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

This instrument filed by
Security Land Title Company

**KNIGHTSBROOKE AT NOTTINGHAM
HOMES ASSOCIATION DECLARATION**

93 MAY 13 P 4:22.5

SARA F. ULLMANN
REGISTER OF DEEDS

THIS DECLARATION is made as of the 16th day of May, 1993, by Hanover Development Company II, a Kansas general partnership (the "Developer").

WITNESSETH:

WHEREAS, the Developer has executed and filed with the Register of Deeds of Johnson County, Kansas a plat of the subdivision known as "Knightsbrooke at Nottingham"; and

WHEREAS, such plat creates the subdivision of Knightsbrooke at Nottingham, composed, in part, of the following described lots, to-wit:

All of Lots 1 through 5 of Block 1; Lots 1 through 8 and 31 and 32 of Block 2; Lots 1 through 9 of Block 3; KNIGHTSBROOKE AT NOTTINGHAM, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof;

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 subdivision;

WHEREAS, the Developer desires for the above-referenced lots to be part of the area-wide homes association that is being established to govern the Nottingham By The Green subdivision and the other nearby subdivisions being developed by the Developer, but the Developer desires to reserve the right to establish in the future a separate homes association for the above-referenced lots.

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.

PART I -- Nottingham By The Green Area Homes Association

This Part I (as opposed to Part II) shall be the operable provisions of this Homes Association Declaration unless and until the Developer has executed and recorded in the Office of the Register of Deeds of Johnson County, Kansas an instrument declaring that Part II of this instrument is thereafter to be effective and supersede this Part I.

The Developer, as the owner of the above-referenced lots (the "Lots"), for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Lots shall be, and they hereby are, subject to the covenants, assessments, charges and other provisions set forth in that certain Nottingham By The Green Area Homes Association Declaration, dated as of August 24, 1992 (the "Original Declaration"), executed by the Developer and filed with the Office of the Register of Deeds of Johnson County, Kansas on September 2, 1992 and recorded as Instrument No. 2160462 in Book 3694 at Page 258. As contemplated in Article IX of the Original Declaration, this instrument shall have the effect of subjecting the Lots to all of the provisions of the Original Declaration as though the Lots had been originally described therein and subject to the provisions thereof, except for the right of the Developer to cause Part II of this instrument to become effective and supersede this Part I and the Original Declaration.

PART II -- Separate Homes Association

This Part II (as opposed to Part I) shall not be the operable provisions of this Homes Association Declaration unless and until the Developer has executed and recorded in the Office of the Register of Deeds of Johnson County, Kansas an instrument declaring that this Part II is thereafter to be effective and supersede Part I.

ARTICLE I. DEFINITIONS

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

(a) The term "Lot" shall mean 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 all or part of one or more adjacent lots 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 from time to time 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) The term "District" shall mean collectively all of the above-described lots in Knightsbrooke at Nottingham, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(c) The term "Developer" shall mean Hanover Development Company II, and its successors and assigns.

(d) The term "Owner" shall mean the record owner(s) of title to any Lot, including the Developer.

(e) The term "Common Areas" shall mean (i) any entrances, monuments, berms 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, (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 Recreational Facilities, and (iv) 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) The term "Recreational Facilities" shall have the meaning set forth in Article XV below.

(g) The term "Homes Association" shall mean 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 and, if applicable, other nearby subdivisions.

(h) The term "Board" shall mean the Board of Directors of the Homes Association.

(i) The term "Certificate of Substantial Completion" shall mean 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 discretion at any time and for any limited purpose hereunder.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Membership in the Homes Association shall be limited to the Owners of Lots within the District and every such Owner shall be a member. The Homes Association shall have only one class of membership. Members may vote in person or by written proxy duly filed with the secretary of the Homes Association. Each member shall have one vote for each Lot for which he is the Owner and upon which he shall not be delinquent in the payment of any assessment; 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.

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 its own 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; 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 fund 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 insur-

ance with respect to the activities of the Homes Association and the property within the District.

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

(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 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 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, and operation and maintenance of Common Areas.

(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 and aesthetic control and authority given and assigned to it 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 for the purpose of adequately and properly carrying out the provisions and purposes of this Declaration.

(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 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 shall be the same for all residences).

(b) Except as otherwise provided in Article XV below regarding the Recreational Facilities or in any agreement with the Developer, the Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, 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 comply with all obligations and pay all amounts due from it under this Declaration or any agreement regarding the Recreational Facilities, as contemplated in Article XV 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 Homes Association, and, until further action of the Homes Association, shall be \$200.00 per year; provided, however, that if and when the swimming pool portion of the Recreational Facilities contemplated in Article XV below is substantially completed and available for use (as determined by the Developer), such annual amount shall automatically increase to \$375.00.

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 25% over the rate of annual assessment in effect on the preceding January 1st, or (b) by up to 100% over the rate of annual assessment in effect on the preceding January 1st, by a vote of the members at a meeting of the members called (in whole or in part) for that purpose and of which notice

is duly given and if a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote therefor; provided, however, that 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 subsection 2 of Article III above.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 1993) and shall be due and payable on January 1st of each year; provided, however, that (a) the first assessment for each Lot shall be due and payable only upon initial occupancy of the residence on such Lot and shall be prorated as of the date thereof (with an adjustment to reflect a proper portion of the dues associated with the costs of the Recreational Facilities for the remainder of the year, as determined by the Board) and (b) any increase that occurs under the proviso in subsection 1 above shall be effective as of the date such swimming pool is substantially completed and ready for use (as determined by the Developer). If the effective date of any increase in the rate of assessment is other than January 1st, the prorated 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) 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 subsection 2 of Article III 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 of the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of 10% per annum from the due date until paid, which interest shall become part of the delinquent assessment and the lien on the Lot. Should it become necessary to 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 thereunder shall extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure but shall not release such Lot from liability for any assessment applicable to periods thereafter.

3. Payment of a delinquent assessment may be enforced by judicial process against the Owner personally 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 \$50.00, 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 use of the Recreational Facilities) 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 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 with respect to its duties relating to the Common Areas, 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; nor shall the Homes Association 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 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 and except for matters contemplated in Section 2(c) of Article III above.

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 (without reference to streets, rights-of-way or golf course) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land 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 declaration or agreement 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 discretion.

ARTICLE X. OBSERVANCE OF ALL LAWS

The Homes Association shall at all times observe all applicable state, county, city or other laws or regulations and, if at any time any of the provisions of this Declaration shall be found to be in conflict with such laws, such provisions shall become null and void to the extent thereof, but no other parts of this Declaration not in conflict therewith shall be affected thereby.

ARTICLE XI. AMENDMENT AND TERMINATION

1. This Declaration may be 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 both (a) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted and (b) prior to the recording of the Certificate of Substantial Completion, the Developer.

2. Anything set forth in Section 1 of this Article XI to the contrary notwithstanding, 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, all as from time to time amended or supplemented, if either the Veteran's Administration or the Federal Housing Administration or any successor or similar 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.

ARTICLE XII. ASSIGNMENT

1. The Developer shall have the right and authority, by appropriate agreement 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, transfer or set over all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XIII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and into whosoever hands any of the property in the District shall come. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer), including any Owner 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 XIV. 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 any part thereof, but they shall remain in full force and effect.

ARTICLE XV. RECREATIONAL FACILITIES

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, tennis court(s), a clubhouse, parking lot and similar recreational facilities ("Recreational Facilities") 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 and, at the Developer's option, residents of other nearby subdivisions. The size, number and components of the Recreational Facilities shall be determined by the Developer in its absolute discretion.

2. If any Recreational Facilities are 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, all of its rights, title and interest in the Recreational Facilities (or the completed portion thereof) to the Homes Association and, if applicable, any other homes associations whose members are entitled to use the facilities. Thereafter, the Homes Association shall cause insurance to be continuously maintained on the Recreational Facilities 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 its pro rata share (as defined below) of all operating expenses (as defined below) (net of operating income) and of all post construction capital expenditures (as defined below) relating to the Recreational Facilities; provided, however, that for each of the first two calendar years in which the Swimming Pool is in operation, the per residence payment by the Homes Association toward such expenses shall not exceed \$175.00 for the first year and \$200.00 for the second year.

(c) For purposes hereof, the "operating expenses" of the Recreational Facilities shall generally have 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 Recreational Facilities or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, (iii) any financing or debt service expenses related to the costs described in clause (i) above, or (iv) any costs attributable or allocable to the use of the Recreational Facilities or any part thereof by the Developer, any construction company, any real estate agent or any other similar party as an office, meeting place or storage facility.

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

(e) For purposes hereof, the Homes Association's "pro rata share" for any year shall be equal to the product of (i) the aggregate expenses for the period, multiplied by (ii) a fraction the numerator of which is the number of Lots that are then obligated to pay annual homes association dues and the denominator of which is the sum of (A) the numerator plus (B) the number of residential units outside the District that are using the Recreational Facilities; provided, however, that in computing such pro rata share (which shall be done by the

Developer), there shall be taken into account any lots that were subject to payment of homes association dues for only part of the year.

(f) The Homes Association shall pay the amounts due from it under paragraph (b) above out of the dues collected from the Owners of the Lots subject to this Declaration.

PART III

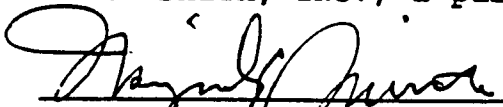
IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

THE DEVELOPER:

HANOVER DEVELOPMENT COMPANY II

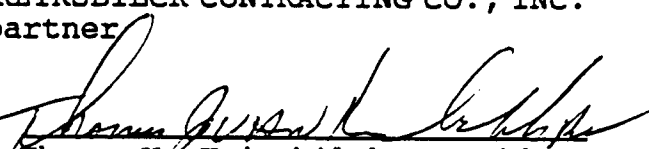
BY: WAYNE "E" SMITH, INC., a partner

By:


Wayne Smith, President

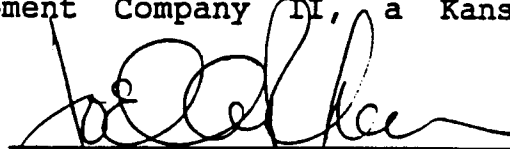
BY: VANKEIRSBILCK CONTRACTING CO., INC.
a partner

By:


Thomas VanKeirsbilck, President

STATE OF KANSAS)
)
COUNTY OF JOHNSON) ss.

This instrument was acknowledged before me on May 10th, 1993 by Wayne Smith, President of Wayne "E" Smith, Inc., a Kansas corporation, and Thomas VanKeirsbilck, President of VanKeirsbilck Contracting Co., Inc., a Kansas corporation, as partners in and on behalf of Hanover Development Company II, a Kansas general partnership.



Notary Public in and for
Said County and State



Print Name: JOELLA R KOCH

My Commission Expires:

[SEAL]