

HOMES ASSOCIATION DECLARATION

THIS DECLARATION made this 31st day of October, 1983,
by BLACKFISH ASSOCIATES, a Limited Partnership, and having its
principal place of business in Johnson County, Kansas;

WITNESSETH: That

WHEREAS, BLACKFISH ASSOCIATES is the owner and developer
of OAK HILL, a subdivision in Johnson County, Kansas, which plat
was recorded in the Office of the Register of Deeds of Johnson
County, Kansas, on August 19, 1983, and duly recorded in Plat
Book No. 54 at Page 6; and

WHEREAS, said subdivision of OAK HILL is being developed
to create and maintain a homogeneous neighborhood possessing
features of more than ordinary value to the community;

NOW, THEREFORE, in order to assist said developer and
the respective owners and their grantees in providing the means
necessary to bring about the development of OAK HILL, BLACKFISH
ASSOCIATES as the owner of all of OAK HILL does now and hereby
agree and does subject the following described real property, to
wit:

Lots 1 through 40, both inclusive, of OAK
HILL, a subdivision in the City of Lenexa,
Johnson County, Kansas;

to the covenants, charges and assessments set forth and contained
in this Declaration, subject, however, to the limitations
hereinafter contained.

DEFINITIONS OF TERMS USED

The term "district" as used in this declaration shall
mean, unless and until extended as hereinafter provided, all of
the lots last hereinabove described and shown on the plat of OAK
HILL. If or when other land, in the manner hereinafter provided,
shall be added to that described above, then the term "district"
shall thereafter mean all land which shall from time to time be
subjected to the terms of this declaration, including any future

modification thereof. The term "improved property" as used herein 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 the process of erection. Any other land covered by this declaration shall be deemed to be vacant and unimproved. The term "public place" as used herein shall be deemed to mean all streets, park areas, service areas and other common areas, and all similar places the use of which is dedicated to or set aside for the use of the general public, or limited to the general use of all of the owners within the district, or which may, with appropriate consent, be used by all of the owners of the district. The term "owners" as used herein shall mean those persons or corporations who may from time to time own the land within the district.

SECTION 1. MEMBERSHIP IN ASSOCIATION

The owners of all of the land hereinabove described, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this declaration in the manner hereinafter provided for, shall be the members of an Association, which is hereby created and established, to be known as OAK HILL HOMES ASSOCIATION. The Association shall be incorporated under the laws of the State of Kansas, as a corporation not for profit. Membership in the Association shall be limited to and required of the owners of the land within the boundaries of the district as it exists from time to time. The Association shall be the sole judge of the qualifications of its members and of their rights to participate in its meetings and proceedings.

SECTION 2. OTHER LANDS - HOW THEY MAY BE ADDED

BLACKFISH ASSOCIATES may from time to time add to the district such land as is now or hereafter owned by it or approved for addition by said Association, provided that the land so added

to the district shall at that time be bound by all of the terms of this declaration and any future modifications thereof. The Association may also unite or combine with any other association similarly organized, operating on a similar basis, and having jurisdiction of land lying with Johnson County, Kansas, or any political subdivision thereof.

SECTION 3. POWER AND DUTIES OF THE ASSOCIATION

It is the purpose of BLACKFISH ASSOCIATES to cause the original builders to construct on the lots hereby subjected to the terms of this document single family dwellings for occupancy by a single family.

BLACKFISH ASSOCIATES may cause certain lands now owned by it or land which it may hereafter acquire, to be designated as public places or common areas. The Association shall have the power and obligation to accept from Blackfish Associates the conveyance of all its right, title and interest in and to any and all of the public places and common areas as may be created by it subject to the rights of property owners in the District or other land which may be subjected to this agreement.

The Association shall have the following powers and duties which it may exercise and perform whenever in its discretion it may deem them necessary or desirable, to wit:

(1) To enforce, either in its own name or in the name of any owner within the district, any or all building restrictions which may have been heretofore or may hereafter be imposed upon any of the land in the district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations or contracts in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties,

wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any owner having the contractual right to do so from enforcing in his own name any such restrictions.

(2) To manage and control as trustee for its members all public and private streets, park areas, service areas, sidewalks and other public places which may now be or hereafter designated as such, and any and all improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to that had and exercised by any township, city, county and state, or any of them, in which said places and improvements are located.

(3) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(4) To care for, spray, trim, protect and replant trees on all streets and in other public places where trees have once been planted, when such services are not available from any public source; and to care for, protect and replant shrubbery, and resow grass and replace sod in any common areas shown on the plats of OAK HILL or on property which may hereafter be dedicated for common use.

(5) To mow, care for, maintain and remove all rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the district neat in appearance and in good order.

(6) To provide for the plowing and removal of snow from sidewalks and streets when such services are not available from any public source.

(7) To provide for the maintenance of any lawns, swimming pools, dedicated parks, tennis courts, playgrounds,

public and private streets, parking areas, walks, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be constructed, erected or created in any public or private street, common areas, parking area or other public place shown on the plat of OAK HILL or created by separate instrument from land described in the preamble hereto or from other lands later added to the district.

(8) To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, gateways, entrances or other features and in other public or semi-public places, when such facilities are not available from any public source.

(9) To provide for the cleaning of streets, gutters, catch basins, sidewalks, and pedestrian ways and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

(10) To erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons, when such signs are not available from any public source.

(11) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

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

(13) To pay taxes and special assessments on such real estate and personal property as may be owned by it; and the Association shall have the responsibility for paying such taxes and special assessments on any swimming pool which may be due and owing at the time the Association receives the title to such swimming pool. Additionally, the Association shall pay such taxes and assessments as may be assessed against land in streets, common areas and other public or semi-public places within the

district.

(14) To levy and collect the assessments which are provided for in this declaration.

SECTION 4. METHOD OF PROVIDING GENERAL FUNDS

(1) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, all privately owned lots on which a dwelling has been erected within the boundaries of the district shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective owners of the said assessable lands subject thereto, which said assessable lands shall be deemed to be all of the above enumerated lots in the aforesaid plat of OAK HILL on which dwellings have been erected, together with such other lots as may from time to time be added to the said district as herein provided and on which dwellings have been erected. The Association may from year to year fix and determine the total amount required in the general fund and may levy and collect an annual assessment not exceeding Two Hundred Forty Dollars (\$240.00) for each lot on which a single family dwelling has been erected. No single family dwelling shall be deemed to be "erected" until it is substantially completed, and assessment for the year in which the dwelling is erected shall be prorated on the basis of such date of substantial completion.

(2) The maximum annual assessment upon each lot as aforesaid may be increased to an amount not exceeding one hundred fifty percent (150%) of the Two Hundred Forty Dollars (\$240.00) original maximum annual assessment which the Association may levy and collect from year to year, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the first year for which such increase is proposed, a majority of the members present at such meeting authorize such an increase by an affirmative vote

therefor; and provided further, that the maximum annual assessment upon each lot as aforesaid may be increased to an amount not exceeding two hundred percent (200%) of the said Two Hundred Forty Dollar (\$240.00) original maximum annual assessment, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, fifty-five percent (55%) of the members present at such meeting authorize such an increase by an affirmative vote therefor.

(3) Unless the increases provided for in paragraph (2) of this Section 4 are specifically limited by the resolutions in which they are contained to be for a specified period they shall be effective until rescinded by the Association, at a meeting specifically called for such purpose, by an affirmative vote of two-thirds (2/3) of the members present or by action taken under the terms of paragraph (4) of this Section 4 and in either such event the rescission shall be effective commencing on the first day of the next succeeding year.

(4) It is recognized that during the period of the time spanned by the term of this agreement, that substantial changes may occur in the economic status of the United States as a whole and of the Johnson County, Kansas, area in particular and that in the event of such economic change, either by inflation or deflation, that there should be a provision by which the maximum annual assessment provided for herein may be decreased or increased to a degree greater than that permitted by the other provisions hereof. It is therefore provided that a resolution to such effect adopted at a meeting of the Association specially called for that purpose, sixty percent (60%) of the members present at such meeting voting in the affirmative therefor, shall be sufficient to require the Association to request the Board of County Commissioners of Johnson County, Kansas, to set a new and reasonable maximum annual assessment for the purposes provided for herein based on the then current economic conditions, the

change to be effective commencing on the first day of the next succeeding year. In the event, however, that the said Board of County Commissioners should refuse to act, the Association shall petition the District Court of Johnson County, Kansas, to name a Board of three (3) disinterested persons to act in the stead of said Board of County Commissioners. The decision of a majority of either of such Boards shall be final and conclusive and shall be effective until amended by further action of the said Board of County Commissioners or a Board selected by the said District Court, both under the provisions of this paragraph.

(5) Whenever the Association may deem it advisable to submit to the members a proposal under either paragraph (2) or paragraph (4) of this Section 4 for increasing or decreasing the permissible maximum amount of the annual assessment it shall notify the members of the Association by mailing to such members at the last known address, with United States postage thereon prepaid, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase in the amount of the annual assessment is to be voted upon at such meeting.

(6) The first assessment shall be for the calendar year beginning January 1, 1985, and it shall be fixed and levied prior to December 1, 1984, and shall be payable on January 1, 1985 and on January 1st of each year thereafter. It will be the duty of the Association to notify each and every owner of an assessable lot whose address is listed with the Association on or before that date giving the amount of the assessment on each tract owned by them and the date when such assessment is due. Failure of the Association to levy the assessment prior to January 1st of each year for the next succeeding fiscal year beginning on January 1st shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to January 1st of any year, then

it shall become due and payable not later than thirty (30) days from the date of levying the assessment. The Association may elect to permit collections in monthly, quarterly or semi-annual payments in lieu of the annual payments provided for herein.

(7) A written or printed notice, deposited in the United States Post Office 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 these purposes, or for any other purpose of this declaration where notices are required.

SECTION 5. LIEN ON REAL ESTATE

(1) The assessment provided for by Section 4 hereof shall become a lien on the real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan made by a recognized lending institution. In the event of the failure of any owner to pay the assessment on or before the first day of February following the making of such assessment, then such assessment shall bear interest at the rate of ten percent (10%) per annum from the first day of January, but if the assessment is paid before February 1st or within thirty (30) days from the date of the assessment, if the assessment is made subsequent to December 1st for the calendar year beginning the next succeeding January 1st, then no interest shall be charged. If the Association exercises the election permitted by Section 4, paragraph (6) hereof to collect each year's assessment in either monthly, quarterly or semi-annual installments, then no interest shall be charged except as to any owner who shall fail to pay any such installments within thirty (30) days of its due date, which default may, at the election of the Association, be treated as sufficient cause to accelerate maturity of the annual assessment remaining unpaid and interest

shall be owed on the entire unpaid amount from the date of such default.

(2) On or after February 1st, 1985, and February 1st of each year thereafter, or within thirty (30) days from the date of levying the assessment for the calendar year during which the assessment is levied, or within thirty (30) days following the election of the Association to accelerate maturity under paragraph (2) of this Section 5 in the case of installment collection, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file certificates of nonpayment of assessments in the Office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property described therein a fee of Ten Dollars (\$10.00) which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is made by a recognized lending institution. Such fees shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(3) Such liens shall continue for a period of five (5) years 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 same.

SECTION 6. EXPENDITURES LIMITED TO ASSESSMENT
FOR CURRENT YEAR

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 contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the assessment for each year shall be applied as far as practicable toward payment of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessments of any future or subsequent year except for utilities.

SECTION 7. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS

The Association shall notify all owners of land in the district as it may exist from time to time, insofar as the addresses of such owners are listed with the said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address the Association shall notify all the owners of the land in the district insofar as their addresses are listed with the Association of the new address.

SECTION 8. TEMPORARY TRUSTEE

Prior to the actual organization or incorporation of the Association and relinquishment of rights as contemplated by the terms of this declaration, Blackfish Associates shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were

hereby given directly to Blackfish Associates including without limitation the right to increase the annual assessment to an amount not to exceed the sum of Three Hundred Sixty Dollars (\$360.00) per year. The Association contemplated by the terms of this declaration shall not assume any of the rights herein provided for without the consent of Blackfish Associates and its relinquishment of its rights as Temporary Trustee. Blackfish Associates may, by appropriate agreement made expressly for that purpose, assign or convey to any person or corporation all of the rights, reservations, and privileges reserved by and to it in this Section 8, and upon such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign such rights at any time or times, in the same way and manner as though directly reserved by them, or it, in this instrument.

SECTION 9. TO OBSERVE ALL LAWS

Said Association shall at all times observe all state, county, city and other laws, and if at any time any of the provisions of this declaration shall be found to be in conflict therewith then such parts of this declaration as are in conflict with such laws shall become null and void, but no other part of this declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this declaration, subject, however, to the limitations of its rights to contract as are herein provided for.

SECTION 10. AMENDMENT

By written consent of the owners of two-thirds (2/3) of the lots within the district as then constituted, evidenced by the declaration duly executed and acknowledged by such owners and

recorded in the Office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended, provided, however, that no right to exceed the maximum annual assessment herein provided for may be given, and provided further that no amendment shall limit any right of Blackfish Associates herein reserved without its respective written consent.

SECTION 11. HOW TERMINATED

This declaration may be terminated and all of the land now or hereafter affected may be released from all of the terms and provisions thereof by all the owners of all the lots then subject thereto executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the Office of the Register of Deeds of Johnson County, Kansas.

SECTION 12. COVENANTS RUNNING WITH THE LAND

All of the provisions of this declaration shall be deemed to be covenants running with the land, and shall be binding upon BLACKFISH ASSOCIATES and upon its successors and assigns.

IN WITNESS WHEREOF, BLACKFISH ASSOCIATES, by authority of its General Partner, ACUFF DEVELOPMENT, INC., has caused these presents to be executed by such General Partner by its president and secretary and upon the authority of its Board of Directors, this 31st day of October, 1983.

BLACKFISH ASSOCIATES
A Limited Partnership

By: ACUFF DEVELOPMENT, INC.
General Partner

By: *Phil R. Acuff*
Phil R. Acuff, President

ATTEST:

John W. Acuff
John W. Acuff, Secretary

ACKNOWLEDGEMENT

STATE OF KANSAS }
COUNTY OF JOHNSON } ss:

BE IT REMEMBERED that on this 31st day of October, 1983, before me, the undersigned, a notary public in and for the county and state aforesaid, came PHIL R. ACUFF, President of ACUFF DEVELOPMENT, INC., a Kansas corporation, and General Partner of BLACKFISH ASSOCIATES, a Limited Partnership, under the Certificate of the Secretary of State of the State of Kansas, and JOHN W. ACUFF, Secretary of said corporation general partner, said persons known to me to be the same persons who executed the within instrument as such officers and on behalf of the Limited Partnership, such persons having duly acknowledged execution of the same as and to be the act and deed of said Limited Partnership, BLACKFISH ASSOCIATES.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my notarial seal the day and year last above written.

Carmen J. Russell
Notary Public

My appointment expires:

CARMEN J. RUSSELL
NOTARY PUBLIC
JOHNSON COUNTY, KANSAS
My Appointment Expires <u>9-12-86</u>