

2192869

AMENDMENT TO AGREEMENT

THIS AMENDMENT made as of the 27th day of April, 1992 by and between DEER CREEK HOMES ASSOCIATION, INC., a Kansas corporation ("Homes"), and DEER CREEK VILLAS HOMES ASSOCIATION, a Kansas corporation ("Villas").

W I T N E S S E T H:

WHEREAS, Homes and Villas entered into a certain Agreement dated September 5, 1992, a true and correct copy of which is attached hereto and incorporated herein by this reference as Exhibit A relating to the use of certain recreational facilities designated by the developer for Homes use; and

WHEREAS, the parties agreed that at such time as Homes acquired title to said recreational facilities said Agreement would be recorded and that if the title acquired differed from the property described in Exhibit A attached to said Agreement, the parties would amend and modify said Agreement to substitute the legal description of the property actually acquired; and

WHEREAS, Homes has now acquired title to a portion of the property described in said Agreement and the parties desire to amend the Agreement to provide that the description of the property actually acquired by Homes be substituted and to record the same for the purpose of recording notice of the Agreement between the parties.

NOW, THEREFORE, in consideration of the premises, the parties hereto hereby amend the Agreement by substituting for the Exhibit A to the Agreement, Exhibit B attached hereto, which property shall be deemed for all purposes to be substituted and subject to the terms of the Agreement as amended hereby as the description of the Land (as defined in the Agreement).

Following execution hereof, Homes shall cause this Amendment to Agreement, together with the original Agreement as amended hereby to be duly recorded with the Register of Deeds of Johnson County, Kansas.

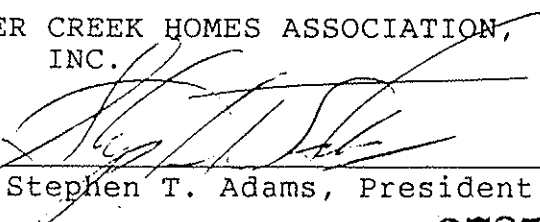
IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals the day and year first above written.

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

28⁰⁰
1992 DEC -2 P 1: 19.4

SARA FULLMANN
REGISTER OF DEEDS

DEER CREEK HOMES ASSOCIATION,
INC.

By: 
Stephen T. Adams, President

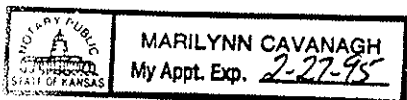
28 Cash
70

DEER CREEK VILLAS HOMES
ASSOCIATION

By: [Signature]
Name: Stuart E. Davis
Title: President

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 21st day of October, 1992 by Stephen T. Adams as President of Deer Creek Homes Association, Inc.



[Signature]
Notary Public

My commission expires:
2-27-95

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 18 day of AUGUST, 1992 by STUART E. DAVIS as PRESIDENT of Deer Creek Villas Homes Association.

[Signature]
Notary Public LINDA M. CLEVENGER

My commission expires:
1-11-93



Exhibit A

AGREEMENT

THIS AGREEMENT made this 5th day of September, 1991 but effective as of January 1, 1991, by and between DEER CREEK HOMES ASSOCIATION, INC., a Kansas corporation ("Homes"), and DEER CREEK VILLAS HOMES ASSOCIATION, a Kansas corporation ("Villas").

W I T N E S S E T H:

WHEREAS, Homes is a community homes association encompassing a single-family residential development known as Deer Creek, located in the City of Overland Park, Johnson County, Kansas; and

WHEREAS, Villas is a community homes association encompassing a planned development, single-family residential townhome development located near Deer Creek and a part of the overall development and community around Deer Creek Golf Course located in Overland Park, Johnson County, Kansas; and

WHEREAS, Homes owns, or will own, and controls certain recreational facilities consisting of a neighborhood swimming pool and two tennis courts (the "Recreational Facilities") located upon the real property described in Exhibit A attached hereto and incorporated herein (the "Land"); and

WHEREAS, Villas, for the benefit of its members, desires to utilize the Recreational Facilities and Homes is willing to allow the members of Villas to use such facilities upon the payment of certain dues as herein set forth.

NOW, THEREFORE, in consideration of the premises and the agreements and undertakings herein set forth, the parties agree as follows:

1. Right to Use Recreational Facilities. Subject to the payment of the dues as and in the manner hereinafter described and satisfaction by Villas of its other obligations herein set forth, Homes hereby grants Villas and its members a license and the right to use the Recreational Facilities in common with members of Homes and other homes associations as hereinafter described, in accordance with Homes' rules and regulations, as the same may be amended from time to time, relating to the use, availability and operation of the Recreational Facilities.

2. Dues to be Paid by Villas. In consideration for the grant of the license to Villas' members and right to use the Recreational Facilities, to offset the cost of maintaining, operating, repairing and replacing the Recreational Facilities,

082991:6252a

VOL 3785 PAGE 91

Villas agrees to pay Homes, on behalf of Villas' members, for the period from the commencement date hereof through and including December 31, 1991, an initial amount (which shall thereafter be subject to annual adjustment as provided in Paragraph 4 hereof) determined as follows: \$26.55 per month for each member of Villas commencing with the earlier of (the "Dues Commencement Date") (i) the date the residence on the lot in the Villas is first occupied as a residence or (ii) the date a residence constructed on a lot located within Villas is first sold to a consumer (i.e. other than to a home builder). Any partial month shall be prorated in either event. The parties agree that at the effective date hereof and as of April 1 there were 10 such Villas members. Such dues shall be payable initially on a quarterly basis, with the payment for the first two quarters of \$796.50 each and the third quarterly payment of \$929.25 (based on 11 members and prorated portion for 1 member for such quarter) all being paid currently herewith and a fourth quarterly payment as determined and adjusted as above to be due on October 1. Payment of dues with respect to any member of Villas for whom a Dues Commencement Date occurred during the previous quarterly period not otherwise paid at the date hereof shall be paid (prorated from the Dues Commencement Date to the end of such quarterly period) at the time of and together with the next quarterly dues payment. Dues, as they may be adjusted as hereinafter provided, shall be payable for 1992 semi-annually on January 1, 1992 and July 1, 1992 and then annually on January 1, 1993 and each January 1 thereafter. Dues with respect to any new resident of Villas in which a Dues Commencement Date occurs after January 1, 1992 shall be paid on a prorata basis to the date the next payment by Villas is due within 30 days of the Dues Commencement Date. Villas' obligation to pay such dues to Homes as provided herein shall not be contingent upon collection by Villas of any dues or payments from its members and Villas acknowledges that its obligation is independent of its ability to collect such dues from its members.

3. Furnishing of Names of Villas' Members. Villas acknowledges that it has, contemporaneously herewith, furnished Homes with a list of its current members, their respective addresses and the Dues Commencement Date for each such member if subsequent to the effective commencement date hereof. Villas agrees to furnish Homes with the name and address of each new member of Villas and the Dues Commencement Date with respect thereto. Villas shall furnish Homes with the names of each of its members and the status of the payment of their respective dues to Villas and the amount of any unpaid dues as of each dues payment date hereunder and shall immediately advise Homes of the payment by its members of any dues previously reported as unpaid (and Villas shall immediately pay to Homes such dues so received by Villas if not previously paid to Homes). In acknowledgment of Homes right to suspend and

deny a delinquent Villas' member's rights to use the Recreational Facilities as set forth in Paragraphs 5 and 6 hereof and that Homes will rely upon the accuracy of the information from Villas as to the status of payment by its members, Villas agrees to defend, indemnify and hold Homes, its officers, directors, members and agents harmless from any liability, action, demand, suit, cost or expense, including court costs and attorneys' fees, arising from any action taken by Homes in reliance upon such payment information from Villas. In addition, Villas shall advise Homes of any change of ownership of any of the residents in Villas on a monthly basis by the 10th day of each succeeding month during the term hereof so that Homes may have an accurate listing of persons entitled to use the Recreational Facilities. Villas agrees to advise its new members of the procedure to be followed in obtaining pool passes and keys to tennis courts and provide its members with Homes' rules regarding their respective use.

4. Adjustment of Dues. Villas acknowledges that dues are established annually in November by Homes' members pursuant to an annual budget approved by Homes for the next succeeding calendar year. The amount of such dues payable by Villas hereunder shall be 90% of the amount of dues payable by members of Homes less that portion relating to trash removal, and less any special assessments relating to special projects of Homes (such as a general subdivision tree planting program) or cost of any material special service not currently provided by Homes (such as a security patrol service) unless Villas elects to participate therein. Homes shall notify Villas as soon after its annual meeting as reasonably possible but no later than December 1, 1991 and each December 1 thereafter of the adjusted dues and payments payable by each member of Villas to be made by Villas for the next succeeding calendar year (except for prorated payments for new members paid in arrears as provided in Paragraph 2).

5. Denial of Use of Recreational Facilities. Villas acknowledges, and will so inform its members, that in the event of a Default, as defined in Paragraph 6 hereof, with respect to payment by any of its members of those dues payable by Villas as agreed hereby, Homes shall have the right to deny use of the Recreational Facilities to those Villas' members who have not paid such dues to Villas as such members' names are provided by Villas to Homes, provided, however, Villas shall remain liable for the payment of all dues payable hereunder when collected in recognition that the payment required by Villas hereunder is that of Villas and not of its individual members from whom the responsibility for collection by Villas of individual dues solely lies. In addition, if Villas fails to pay to Homes the dues received by it from its Villas' members or otherwise fails to satisfy any other of its obligations and such failure continues for thirty (30) days after written notice from Homes,

Homes shall have the right to suspend the right to use the Recreational Facilities to all members of Villas. Homes may, in the event it elects to so deny use of the Recreational Facilities because of Default by any of Villas' members, notify such defaulting Villas' members of such denial. Villas, at Homes' request, agrees to so notify its defaulting members, of such denial as well. In addition, in the event of default by Villas as provided above, Homes may in the event it elects to so deny use of the Recreational Facilities because of such default by Villas, notify Villas' members of such denial.

6. Default in Payment of Dues. In addition to all other remedies available at law, including the denial of the use of the Recreational Facilities to Villas' members as provided in Paragraph 5 above, in the event any payment of dues by Villas is not made on the date due and such non-payment continues for thirty (30) days thereafter (a "Default"), the amount of such unpaid dues shall bear interest at the rate of ten percent (10%) per annum commencing thirty (30) days after the date due and continuing until finally paid and, in addition, in the event such amount due, plus interest, if any, is not made by Villas within thirty (30) days after written notice of such non-payment Homes shall have the right to suspend this Agreement and the license granted hereby to use the Recreational Facilities by the Villas' member(s) who have not so paid, or by Villas if Villas has failed to pay any dues collected by it, and Homes shall have the further right to collect, and Villas agrees to pay, the amount of dues payable for the remainder of the calendar year, Villas acknowledging that the dues established to be paid by Homes' members necessary to operate the Recreational Facilities will be based upon the assumed contribution by Villas. Notwithstanding such suspension, Villas and Villas' defaulting members shall have the right at any time to reinstate their privileges and access to the Recreational Facilities upon the payment of all dues then due and payable by Villas together with interest thereon as provided above and any other moneys then due from Villas (if the amount of such dues has not previously been paid as provided in the preceding sentence). In the event of any default hereunder by either party, the defaulting party shall pay the reasonable attorneys' fees incurred by such non-defaulting party in the enforcement of such non-defaulting party's rights hereunder or collection of any moneys due from such defaulting party.

7. Collection of Dues by Villas. Villas shall use its reasonable best efforts to collect dues from all of its members, including filing of liens against the properties of any members who fail to pay Villas their respective dues and shall take such further action upon request of Homes as may be reasonable.

8. Term. The term of this Agreement shall commence on January 1, 1991 and shall continue for so long as the Recreational Facilities are available for the use of members of Homes. In the event such Recreational Facilities are no longer in use and available to members of Homes, this Agreement shall automatically terminate and expire upon written notice from Homes unless such use and unavailability shall be temporary in nature because of the repair, restoration and replacement of such facilities. Notwithstanding anything herein to the contrary or to be implied hereby, Homes makes no warranty or representation, covenant or agreement that such Recreational Facilities shall continuously be operated or open for the use of Homes' members and Villas members and nothing shall obligate Homes to replace or repair such Recreational Facilities in the event of destruction thereof, the enactment of any government or governmental agency regulation, rule, ordinance, statute or law making the operation of such Recreational Facilities impractical, prohibited or economically unfeasible, any change in insurance rates or regulations making the operation of such Recreational Facilities impractical, prohibited or economically unfeasible, or if such facilities be so damaged by casualty or eventual wear and tear that Homes determines not to replace or repair such facilities. This Agreement shall continue, as provided above, so long as the Recreational Facilities are available to Homes' members and only during the period that such Recreational Facilities are so available (including any period of temporary unavailability due to repairs, maintenance or replacement if Homes so elects) to Homes' members. In the event of damage or destruction to the Recreational Facilities, or need for substantial repair thereof, for which reserve funds or insurance proceeds are inadequate to pay the cost of such replacement or repair, Villas agrees to pay, in addition to the dues set forth herein, within thirty (30) days of written notice from Homes proportional special assessments as may be levied for such purpose by Homes against all members of Homes, Villas and any other homes association to whom a license has been granted to use such facilities, provided such assessment does not result from the expansion of the Recreational Facilities unless the owners within Villas shall have been afforded a right to vote on such expansion and assessment along with the owners within Homes.

9. Obligations of Homes. Homes agrees:

(a) to maintain property insurance on a full replacement cost basis on the Recreational Facilities and general liability insurance relating to the Recreational Facilities with limits not less than \$2,000,000 per occurrence, \$4,000,000 in the aggregate (subject to reasonable deductibles) so long as such insurance is reasonably available from insurance companies licensed to write such insurance in the

State of Kansas and is available at a cost acceptable to the Board of Directors of Homes in the reasonable determination of the Board of Directors of Homes, and

(b) subject to the payment of dues by Villas, budgetary limitations and the provisions of Paragraph 8, to maintain in reasonably good repair the Recreational Facilities.

10. Use of Recreational Facilities by Other Homes Associations. The parties acknowledge that a single-family residential development similar to Villas, commonly known as The Deer Creek Courts, located within the Deer Creek community, and other adjacent residential developments may also be granted a license for its members to use the Recreational Facilities and nothing herein shall be deemed to be a grant of an exclusive license to Villas, provided such license shall be upon substantially the same terms contained herein or at least no more favorable than the terms contained herein.

11. Default by Homes. In the event of a default in the performance of any of Homes' obligations set forth in Paragraph 8(b) and the failure to cure such default within thirty (30) days after receipt of written notice of such default and specifying the maintenance or repair not made, Villas shall have the right to terminate this Agreement, and receive a refund of dues paid by it for the calendar year prorated over the remainder of the payment period as its sole remedy; provided, however, in the event such default is not reasonably capable of being cured within such thirty (30) day period, Homes shall not be deemed in default if it notifies Villas of its intent to cure such default and commences such cure within said thirty (30) days and thereafter diligently pursues such cure to completion.

12. Covenants Running with the Land. Villas acknowledges that Homes does not presently hold fee simple title to the Land but, pursuant to that certain Homes Association Declaration affecting the Recreational Facilities, Homes manages and operates the Recreational Facilities and Homes contemplates that the current owner and developer thereof will convey title to the Recreational Facilities and the Land to Homes. It is the intent of the parties that the agreements herein are intended to affect title to the Land and shall be deemed to be a covenant running with the Land effective upon conveyance of title to the Land. In the event that Homes acquires title to the Recreational Facilities but acquires title to less than all of the Land (or acquires title thereto in parcels or stages), the parties agree that this Agreement shall affect only so much of the Land as Homes shall acquire from time to time and this Agreement shall be amended to refer only to such portion of the

Land as so acquired from time to time, including so much thereof as may be acquired in parcels or in stages. Upon acquisition of title to the Land (or such portion thereof as described above), Homes agrees to cause this Agreement to be recorded with the Register of Deeds of Johnson County, Kansas.

13. Notices. Any notice which is required or permitted to be given hereunder shall be given in writing and sent by United States Mail certified or registered, addressed to the parties as follows:

If to Homes: Deer Creek Homes Association, Inc.
 c/o Association Services, Ltd.
 14965 West 117th Street
 Olathe, KS 66062

If to Villas: Deer Creek Villas Homes Association
 c/o BDP Investors
 9401 Nall Avenue, Suite 101
 Shawnee Mission, KS 66207

Either party shall have the right to change the address to which notices may be sent by written notice given to the other in the above manner. Any notice given in the manner as set forth shall be deemed delivered at the earlier of the date actually received by the addressee or three (3) business days after deposit in the United States Mail.

14. Assignment and Binding Effect. This Agreement may be assigned by either party to any successor organization to it having substantially the same duties, responsibilities and functions as to the residences included within the respective party but to no other person or entity without the other party's written consent. This Agreement shall be binding upon and inure to the benefit of any such permitted assignee, and the successors hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals the day and year first above written.

DEER CREEK HOMES
ASSOCIATION, INC.

By: G. E. Harvey Jr.
Name: G. E. Harvey, Jr.
Title: Pres.

DEER CREEK VILLAS HOMES
ASSOCIATION

By: [Signature]
Name: Stuart E. Davis
Title: President

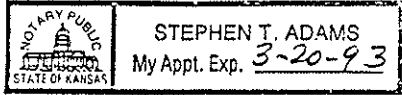
STATE OF KANSAS)
)SS.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 5th day
of September, 1991, by G. E. Harvey, Jr.
as President of Deer Creek Homes Association, Inc.

[Signature]
Notary Public
STEPHEN T. ADAMS

(Seal)

My commission expires:
3-20-93



STATE OF KANSAS)
)SS.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the 16th day
of September, 1991, by Stuart E. Davis
as President of Deer Creek Villas Homes
Association.

[Signature]
Notary Public
E. Jocelyn Sutoris

(Seal)

My commission expires:
August 31, 1993

EXHIBIT A

Legal Description of Recreational Facilities

Tract "A" Lot 1, DEER CREEK, 5th Plat, a Subdivision
in the City of Overland Park, Johnson County, Kansas,
according to the recorded plat thereof.

EXHIBIT B

Substitute legal description of recreational facilities:

All of Tract "A," Lot 1, DEER CREEK, FIFTH PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof, except the easterly forty-five (45) feet thereof.

041692:8486a