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

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HOMES ASSOCIATION DECLARATION

4200

SARA F. ULLMANN
REGISTER OF DEEDS

**BLACKTHORNE ESTATES
1ST PLAT**

THIS HOMES ASSOCIATION DECLARATION, made as of this 12th day of October, 1998 by the undersigned, Heritage Development of Kansas, Inc., a Minnesota corporation.

WHEREAS, Heritage Development of Kansas, Inc., a Minnesota corporation ("Developer"), is the owner of the real property described on Exhibit "A" attached hereto, platted as "Blackthorne Estates," 1st Plat and has filed that certain Declaration of Restrictions for "Blackthorne Estates" in the Office of the Register of Deeds of Johnson County, Kansas at Volume 5898 at Page 871 on _____, 1998; and

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

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

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cc

DEFINITIONS OF TERMS USED.

The term "District" as used in this Declaration shall mean all of the real property described on Exhibit "A" attached hereto (referred to as "Blackthorne") and such additional lands as may be added to the District as set forth below.

The term "Lot", as used herein, shall mean any numbered lot as platted, which may consist of one or more numbered lots or part or parts of one or more numbered lots, as platted, upon which a residence may be erected in accordance with the "Restrictions" hereinafter defined.

The term "Association" shall mean and refer to the Blackthorne Estates Homes Association.

The term "Public Place" as used herein shall be deemed to mean all streets, and similar places the use of which is expressly dedicated to or set aside for the use of the general place on said plat.

The term "Common Areas" as used herein shall be deemed to mean any tract, designated as such on said plat, located within the District as it exists from time to time, which tracts shall be owned, managed and maintained by the Blackthorne Estates Homes Association for the use, benefit and enjoyment of the present and future owners of land within the District.

The term "Owners" as used herein shall mean those persons or corporations who may from time to time own land within the District.

The term "Restrictions" as used herein shall specifically include those contained in the "Declaration of Restrictions" of Blackthorne Estates filed in the office of the Register of Deeds, Johnson County, Kansas aforesaid, and all amendments thereto.

SECTION 1. MEMBERSHIP IN ASSOCIATION

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

SECTION 2. VOTING RIGHTS

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

Class A. Each Owner of a Lot in Blackthorne shall be a Class A member. Each Class A member shall be entitled to one vote for each Lot owned by him, her or it in fee simple title. Provided, however, that until a residence is completed and occupied in good faith on a lot, the Developer shall be entitled to the vote of the lot owner, and purchase of a lot subject to this Declaration shall constitute the purchaser's proxy to Developer for the aforesaid purpose. When more than one person holds such interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. The Developer shall be a Class B member. The Developer shall have the right to appoint a majority of the Board of Directors of the Association and shall have the right to

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

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

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

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

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

(5) Unless the context clearly indicates to the contrary, decisions by the Association described herein shall require approval of the requisite percentage of Class A and Class B votes combined, and not separate requisite percentages of each Class. SECTION 3: LAND ENTITLED TO BENEFITS

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

to land within the District after the recording of this Declaration shall satisfy the foregoing requirements.

SECTION 4. OTHER LANDS - HOW THEY MAY BE ADDED

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

SECTION 5. USE OF COMMON AREAS

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

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

SECTION 6. POWERS AND DUTIES OF THE ASSOCIATION

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

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

(b) To provide, maintain, protect and, when necessary, design, construct, reconstruct and replace protective lighting within the District when adequate service of that type is not available from any public source.

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

(d) To provide for the operation and maintenance of and also to establish and enforce rules for the use by the members of any tennis courts, swimming pools, playgrounds, beach areas, green areas and parking areas which now exist or which may hereinafter be included, created, owned or erected by the Association in the District, provided, however, that this section 6(1)(d) does not create any obligation on the part of the Developer or the Association to construct any specific amenities such as tennis courts, swimming pools, playgrounds, beach areas, etc.

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

(f) To enforce, either in its own name or in the name of any Owner within the District, any or all building or other restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such District, either in the form as originally placed thereon or as modified subsequently

thereto, and impose and collect fines for violations of such restrictions; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

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

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

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

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

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

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

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

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

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

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

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

(f) To contract for the services of consultants, managers, accountants and attorneys.

SECTION 7. METHOD OF PROVIDING GENERAL AND SPECIAL FUNDS

(1) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, each Lot within the District, owned by a Class A member upon which a dwelling has been erected and is then or has been at any time theretofore occupied as a residence, shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually or at such other times as the Association may determine in advance. Anything to the contrary herein notwithstanding, the Developer, in its sole discretion, shall fix the amount of annual assessment, for so long as Developer owns land within the District (including land added to the District). Thereafter, the Board of Directors of the Association shall from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment for each Lot owned by a Class A member upon which a dwelling has been erected and is then or has been at any time theretofore occupied as a residence. Assessments shall commence either upon occupancy of the home or by completed sale, whichever comes first. The assessment for the year in which the dwelling is erected shall be determined on the basis of date of the occupancy permit and will be prorated on a 365-day year basis.

(2) The maximum annual assessment upon each Lot as aforesaid may be increased by the Board of the Association on all the Lots in the District by an amount not exceeding fifty percent (50%) of the preceding year annual assessment which the Association may levy against

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

(3) Unless the increases provided for in paragraph (2) of this Section 7 are specifically limited by the resolutions in which they are contained to be for a specified period, they shall continue to be effective until rescinded by the Association, at a meeting specially called for such purpose, by an affirmative vote of seventy-five percent (75%) of the members present in person or by proxy, or by action taken under the terms of paragraph (5) of this Section 7 and in either such event the rescission shall be effective commencing on the first day of the next succeeding year.

(4) Whenever the Board of Directors of the Association may deem it advisable to submit to the members a proposal under paragraph (2) of this Section 7 for increasing or decreasing the amount of the annual assessments, it shall notify the members of the Association by mailing to such members at the last known address, with United States postage prepaid thereon, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase or decrease in the amount of the annual assessment is to be voted upon at such

meeting; such notice must be deposited in the United States mail at a post office within twenty (20) miles of Overland Park, Kansas, not less than fifteen (15) days prior to the date of such special meeting.

(5) The first general assessment hereunder shall be for the calendar year beginning January 1, 1999, and shall be due and payable thirty (30) days after such assessment; future assessments shall be due and payable on January 1st of each year thereafter. Within fifteen (15) days from the levying of each assessment, the Association shall notify all Owners of assessable Lots whose addresses are listed with the Association of the amount of such assessment. Failure of the Association to levy the assessment prior to January 1st of each year for the next succeeding fiscal year beginning on January 1st shall not invalidate any such assessment subsequently made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is levied subsequent to the 1st day of December which precedes such fiscal year then such assessment shall become due and payable not later than thirty (30) days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the Developer shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment within the limits herein provided for and on a prorated basis for the period of time ending December 31, 1998. The Board of Directors of the Association may elect to permit collections in monthly, quarterly or semi-annual payments in lieu of the annual payments provided for herein.

(6) A written or printed notice, deposited in the United States Post Office, with postage prepaid thereon, and addressed to the respective Owners at the last address listed with

the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Declaration where notices are required, unless otherwise provided herein.

(7) The Owner of each Lot subject to an annual assessment as herein provided in paragraph of this Section 7 shall by acceptance of a Deed to such Lot be taken to have agreed and does by these presents agree to pay to the Association all assessments placed against such Lot in accordance herewith, and said Association is hereby granted the power to proceed against such Owner personally for the collection of said assessments, said right to be in addition to and not to be construed as a limitation upon remedies and rights of said Association otherwise herein granted.

(8) The Board of Directors of the Association shall be empowered to levy and collect an initiation fee in an amount not greater than one-half of the then yearly general assessment from the first purchaser of each dwelling.

SECTION 8. LIEN ON REAL ESTATE AND PERSONAL OBLIGATION OF ASSESSMENTS.

(1) The assessment provided for herein shall become a lien on the real estate against which it can be levied as soon as it is due and payable as above set forth; provided, however, that such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. In the event of the failure of any Owner to pay the assessment within thirty (30) days from the date same is levied, then such assessment, from the thirtieth (30th) day after it has been levied shall bear interest at the maximum rate of interest then allowed in Kansas on judgments.

(2) Within thirty (30) days from the date of levying the assessment for the calendar year during which and for which the assessment is levied, the assessments shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. The Association may at its discretion file certificates of nonpayment of assessments in the office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee of the greater of One Hundred Fifty Dollars (\$150.00) or one year's general assessment as described in Section 7(1) above, which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectable in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(3) Such liens shall continue for a period of five (5) years from the date of delinquency or the maximum amount allowed by law, whichever is longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

(4) Each assessment shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation shall

not pass to the successor(s) in title unless expressly assumed by such successor(s), but shall remain a lien upon the subject lot according to the terms herein.

SECTION 9. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR

The Association shall at no time expend more money within any calendar year than the total amount of the general assessment for that particular year plus any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever binding the general assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for periods up to three (3) years for utilities, trash removal and equipment and property maintenance, it being the intention that the assessments for each year shall be applied as far as practicable toward payment of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for the purposes set forth above.

SECTION 10. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS


The Association shall notify all Owners of land in the District as it may exist from time to time, insofar as the addresses of such Owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address the Association shall notify all the Owners of the land within the District, insofar as their addresses are listed with the Association, of the new address.

SECTION 11. DEVELOPER ACTING FOR ASSOCIATION

Until relinquished as set forth below, the Developer shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of the Developer and its relinquishment in writing of such rights. The Developer may, by appropriate agreement made expressly for that purpose, assign or convey to the Association any or all of the rights, reservations and privileges reserved by it in this Section 11, and upon such assignment or conveyance being made, the Association shall exercise and assume such rights.

SECTION 12. TO OBSERVE ALL LAWS

Said Association shall at all times observe all State, County, City and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, penalties for violation thereof and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitation of its rights to contract as are herein provided.



SECTION 13. AMENDMENT

Upon the affirmative vote of 66% of the votes of Class A members in person or by proxy at a meeting called for such purpose, and with the approval of the Class B member (so long as Class B membership exists), evidenced by a Declaration duly executed and acknowledged by such Class A and Class B members and recorded in the office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended. Provided, however, that the Developer retains the right to amend this Declaration, in its sole discretion, as it may relate to land added pursuant to Section 4 above.

SECTION 14. HOW TERMINATED

This Declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions thereof, by the affirmative vote of ninety percent (90%) of the outstanding total votes of Class A and approval of the Class B member (so long as Class B membership exists), and shall be evidenced by an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas.

SECTION 15. COVENANTS RUNNING WITH THE LAND

All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon the Developer and upon their successors and assigns.

SECTION 16. CONTRIBUTIONS MADE BY DEVELOPER

As conditions precedent to the development of the District, Developer has been required to pay to the City of Overland Park and other authorities certain fees, charges and impositions for streets, parks, utilities and other off-site improvements. Each grantee of the Developer or

[REDACTED] [REDACTED] [REDACTED]

of any Owner of a Lot, by the acceptance of a deed, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each occupant of a Lot, and the heirs, successors and assigns of the foregoing persons, hereby releases the Developer, its successors, agents, officers, members, stockholders and assigns from any obligation to remit any part of such fees, charges and impositions to him, her or it in the event any of the same are declared invalid or illegal, or refunded for any reason, the refund or return of same to the Developer notwithstanding; it is expressly understood that Developer shall have the sole right to make claim for and receive any such refund or return.

OPTION TO EXCLUDE APPLICABILITY
OF THE TERMS AND CONDITIONS OF THE FOREGOING
DECLARATION TO CERTAIN REAL PROPERTY

The legal owner of all of the real property described herein, the Developer, shall have the power at any time to waive or modify any or all of the restrictions or covenants contained herein as to said real property remaining undeveloped or unimproved and under the ownership of the Developer, or its assigns. The Developer specifically reserves the right carry on its business in the subdivision, so long as Developer owns land within the subdivision or new homes are being constructed, including, but not limited to, ~~maintaining sales offices, model homes,~~ business offices and other facilities necessary or convenient for the business of Developer.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the 12th
day of October, 1998.

"Developer"

HERITAGE DEVELOPMENT OF KANSAS, INC.,
a Minnesota corporation

By: [Signature]

Name: Edward John Dobbs
Title: Vice President

STATE OF Minnesota, Hennepin COUNTY, SS.:

BE IT REMEMBERED, that on this 12th day of October, 1998, before me the undersigned, a Notary Public in and for the county and state aforesaid, came Edward J. Dobbs, Vice President of Heritage Development of Kansas, Inc., a Minnesota corporation, who is personally known to me to be the same person who executed, as officer of such corporation, the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

[Signature]
Notary Public

My Appointment Expires:

Jan. 31, 2000

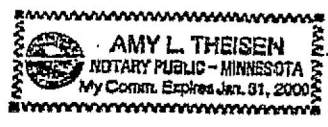


EXHIBIT "A"

Lots 1 through 54, inclusive, and Tracts A and B, BLACKTHORNE ESTATES,
1ST PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas,
as shown on the recorded plat thereof.