

West Hills Homes Association Declaration

THIS DECLARATION, Made on this 12th day of April, 1939, by S. J. Hunter, a single man, of Douglas County, Kansas, who is the owner of all of the lots and parcels of land included in West Hills as described herein, which are set opposite his name below, and who shall hereinafter be referred to as first party; and those individuals whose names are subscribed hereto as the owners of the lots and parcels of land included in said West Hills, which are set opposite their respective names below, and who shall hereinafter be referred to as second parties.

WITNESSETH:

THAT WHEREAS, First party has developed and sold and is now developing and selling parts of said West Hills for restricted residential purposes, and it is his desire and intention to continue the development and sale of certain parts of such land for such purposes; and

WHEREAS, Home ownership in said West Hills has now progressed to such an extent that, for their mutual benefit and the benefit of the future home owners of said West Hills, both first party and second parties are desirous of perfecting what shall be known as The West Hills Homes Association, to the end that improvements and services of more than ordinary value to a residence community may be created, provided and maintained,

NOW, THEREFORE, In order to provide the necessary means to enable first party and his grantees and second parties and their respective grantees to perfect such an association, the parties hereto do now and hereby subject all of the lots and parcels of land in said West Hills which are described below and set opposite the respective names of the parties hereto, to the following covenants, charges and assessments:

PART I CREATION AND MEMBERSHIP

FIRST: An association of the parties to this Declaration and their respective grantees as the owners of the lots and parcels of land, in the premises hereinafter described as "District," set opposite their respective names below, shall be, and by these presents is, created. Said association shall be named and known as The West Hills Homes Association, and shall be hereinafter referred to as "Association."

SECOND: The land which shall be eligible to the improvements and services made possible to its owner or owners under and by virtue of the terms of this Declaration, shall be limited, unless and until extended as hereinafter provided, to the land embraced in West Hills, described as follows:

The East Fifty (50) acres of the North Half ($\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-six (36), Township Twelve South (12S), Range Nineteen (19E) East of the Sixth (6th) P.M., less one (1) acre in the Southeast corner, in Douglas County, Kansas; also, Lot One (1), Colonial Court, further described as follows: Beginning at the center of Section Thirty-six (36), Township Twelve (12) South, Range Nineteen (19) East of the Sixth (6th) Principal Meridian, thence North from the center of said Section one hundred twenty (120) feet, thence West one hundred eighty-eight and five-tenths (188.5) feet, thence South one hundred twenty (120) feet, thence East one hundred eighty-eight and five-tenths (188.5) feet to place of beginning;

which land as described, or as added to in accordance with the terms hereof, shall be hereinafter referred to as "District."

THIRD: No land in the District shall be entitled to any of the benefits or improvements or services provided for by the Association under the terms of this Declaration unless the owner or owners thereof shall have subjected their land to the terms of this Declaration and the assessments herein provided for.

FOURTH: The owner or owners of all or any part of the District shall be eligible to membership in said Association.

FIFTH: The membership in said Association for all the purposes hereof, shall be composed of and is expressly limited to the owner or owners of all or any part of the District who have signed this Declaration, or whose land has been subjected to the terms hereof by prior signing of said Declaration by their respective grantor or grantors, as the case might be.

SIXTH: The term "improved property," as herein used, shall be deemed to mean a single tract under a single ownership and use, and on which tract a residence has been erected or is in process of erection, or on which any other building not in violation of the restrictions then of record thereon is erected or is in process of erection; any such tract may consist of one or more contiguous lots or parts thereof. Any other land covered by this agreement shall be deemed to be vacant and unimproved.

SEVENTH: The term "public places," as used herein, shall be deemed to mean all streets, lakes, streams, and all parks at street intersections or elsewhere, and all similar places dedicated to or set aside for the use of the general public or the general use of all of the owners within the District, or which may, with proper consent, be used by all of the owners of the District.

EIGHTH: The term "paved street," as used herein, shall be deemed to mean any street which has been surfaced with a concrete slab, or with blocks or slabs of any hard material laid in a compact and regular manner, or with a mixture of cement or bituminous binding materials with coarser materials which has been prepared and mixed before being finally spread on the street. The term "improved street," as used herein, shall be deemed to mean any street which has been graded and opened for vehicle travel, and whose surface has been rendered more resistant to the weather by the addition of sand, gravel or crushed rock, or by sprinkling with oil or other binding material, but in which the binding material has not been mixed with a coarser material before finally being spread on the street.

PART II ORGANIZATION, POWERS AND DUTIES

FIRST: The Association may be incorporated or not, as the members thereof shall direct, but whether it is incorporated or not, said Association shall be governed by the following rules and regulations concerning organization, powers and duties, and any member thereof shall be entitled to enforce any such rule, or regulation concerning said organization, powers and duties.

SECOND: The Association shall have an annual meeting each year, and said annual meeting shall be held on the first Monday in May. The purpose of said meeting shall be to consider the levying of assessments, and any other business that may properly come before the Association. The Association by its by-laws may provide for special meetings.

THIRD: Each of the members of the Association shall be entitled to one vote, either in person or by proxy, at all meetings of said Association. Provided, however, that where there is a joint, or joint and several ownership of any lot or parcel of land in the District, then the said joint or joint and several owners shall be entitled to but one vote. In no event shall any member be entitled to more than one vote, regardless of the number of lots or tracts owned.

FOURTH: All matters and things herein provided for to be done by the Association shall be performed by a Board of Directors, which shall be elected at the first meeting of the Association, and at each annual meeting thereafter.

FIFTH: The Association shall be the sole judge of the qualifications of its members, and of their right to participate in its meetings and proceedings.

SIXTH: The Directors shall adopt a set of by-laws supplementing but not conflicting with the provisions of this Declaration.

SEVENTH: The Association shall have the power to make such reasonable rules and regulations and provide such means and employ such agents as will enable it to carry out the provisions of this Declaration, subject, however, to the limitations on its right to contract as herein provided for.

EIGHTH: The Association shall have the power to acquire title to real estate, provided, however, that until such time as the Association shall become incorporated, title to any real estate to be acquired and owned for the benefit of the Association shall be taken in the names of the officers thereof, as trustees. If the Association should become incorporated, then title to any real estate held in trust for the Association by its officers shall be conveyed by such officers to the corporation, and title to any land acquired after such incorporation shall be acquired in the name of said corporation.

NINTH: The Association shall have the following powers and duties whenever in the exercise of its discretion it may deem them necessary or advisable:

(1) To enforce either in its own name or in the name of any member of the Association, any or all restrictions or covenants which may have heretofore, or which may hereafter, be imposed upon any of the land within the District, as said restrictions or covenants shall exist from time to time, provided, however, that nothing herein contained shall be deemed to prevent any owner or owners having the contractual right to do so, from enforcing any such restriction or covenant in his or their names, as the case might be.

(2) To provide for the plowing and removal of snow from sidewalks and streets.

(3) To care for the spraying, trimming and protecting and replanting of trees on all streets in the District and other public places where trees have once been planted, except where otherwise provided for.

(4) To care for and protect and replant shrubbery and re-sow grass in the traffic islands which are in the streets, or in the parks or other tracts which are set aside for the general use of the members of the Association, or which are accessible to and usable by such members.

(5) To keep the vacant and unimproved assessable property within the District in clean and orderly condition, to cut and remove weeds and grass therefrom; to pick up loose material, trash, etc.; and do anything necessary or desirable, in the judgment of the officers of the Association, to keep such vacant and unimproved property neat in appearance and in good order.

(6) To pay any taxes and assessments that may by law be levied on any land or property owned by the Association, as the same shall become due and payable.

(7) To maintain and repair the sewer mains and water mains, which are provided for the the general use and benefit of the District; provided, however, that nothing herein contained shall be construed to obligate the Association to build or erect or lay any sewer mains or water mains in the District. The parties hereto agree that said Association may enter upon their respective properties when necessary to carry out the purposes of this paragraph. For the purpose of this Declaration, the term "laterals" shall mean any water or sewer lines to which other owners may not lawfully make connection or have access without the consent of said owner. All other sewer and water lines shall be termed "mains." It is expressly provided, however, that in no event shall the Association become liable to maintain and repair any sewer or water mains as described herein which are not inspected and approved by the proper authorities of the City of Lawrence at the time the same are laid and installed.

(8) To provide for the collection of rubbish and garbage, and for the disposal of the same.

(9) To provide such lights as the Association may deem advisable on streets, parks, parkings, gateways, entrances or other features, and in other public or semi-public places.

(10) To provide for the maintenance of tennis courts, playgrounds, gateways, entrances, drinking fountains, streams and other 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 general use of the owners in the District, or to which all of such owners have access and the use thereof; and also to provide for the maintenance of natural water courses within the District.

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

(12) To exercise such control over streets as may be within its powers and as it may deem necessary or desirable. To issue permits for plumbers or other parties to make cuts or excavate in streets when necessary for installation of utilities and to accept bonds or deposits for the repairing of such cuts. Said Association shall have full authority to prevent any excavation or cuts in streets without first requiring a reasonable deposit to insure the repair and future maintenance of such repairs. It being further understood that the Association may reserve the full right to make any or all excavations in streets; or the right to refill any excavations; or the right to repave any cuts, or the right to repair any damages, in its opinion, to any improvements in the streets, and pay the cost of the same out of the deposits made as above provided; subject at all times to such control by county or other proper officials as may have jurisdiction over streets.

(13) To repair, oil, maintain, repave and reconstruct paved streets, or roads, lanes and pedestrian ways, and to clean streets, gutters and sidewalks and pedestrian ways.

(14) To erect and maintain signs for marking of streets.

(15) To provide means for furnishing water, gas, electricity, and sewage disposal for the purposes of heating, power, and lighting, and other utilities to the owners within said District, and for such purposes to purchase water, gas, electricity or heat or power from other cities, or from other corporations, or private individuals, and to distribute the same to the owners of the property within said District, and to provide means for furnishing transportation to the owners in said district, and to fix the charges to said owners for such services rendered and to collect for the same from such owners.

(16) To provide means for fire protection and to furnish the water and necessary equipment for same.

(17) To reimburse the State, County, or Township for expense of furnishing police service for the District or to employ duly qualified peace officers for such purposes.

TENTH: It shall be incumbent upon all of the members of the Association to notify the officers thereof of their respective address or addresses, and of any change, thereof, or of any change in the ownership of any lot or parcel of land in the District, which information shall be recorded by the officers of said Association. All members shall be notified in writing of any change in address of the office of the Association.

ELEVENTH: The Association shall at all times observe all the laws, rules or regulations of all governmental units or agencies having jurisdiction in the premises, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of said Declaration as are in conflict therewith shall become null and void, but no other part of said Declaration not in conflict therewith shall be affected thereby.

PART III METHOD OF PROVIDING GENERAL FUNDS

FIRST: For the purpose of providing a general fund to enable the Association to perform the services, and to provide the improvements made possible under and by virtue of the terms of this Declaration, all assessable land within the jurisdiction of the District shall be subject to an annual assessment to be paid to the Association at the time and in the manner hereinafter provided for, by the respective members thereof who own the assessable land subject thereto.

SECOND: Said assessable land shall be deemed to be all of the land in the District which has been subjected to the terms of this Declaration and which shall lie within three hundred (300) feet of the boundary of a paved street and all improved property in the District which has been subjected to the terms of this Declaration and which shall lie within three hundred (300) feet of the boundary of an improved street, provided, however, that all land in the District which is or may hereafter be contained in streets, and in what is commonly known and referred to as West Hills Park, also, the Rock Garden, and also the Athletic Court, together with any or all land, the title to which may be held in the name of the Association, and any and all land lying within the District which may be accepted by the Association for the general use and benefit of the members thereof, shall not be considered assessable land within the meaning thereof as defined herein. Provided, however, that should any part or portion of such non-assessable land as defined herein be not held for the general use and benefit of the members of the Association, then in such case, that part or portion of said non-assessable land shall become assessable.

THIRD: Said assessable land shall be divided into three (3) classes, namely, Class A Property, Class B Property, and Class C Property, for the purposes of ascertaining the amount of the assessment which shall be payable thereon as hereinafter provided. It being further provided that for the purpose of this Declaration Class A Property shall be all improved property included in the assessable land in the District lying within three hundred (300) feet of the boundary of a paved street and all improved property included in the assessable land in the District lying within three hundred (300) feet of the boundary of any improved street; Class B Property shall be all unimproved property included in the assessable land in the District lying within one hundred fifty (150) feet of the boundary of a paved street; and Class C Property shall be all unimproved property included in the assessable land in the District lying more than one hundred fifty (150) feet and within three hundred (300) feet of the boundary of a paved street.

FOURTH: Assessments on said assessable land shall be confined within a minimum of no assessment, and a maximum assessment of two (2) mills per square foot per annum on Class A Property, a maximum assessment of one (1) mill per square foot per annum on Class B Property, and a maximum assessment of one-half (½) mill per square foot per annum on Class C Property.

FIFTH: The amount of the annual assessment shall be fixed and levied each year by the Association at its annual meeting. No assessment may be levied except upon the affirmative vote of those members present and voting as follows: By a majority of those members present and voting at any annual meeting, the Association may levy not to exceed a maximum assessment of one mill per square foot per annum upon Class A Property, and not to exceed a maximum assessment of one-half of one mill per square foot per annum upon Class B Property, and not to exceed one-fourth of one mill per square foot per annum on Class C Property. By an affirmative vote of two-thirds of those members present and voting at any such annual meeting, the Association may levy an assessment not to exceed a maximum of two mills per square foot per annum on Class A Property, and not to exceed a maximum of one mill per square foot per annum on Class B Property and not to exceed one-half of one mill per square foot per annum on Class C Property. In no event shall the proportion of said assessment as regards the three classes of property be changed from the proportions above enumerated.

SIXTH: All assessments levied as provided in the fifth section shall be due and payable on the date levied. It shall be the duty of the Association to notify all members whose addresses are listed with the Association within ten days from the date such assessment is levied, giving the amount of the assessment, and the amount on each tract owned by them. Failure to levy assessment for any one year shall not affect the right of the Association to do so for any subsequent year.

SEVENTH: A written or printed notice thereof, deposited in the United States Post Office at Lawrence, Kansas, with postage thereon prepaid and addressed to the respective owners at the last address listed with the Association, shall be deemed to be sufficient and proper notice for this purpose or for any other purpose of this agreement, where notices are required.

EIGHTH: All assessments which shall be fixed and levied under and in accordance with the terms of this Declaration shall become a lien on the land against which such assessment shall have been fixed and levied as soon as any such assessment shall become due and payable as hereinbefore provided. In the event any member

of the Association shall fail, neglect, or refuse to pay the amount of his assessment on or before the date when it shall become delinquent, then the amount of said assessment shall draw interest at the rate of six (6%) per cent per annum, until paid.

NINTH: Any assessment provided for under the terms of this Declaration, which is not paid within sixty (60) days from the day upon which it shall be due and payable, shall become delinquent, and payment of both principal and interest thereof may be enforced as a lien against the land upon which the assessment was due by proceedings in any court having jurisdiction in the premises. It shall be the duty of the officers of the Association to bring suit to enforce such liens as soon as they shall have become delinquent.

TENTH: Such liens shall continue for a period of one (1) year from the date of delinquency and no 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 the same.

ELEVENTH: The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year, plus any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contracts, whatever, binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid and enforceable against the Association, it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year.

TWELFTH: In no event shall any member of the Association become liable to the Association or to any creditor or creditors of the Association for any sum or sums of money in excess of the assessments which have been legally imposed against such property under and by virtue of the terms of this Declaration. In other words, it shall be considered impossible for the Association to contract any indebtedness with any creditor which might result in such creditor attempting to force the Association to levy an assessment against its property for the payment of any such obligation.

PART IV RESERVATION OF RIGHTS OF THE PARTIES

It is hereby provided that in no event shall this Declaration be construed as dedicating any land in said District for the use, occupancy, or control of the public. It is further provided that this Declaration shall in no event be construed as conveying, dedicating, or interfering with any of the property rights of any of the parties hereto, except as may be expressly provided herein.

PART V PROVISION FOR ADDITION OF OTHER LANDS TO THE DISTRICT

FIRST: First party, his heirs, executors, administrators, trustees, devisees, and assigns, subject to the approval of the Association by a three-fourths (¾) majority vote of the members thereof, may from time to time add such land to the District as is now or hereafter owned or approved for addition by the said first party, his heirs, executors, administrators, trustees, devisees and assigns, provided that the land to be added to the District shall at all times be bound by all of the terms of this agreement or any future modification thereof. The Association may also unite or combine with any other Association similarly organized, operating on a similar basis, and lying contiguous to the District as theretofore constituted, and an intervening street shall not have the effect of breaking such contiguity within the meaning of this agreement. It being provided further that any action by the Association to combine or unite with any similar association shall be done only in the event three-fourths (¾) of the members of the Association shall vote in favor of such combination.

PART VI PROVISION FOR AMENDMENT AND TERMINATION OF DECLARATION

FIRST: This Declaration may be amended, and all of the land now or hereafter affected, shall be subject to such amendment upon the execution and acknowledgement of an appropriate agreement or agreements for that purpose by at least two-thirds (⅔) of the members of the Association and the filing of the same for record in the office of the Register of Deeds of Douglas County, Kansas, provided, however, that no change in the provisions of paragraphs Second, Third, Fourth, and Fifth of Part III hereof shall be permitted except upon the filing of an appropriate agreement or agreements for that purpose in the office of the Register of Deeds of Douglas County, Kansas, signed by all of the members of the Association.

SECOND: This agreement may be terminated and all of the land now or hereafter affected may be released from all the terms and provisions hereof by the execution and acknowledgement of an appropriate agreement or agreements for that purpose which is signed and acknowledged by at least three-fourths (¾) of all members of the Association, and by filing the same for record in the office of the Register of Deeds of Douglas County, Kansas.

THIRD: In the event either amendment or termination of the terms of this Declaration is contemplated by any member or members of the Association, or by the officers thereof, it shall be mandatory that such contemplated amendment or termination be discussed by the members of the Association at a special meeting called for the purpose, due notice of such meeting to be given in accordance with the by-laws of the Association. Provided further, that no agreement or agreements as to amendment or termination of the terms hereof shall be valid if such notice is not given and such special meeting is not held in accordance herewith. Provided further, that an affidavit over signature of the President and Secretary-Treasurer of the Board of Directors of the Association to the effect that such notice was given and that such meeting was held, shall be a necessary part of any agreements to amend or terminate the terms of this Declaration.

PART VII FILING OF DECLARATION

It is understood and agreed between the parties hereto that this Declaration shall not be binding upon the parties signing until this Declaration shall have been filed for record in the office of the Register of Deeds of Douglas County, Kansas.

PART VIII
NATURE OF COVENANTS

FIRST: All of the provisions of this Declaration shall be deemed to be covenants running with the land affected thereby and shall be binding and in full force and effect upon the parties thereto, and upon their respective heirs, executors, administrators, successors, trustees, devisees and assigns.

SECOND: Nothing herein contained shall in any way or manner be construed to limit, alter, change, supplement, or in any way affect any restrictions now of record existing as to any of the land contained within West Hills as described herein in subdivision Second of Part I hereof.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands on the day and year set out below.

DATE OF SIGNING	NAME OF OWNER	DESCRIPTION OF LAND OWNED
_____	_____	_____

