

STATE OF KANSAS  
SEDGWICK COUNTY  
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BOOK 7 MAR 7 1972 1439

HOME OWNERS ASSOCIATION AGREEMENT  
(As required by Paragraph 6 - General Provisions  
Willo-Esque Addition Community Unit Plan)

MAR 13 1972

REG. 06428  
JOHN HALE  
REGISTER OF DEEDS

*Beal Deputy*

THIS DECLARATION, made this 23 day of February, 1972

by L. C. Investment, Inc., hereinafter called "Developer,"

WITNESSETH:

*Also pasted to Wills Esque Trust*

WHEREAS, Developer is the owner of and proposes to develop all  
of the real property legally described as follows:

✓ The Southwest Quarter, Section 22, Township 27 South,  
Range 1 West of the 6th Principal Meridian in Sedgwick  
County, Kansas, except two tracts described as follows:

*of*

1. The South 1,575.98 feet of the East 804.21 feet of  
said Southwest Quarter, Section 22, Township 27 South,  
Range 1 West; and

2. The South 600 feet of the West 500 feet of said South-  
west Quarter, Section 22, Township 27 South, Range 1 West,

under and in accordance with the maps, plans, drawings and pro-  
visions of Willo-Esque Community Unit Plan, heretofore approved  
by the Board of City Commissioners of Wichita, Kansas; and

WHEREAS, the Developer shall be responsible for the construction  
of parking areas, the development and landscaping of the non-  
public common areas, the construction of community facilities as  
the Developer desires and other items enumerated and required  
under the above mentioned Community Unit Plan; and

WHEREAS, the Developer desires to provide for the maintenance  
of non-public common areas, parking areas, community facilities,  
drainage channels, etc. contained in the above described  
property, as set out in Paragraph 6 under the General Provisions  
of the Community Unit Plan for Willo-Esque; and

WHEREAS, the Developer deems it desirable, in order to pro-  
vide for the orderly maintenance and preservation of the values

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Room 104 City Bldg.*

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of said property, to create a "Home Owners Association" which would be delegated and assigned the power of maintaining and providing for the maintenance of the areas above referred to and for enforcing the agreements, covenants and restrictions hereinafter set forth and for collecting and disbursing the assessments and charges hereinafter provided for;

NOW, THEREFORE, the Developer declares that the property hereinbefore described shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, charges, and liens hereinafter set forth:

I. MEMBERSHIP

A. Every person or entity who is a record owner of the fee or of an undivided fee interest in any lot or block contained within the above description shall be a member of said association. The owner of each lot designated as Single Family Cluster in Parcels 2, 3 and 4, shall have three votes per lot owned, in the election of the Board of Directors. Should any one lot be owned by more than one person, the owners shall jointly cast three votes. The owners of each lot designated in Parcel number 1 as Patio Homes, shall be entitled to one vote per lot. If two or more owners own the same lot, they shall collectively cast one vote. The owners of the Garden Apartments and of the Town Houses, as designated in Parcel 1, shall each be entitled to one vote for each apartment or separate living quarters located within the Garden Apartments or the Town Houses. Until such time as the Garden Apartments and the Town Houses are constructed as contemplated by the Community Unit Plan of Willowesque, the owner of each lot in Parcel 1 designated for Patio Homes and the owner of each lot in Parcels 2, 3, and 4 shall have

one (1) vote for each lot toward the election of a Board of Directors.

B. The Developer shall serve as the sole director of said association, having all powers, duties and responsibilities of the Board of Directors as subsequently provided for, until such time as there are at least 200 living units constructed within the captioned property. The Developer, however, may waive this right, in which event a Board of Directors as subsequently provided for shall be formed.

## 2. BOARD OF DIRECTORS

A. The association shall be governed by a Board of Directors consisting of three (3) members who are elected by those members entitled to vote as hereinbefore set forth, subject to the limitation set out in the preceding paragraph. The Board of Directors shall elect from its members one who shall serve as Chairman of the Board of Directors and who shall preside at all meetings at which he is present and shall fulfill all duties of the Chairman. The Chairman is responsible for the calling of such meetings of the membership and of the Board of Directors as herein provided.

B. The membership shall hold an annual meeting for the purpose of electing the Board of Directors, which annual meeting shall be held on the second Tuesday of May each year. Mailed notice shall be sent to all members or owners under the provisions of this agreement not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting.

C. The membership, upon a majority of the votes cast by the members present and voting at any annual meeting may authorize and direct the incorporation of the association as a non-profit

corporation under the laws of the State of Kansas. Votes shall be cast by the membership in the same number and manner as if they were voting for a member of the Board of Directors as above set forth.

### 3. POWER OF THE BOARD OF DIRECTORS

A. The Board of Directors shall provide for the maintenance of non-public common areas, including lighting, sidewalk, parking areas, community facilities, drainage areas, etc. contained in the above described property as mentioned in Paragraph 6, under "General Provisions" for the Community Unit Plan on file with the City of Wichita. Any additional power of the Board of Directors is limited to providing maintenance and upkeep of the improvements installed by the Developer in the non-public common areas, keeping the non-public common open areas mowed, trees trimmed and to provide police protection for the non-public common areas. However, the Board of Directors shall have the power to promulgate rules and regulations as to the use of all non-public common areas and facilities, and to provide an enforcement of the rules and regulations.

B. The Board of Directors may call such special meetings from time to time as shall be in the best interest of the association, and written notice of said special meetings shall be mailed, stating the date, time, and place at least seven (7) days before said meeting. A quorum required for any action authorized hereunder shall be the Developer, or if there are at least three (3) members of the Board of Directors, a quorum shall consist of a majority of the Board of Directors.

### 4. MAINTENANCE AND ASSESSMENTS.

A. The Developer and such owner of any interest in and to any parcel contained within the above described real property,

upon acceptance of a deed therefor, whether or not said deed shall so express, shall be deemed to covenant and agree to pay to the association, such annual assessments or charges and such special assessment or charges as shall be fixed, established and levied for the property maintenance and other authorized expenses as determined by the Board of Directors. Such annual and special assessments shall be due thirty (30) days after the mailed written notification of said assessment. If not paid within said thirty (30) days the Board of Directors shall file a notice with the Register of Deeds of Sedgwick County, Kansas, setting forth that said assessment has not been paid, the amount thereof and a legal description of the property upon which a lien is claimed for said amount. That upon the filing of said notice, said assessment shall become a charge and continuing lien upon the property described in said notice and subject to foreclosure as the law provides for mortgages. That upon the payment of said assessment and lien the Board of Directors shall file a satisfaction of said lien with the Register of Deeds properly identifying the lien and the legal description of the property upon which it is claimed. Each assessment, together with any interest thereon, shall be a personal obligation of the persons who are the owners of such property at the time the assessment is made.

The assessments levied by the association shall be used exclusively for the purpose of proper maintenance, other authorized expenses and enforcement of this agreement and any other restrictive covenants that may be on the above described property. The assessment shall be only that necessary for one (1) year's expenses as above set out.

B. After the construction of the Town Houses and Garden Apartments as shown on the Community Unit Plan for Willo-Esque,

the assessments shall be levied as follows: The maximum annual assessment for each lot designated in Parcels 2, 3 and 4 and designated as Single Family Clusters, shall not exceed  $1/224$  of  $3/4$  of the total annual costs of the operation of the association. The maximum annual assessment for each dwelling unit located in Parcel number 1 and designated as Garden Apartments, Town Houses and Patio Homes, shall not exceed  $1/287$  of  $1/4$  of the total annual cost of operation of the association for each dwelling unit owned or contemplated. As used herein, dwelling unit shall include each lot designated in Parcel 1 and each separate living unit or apartment designated by the Community Unit Plan as Garden Apartments and Town Houses, it being contemplated that there shall be 160 Garden Apartments and 70 Town House Units.

C. Until such time as the Town Houses and Garden Apartments are constructed, the owner of the land designated for the construction shall not be required to contribute to the assessments for the maintenance and expenses of the association. Each lot in Parcels 2, 3, and 4, and the 57 lots in Parcel 1 designated as Patio Homes shall each pay  $1/281$ st of the total assessment as required by the association.

D. In the event the Developer or the Home Owners Association, shall at any time fail to maintain the open space or fail to fulfill any other obligation imposed upon the Home Owners Association, the City of Wichita may serve written notice upon the Home Owners Association or upon the residents and owners of the above described Community Unit Plan, setting forth the manner in which the Home Owners Association has failed to fulfill its obligation. If such notice is given it shall include a statement as to what obligation the Association has failed to fulfill and shall state a reasonable

time in which the association may fulfill the obligation complained of. If said complaint is not cured within the time specified, the City of Wichita, in order to preserve the taxable values of the properties within the Community Unit Plan and to prevent the non-public common open space from becoming a public nuisance, may enter upon said common place and maintain the same and perform the other duties of the association until such association shall again resume its obligations. All costs incurred by the City of Wichita in carrying out the obligations of the Home Owners Association shall be assessed against the properties within the Community Unit Plan and shall become a tax lien on said properties.

5. GENERAL PROVISIONS.

A. Subject to all rules and regulations promulgated by the Board of Directors concerning the use of non-public common properties, every member of the Home Owners Association and every tenant of the Garden Apartments and Town Houses, as designated in Parcel number 1 shall have a right and easement of enjoyment in and to the non-public common properties, and such easement shall be appurtenant to and shall pass with the title to every lot or living unit.

B. Should the area designated for the Garden Apartments and/or Town Houses be developed in some other manner than as specified on the Community Unit Plan of Wilco-Esque, the Board of Directors shall grant such voting rights and assess such assessments to the land modified as will insure an equal participation and equal responsibility for the operation and expenses of the association..

C. The Developer may maintain the legal title to any portion of the non-public common properties until such time as he has completed improvements thereon and until such time as,

in the opinion of the Developer, the association is able to maintain the same; but, notwithstanding any provision herein, the Developer covenants for himself, his heirs and assigns, that he will convey the common properties to the association not later than January 1, 1982, unless excused from so doing by the association.

D. The Developer shall be the sole judge as to what improvements are to be constructed upon the non-public common properties and the location, design and time of construction of improvements so made.

E. The covenants and restrictions of this agreement shall run with and be binding on the land, and shall inure to the benefit of and be enforceable by the association, or the owner of any land subject to this declaration, or their respective legal representatives, or successors, and assigns, or any public body responsible for the enforcement of the Community Unit Plan provisions.

F. Enforcement of these covenants and restrictions and agreements shall be by any proceeding at law or in equity against any person or persons or entity violating or attempting to violate any covenant, agreement, or restriction, either to restrain violation, or to recover damages, and against the land to enforce any lien created by these covenants; and the failure by the association or any owner to enforce any covenant or agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

G. The invalidity of any one of the covenants, agreements, or restrictions contained herein by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.



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H. Only that portion of the captioned real estate which has been platted in substantial conformity to the Community Unit Plan known as Willo-Esque shall be subject to any of the provisions of this agreement. It being understood that when any portion of the captioned real estate is so platted by filing a final plat with the Register of Deed's office, said portion shall immediately become subject to the provisions of this agreement.

Until such time as all the captioned property has been so platted by one or more plats, the Board of Directors shall grant such voting rights and assess such assessments to the real estate so platted and subjected to this agreement as will insure an equal participation in the operation and an equal responsibility for the expenses of the association.



L. C. INVESTMENT, INC.

By Ronald F. Lane  
Ronald F. Lane, President

Archie Conduff  
Archie Conduff, Secretary

