

Accom

BROOKWOOD  
AREA HOMES ASSOCIATION DECLARATION

THIS DECLARATION is made as of the 14th day of January, 1999, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the Developer has executed and filed with the Register of Deeds of Johnson County, Kansas plats of the subdivisions known as "BROOKHIGHLAND", "BROOKHOLLOW", "BROOKWOOD ESTATES", which plats include the following described lots and tracts:

All of Lots 1 through 43 and Tracts A, B, C and D, BROOKHIGHLAND, a subdivision in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof;

All of Lots 1 through 42 and Tracts G and H, BROOKHOLLOW, a subdivision in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof;

All of Lots 1 through 27 and Tract J, BROOKWOOD ESTATES, a subdivision in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof;

WHEREAS, such plats are the first plats in the overall area to be known generally as "BrookWood;"

WHEREAS, the Developer, as the present owner and developer of the above-described lots, 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 subdivisions;

NOW, THEREFORE, in consideration of the premises contained herein, the Developer, 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.

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

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SARA FULLMANN  
REGISTER OF DEEDS

## ARTICLE I. DEFINITIONS

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

(a) "Lot" means 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 adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of annual and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(b) "District" means collectively all of the above-described lots and tracts in BrookHighland, BrookHollow and BrookWood Estates, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(c) "Developer" means BrookWood Development Company, L.C., a Kansas limited liability company, and its successors and assigns.

(d) "Owner" means the record owner(s) of title to any Lot, including the Developer.

(e) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the District, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, (iii) the Pool Area, (iv) the Green Areas, (v) the Right of Way Amenities, and (vi) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

(f) "Pool Area" has the meaning set forth in Article XIV below.

(g) "Green Areas" means all areas that may be platted in the District as a tract and not as a residential lot, including, without limitation, the Private Park.

(h) "Right-of-Way Amenities" has the meaning set forth in Article XV below.

(i) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the District.

(j) "Board" means the Board of Directors of the Homes Association.

(k) "Certificate of Substantial Completion" means 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 absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(l) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer, or (ii) the date Developer, in its absolute discretion, selects as the Turnover Date for this Declaration.

(m) "City" means the City of Overland Park, Kansas.

(n) "Private Park" means the real property described on Exhibit A attached hereto and any real property that may be designated by the Developer on an amendment or supplement to this Declaration as containing an earthen ditch ("Private Storm Sewer System") through which storm water flows and with respect to which the City has granted a variance from the provisions of its municipal code that require the construction of storm sewers to accommodate natural run-off.

## ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 2 of Article IV below.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the District and every such Owner shall be a member.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one 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. During any period in which a member is in default in the payment

of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

After the Turnover Date, the Board of the Homes Association shall be divided into a number of classes equal to the number of subdivisions in the District, with each separate subdivision in the District being entitled to elect from the members of the Homes Association residing in such subdivision the member(s) of the Board of the class of directors assigned to such subdivision. The size of the Board shall be at least eight (8) in number with the relative number of positions in each class for each subdivision being as proportional as possible to the relative number of Lots in each subdivision.

For a period of five years and without any obligation to pay any assessments under this Declaration, the immediate family of H. E. ("Dan") Bunch, who resides at 14540 Switzer, shall be entitled to use and enjoy the Common Areas as if such property were a "Lot" within the District. Following the fifth year, the Bunch family shall be entitled to continue to use and enjoy the Common Areas, but only so long as (i) the Bunch family continues to reside at 14540 Switzer and (ii) the Bunch family pays to the Homes Association an amount each year equal to the annual assessment then payable by each 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 but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the District; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such waivers, 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 shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar 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 the property within the District.

(d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

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

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

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the District neat in appearance and in good order.

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

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.

(l) 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 all Owners within the District:

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences).

(b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall satisfy its obligations with respect to the Pool Area, as set forth in Article XIV below. The Homes Association shall properly maintain the Right of Way Amenities and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated in Article XV. The Homes Association shall comply with all of its obligations regarding the Private Park and Private Storm Sewer System, including as provided in Article XVI below.

#### ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties 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 this Article IV. The amount of such annual assessment per Lot shall be fixed periodically by the Board, subject to Section 2 below. Until further action of the Board, the rate of annual assessment shall be \$400.00 per year; provided, however, that if and when the Pool Area is substantially completed and available for use (as determined by the Developer), such annual assessment may be increased by the Board by up to \$100.00.

2. The rate of annual assessment upon each Lot in the District may be increased:

(a) by the Board from time to time, without a vote of the members, by up to \$40.00 per year over the rate of annual assessment in effect for the preceding year for each of 2000 through 2004;

(b) after 2004, by the Board from time to time, without a vote of the members, by up to 5% over the rate of annual assessment in effect for the preceding year; or

(c) at any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 1999) and shall be due and payable on January 1st of each year; provided, however, that the first assessment for each Lot shall be due and payable only upon a transfer of title to the Lot from the Developer to a third party (including a builder) and shall be prorated as of the date thereof. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.

#### ARTICLE V. SPECIAL ASSESSMENTS

In addition to the annual assessments provided for herein, the Board (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 or materials, or legal fees and expenses) 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 Section 2 of Article III above that require any expenditure during any period in an amount in excess of the general funds of the Homes Association available therefor. Each such special assessment shall be due and payable upon giving notice of the assessment to such Owner.

#### ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment within 30 days after the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of 10% per annum from the delinquency date until paid, which interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage 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. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.

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. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent accruing for periods prior to such foreclosure or deed in lieu thereof but shall not release such Lot from liability for any assessment accruing for periods thereafter.

3. Payment of a delinquent assessment may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court 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, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$100.00, 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.

5. The Homes Association may cease to provide any or all of the services (including, without limitation, trash services and use of the Pool Area and the Green Areas) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

#### ARTICLE VII. LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 2 of Article III above, 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 and available reserves which it may have on hand from prior years, plus any proceeds of loans from the Developer described in Section 2(e) of Article XIV below. The Homes Association shall not 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 (i) contracts for utilities, maintenance or similar services or matters to be performed for or received



by the Homes Association or its members in subsequent years, (ii) matters contemplated in Section 2 of Article III above, and (iii) any borrowings from the Developer described in Section 2(c) of Article XIV below.

#### ARTICLE VIII. NOTICES

1. 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.

2. 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 or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

#### ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent or nearby lands (without reference to any street, park or right-of-way) (regardless of whether the additional property is part of the property platted as BrookHiland, BrookHollow or BrookWood Estates or is known by a name other than BrookWood) by executing, acknowledging and recording a written instrument subjecting such additional property 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 instrument 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 its absolute discretion.

#### ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, 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 (a) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, the written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Right of Way Amenities or the Private Storm Sewer System. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request.

2. Anything set forth in Section 1 of this Article X to the contrary notwithstanding, except the provision relating to the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of

this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording a written instrument for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the District. Pursuant to clause (ii) above, Developer shall have the right to amend Exhibit A from time to time to add the legal description of any Private Park.

3. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

#### ARTICLE XI. ASSIGNMENT

1. The Developer shall have the right and authority, by appropriate instrument made expressly for that purpose, to assign, convey, transfer and set over to any person(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.

2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

#### ARTICLE XII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the District. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

3. No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

#### ARTICLE XIII. 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 provisions or parts.

#### ARTICLE XIV. COMMON AREAS

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, cabana, sport court, and/or other recreational facilities ["Pool Area(s)"] in one or more places within the District or on property near the District and to make such facilities available for use by residents of the District. The number of Pool Areas and the size, number and components of each Pool Area shall be determined by the Developer in its absolute discretion.

2. If any Pool Area is so constructed and made available for use by residents of the District, the following shall apply:

(a) Upon substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of any mortgages or similar liens, title to the Pool Area (or the completed portion thereof) to the Homes Association by special warranty deed. Thereafter, the Homes Association shall cause insurance to be continuously maintained on the Pool Area and, so long as Developer owns any Lots in the District, cause the Developer to be named as an additional insured on such insurance coverage.

(b) The Homes Association shall pay all (i) operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Pool Area.

(c) For purposes hereof, the "operating expenses" of the Pool Area generally has 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 Pool Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(d) For purposes hereof, "post construction capital expenditures" means any expenditures made or incurred after the initial completion (as specified by the Developer) of each Pool Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied.

(e) The Homes Association shall pay the amounts due from it under subsection (b) above out of the assessments collected from the Owners of the Lots subject to this Declaration, except that the Developer shall have the right (but not the obligation) to make non-interest bearing loans to the Homes Association for post-construction capital expenditures incurred through the Turnover Date, which loans shall be repaid to the Developer in two equal annual installments commencing six months after the Turnover Date or in earlier payments to the extent the Homes Association has funds available therefor.

3. Subject to Section 2 above, the Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the District) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the District, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

4. Upon transfer of title to any Green Area (or portion thereof) with respect to which the Developer has obtained a Department of Army permit relating to the development of the Green Area, the Homes Association, as the new owner, shall sign the permit and be responsible for all obligations thereafter with respect to such permit.

#### ARTICLE XV. RIGHT OF WAY AMENITIES

1. Pursuant to the terms and conditions of a certain Right of Way Maintenance Agreement between the Developer and the City, the City has agreed to allow the Developer to construct certain Common Area improvements within certain of the public right-of-way associated with streets in the District (the "Right of Way Amenities"). The following provisions of this Article XV are required to be in this Declaration pursuant to such Right of Way Maintenance Agreement.

2. The Right of Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association under this Article XV. Such delegation shall not, however, relieve the Owners of their responsibilities under this Article XV.

3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right of Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right of Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right of Way Amenities.

4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, its Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right of Way Amenities. The Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right of Way Amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.

5. The Developer, the Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right of Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.

6. The Developer, the Homes Association and the Owners understand and agree, should the City determine that the Right of Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the City's use of the right-of-way, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right of Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.

7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right of Way Amenities and the covenants contained in this Article XV.

8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right of Way Amenities, and the Developer and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right of Way Amenities.

## ARTICLE XVI. PRIVATE PARK

1. The Owners of the Lots shall have sole responsibility for the Private Park and Private Storm Sewer System, and in that regard shall maintain the Homes Association as the vehicle to fulfill their obligations. The Homes Association shall be responsible for properly maintaining the Private Park and the Private Storm Sewer System, including, without limitation, any bank stabilization project constructed therein to obviate the effects of detrimental erosion or other damage caused by the flow of water into or through the Private Storm Sewer System from the surrounding property or from public storm sewer systems and correcting any effects of detrimental erosion or other damage caused by the flow of water through the Private Park. The Homes Association shall enter into an agreement with the Developer regarding the sharing of the expenses of the maintenance and other costs associated with the Private Storm Sewer System in proportion to the number of lots in the District that have been sold versus unsold by the Developer, except that the Developer's obligation to contribute periodically to the expenses shall cease once the Developer transfers title to all Lots and common areas. Title to the Private Park shall be conveyed to the Homes Association at such time as the Developer determines in its discretion.

2. The Homes Association shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the Private Storm Sewer System and the obligations of the Homes Association to the City.

3. The Homes Association shall indemnify and hold harmless the City, the Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Private Storm Sewer System. The Homes Association shall promptly reimburse the City for any public funds the City may expend with respect to maintenance of or improvement of the Private Storm Sewer System in the event the Homes Association fails to maintain the Private Storm Sewer System, although the City is under absolutely no obligation to so maintain or improve.

4. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property, including, without limitation, any lot, residence or other improvement, or to the Private Storm Sewer System resulting from or related to, directly or indirectly, the City's granting to the Developer of a variance from the Overland Park Municipal Code relating to the Private Storm Sewer System or otherwise acting or failing to act with respect to the maintenance of the Private Storm Sewer System or the City's permitting public storm water to enter the Private Storm Sewer System. The City is hereby further released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Private Storm Sewer System.

5. With regard to the provisions contained in this Declaration relating to the Private Storm Sewer System, each of the Developer and the City shall be deemed third party beneficiaries with a continuing right (but not the obligation) to enforce all restrictions, obligations and other provisions regarding the Private Storm Sewer System. Such right shall survive the transfer of title to the Private Park from the Developer to the Homes Association.

6. The Homes Association shall create and maintain out of its annual dues a reserve for the costs of the future performance of the Homes Association's obligations with respect to the Private Storm Sewer System.

7. If at any time in the future the Homes Association requests that the ownership, operation and maintenance of the Private Storm Sewer System be assumed by the City, the City will not consider such a request before:

(a) The Private Storm Sewer System is improved to meet the requirements of the Overland Park Municipal Code as amended; and

(b) Any easement necessary for the City to own, operate and maintain the storm sewer is granted to the City at no cost to the City.

Consideration of such a request by the City does not guarantee acceptance of the Private Storm Sewer System.

8. Upon any future written request by the City that the Private Storm Sewer be dedicated to the City, and if at the time of such request the Homes Association is in default of its obligations hereunder, the Homes Association shall effect such dedication without any costs or charge to the City.

9. Upon any failure by the Homes Association to satisfy its obligations to the City under this Article, the Owners shall have such responsibility.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT COMPANY, L.C.

By: 

Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC., Member

By: 

Saul Ellis, President

STATE OF KANSAS            )  
                                      ) ss.  
COUNTY OF JOHNSON        )

This instrument was acknowledged before me on January 14, 1999 by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

*Cheryle D. Castro*  
Notary Public in and for Said County and State

Print Name: Cheryle D. CASTRO

My Commission Expires:

2001

[SEAL]

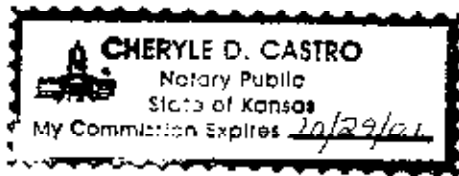




EXHIBIT A

LEGAL DESCRIPTION OF PRIVATE PARK

18003 / 28590  
SNWOO 112059

May 29, 1998

LEGAL DESCRIPTION FOR  
PART OF NW¼ SECTION 1-14-24  
(LAND WITHIN 100 YEAR FLOOD PLAIN  
DETERMINED BY STORM WATER VARIANCE)

All that part of the NW¼ of Section 1, Township 14, Range 24, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW¼ of said Section 1, thence N 87° 49' 39" E, along the North line of the NW¼ of said Section 1, a distance of 2,649.86 feet, to the Northeast corner thereof; thence S 2° 17' 47" E, along the east line of the NW¼ of said Section 1, a distance of 342.41 feet, to the true point of beginning of subject tract; thence S 77° 59' 33" W, a distance of 135.41 feet; thence S 55° 26' 20" W, a distance of 390.78 feet; thence Southeasterly, along a curve to the right having a radius of 225 feet, a central angle of 6° 54' 16" and whose initial tangent bearing is S 40° 57' 29" E, a distance of 27.11 feet, to a point of tangency; thence S 34° 03' 13" E, a distance of 137.91 feet, to a point of curvature; thence Southeasterly, along a curve to the left having a radius of 175 feet and a central angle of 13° 03' 56", a distance of 39.91 feet; thence N 42° 52' 50" E, a distance of 146.88 feet; thence S 73° 46' 24" E, a distance of 49.40 feet; thence S 87° 22' 12" E, a distance of 95.35 feet; thence N 56° 12' 01" E, a distance of 123.16 feet, to a point on the East line of the NW¼ of said Section 1; thence N 2° 17' 47" W, along the East line of the NW¼ of said Section 1, a distance of 258.10 feet, to the true point of subject tract.

The above described tract of land contains 104,049 square feet, more or less; equal to 2.389 acres, more or less.

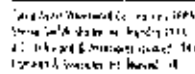
By: Douglas A. Farrar, KS US-720  
May 29, 1998

Shah, H. & Wessan, P. A.  
Exxon Co. (UK)  
Surrey, UK  
1982-1983

HARVEY K. BROWDER, Inc.  
Attn: Group  
Director  
c/o J.P.S. & Co.

Shear & Giffith Shuster, Inc.  
410, 420  
214, 722-5101  
Fax: 214, 722-6838

[Return to top of page](#)



BOOK 6018 PAGE 583

LEGAL DESCRIPTION FOR  
PART OF NW¼ SECTION 1-14-34  
(LAND WITHIN 100 YEAR FLOOD PLAIN  
DETERMINED BY STORM WATER VARIANCE)  
May 28, 1998  
Page 2

a distance of 85.78 feet; thence N 8° 52' 23" E, a distance of 74.41 feet; thence  
N 87° 51' 13" E, a distance of 142.69 feet; thence N 10° 44' 17" E, a distance of  
76.95 feet; thence S 87° 46' 54" W, a distance of 133.40 feet; thence  
N 15° 23' 24" E, a distance of 134.84 feet; thence N 30° 36' 27" E, a distance of  
115.35 feet; thence N 45° 10' 21" E, a distance of 115.35 feet; thence  
N 51° 40' 11" E, a distance of 163.39 feet; thence S 62° 59' 43" E, a distance of  
129.83 feet; thence Northeasterly, Northerly and Northwesterly, along a curve to the  
left having a radius of 225 feet, a central angle of 61° 03' 31" and whose initial  
tangent bearing is N 27° 00' 18" E, a distance of 239.78 feet, to a point of  
tangency; thence N 34° 03' 13" W, a distance of 62.76 feet, to a point of curvature;  
thence Northwesterly, along a curve to the left having a radius of 175 feet and a  
central angle of 9° 24' 12", distance of 28.72 feet, to the Northeasterly corner of  
Lot 27, BROOKWOOD ESTATES, a subdivision of land now in the City of  
Overland Park, Johnson County, Kansas; thence S 17° 59' 35" W, along the  
Easterly line of said Lot 27, a distance of 128.74 feet, to the Southeasterly corner  
thereof; thence S 66° 38' 08" W, along the Southerly line of Lots 27 and 26 of said  
BROOKWOOD ESTATES, a distance of 172.63 feet; thence S 58° 56' 08" W,  
along the Southeasterly line of Lots 25, 24 and 23 of BROOKWOOD ESTATES, a  
distance of 251.73 feet; thence S 42° 46' 07" W, along the Southeasterly line of Lot  
22 of said BROOKWOOD ESTATES, a distance of 129.22 feet; thence  
S 1° 36' 29" E, along the East line of Lots 21 and 20 of said BROOKWOOD  
ESTATES, a distance of 244.99 feet; thence S 87° 51' 05" W, along the South line  
of Lots 20 and 19 of said BROOKWOOD ESTATES, a distance of 296.09 feet;  
thence N 2° 18' 02" W, along the West line of said Lot 19, a distance of 136.03  
feet, to the Northwest corner thereof said point also being on the Southerly right-of-  
way line of 144th Street, as now established; thence Southwesterly, along the  
Southerly line of said 144th Street said line being on a curve to the right having a

LEGAL DESCRIPTION FOR  
PART OF NW¼ SECTION 1-14-24  
(LAND WITHIN 100 YEAR FLOOD PLAIN  
DETERMINED BY STORM WATER VARIANCE)  
May 29, 1998  
Page 3

radius of 275 feet, a central angle of  $4^{\circ} 35' 19''$  and whose initial tangent bearing is  $S 76^{\circ} 07' 53'' W$ , a distance of 22.02 feet, to a point of compound curvature; thence Southwesterly, Westerly and Northwesterly, along the Southerly right-of-way line of said 144th Street said line being on a curve to the right having a radius of 407 feet, a central angle of  $22^{\circ} 33' 23''$  and whose initial tangent bearing is  $S 80^{\circ} 43' 12'' W$ , a distance of 160.23 feet, to a point of compound curvature; thence Northwesterly, along the Southwesterly right-of-way line of said 144th Street said line being on a curve to the right having a radius of 230 feet, a central angle of  $37^{\circ} 39' 29''$  and whose initial tangent bearing is  $N 76^{\circ} 43' 25'' W$ , a distance of 151.17 feet, to a point of tangency; thence  $N 39^{\circ} 03' 56'' W$ , along the Southwesterly right-of-way line of said 144th Street, a distance of 64.49 feet, to the true point of beginning of subject tract.

The above described tract of land contains 576,611 square feet, more or less equal to 13.237 acres, more or less.

By: \_\_\_\_\_  
Douglas A. Farrar, KS LS-720  
May 29, 1998



SHAFER, KLINE & WARREN, P.A. • 1199 West 9<sup>th</sup> St. Street, Overland Park, Kansas 66214 • 913/888-7600 FAX: 913/888-7668

John A. Shafer, Esq. (Lic. No. 433)  
 David K. Kline, Esq. (Lic. No. 1116)  
 J. Warren, Esq. (Lic. No. 1116)  
 George & Associates, Inc. (Lic. No. 1116)

May 29, 1998

LEGAL DESCRIPTION FOR  
 PART OF NW¼ SECTION 1-14-24  
 (LAND WITHIN 100 YEAR FLOOD PLAIN  
 DETERMINED BY STORM WATER VARIANCE)

All that part of the NW¼ of Section 1, Township 14, Range 24, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW¼ of said Section 1; thence N 87° 49' 39" E, along the North line of the NW¼ of said Section 1, a distance of 1,325.01 feet to a point on the centerline of Switzer Road, as now established; thence S 2° 18' 02" E, along the centerline of said Switzer Road, a distance of 204.21 feet, to a point of curvature; thence Southerly and Southwesterly, along the centerline of said Switzer Road said line being on a curve to the right having a radius of 855 feet and a central angle of 63° 10' 35", a distance of 942.76 feet, to a point of tangency; thence S 60° 52' 33" W, along the centerline of said Switzer Road, a distance of 403.04 feet; thence N 29° 07' 27" W, a distance of 60 feet, to the most Southerly corner of Tract "G", BROOKHOLLOW, a subdivision of land now in the City of Overland Park, Johnson County, Kansas said point also being the true point of beginning of subject tract; thence N 70° 44' 57" W, along the Southwesterly line of said Tract "G", a distance of 90.62 feet, to the most Southerly corner of Lot 23 of said BROOKHOLLOW; thence N 52° 30' 25" W, along the Southwesterly line of said Lot 23, a distance of 119.01 feet, to the most Westerly corner thereof; thence Westerly and Northwesterly, along the Southwesterly line of Stearns, as now established said line being on a curve to the right having a radius of 50 feet, a central angle of 82° 46' 17" and whose initial tangent bearing is S 86° 06' 26" W, a distance of 72.23 feet, to the most Southerly corner of Lot 24 of said BROOKHOLLOW; thence N 52° 30' 25" W, along the Southwesterly line and its extension of said Lot 24, a distance of 252.55 feet; thence S 87° 49' 40" W, a distance of 48.11 feet, to a point on the West line of the NW¼ of said Section 1;

- Civil Engineers
- Electrical Engineers
- Mechanical Engineers
- Landscape Architects
- Land Surveyors
- Real Estate

Shaffer, Kline & Warren, P.A.  
 Overland Park, Kansas  
 913/888-7600  
 913/888-7668

Hammer & Associates, Inc.  
 4401 W. 119th  
 Overland Park, Kansas  
 913/888-7600

Shaffer & Associates, Inc.  
 4401 W. 119th  
 Overland Park, Kansas  
 913/888-7600

LEGAL DESCRIPTION FOR  
PART OF NW¼ SECTION 1-14-24  
(LAND WITHIN 100 YEAR FLOOD PLAIN  
DETERMINED BY STORM WATER VARIANCE)  
May 29, 1998  
Page 2

thence S 2° 19' 45" E, along the West line of NW¼ of said Section 1; a distance of  
883.39 feet; thence Northeasterly, along a curve to the right having a radius of 915  
feet, a central angle of 47° 32' 13" and whose initial tangent bearing is  
N 13° 20' 20" E, a distance of 759.15 feet, to the true point of beginning of subject  
tract.

The above described tract of land contains 169,188 square feet, more or less equal to  
3.884 acres, more or less.

By: \_\_\_\_\_  
Douglas A. Farrar, KS LS-720  
May 29, 1998

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**SUPPLEMENT TO  
BROOKWOOD AREA HOMES ASSOCIATION DECLARATION**

THIS SUPPLEMENT TO DECLARATION is made as of the 17 day of August, 1999, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer");

WITNESSETH:

WHEREAS, the Developer is the developer of the residential area commonly known as "BrookWood" and continues to be the owner of all of the platted lots in the portions of BrookWood commonly known as "BrookWood Estates" and "BrookHighland", which portions are legally described as follows (the "Specific Lots"):

Lots 1 through 27, BROOKWOOD ESTATES, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 1 through 43, BROOKHIGHLAND, a subdivision in the City of Overland Park, Johnson County, Kansas.

WHEREAS, the Developer has previously subjected the Specific Lots to the covenants, assessments, charges and other provisions contained in that certain BrookWood Area Homes Association Declaration, dated as of January 14, 1999 (the "Original Declaration"), executed by the Declarant and filed with the Office of the Register of Deeds of Johnson County, Kansas on January 15, 1999, and recorded as Instrument No. 2937796 in Book 6018 at Page 565; and

WHEREAS, the Developer desires to supplement the Original Declaration as provided herein with respect to the Specific Lots and as provided herein with respect to the Common Areas of the District;

NOW, THEREFORE, the Developer declares and agrees as follows:

- A. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Original Declaration.
- B. The following new Section 4 is hereby added to Article IV of the Original Declaration to be applicable only to the Specific Lots:

4. Upon initial occupancy of the residence on each Lot in the BrookWood Estates and BrookHighland areas, the Developer shall collect from the Lot Owner and cause to be paid over to the Association, for the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, a one time initiation fee of \$250.00.

- C. The Common Areas for the District shall include the "draw" area on the west side of the District (as proposed) and the Homes



Association shall be responsible for maintenance and repair of such "draw" area.

- D. Except as otherwise supplemented hereby, the Original Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed the day and year first above written in its capacity as the Developer under the Original Declaration and its capacity as the Owner of all of the Specific Lots.

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT COMPANY, L.C.

By: \_\_\_\_\_

Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC., Member

By: \_\_\_\_\_

Saul Ellis, President

STATE OF KANSAS            )  
                                      ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on August 17<sup>th</sup>, 1999 by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

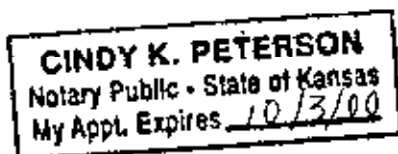
Cindy K. Peterson  
Notary Public in and for Said County and State

Print Name: Cindy K. Peterson

My Commission Expires:

10/3/00

[SEAL]



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

1999 AUG 18 P 3:48.7

SARA FULLMANN  
REGISTER OF DEEDS

2002 APR 19 P 3:47 PM

REBECCA L. DAVIS  
REGISTER OF DEEDS

This instrument filed by  
Security Land Title Company  
Accom

3404946

\$10.00

BROOKWOOD AREA  
HOMES ASSOCIATION DECLARATION  
ADDITIONAL PHASE

THIS DECLARATION is made as of the 18 day of April, 2002, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer");

WITNESSETH:

WHEREAS, the Developer has executed and filed with the Office of the Register of Deeds of Johnson County, Kansas (the "Recording Office"), additional plats of the area known as "BrookWood"; and

WHEREAS, such plats add the following lots to the area (the "Additional Lots"):

Lots 28, 29 and 30, BROOKWOOD ESTATES, SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 31 through 42, BROOKWOOD ESTATES, THIRD PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 43 through 70, BROOKHOLLOW, SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 71 through 101, BROOKHOLLOW, THIRD PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

WHEREAS, the Developer, as the owner of the Additional Lots, desires to subject the Additional Lots to the covenants, assessments, charges and other provisions contained in that certain BrookWood Area Homes Association Declaration (the "Original Declaration"), executed by the Developer and filed with the Recording Office on January 15, 1999, as Instrument No. 2937796 in Book 6018 at Page 565, as supplemented and amended by Supplement to BrookWood Area Homes Association Declaration executed by the Developer and filed with the Recording Office as Instrument No. 3029534 in Book 6293 at Page 163 (as so amended and supplemented, the "Original Declaration").

NOW, THEREFORE, in consideration of the premises, the Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Additional Lots shall be, and they hereby are, subject to the covenants, assessments, charges and other provisions set forth in the Original Declaration. As contemplated in Article IX of the Original Declaration, this instrument shall have the effect of subjecting the Additional Lots to all of the provisions of the Original Declaration as though the Additional Lots had been originally described therein and subject to the provisions thereof.

Tract K of BrookWood Estates, Second Plat, Tracts L and M of BrookWood Estates, Third Plat, Tracts K and L of BrookHollow, Second Plat and Tracts M, N, O and P of BrookHollow, Third Plat are "Common Areas" as described in the Original Declaration. Tracts N and O of BrookHollow, Third Plat are "Private Park" areas that contain a "Private Storm Sewer System", as described in the Original Declaration. The 15 feet wide area immediately west of Tract N, BrookHollow, Third Plat is a recorded easement area in favor of the Homes Association to enable the Homes Association to maintain Tract N.

The obligations of the Homes Association with respect to Tracts N and O of BrookHollow, Third Plat set forth in the Storm Drainage Variance Agreement between the Developer and the City recorded in the Recording Office as Instrument No. 3337722 in Book 7478 at Page 283 are hereby incorporated into this Declaration and into Article XVI of the Original Declaration.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT  
COMPANY, L.C.

By: 

Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC.,  
Member

By: 

Saul Ellis, President

BOOK 7775 PAGE 725

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON        )

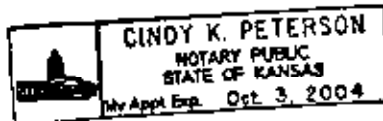
This instrument was acknowledged before me on April 18, 2002, by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

Cindy K. Peterson  
Notary Public in and for Said County and State

Print Name: Cindy K. Peterson

My Commission Expires:  
10/03/04

[SEAL]



18003 / 37092  
SNWOO 168521

*Secom*  
This instrument filed by  
County Land Title Company

**3445231**

**AMENDMENT TO  
BROOKWOOD AREA  
HOMES ASSOCIATION DECLARATION**

THIS AMENDMENT ("Amendment") is made and entered into as of July \_\_\_\_, 2002 by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer").

**WITNESSETH:**

WHEREAS, the Developer is the developer of the residential area commonly known as "BrookWood" and continues to be the owner of the platted lots in the portions of BrookWood legally described as follows (the "Specific Lots"):

Lots 71 through 101, BROOKHOLLOW, THIRD PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 1, 12, and 14, BROOKWOOD ESTATES, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 34, 36, 37, 38, 39, 42, 43 and 45, BROOKWOOD ESTATES, THIRD PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 10, 27, 30, 31, 35, 36, and 37, BROOKHIGHLAND, a subdivision in the City of Overland Park, Johnson County, Kansas.

Lots 44 through 83, BROOKHIGHLAND, SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

WHEREAS, the Developer has previously executed a certain instrument entitled BrookWood Area Homes Association Declaration and caused such instrument to be recorded in the Office of the Register of Deeds of Johnson County, Kansas (the "Recording Office") on January 15, 1999 as Instrument No. 2937796 in Book 6018 at Page 565, and caused such instrument to be supplemented and amended by the following instruments:

| <u>Title</u>  | <u>Instrument No.</u> | <u>Book</u> | <u>Page</u> |
|---|-----------------------|-------------|-------------|
| Supplement to BrookWood Area Homes Association Declaration    | 3029534               | 6293        | 163         |
| BrookWood Area Homes Association Declaration Additional Phase | 3404946               | 7775        | 724         |

(The foregoing existing instruments are hereinafter collectively referred to as the "Original Declaration").

WHEREAS, the Developer desires to amend the Original Declaration as it relates to the Specific Lots as provided herein;

NOW, THEREFORE, the Developer declares and agrees as follows:

A. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Original Declaration.

B. The following new Section 4 is hereby added to Article IV of the Original Declaration to be applicable to all of the Specific Lots and to replace, as applicable to the Specific Lots, the Section 4 of Article IV added by Instrument No. 3029534 referenced above:

4. Upon each and every transfer of title for value to any of the Specific Lots, the following shall apply:

(i) if the transfer of title is from the Developer to a builder, a one-time fee of \$300.00 shall be payable by the builder to the Homes Association, for use as part of the general funds of the Homes Association. After payment of such one-time fee, the builder shall be exempt from annual assessments on the Specific Lot transferred, unless and until a residence constructed thereon is sold to a third party or is occupied for residential use; and

(ii) if the transfer of title is from any Owner (other than the Developer) to another party, an initiation fee equal to the then current annual assessment for one year shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association. Such initiation fee shall be in addition to the annual assessment otherwise payable to the Homes Association with respect to such Lot.

IN WITNESS WHEREOF, the Developer has caused this Amendment to be duly executed.

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT  
COMPANY, L.C.

By: Mark R. Simpson

Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC.,  
Member

By: Saul Ellis

Saul Ellis, President

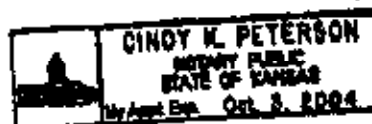
STATE OF KANSAS       )  
                                  ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on July 22<sup>nd</sup>, 2002 by Saul Ellis, as President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

Cindy K. Peterson  
Notary Public in and for said County and  
State

Print Name Cindy K. Peterson

My Commission Expires: 10/03/04



STATE OF KANSAS  
COUNTY OF JOHNSON SS  
FILED FOR RECORD

24 A  
2002 JUL 23 P 9:06 8

REBECCA L. DAVIS  
REGISTER OF DEEDS

This instrument filed by  
Security Land Title Company

3517143

BROOKWOOD AREA

HOMES ASSOCIATION DECLARATION  
ADDITIONAL PHASE

STATE OF KANSAS  
COUNTY OF JOHNSON  
FILED FOR RECORD

2002 NOV 22 P 1:44 PM

REBECCA L. DAVIS  
REGISTER OF DEEDS

THIS DECLARATION is made as of the 21<sup>st</sup> day of November 2002, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer") and Steven L. Broussard, a single person ("Broussard");

WITNESSETH:

WHEREAS, the Developer and Broussard have executed and filed with the Office of the Register of Deeds of Johnson County, Kansas (the "Recording Office"), an additional plat of the general area known as "BrookWood"; and

WHEREAS, such plat adds the following lots to the area (the "Additional Lots"):

Lots 44 through 83, BROOKHIGHLAND, SECOND PLAT,  
subdivision in the City of Overland Park, Johnson County, Kansas.

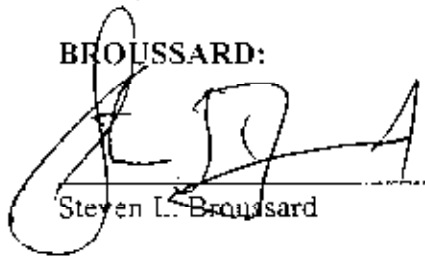
WHEREAS, the Developer and Broussard, as the owners of the Additional Lots, desire to subject the Additional Lots to the covenants, assessments, charges and other provisions contained in that certain BrookWood Area Homes Association Declaration, executed by the Developer and filed with the Recording Office on January 15, 1999, as Instrument No. 2937796 in Book 6018 at Page 565, as supplemented and amended by Supplement to BrookWood Area Homes Association Declaration executed by the Developer and filed with the Recording Office as Instrument No. 3029534 in Book 6293 at Page 163, and by Amendment to BrookWood Area Homes Association Declaration executed by the Developer and filed with the Recording Office as Instrument No. 3445231 in Book 7959 at Page 583 (as so amended and supplemented, the "Original Declaration").

NOW, THEREFORE, in consideration of the premises, the Developer and Broussard, for themselves and for their successors and assigns, and for their future grantees, hereby agree and declare that all of the Additional Lots shall be, and they hereby are, subject to the covenants, assessments, charges and other provisions set forth in the Original Declaration. As contemplated in Article IX of the Original Declaration, this instrument shall have the effect of subjecting the Additional Lots to all of the provisions of the Original Declaration as though the Additional Lots had been originally described therein and subject to the provisions thereof.



IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

**BROUSSARD:**


  
Steven L. Broussard

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT  
COMPANY, L.C.

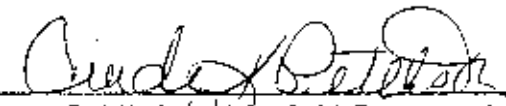
By:   
Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC.,  
Member

By:   
Saul Ellis, President

STATE OF KANSAS           )  
  ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on NOV 21<sup>st</sup>, 2002, by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of Brook Wood Development Company, L.C., a Kansas limited liability company.

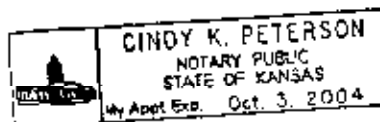
  
Notary Public in and for Said County and State

Print Name: Cindy K Peterson

My Commission Expires:

10/03/04

[SEAL]



STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF JOHNSON            )

On this 21<sup>st</sup> day of DECEMBER, 2002, before me personally appeared Steven L. Broussard, a single person, to me known to be the person described herein and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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

Lynda L. Hayden  
NOTARY PUBLIC

My Commission Expires:

5-5-05  
[SEAL]

18003 / 37092  
JDHAY 173107 v2



This instrument filed by  
Security Land Title Company

3754007

**BROOKWOOD AREA  
HOMES ASSOCIATION DECLARATION  
ADDITIONAL PHASE  
(BROOKHIGHLAND, THIRD PLAT)**

\$12.00  
\$8.00

STATE OF KANSAS  
COUNTY OF JOHNSON

2003 NOV 26 A 10:34 AM

REGISTER OF DEEDS

THIS DECLARATION is made as of the \_\_\_\_ day of November, 2003, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer");

WITNESSETH

WHEREAS, the Developer has executed and filed with the Office of the Register of Deeds of Johnson County, Kansas (the "Recording Office"), an additional plat of the general area known as "BrookWood"; and

WHEREAS, such plat adds the following lots to the area (the "Additional Lots"):

Lots 84 through 129, BROOKHIGHLAND, THIRD PLAT,  
subdivision in the City of Overland Park, Johnson County, Kansas.

WHEREAS, the Developer, as the owner of the Additional Lots, desires to subject the Additional Lots to the covenants, assessments, charges and other provisions contained in that certain BrookWood Area Homes Association Declaration, executed by the Developer and filed with the Recording Office on January 15, 1999, as Instrument No. 2937796 in Book 6018 at Page 565, as supplemented and amended by Supplement to BrookWood Area Homes Association Declaration executed by the Developer and filed with the Recording Office as Instrument No. 3029534 in Book 6293 at Page 163, and by Amendment to BrookWood Area Homes Association Declaration executed by the Developer and filed with the Recording Office as Instrument No. 3445231 in Book 7959 at Page 583 (as so amended and supplemented, the "Original Declaration").

NOW, THEREFORE, in consideration of the premises, the Developer, for itself and for its successors and assigns, and for its future grantees, hereby agree and declare that all of the Additional Lots shall be, and they hereby are, subject to the covenants, assessments, charges and other provisions set forth in the Original Declaration. As contemplated in Article IX of the Original Declaration, this instrument shall have the effect of subjecting the Additional Lots to all of the provisions of the Original Declaration as though the Additional Lots had been originally described therein and subject to the provisions thereof.

BOOK 9895 PAGE 941

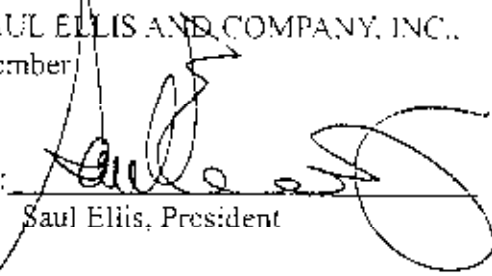
IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

**THE DEVELOPER:**

BROOKWOOD DEVELOPMENT  
COMPANY, L.C

By:   
Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC.,  
Member

By:   
Saul Ellis, President

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on November 18, 2003, by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

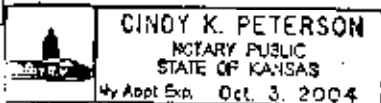
  
Notary Public in and for Said County and State

Print Name: Cindy K Peterson

My Commission Expires:

10/03/04

[SEAL]



BOOK 9693 PAGE 944

CONSENT

The undersigned Owners of Lots hereby consent to and approve the foregoing instrument and hereby subject the Lots owned by them to such instrument.

RIFFE HOMES, INC

JIM HOERL CONSTRUCTION CORP.

By: [Signature]  
James W. Riffe, President

By: [Signature]  
James Hoerl, President

Lots 84 and 88, BROOKHIGHLAND,  
THIRD PLAT

Lots 109, 111 and 116,  
BROOKHIGHLAND, THIRD PLAT

STATE OF KANSAS           )  
  ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on November 24<sup>th</sup>, 2003 by James W. Riffe, as President of Riffe Homes, Inc., a Kansas corporation.

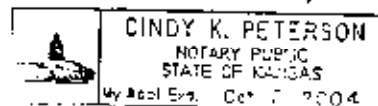
My Commission Expires:

10/03/04

[Signature]  
Notary Public in and for said County and  
State

Print Name: Cindy K Peterson

STATE OF KANSAS           )  
  ) ss.  
COUNTY OF JOHNSON    )



This instrument was acknowledged before me on November 25<sup>th</sup>, 2003 by James Hoerl, as President of Jim Hoerl Construction Corp., a Kansas corporation.

My Commission Expires:

10/03/04

[Signature]  
Notary Public in and for said County and  
State

Print Name: Cindy K Peterson

18003 / 37092  
SNWOO 197070

