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Security Land Title Company

STATE OF KANSAS
COUNTY OF JOHNSON
FILED FOR RECORD

APPLEWOOD
HOMES ASSOCIATION DECLARATION

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THIS DECLARATION, made as of the 5th day of November, 1991, by PEPPERCORN, INC., a Kansas corporation;

SARAH T. BELMANN
REGISTER OF DEEDS

WITNESSETH:

WHEREAS, Peppercorn, Inc. has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as "Applewood"; and

WHEREAS, such plat creates the subdivision of Copper Creek, composed of the following described lots; and tracts, to-wit:

Lots 14 through 38, Block 3; Lots 1 through 49, Block 4; Lots 1 through 22, Block 5; Applewood, a subdivision in the City of Olathe, Johnson County, Kansas and

WHEREAS, Peppercorn, Inc., as the present owner and developer of the above-described lots and tracts, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises, Peppercorn, Inc., for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I. Definitions

For the purposes of this Declaration, the following definitions shall apply:

(a) The term "Lot" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than the Developer, owns all or part of one or more adjacent lots upon which only one residence has been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(b) The term "District" shall mean all of the above-described lots and tracts in Applewood, all Common Areas, if any, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(c) The term "Developer" shall mean and refer to Peppercorn, Inc., a Kansas corporation, and its successors and assigns.

(d) The term "Owner" shall mean the record owner in fee simple of any Lot, including the Developer.

(e) The term "Common Areas", if any, shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) entrances, monuments, berms and other similar ornamental areas and related utilities, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, and (iv) all other similar areas, if any, and places, together with all improvements thereon and thereto (including any swimming pool, tennis courts, clubhouse or similar recreational facilities, if any, that may be constructed or erected) the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any "Common Area", if any, is located on any Lot.

(f) The term "street" shall mean any public street, road, terrace, circle or boulevard shown on any recorded plat of all or part of the District.

(g) The term "Homes Association" shall mean the Kansas not-for-profit corporation to be formed by the Developer for the purpose of serving as the homes association for the District.

(h) The term "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all, or at the Developer's discretion, substantially all, of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP, VOTING AND MANAGEMENT

Membership in the Homes Association shall be limited to the Owners of Lots within the District and every such Owner shall be a member. The Homes Association shall have only one class of membership. Each member shall have one vote for each Lot for which he is the Owner and upon which he shall not be delinquent in the payment of any assessment; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot.

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. In addition to the powers granted by other portions of this Declaration or by law, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by its Board of Directors to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in its own name, any and all building, use or other restrictions, obligations, agreements or reservations which have been or hereafter may be imposed upon any of the Lots; provided, however, that this right of enforcement shall not serve to prevent changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association may be paid out of the general fund of the Homes Association, as herein provided. Nothing herein contained shall be deemed or construed to prevent any Owner from enforcing any building, use or other restrictions in his own name.

(b) To acquire and own title to or interests in, and exercise control over, the Common Areas, if any, subject to the rights (including ownership) of any governmental authority, utility or any other person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association and Common Areas, if any.

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

(e) To enter into agreements from time to time with the Developer and other parties regarding the performance and services and matters benefiting both the Developer and the Homes Association and its members and the sharing of the expenses associated therewith.

(f) To enter into agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities, if any, and other similar common areas, if any, whether in or outside the District, and the sharing of expenses related thereto.

(g) To engage the services of a management company, if desired, or other person or entity to carry out and perform the functions and powers of the Homes Association, including, without limitation, keeping of books and records, and operation and maintenance of Common Areas, if any, and landscape easements along the entry.

(h) To exercise any architectural and aesthetic control and authority given and assigned to it in this Declaration or in any other deed, declaration or plat relating to all or any part of the District.

(i) To make such reasonable rules and regulations (including, without limitation, the use of Common Areas, if any) and to provide means to enforce such rules and regulations as will enable it to adequately and properly carry out the provisions and purposes of this Declaration.

(j) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to Owners within the District:

(a) Except as otherwise provided in any agreement with the Developer, the Homes Association shall at all times pay and be responsible for the proper maintenance of, and shall maintain, the Common Areas, if any, and entry landscape easement, subject to any control thereover maintained by any governmental authority or utility.

(b) The Homes Association shall pay all amounts due from it under this Declaration or any agreement regarding the Recreational Facilities, if any, as contemplated in Article VIII below.

ARTICLE IV. METHOD OF PROVIDING GENERAL FUNDS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, maintain the improvements and render the services provided for herein, all Lots in the District, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in the Article IV. The amount of such annual assessment shall be fixed periodically by the Homes Association, and, until further action of the Homes Association, shall be \$75.00 per year.

2. The rate of annual assessment upon each Lot in the District may be increased or decreased (a) by the Board of Directors of the Homes Association from time to time to an amount not to exceed 110% of the rate of annual assessment in effect on the preceding January 1st (plus any increases after such date relating to the Recreational Facilities, if any, as contemplated in subsection 1 above), or (b) at a meeting of the members specially called for that purpose and of which advance notice is given and if a majority of the members present at such meeting and entitled to vote authorize such increase or decrease by an affirmative vote therefor; provided, however, that the rate of annual assessment may not be less than an amount that is necessary to permit the Homes Association to perform its duties as specified in subsection 2 Article III.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 1988) and shall be due and payable on January 1st of each year; provided, however, that (a) the first assessment for each Lot shall be due and payable at the Developer's option, upon closing of the acquisition of the Lot from the Developer.

ARTICLE V. LIEN ON REAL ESTATE

1. The annual assessment shall become a lien on the Lot against which it is levied as soon as it is due and payable as set forth above. In the event of the failure of any Owner to pay any assessment within 30 days of the due date thereof, then such assessment shall bear interest at the rate of 10% per annum from the date until paid. Should it become necessary to engage in the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and

reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot.

3. Nonpayment of any assessment provided for herein within 60 days from the due date thereof shall cause such assessment to become delinquent. Payment of both principal and interest of a delinquent assessment may be enforced as a mortgage lien on such Lot through proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas, whenever any assessment is delinquent. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$25.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.

ARTICLE VI. SPECIAL ASSESSMENTS

In addition to the annual assessments provide for herein, the Board of Directors of the Homes Association (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services and materials) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation, or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in subsection 2 of Article III that require any expenditure during any period in an amount in excess of the general funds of the Homes Association available therefor. Such special assessment shall be due and payable, and shall become a lien on such Lot, upon notice to such Owner of the assessment. Interest at the rate of 10% per annum shall accrue from the due date until paid and shall also be part of the lien against such Lot. Such lien shall be enforced and terminated in accordance with the provisions of Article V above.

ARTICLE VII. LIMITATION ON EXPENDITURES

Except with respect to Recreational Facilities, if any, the Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus which it may have on hand from prior years; nor shall the Homes Association have the power to

enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for contracts for utilities, maintenance or similar services or matter to be performed for or received by the Homes Association or its members in subsequent years and except for matters contemplated in subsection 2(c) or Article III above.

ARTICLE VIII. RECREATIONAL FACILITIES

1. The Developer shall have the right (but is not obligated) to construct and erect from time to time a swimming pool, tennis courts, a clubhouse, parking lot and other similar recreational facilities (the "Recreational Facilities"), if any, within the District or on property near the District and to make such facilities available for exclusive use by residents of the District and residents of other subdivisions that may be situated near the District and their guests. The size, number and components of the Recreational Facilities shall be as determined by the Developer in its absolute discretion.

2. In the event any Recreational Facilities are so constructed and made available for use by residents of the District, the following shall apply:

(a) The Homes Association will pay, from and after the substantial completion and availability date, a pro rata share (as defined below) of the operating expenses (as defined below) (net of operating income) of the Recreational Facilities, construction expenditures, and of any post construction capital expenditures (as defined below); provided, however, that until ownership and control of the Recreational Facilities are transferred as provided in paragraph (e) below, the per residence payment by the Homes Association shall not exceed \$150.00 per year (which amount may be increased by 10% on January 1st of each year after payments commence).

(b) For purposes hereof, the "operating expenses" of the Recreational Facilities shall generally have the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Facilities or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, (iii) any financing or debt service expenses related to the costs described in clause (i) above, (iv) any ground, facilities, or other lease payments or rents related to the costs described in clause (i) above, or (v) any costs attributable or allocable to the use of the Recreational Facilities or any part thereof by the Developer, any construction company, any real estate sales agent or any other similar party as an office, meeting place or storage facility.

(c) For purposes hereof, "construction expenditures" shall mean any expenditures made or incurred during construction including but not limited to (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Facilities or the site on which such facilities are located, (ii) any financing or debt service expenses related to the costs described in clause (i) above, (iii) any equipment, furniture or other capital assets.

(d) For purposes hereof, "post construction capital expenditures" shall mean any expenditures made or incurred after the completion of the initial (as specified by the Developers) Recreational Facilities for equipment, furniture, or other capital assets, including the expansion of any facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied.

(e) For purposes hereof, the Homes Association's "pro rata share" for any fiscal year shall be equal to the product of (i) the aggregate pertinent expenses for the period that are not payable or reimbursable by the Developer or other developers pursuant to any agreement with the Homes Association, multiplied by (ii) a fraction the numerator of which is the number of Lots that are then obligated to pay annual homes association dues and the denominator of which is the sum of (A) the numerator plus (B) the number of residential units in other subdivisions that are entitled to use the Recreational Facilities, if any.

(f) At such time as the Developer deems appropriate, the Developer shall convey all of its rights, title and interest in the Recreational Facilities to the Homes Association and any other homes association whose members may use the Recreational Facilities or to a joint venture among such homes associations or to a not-for-profit corporation having as its members the owners of the residences entitled to use the Recreational Facilities.

(g) The Homes Association shall pay the amounts due from it under paragraph (a) above out of the homes association dues collected from the Owners of the Lots.

ARTICLE IX. NOTICES

1. At least seven days prior to any meeting of the Homes Association, it shall give written notice to all members of the place, time and purpose of the regular or special meeting of the Homes Association.

2. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

3. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person entitled to such notice at the last address listed with the Homes Association for such person. Notice to one co-owner shall constitute notice to all co-owners.

ARTICLE X. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to streets and right-of-ways) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though

such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

ARTICLE XI. OBSERVANCE OF ALL LAWS

The Homes Association shall at all times observe all applicable state, county, city or other laws or regulations and, if at any time any of the provisions of this Declaration shall be found to be in conflict with such laws, such provisions shall become null and void, but no other parts of this Declaration not in conflict therewith shall be affected thereby.

ARTICLE XII. AMENDMENT AND TERMINATION

This Declaration may be amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the owners of two-thirds of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion and the transfer of the Recreational Facilities, if any, as contemplated in Subsection 2(e) of Article VIII above, by the Developer.

ARTICLE XIII. ASSIGNMENT OF DEVELOPER'S RIGHTS

The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any persons(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XIV. COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration shall be deemed to be covenants running with the land and into whosoever hands any of the property in the District shall come.

ARTICLE XV. SEVERABILITY

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other

