necessary to comply with any applicable laws.

ARTICLE X

Transfer Restrictions

Section 1. Transfer Restrictions. An Owner shall have the right to sell, transfer, lease, or sublease his Unit, subject to the following provisions:

a. In the event of a sale, lease, or sublease of any Unit or any part thereof, the Association has and shall have the option to purchase, rent, or lease the same on the same terms and conditions as offered to the Owner by a third party. Any attempt at sale, lease, or sublease of any Unit without prior offer to the Association shall be wholly null and void and shall confer no title or interest whatsoever to the intended purchaser, tenant, or sublessee. Should an Owner wish to sell, lease, or rent his interest in any Unit or any part thereof, he shall, before accepting any offer to sell, purchase, lease, or rent any

such interest, deliver to the Association written notice of his intent to sell, lease, or rent, which notice shall contain a true copy of any instrument containing the terms of any such offer. The Association shall, within fifteen (15) days after receiving such notice, either consent to the transaction specified in said notice or, by written notice, indicate the Association's intention to purchase, lease, or rent the Unit, or arrange for such, upon the same terms and conditions specified in the notice to the Association. The Association shall have fifteen (15) days after the giving of its notice to the Owner to perform the duties and obligations and to make the payments provided to be performed and to be made by the prospective buyer, tenant, or sublessee in the notice to the Association. An Owner shall have no right to sell, lease, or rent any interest in any Unit or any part thereof, except as expressly provided in this Article X. The subleasing of any interest in any Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of an Owner under these covenants shall continue notwithstanding that he may have leased or rented said interest as provided herein.

b. Any Owner who wishes to make a gift of his Unit or any interest therein to any person or persons not members of his immediate family shall within fifteen (15) days prior to the contemplated date thereof to give written notice to the Association of his intent to make such a gift, together with the name and address of the intended donee and the contemplated date of said gift. The Association shall, at all times, have the first right and option to purchase such Unit or interest therein or furnish another purchaser therefor, for cash at fair market value to be determined in the same manner as such fair market value is determined under Subsection "c" below.

c. In the event any Owner dies leaving a will devising his Unit or any interest therein to any person not a member of his immediate family, or in the event any Owner dies intestate and by virtue of the laws of intestate succession, any interest in his Unit should pass to person or persons not members of his immediate family, the Association shall have an option to purchase his Unit ownership or interest therein from either the devisee or devisees named in said will or the heirs at law of said decedent Owner, or

from the personal representative thereof, for cash at fair market value to be determined as follows. Within ten (10) days after receipt of written notice of the appointment of a personal representative for the estate of the deceased Owner, the Association shall appoint a qualified real estate appraiser and shall thereupon give written notice of such appointment to the said devisee or devisees, heirs at law, or personal representative, as the case may be. Within ten (10) days thereafter, said devisee or devisees, heirs at law, or personal representative, as the case may be, shall appoint a second qualified real estate appraiser. Within ten (10) days after the appointment of said appraiser, the two appraisers so appointed shall appoint another qualified real estate appraiser to act as the third appraiser. In the event the said two appraisers cannot agree upon such third appraiser, the Senior Judge of the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, shall appoint such third appraiser. Within fourteen (14) days thereafter, the three appraisers shall determine, by majority vote, the fair market value of the Unit or interest therein devised by the deceased Owner and shall thereupon give written notice of such determination to the Association and the said devisee or devisees, heirs at law, or personal representative, as the case may be. The Association's right to purchase the Unit or interest therein at the price determined by the three appraisers shall expire ten (10) days after the date of receipt of such notice by it. The Association shall be deemed to have exercised its option if it tenders the required sum of money to the said devisee or devisees, heirs at law, or personal representatives, as the case may be, within the said option period or within said period furnish a purchaser who tenders such sum. Nothing herein contained shall be deemed to restrict the right of the Association or its authorized representative, pursuant to authority given to the Association by the Owners, to bid at any sale of the Unit or interest therein of any deceased Owner which is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased Owner's estate which contains his Unit or interest therein.

d. The Association shall not exercise any option hereinabove set forth to purchase any Unit or interest therein without the prior written consent of two-thirds (2/3) of the total vote of the Association. The Association may bid to purchase at any sale of a Unit or any

interest therein of any deceased Owner which is held pursuant to an order or direction of the court upon the prior written consent of two-thirds (2/3) of the total vote of the Association, which consent shall set forth a maximum price which the Association is authorized to bid and pay for said Unit or interest therein.

e. Upon the written consent, determined by a majority vote of the Board of Directors of the Association, any of the options contained in this Article may be released or waived. Failure of the Association to indicate by notice to the Owner or representative its intention to buy, lease, or rent the unit within the specified time period following the notice to the Association and to perform as provided herein shall be deemed a consent by the Association to the transaction specified in the notice, or a waiver of its option to purchase and the Unit or any interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

f. A certificate executed and acknowledged by the acting Secretary of the Association stating that the provisions of this Article as hereinabove set forth have been met by an Owner or representative, or duly waived by the Association, and that the rights of the Association hereunder have terminated, shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or representative who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived.

g. All fees, charges, assessments, interest, penalties, and special assessments levied against the Unit proposed to be transferred, rented, or leased, as provided in this Article, shall be fully paid to the Association before any transfer, lease, or sublease shall be effective.

h. The provisions of this Article shall not apply to the leasing, renting, or transfer of ownership by the Owner of any Unit to a member of his immediate family, or if ownership be held jointly or in common with others, the

leasing, renting, or transfer of ownership of a Unit by one of such joint or common Owners to another joint or common Owner, or the leasing, renting, or transfer of ownership to the Owner of another Unit in the subject property, or the granting by an Owner to a friend or relative of the limited license upon receipt of no consideration by way of rent or otherwise to be used and to occupy a Unit for a term of not longer than four (4) weeks; provided, however, that an Owner shall give the Association two (2) weeks' notice in writing of the intended license and of the name and address of the licensee.

i. Regardless of any prior consent theretofore given, no Owner of a Unit nor his executor, administrator, or personal representative, nor any trustee or receiver of a Unit of such Owner, nor anyone to whom interest of such ownership passed by law shall be entitled to lease, rent, or transfer the ownership of any interest therein of any Unit, except upon full compliance with the provisions of this Article.

ARTICLE XI

Power of Assignment and Delegation

Section 1. Power to Assign and Delegate. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers, and authority contained in this Declaration. The initial operation of the Association shall be by Declarant until ninety percent (90%) of all Units have been sold or until such earlier time as Declarant may relinquish such control to the Association. ✓

And when will Association be formed?

ARTICLE XII

Severability

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in

no way affect any other provisions which shall remain in full force and effect.

ARTICLE XII

Amendment

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) year. This Declaration may be amended by an instrument signed by the Owner(s) of not less than seventy-five percent (75%) of the votes in the Addition and recorded in the Office of the Register of Deeds of Sedgwick County, Kansas, or any other public office for recording instruments affecting real property located in Sedgwick County, Kansas, as may hereafter be established; provided, however, that ARTICLE VI, Section 3, shall not be amended without the prior approval of the Wichita Board of City Commissioners and ARTICLE III, Section 10, shall not be so amended without the proper approval of Tallgrass Club, its successors or assigns..

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of this ____ day of _____, 1981.

PEPPERTREE COMPANY,
a joint venture

By: TALLGRASS COMPANY,
a Partnership

By: RITCHIE ENTERPRISES,
Managing Partner

By _____,
_____, a Partner

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 1981, before me, a Notary Public within and for the County and State aforesaid, came _____, a partner of Ritchie Enterprises, Managing Partner of TALLGRASS COMPANY, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Declaration of Covenants, Conditions, and Restrictions, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for an on behalf of and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires:

In certain places this reads like a
condominium owners association where
only the units are sold and all the
land is jointly owned.

SUPERSEDED

draft
8-24-81

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
PEPPERTREE TOWNHOUSES

THIS DECLARATION, made this _____ day of _____, 1981, by PEPPERTREE COMPANY, a joint venture, herein called the "Declarant", for itself, its successors and assigns, declares as follows:

Declarant owns in fee simple and hereby submits to the Kansas Townhouse Ownership Act (K.S.A. 58-3701, et seq.), as now in effect and as hereafter at any time and from time to time amended, the following described land in Peppertree, an addition to Sedgwick County, Kansas, together with all rights, easements, appurtenances, and hereditaments pertaining to or belonging thereto, and all buildings, structures, and improvements located and to be constructed thereon and hereinafter more fully described, and all personal property, equipment, and facilities intended for use in connection therewith (all of which real and personal property is hereinafter called the "Property"), to-wit:

Peppertree, an addition to Wichita, Sedgwick County, Kansas

ARTICLE I

Definitions

Section 1. Definitions. The terms used herein and in the Bylaws and all other documents relating to this townhouse development shall have the meanings specified in the Kansas Townhouse Ownership Act (K.S.A. 58-3702), unless the context requires otherwise.

a. "Association of Townhouse Owners", referred to herein as the "Association", shall mean and refer to Peppertree Townhouse Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of Kansas.

b. "Board of Directors" shall mean the Board of Directors of the Association.

c. "Common Areas and Facilities" shall mean any portion of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the Townhouse Unit Owners.

d. "Common Expenses" shall be all sums lawfully assessed against the Townhouse Unit Owners by the Association pursuant to the provisions hereof, including, but not limited to, the cost of exterior maintenance of Units and the cost of all insurance policies purchased by the Board of Directors pursuant to the Declaration.

e. "Declaration" means this document and all attachments and amendments thereto.

f. "Insurance Trustee" shall mean the Association, unless the Board of Directors shall have designated another person, firm, or corporation to be the Insurance Trustee.

g. "Lot" means a portion of the real property that comprises the Property which is shown on the attached plat of survey and described by a number, with the exception of any Common Areas and Facilities.

h. "Owner", "Unit Owner", or "Townhouse Owner" means the person or persons owning the Lot in fee simple on which a Townhouse Unit is, or is to be, located.

i. "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

j. "Townhouse Unit" or "Unit" means one (1) single-family townhouse residential unit which is located on a Lot and may be joined with at least one (1) additional single-family townhouse residence by a common wall or walls and/or roof and/or foundation.

ARTICLE II

Description of Units

Section 1. Townhouse Units.

a. Description of Buildings. There will be constructed a total of fifteen (15) buildings of which ten (10) shall contain two (2) Units and five (5) shall contain one (1) Unit. The ground floor of each Unit, exclusive of porches and garages, shall contain a minimum of _____ (_____) square feet and any two-story Unit shall contain a minimum of _____ (_____) square feet of floor space, exclusive of porches and garages. All Units shall include a garage, with a driveway that will provide at least four (4) off-street parking spaces. All Units shall be constructed in accordance with the provisions of this Declaration, as well as the Bluestem Community Unit Plan.

b. Numbers and Descriptions of Townhouse Units. The designation of each Unit, as shown on the plat of survey attached hereto, together with the square footage of living area contained in each, is as follows:

Unit

Square Footage

Unit

Square Footage

Prior to the completion of construction of any Units not shown on the plat of survey attached hereto, Declarant shall record in the office of the Register of Deeds of Sedgwick County, Kansas, an amended or supplemental plat of survey which shall expressly refer to this Declaration and which shall show the location and dimensions of all such units.

Section 2. Description of Common Areas and Facilities. The Common Areas and Facilities shall consist of the entire Property not included within the boundaries of any of the Lots.

ARTICLE III

Assessments

Section 1. Assessments. All of the Units of the Members of the Association shall be subject to an annual assessment charge to be paid by the respective Owners thereof to the Association annually in advance on the 1st day of January, in each year. The Board of Directors of the Association may permit the annual assessment charge to be paid either annually or semi-annually.

Section 2. Determination of Assessments. Each year the Board of Directors of the Association shall, prior to November 1, determine the total amount to be raised by the annual assessment charge for the next succeeding year. This sum so determined shall be divided by the total number of Units, and each Unit shall be assessed an equal amount. Should the Board of Directors of the Association at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management

of the Common Areas and Facilities, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

Section 3. Use of Assessment Fund. The assessment fund shall be used for such of the following purposes as the Association shall determine necessary and advisable: for improving and maintaining the Common Areas and Facilities and other property of the Association, including the guardhouse; for planting trees and shrubbery and the care thereof; for expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Areas and Facilities; for collecting and disposing of garbage, ashes, and rubbish; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs, street lights, and snow removal; for constructing, purchasing, maintaining, or operating any community service; for purchase of insurance; for doing any other thing necessary or advisable in the opinion of the Association for the general welfare of the Members; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

Section 4. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate of fifteen percent (15%) per annum or at such higher rate as may be permitted by law.

Section 5. Lien for Delinquent Assessments. It is expressly understood and agreed that the annual assessment charge shall be a lien and encumbrance on the Unit with respect to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Units, the Owner (not including thereby the mortgagee as long as he is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid to the time of his acquiring the title and all such charges thereafter falling due during his ownership thereof. A certificate in writing issued by the Association or its agent shall be given

on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon said parties.

Section 6. Subordination of Assessment Lien. The lien provided for herein shall be subordinate to the lien of any first mortgage or mortgages. Sale or transfer of any Lot or Unit shall not affect the assessment lien. The sale or transfer of any Lot or Unit, which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7. Right of Association to Enforce Payment of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges.

Section 8. Maximum Annual Assessment.

a. The maximum annual assessment (except for such sum assessed pursuant to Section 10 of this Article III), for the calendar year ending December 31, 1982, shall be Three Hundred Dollars (\$300) per Unit. The maximum annual assessment may be increased for any subsequent year to an amount which is no more than ten percent (10%) compounded above the maximum permitted annual assessment for the previous year without a vote of the membership of the Association.

b. The annual assessment for any year commencing after December 31, 1982, may be increased to an amount greater than that permitted by Subsection "a" of this Section 8 only by an affirmative vote of two-thirds (2/3)

of the vote of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

c. The Board of Directors of the Association (the "Board") may fix the annual assessment at an amount not in excess of the maximum amounts set forth in this Section 8.

Section 9. Special Assessments for Capital Improvements.
In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas and Facilities, if any, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

Section 10. Additional Assessments. In order to help provide for a comprehensive neighborhood scheme and an integrally related community, Declarant has entered into certain agreements with the owner of the adjoining property regarding the development of a golf course thereon. In order to induce said owner of the adjacent property to develop such golf course, which golf course will affirmatively contribute to the aesthetic and monetary values of the Property and the Lots and Units therein, and in order to assist in providing proper maintenance and care of the green spaces thereon and for other consideration hereafter set out, Declarant has contracted with said owner to provide for the additional assessment provided for herein.

In order to assist in providing for the proper maintenance and care of the green spaces located on the adjacent golf course property, there shall be included in the assessment levied by the Association pursuant to the foregoing provisions of this Article III an additional amount determined as hereinafter provided, which amount shall be due and owing Tallgrass Club, owner of the adjacent golf course, its successors and assigns, to be utilized by it in maintaining the landscaping and green

spaces of the golf course; provided, however, that the provisions of this Section 10 shall not apply to Declarant. Each Owner and the Association shall be bound by the provisions hereof as follows:

a. All sums paid by the Association to Tallgrass Club (or any successor or assign) shall be used by Tallgrass Club (or any successor or assign) to help defray the cost of maintenance and care of the landscaping and green spaces of the golf course, such maintenance and care to be performed by it at such times and in such manner as the said Tallgrass Club (or any successor or assign), in its sole discretion, deems reasonable and appropriate.

b. The annual assessment payable to Tallgrass Club, its successors or assigns, shall be in the initial amount as set out in Subsection "f" of this Section 10. Beginning with calendar year 1983, each annual assessment shall be increased pursuant to the "All Items Figure" of the 1978 revised Consumer Price Index-Urban Wage Earners and Clerical Workers-U. S. City Averages (1967 = 100) (the "BLS Index"), issued by the Bureau of Labor Statistics of the United States Department of Labor, with the initial assessment being predicated on such figure as issued for the month of September, 1981. For each succeeding calendar year said assessment shall be in an amount equal to such assessment for the initial year multiplied by a fraction, the numerator of which shall be the BLS index figure for September of the preceding year, and the denominator of which shall be such figure for September, 1981. In no event, however, shall such amount be less than the initial amount. In the event the BLS index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula, or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, by any other nationally recognized publisher of similar statistical information.

c. Nothing herein shall be construed as obligating Tallgrass Club, its successors or assigns, to continue the operation of the golf course; however, the obligation of

the Association to pay said sums to Tallgrass Club, its successors or assigns, shall continue only so long as Tallgrass Club, its successors or assigns, shall maintain and operate said golf course. At such time as said property shall cease to be operated as a golf course, and such cessation shall continue for a period of more than six (6) months, then and in that event, the obligation of the Association to pay said sum shall terminate as of the date such golf course first ceased to be so operated.

d. Said assessment shall be levied and collected as a part of the assessment against each Unit as herein provided, but the collection and payment thereof shall also be the binding obligation of the Association to Tallgrass Club, its successors and assigns, and any failure of any Owner to make payment of such Owner's assessment to the Association shall not diminish the Association's obligation to Tallgrass Club, its successors and assigns, for the full amount of such payment. This provision is for the benefit of said Tallgrass Club and its successors and assigns and may be enforced by it pursuant to law.

e. The initial annual assessment for calendar year 1981 shall be in the following amount with the obligation as to each Unit to commence with the first full month after the month in which the golf course or any portion thereof is first opened for play, said assessment to be prorated on a monthly basis for a partial year.

Townhouse Units in Peppertree \$120 per Unit

f. A similar obligation to Tallgrass Club, its successors and assigns, shall be imposed upon all other residential additions of which Declarant is either owner or part owner and platted within any of the parcels located within the Bluestem Community Unit Plan. The minimum initial annual assessment for calendar year 1981 as to any such additional Units or dwelling units other than single-family, detached, is as follows, the same to be prorated as aforesaid.

Duplex, fourplex, townhouse,
condominium, and zero lot line
dwelling units \$60 per Unit

Apartment units, being defined
as 15 or more dwelling units
per acre \$30 per Unit

ARTICLE IV

Covenants for Maintenance

Section 1. Exterior Maintenance.

a. In addition to maintenance of the Common Areas and Facilities, the Association shall provide exterior maintenance upon the individual Units as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, and provide lawn and yard care. The care and maintenance of the Owner's patio, any enclosed yard areas, and interior of the Units, including all appliances, heating and air-conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, and all other maintenance and repair that might be required on the individual Unit not otherwise specifically designated the responsibility of the Association herein, shall be the sole responsibility of the Owner. In addition, each Owner shall be solely responsible for the repair and maintenance of the driveway and sidewalks appurtenant to his Unit.

b. The cost of the maintenance to be provided above shall be added to and become a part of the annual assessment to which the Units are subjected under ARTICLE III hereof, and, as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided therein.

ARTICLE V

Architectural Control

Section 1. Approval Required. No building, fence, wall, or other structure or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration to any Unit be made, 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 Architectural Control Committee (the "ACC"), its agents, assignees, or successors. In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with.

Section 2. Form of Plans and Specifications. Such plans and specifications shall be in such form and shall contain such information as may be required by the ACC, but in any event shall include

a. A site plan of the Lot showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all structures, the location thereof with reference to structures on adjoining portions of the property, and the number and location of all parking spaces and driveways on the Lot; and

b. A grading plan for the particular Lot.

Section 3. Retention of Approved Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted hereunder a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Association, and a copy of such plans and specifications bearing

such approval, in writing, shall be returned to the applicant submitting the same.

Section 4. Removal and Alteration of Structures; Lien.

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

b. If fifteen (15) days after the notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association or the ACC shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost thereof shall be a binding, personal obligation of such Owner and the cost may mature into a lien (enforceable in the same manner as a mortgage) upon the Lot(s) in question in the following manner: The Association or the ACC may record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Sedgwick County, Kansas, stating

- (1) The legal description of the property upon which the lien is claimed;
- (2) The name(s) of the Owner(s) of said property; and
- (3) The amount of the Removal and Alteration Charges which are unpaid.

The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

c. In the event a lien is obtained pursuant to this Section 4 and thereafter the Removal or Alteration Charges, plus interest at the rate of fifteen percent (15%) per annum, shall be fully paid, the Association or the ACC shall, within ten (10) days following payment, file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Removal or Alteration Charges, which Affidavit shall

(1) Refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied;

(2) State the legal description of the property affected; and

(3) State the name(s) of the Owner(s) of the property.

The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit, and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the preexisting lien has been fully and completely released and discharged.

d. In the event of any transfer, sale, or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section

4 prior to such transfer, sale or assignment, any such Affidavit filed subsequent to the above-referenced transfer, sale or assignment shall be invalid and unenforceable.

Section 5. Certificate of Compliance. Upon completion of the construction or alteration of any structure in accordance with plans and specifications approved by the ACC, it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed, and stating that the plans and specifications, the location of such structure, and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Section 5 shall be prima facie evidence of the facts therein stated, and, as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all structures on the Lot, and the use or uses described therein comply with all the requirements of this Declaration as to which the ACC exercises any discretionary or interpretive powers.

Section 6. Right of Inspection. The Association or any of its agents may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither the ACC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 7. No Liability. Neither the ACC, Declarant, the Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article V.

Section 8. Membership. The original members of the ACC shall be three persons to be appointed by Declarant. Upon the

death or resignation of any member of the ACC, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. In such event, the Association shall have full authority to designate a successor. The act of a majority of the committee shall be binding and the majority of the committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished to the Association. Declarant may relinquish its rights or any portion thereof under this Section 8 to the Association by advising the Association in writing of its intent to do so and in such event, the Association shall have the authority of Declarant under this Section 8, and Declarant shall relinquish such rights at such time as Declarant shall cease to own any Lots in the Addition.

ARTICLE VI

General Covenants and Restrictions

Section 1. Structures; Division of Lots; Utilities; Trailers; and Fences. Without the prior written approval of the ACC:

- a. No previously approved structure shall be used for any purpose other than that for which it was originally designed;
- b. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise;
- c. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained;
- d. No boat, boat trailer, house trailer, camper, camper trailers, recreational vehicles, or similar items

shall be stored in and on any street, the Common Areas and Facilities, or in the open on any Lot; and

e. No fence shall be erected on any Lot, except those expressly permitted by Section 20 of this Article VI and those specifically approved as to location, size, type, and material by the ACC.

Section 2. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

when
Section 3. Rights of City of Wichita; Off-Street Parking Requirement. Reserve _____ in said Addition has been designated as the "Common Areas and Facilities" and is to be conveyed to an Owners' Association to be formed at a later date, which Association shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, as owner, shall be responsible for such maintenance and upkeep. In the event the Association, its successors or assigns, shall fail at any time to maintain the Common Areas and Facilities or fail in any manner to fulfill its obligations relating to the Common Areas and Facilities, the City of Wichita may serve a written Notice of Delinquency upon the Association setting forth the manner in which the Association has failed to fulfill its obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Common Areas and Facilities from becoming a nuisance, may enter upon said Common Areas and Facilities and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Declarant or the Association may be assessed equally against all the Units within the Addition in the same manner as provided by law for special assessments, and said assessments may be established as liens

upon said Units. Should the Declarant or the Association, their successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said Notice, apply for a hearing before the Board of City Commissioners to appeal said obligations, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit. ✓

Section 4. Trees. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 4, the Association and its agents may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Association nor its agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 5. Animals. No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Properties without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Areas and Facilities. Dogs and other animals shall not be allowed to trespass on the adjacent golf course whether on leash or not.

Section 6. Signs. No sign or other advertising device of any nature shall be placed upon any Lot, except as provided herein. The Association may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Association may remove nonconforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner. In addition to the foregoing, so long as Declarant owns any Lots in the Addition, Declarant may require any Owner, real estate agent, or other person desiring to utilize a sign to advertise a Unit for sale, lease, or rent to utilize a standard sign provided by Declarant for which a reasonable rental may be charged by Declarant. The number and location of any such signs shall be subject to reasonable rules adopted by Declarant. Any nonconforming sign may be removed, without notice, by Declarant, and Declarant shall not be liable to anyone in the event of any such removal.

Section 7. Temporary Buildings. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.

Section 8. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Areas and Facilities, except building materials may be stored on a Lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Association, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

Section 9. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

Section 10. Association May Trim or Prune. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action.

Section 11. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Areas and Facilities or the sidewalks and bicycle paths, if any, located in the Common Areas and Facilities. Garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit, or maintenance.

Section 12. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Section 13. Noxious, Dangerous, and Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Maintenance of Drainage Channels and Swales. Each Owner shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot owned by such Owner, in accordance with the master drainage plan.

Section 15. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Association. The Association, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Association, to be compatible with a high-quality residential neighborhood.

Section 16. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot or Unit owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office until all homes in the development are sold.

Section 17. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 18. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, the Bluestem Community Unit Plan, applicable zoning regulations, or this Declaration.

Section 19. Requirement to Plant Lawn and Trees, Shrubs, or Bushes. Within sixty (60) days after occupancy of a residence on a Lot, the Owner thereof shall submit to the ACC a landscape plan for its approval, pursuant to the provisions of ARTICLE V hereof, which plan shall include planting a lawn and at least fifteen (15) perennial shrubs, bushes, or trees on such Lot and shall further include all areas between public sidewalk and the paved streets. Such landscaping shall be installed not later than the next planting season.

Section 20. Fences. No fence shall be constructed or maintained on any Lot except for primary fences immediately

adjacent to patios which are appurtenant to a Unit, except that this restriction shall not prohibit the construction and maintenance of fences constructed only of black wrought iron which do not exceed six (6) feet in height and which do not materially obstruct the passage of light and air.

What about wrought iron fences without the 6' height? Patios? etc.

Section 21. Set-Back Requirements. No building, structure or other improvement may be constructed or maintained on any Lot which shall be nearer than twenty-five (25) feet to the front property line, nearer than ten (10) feet to either side boundary line, or nearer than twenty-five (25) feet to the rear boundary line of any Lot; provided, that the foregoing set-back requirements shall not be applicable to any improvement, building, or structure constructed below the surface level of the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts, or similar sports surfaces constructed at ground level, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas.

20' 2 1/2' setbacks on plot

Section 22. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the Bluestem Community Unit Plan, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

not allowed within required yards by zoning

ARTICLE VII

Enforcement

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association,

Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VIII

Easements

Section 1. Easements.

California

a. If any Unit shall encroach upon any other Unit or upon any portion of the Common Areas and Facilities, as a result of the construction, settling, or shifting of any building, structure, or improvement thereon, a valid easement for the maintenance and continuation of such encroachment shall exist as long as such building, structure, or improvement stands. In the event any building, structure, or improvement on the Property shall be rebuilt after having been damaged or partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, any resulting encroachment of any Unit upon any other Unit or upon any part of the Common Areas and Facilities shall be permitted and a valid easement for the continuation and maintenance of such encroachment shall exist as long as such building, structure, or improvement stands.

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b. There is reserved for the benefit of each Unit an easement for utility services over, under, and through the Property and each other Unit and Lot. There is further reserved for the Association an easement of entry and of access for the installation and maintenance of utility lines, utility meter boxes, landscaping, and community facilities in Common Areas and Facilities and for the performance generally of its rights and duties, as provided in this Declaration and the Bylaws of the Association.

c. Every Owner shall have a right and easement of enjoyment in and to the Common Areas and Facilities and

such easement shall be appurtenant to and shall pass with the title to every Unit; provided, however, that, subject to the provisions of Subsections "a" and "b" of this Section 6, each owner of a Unit shall have the sole right to use and possess that portion of the yard and driveway adjacent to his or her Unit extending to the borders of the Lot on which such Unit is located.

Does not apply
?

ARTICLE IX

Insurance

Section 1. Insurance. The Board of Directors for the benefit of the Association and the Townhouse Unit Owners shall acquire and pay out of the common expense fund premiums for insurance as hereinafter provided.

Section 2. Hazard Insurance. The Board of Directors shall obtain and maintain, at all times, a policy or policies of fire insurance as the same are hereinafter more fully set out, with extended coverage endorsement, for the full insurable replacement value of the Units and Common Areas and Facilities, excluding all foundations and excavations, payable as hereinafter provided, or such other fire and casualty insurance as the Board of Directors shall determine gives substantially equal or greater protection to the Owners, their mortgagees, and the Association, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any. Such limits and coverage shall be reviewed at least annually by the Board of Directors and can be increased or modified in its discretion.

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, or other comparable rating organization, unless such insurance shall be unobtainable or obtainable only at a cost the Board of Directors deems excessive.

b. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors or its authorized representative.

c. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual Owners or their mortgagees.

d. Each Owner may obtain additional insurance at his or her own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time.

e. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1,000).

f. Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance.

g. The Board of Directors shall be required to make every 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 Board of Directors, the officers of the Association, the Owners, and their respective servants, agents, and guests;

(2) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account

of the conduct of any one or more individual Owners without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time;

(3) That the master policy on the Property cannot be cancelled, invalidated, or suspended on account of the conduct of any officer or employee of the Board of Directors without permitting the Board of Directors to have a reasonable opportunity to remedy such conduct within a reasonable period of time; and

(4) That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

h. The Board of Directors shall conduct an annual insurance review which shall include an appraisal of the improvements by a representative of the insurance carrier writing the master policy.

i. In the event that the Board of Directors should fail to provide such hazard insurance coverage or in the event that a majority of the Unit Owners shall decide not to have the Board of Directors provide such coverage, each Unit Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Unit, excluding land, foundation and excavations. Such insurance shall provide for payment for losses thereunder by the insured to the Insurance Trustee for the benefit of each Owner, the owner of each first mortgage of record, and the Association, as their respective interests appear and as set forth in this Declaration. The proceeds from insurance received by the Insurance Trustee shall be used to repair, reconstruct, or rebuild the Units damaged or destroyed by said fire or other casualty as otherwise provided for herein.

Section 3. 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 Section 3, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty.

b. Such damage or destruction shall be repaired or reconstructed, unless all of the Owners and their first mortgagees agree in writing not to rebuild.

c. In the event that it should be determined that the damage or destruction shall not be repaired or reconstructed, then and in that event the proceeds of the said insurance shall be paid to the Unit Owners, their mortgagees, and the Association, as their respective interests may appear.

Section 4. Insurance Trustee.

a. Unless the Board of Directors shall designate a different Insurance Trustee, 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 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. Proceeds on account of damage or destruction to Units shall be held in trust for the Owners of the damaged or destroyed Units in proportion to the costs 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 Unit, the share of such Unit Owner shall be held in trust for such Owner and his mortgagee, as their respective 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 costs of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

(2) 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 3 of this Article IX.

(3) The Board of Directors of the Association, on behalf of the Insurance Trustee, shall determine whether the damage or destruction was to the Common Areas and Facilities or one or more Units or both. If the damage or destruction is to the Common Areas and Facilities and is to be repaired or reconstructed, the Insurance Trustee shall 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 Units 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 Unit or Units 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 5. Repair and Reconstruction--Excess Costs.

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 levy a special assessment against all Owners of the damaged Units 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 Unit Owners for damage to Units shall be in proportion to the cost of repair and reconstruction of their respective Units.

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 4 of this Article IX.

Section 6. Minor Repairs.

a. Notwithstanding the foregoing provisions hereof, in the event of damage by fire or other casualty to either the Common Areas and Facilities or a single Unit 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) 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 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 Unit, 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 of such Unit and his, her, or its 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 against the Owner of the damaged Unit. Payments for repairs provided for in this Subsection shall be made only after all such repairs have been completed and approved by the Association, the Owner, and his, her, or its mortgagee, if any, which approval shall not be unreasonably withheld.

Section 7. Liability Insurance. The Board of Directors shall obtain a policy or policies of liability insurance insuring the Board of Directors, the Association and its officers and employees, and the Unit Owners and their employees, if any, against any liability to the public or to the Owners of the Units and their invitees or tenants incident to the ownership and/or use of the Property and including the personal liability exposure of the Owners incident to their being a member of the

Association, but excluding such liability of such Owners arising from their ownership and occupancy of their individual Units and Lots. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000) for any one (1) person injured for any one (1) accident, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his action against another named insured.

Section 8. Workers' Compensation Insurance. Workers' compensation insurance shall be provided to the extent necessary to comply with any applicable laws.

ARTICLE X

Power of Assignment and Delegation

Section 1. Power to Assign and Delegate. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers, and authority contained in this Declaration.

ARTICLE XI

Severability

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE XII

Amendment

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) year. This Declaration may be amended by an instrument signed by the Owner(s) of not less than seventy-five percent (75%) of the votes in the Addition and recorded in the Office of the Register of Deeds of Sedgwick County, Kansas, or any other public office for recording instruments affecting real property located in Sedgwick County, Kansas, as may hereafter be established; provided, however, that ARTICLE VI, Section 3, shall not be amended without the prior approval of the Wichita Board of City Commissioners.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of this ____ day of _____, 1981.

TALLGRASS COMPANY, a Partnership
By: RITCHIE ENTERPRISES, Managing Partner

By _____,
_____, a Partner

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this ____ day of _____, 1981, before me, a Notary Public within and for the County and

State aforesaid, came _____, a partner of Ritchie Enterprises, Managing Partner of TALLGRASS COMPANY, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Declaration of Covenants, Conditions, and Restrictions, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for an on behalf of and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

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

Notary Public

My Commission Expires:

DEED

This deed executed as of this _____ day of _____, 1982, by PEPPERTREE COMPANY, a joint venture.

WHEREAS, grantor has caused certain improvements to be constructed on certain lots located in Peppertree, an addition to Wichita, Sedgwick County, Kansas, which have been determined by the City of Wichita to be located within applicable setback restrictions concerning the side and rear lot lines thereof; and

WHEREAS, in order to effect a proper compliance with said setback restrictions it is necessary to convey additional land appurtenant to said lots so as to provide for a proper setback; and

WHEREAS, grantor is the owner of all of Reserve A in said addition and intends hereby to convey to the owners of said lots the following described tracts upon the terms and conditions hereof.

NOW, THEREFORE, for and in consideration of one dollar (\$1.00) and other good and valuable consideration, Peppertree Company, a joint venture, does hereby convey and warrant unto the present owners of the following described lots the following tracts of real property to wit:

1. Unto the owners of Lot 6, Block 1, in said addition a six foot wide strip of Reserve A parallel and adjacent to the south line of Lot 6, Block 1, Peppertree, commencing at the westerly boundary of Peppertree east to the right-of-way line of Peppertree Circle.

2. Unto the owners of Lots 4 and 5, Block 1, in said addition a ten foot wide strip of Reserve A parallel and adjacent to the south line of Lots 4 and 5, Block 1, Peppertree, from the easterly right-of-way of Peppertree Circle to the east line of Lot 4, Block 1, extended south.

3. Unto the owners of Lot 2, Block 1, in said addition a ten foot wide strip of Reserve A parallel and adjacent to the south line of Lot 2, Block 1, Peppertree, from the west line of said Lot 2, Block 1, extended south to the east line of said lot extended south.

4. Unto the owners of Lot 3, Block 1, in said addition a ten foot wide strip of Reserve A parallel and adjacent to the south line of Lot 3, Block 1, Peppertree, from the west line of said Lot 3, Block 1, extended south to the east line of said lot extended south.

It is expressly understood that this conveyance is being made solely for purposes of complying with the applicable setback restrictions and that the said grantee's ownership and use of said tracts shall be so limited. Said tracts shall be deemed appurtenant to the said lots and a part thereof, subject to, however, all of the terms and conditions of the Declaration of Covenants, Conditions and Restrictions recorded on film 498, at page 249 in the office of the Register of Deeds of Sedgwick County, Kansas as amended by Amendment recorded at film 504, page 513, it being further understood that said tracts shall otherwise be maintained and utilized as if they remained a portion of Reserve A all as provided for in said Declaration as amended.

This Deed executed as of the date first above written.

PEPPERTREE COMPANY, a joint venture

By: TALLGRASS COMPANY, a Partnership
and a joint venturer

By: RITCHIE ENTERPRISES,
Managing Partner

By _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this ___ day of _____,
1982, before me, a notary public within and for the county and state

aforesaid, came _____, a partner of Ritchie Enterprises, Managing Partner of Tallgrass Company, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Deed, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for and on behalf of and as the free and voluntary act and deed of said partnership and said joint venture, for the uses and purposes therein set forth.

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

Notary Public _____

My Appointment Expires:

SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF PEPPERTREE TOWNHOUSES

THIS AMENDMENT, made this ____ day of _____,
1982, by PEPPERTREE COMPANY, a joint venture (the "Declarant").

W I T N E S S E T H: That,

WHEREAS, Declarant, as the owner of the hereinafter described real property, caused to be placed of record that certain Declaration of Covenants, Conditions, and Restrictions dated September 13, 1981, recorded October 1, 1981, on Film 498 at Page 249 and that certain First Amendment dated November 11, 1981, recorded November 17, 1981, on Film 504 at Page 513, in the Office of the Register of Deeds of Sedgwick County, Kansas; and

WHEREAS, said Declaration covered all of Peppertree, an addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, Declarant desires to amend said Declaration as hereinafter set out and as the owner of lots having more than 75% of the votes in the said addition, is authorized to effect said Amendment as provided in said Declaration.

NOW, THEREFORE, Declarant hereby declares that the hereinabove described Declaration of Covenants, Conditions, and Restrictions is amended as follows:

1 The third and fourth sentences of Subparagraph (a) Section 1, of Article IV, are hereby deleted and there are substituted in their stead the following:

In addition, each Owner shall be solely responsible for the repair and maintenance

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P. 10
of
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of the Owner's patio, fence, driveway, and sidewalks appurtenant to his Unit. In the event any such patio, fence, driveway, or sidewalk should, in the opinion of the Board, become unsightly or dangerous to persons or property, the Association may, after reasonable notice to the Owner affording him an opportunity to make the needed repairs, cause the same to be made at such Owner's expense, and in the event the same shall not be paid by said Owner, the Board may file a lien on said Unit pursuant to Section 5 of Article III hereof.

2. Except as specifically herein amended, said Declaration remains in full force and effect pursuant to its terms.

This Amendment executed the date first above written.

PEPPERTREE COMPANY, a joint venture

BY: TALLGRASS COMPANY, a Partnership and a joint venturer

BY: RITCHIE ENTERPRISES, Managing Partner

By _____
E. D. Ritchie, a partner

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 1982, before me, a notary public within and for the county and state aforesaid, came E. D. Ritchie, a partner of Ritchie Enterprises, Managing Partner of Tallgrass Company, a partnership, who is personally known to me and known to me to be the same person who executed the foregoing Second Amendment to Declaration of Covenants, Conditions, and Restrictions, that said person duly acknowledged before me his execution of the same as and for his free and voluntary act and deed; that said person duly acknowledged before me his authority to execute the same as a partner of Ritchie Enterprises, as a partner of Tallgrass Company, for and on behalf of and as the free and voluntary act and deed of said partnership and said joint venture, for the uses and purposes therein set forth.

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

Notary Public

My Appointment Expires:

Apartment units, being defined
as 15 or more dwelling units
per acre \$ 30 per Unit

ARTICLE IV

Covenants for Maintenance

Section 1. Exterior Maintenance.

a. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon the individual Units as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, and provide lawn and yard care. The care and maintenance of any enclosed yard areas, and interior of the Units, including all appliances, heating and air-conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, and all other maintenance and repair that might be required on the individual Unit not otherwise specifically designated the responsibility of the Association herein, shall be the sole responsibility of the Owner. In addition, each Owner shall be solely responsible for the repair and maintenance of the Owner's patio, driveway, and sidewalks appurtenant to his Unit. In the event any such patio, driveway, or sidewalk should, in the opinion of the Board, become unsightly or dangerous to persons or property, the Association may, after reasonable notice to the Owner affording him an opportunity to make the needed repairs, cause the same to be made at such Owner's expense, and in the event the same shall not be paid by said Owner, the Board may file a lien on said Unit pursuant to Section 5 of ARTICLE III hereof.

b. The cost of the maintenance to be provided above shall be added to and become a part of the annual assessment to which the Units are subjected under ARTICLE III hereof, and, as part of such annual assessment or charge, it shall be a lien and obligation of the respective Owners and shall become due and payable in all respects as provided therein.

FORM 29-1

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sever	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION AMOUNT

Willwood

NAME

ADDRESS

FUND

DUE DATE

COMMENTS

DATE

BY