

DECLARATION

1978 JUL 20 AM 11 04 .8

PERSIMMON HILL FIRST HOMES ASSOCIATION

12.00

PHILIP H. SCOTT
REGISTER OF DEEDS

BY _____ DEP.

This Declaration is made this 19th day of JULY, 1978 by BLEAKLEY DEVELOPMENT CO., INC., a Kansas corporation, hereafter referred to as the "Developer".

WITNESSETH:

WHEREAS, the Developer is the owner of a tract of land located in Olathe, Johnson County, Kansas which tract of land the Developer intends to develop and improve in accordance with that certain community unit project plan approved by the OLATHE CITY COMMISSION, by Ordinance No. 682 passed the 17th day of JANUARY, 1978.

WHEREAS, the Developer has caused that portion of the property encompassed by the aforementioned community unit project plan and referred to on said plan as "Stage I" to be laid out and platted as PERSIMMON HILL, a subdivision of land in Olathe, Johnson County, Kansas, which plat has been duly filed for record as Instrument Number 1157809 in the office of the Register of Deeds for Johnson County, Kansas, in Plat Book 44 at Page 7;

WHEREAS, the Developer intends to develop a portion of the property platted as PERSIMMON HILL ("Stage I" of the aforementioned community unit project plan) with single-family residences;

WHEREAS, the Developer intends to provide certain services and conveniences for the owners and occupiers of said single-family residences and to provide the means for the creation and maintenance of a residential neighborhood possessing features of more than ordinary value to said residents;

NOW, THEREFORE, the Developer does by these presents subject the following described single-family or duplex residential lots to the covenants, charges and assessments hereinafter set forth, to-wit:

- Lots 4 through and including 14 of Block 1,
- Lots 1 through and including 15 of Block 2,
- Lots 1 through and including 21 of Block 3, and
- Lots 1 through and including 8 of Block 4.

as shown on the recorded plat of PERSIMMON HILL, a subdivision of land in Johnson County, Olathe, Kansas, according to the recorded plat thereof.

ARTICLE I

DEFINITIONS

1.1 Association. "Association" shall mean the Persimmon Hill First Homes Association, a Kansas not-for-profit corporation, its successors and assigns.

1.2 Developer. "Developer" shall mean Bleakley Development Co., Inc. a Kansas corporation, its successors and assigns.

1.3 Plan. "Plan" shall mean the community unit project plan approved by the CLATHE CITY COMMISSION which ordinance was passed the 17th day of JANUARY, 1978.

1.4 Lot. "Lot" shall mean those single-family or duplex residential lots, including any part or parts thereof, which are from time to time made subject to the terms of this Declaration. In the event that the single-family or duplex residential lots are hereafter platted and made subject to the terms of this Declaration in the manner hereinafter provided, then the term "lot" shall include such single-family or duplex residential lots.

1.5 Improved Lot. "Improved Lot" shall mean any lot, or part or parts thereof, on which a residence not in violation of the restrictions then of record thereon is erected or in the process of erection. All other lots covered by this Declaration shall be deemed to be "vacant" and "unimproved".

1.6 Owners. "Owners" shall mean those persons, firms or corporations other than the Developer, who or which may from time to time hold record title to a lot or lots subject to the terms of this Declaration, provided, however, that where, pursuant to a financing arrangement, record title to a lot is in a mortgagee, the term "owners" shall mean the mortgagor, and where, pursuant to a financing arrangement, record title to property is in a trustee, the term "owners" shall mean the settlor or grantor who executed the deed of trust.

1.7 Member. "Member" shall mean the Developer and other persons, firms or corporations who are, from time to time, members of the Association as hereinafter provided.

1.8 Public Places. "Public Places" shall mean all parking areas located in public street rights-of-way, all parks situated at street intersections and elsewhere, all cul-de-sac and other roadway islands; and all similar places the use of which is dedicated to or set aside for the use of the general public.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1 Members. The Developer and the owners of lots subject to the terms and conditions of this Declaration, and no others, shall be members of the Association.

The Association shall be the sole judge of the qualifications of its members and of their right to participate in its meetings and proceedings. The qualifications for membership in the Association shall be set out in the By-Laws of the Association.

2.2 Voting Rights of Members. For purposes of voting on any issue, members shall be entitled to cast votes as follows:

- (i) The Developer shall be entitled to cast three (3) votes for each single family lot which it owns, and
- (ii) Owners shall be entitled to cast one (1) vote for each single family lot which they own.
- (iii) Duplex lot Developer shall be entitled to cast three (3) votes per living unit for each lot that it owns, and duplex lot Owners shall be entitled to cast one (1) vote for each living unit which they own.

At the filing of this Declaration, the Developer holds title to all lots subject to this Declaration and shall be entitled to cast three (3) votes for each such lot. In the event the Developer subjects all or a portion of those single-family or duplex residence lots which are parts of the Plan to the covenants and conditions of this Declaration pursuant to the provisions of Section 3.2 hereof, then the Developer shall be entitled to cast three (3) votes for each such lot. Whenever the Developer shall convey a lot subject to this Declaration to an owner, the total number of votes which the Developer shall be entitled to cast shall be reduced by three (3); and the owner to whom such lot is conveyed shall, upon delivery and acceptance of a deed to such lot, become a member of the Association and be entitled to cast one (1) vote with respect to such lot.

ARTICLE III

ADDITIONAL LANDS, HOW THEY MAY BE ADDED

3.1 Addition of Land by Vote of Members. Additional lands may be added to the Association from time to time and the Association may also unite or combine with other Homes Associations provided that the addition of such lands or the uniting or combining with other Homes Associations, as the case may be, is first approved by a two-thirds (2/3rds) majority vote of the members voting at a meeting of the members of the Association duly called as hereinafter provided.

The vote of the members as required by this section shall be taken at either the annual meeting or at a special meeting of the members. If a special meeting is to be held, written or printed notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than forty (40) days before the date of the meeting either personally or by mail.

3.2 Addition of Lands by the Developer. Anything contained in Section 3.1 of this Declaration to the contrary notwithstanding the developer shall have and does hereby reserve the sole authority and right to add additional lands to the Association. The Developer may add such additional lands to the Association by filing an appropriate declaration subjecting such lands to the terms and conditions of this Declaration, including any future modification thereof.

ARTICLE IV

MANAGEMENT OF THE ASSOCIATION

The Association shall be managed by a Board of Directors of not less than three (3) in number and elected in accordance with the Articles of Incorporation and By-Laws of the Association.

ARTICLE V

POWERS, RIGHTS, AND DUTIES OF THE ASSOCIATION

5.1 Discretionary Powers and Duties. The Association shall have the following powers and rights which can be exercised and assumed at its discretion.

5.101 Enforcement of Building Restrictions. The Association can enforce any or all building restrictions which have been imposed or which may hereafter be imposed upon any of the land subject to this Declaration. Said building restrictions may be enforced either in the form in which they were originally placed on such property or as modified subsequent thereto. However, nothing contained herein shall be deemed to prevent the owner of any such property from enforcing any building restrictions in his own name; the right of enforcement shall not serve to prevent such changes, releases, or modifications of the restrictions or reservations placed upon such property by any party having the right to make such changes, releases or modifications in the deeds, contracts, or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists.

The expense and costs of any enforcement proceedings initiated by the Association shall be paid out of the general fund of the Association as hereafter provided for.

5.102 Exercise Easements. The Association can exercise the rights and control over such easements as it may acquire from time to time.

5.103 Garbage and Trash. The Association can provide for the collection and disposal of garbage, rubbish and trash to the extent that these services are not otherwise provided by the City of Olathe.

5.104 Snow Removal. The Association can provide for the plowing or removal of snow from the streets, sidewalks, and parking areas.

5.105 Lighting. The Association can provide such lights as the Association may deem advisable on streets, parkings, entrances, and in other public or semi-public places.

5.106 Defend and Bring Lawsuits. The Association can employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable and defend suits brought against the Association.

5.107 Make Contracts and Employ Agents. The Association

can employ from time to time such agents, servants and laborers as the Association may deem necessary in order to exercise the powers, rights and privileges granted to it and make contracts.

5.2 Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

5.201 Maintenance of Public Places. The Association shall mow, resow grass, care for and maintain public places including but not limited to parking areas located in the public street rights-of-way, parks situated at street intersections and all cul-de-sac and other roadway islands. The Association shall remove weeds and grass from public places; pick up and remove therefrom loose material, rubbish, filth and accumulations of debris, and do any other thing necessary or desirable in the judgment of the Association to keep such public places in neat appearance and in good order.

5.202 Maintenance of Association Property. The Association shall mow and resow the lawns and care for, spray, trim, protect, plant and replant trees and shrubs growing on all property which may, from time to time, belong to the Association; pick up and remove from such property all loose material, rubbish, filth and accumulations of debris; and do any other thing necessary or desirable in the judgment of the Association to keep all such property in neat appearance and in good order.

5.203 Maintenance of Vacant Lots. The Association shall mow, care for, and carry away from all vacant and unimproved lots all weeds and unsightly grasses or other growth, rubbish, filth and accumulations of debris, and other things tending to create unsightliness or untidiness.

ARTICLE VI

ASSESSMENTS

6.1 Imposition of Regular Assessments. For the purpose of providing a general fund to enable the Association to perform and exercise the rights, powers and duties set out in Article V, all lots subject to this Declaration shall be and hereby are made subject to an annual assessment. The amount of the annual assessment shall be fixed by the Association from year to year in the manner prescribed in the By-Laws of the Association. The assessment against each lot shall be an amount of money sufficient to enable the Association to carry out the powers and duties provided for in Article V above; provided, however, that the amount assessed against each improved lot in any year shall not exceed One Hundred Dollars (\$100.00) per single family residential lot, and in the case of lots improved with duplexes, \$80.00 per year per living unit in each duplex, and the amount assessed against each unimproved or vacant lot in any year shall not exceed Twenty-Five Dollars (\$25.00). The term "each assessable lot" shall include each improved and each unimproved lot subject from time to time to the terms of this Declaration.

The amount of the annual assessments for any year may be increased above the sum of \$100.00 and \$80.00 for each improved lot or living unit and \$25.00 for each unimproved lot provided that such increases are approved by a majority vote of the members of the Association at a meeting duly

called in the manner provided. The vote of the members to increase the annual assessments may be taken at either the annual meeting or at a special meeting of the members. If a special meeting is to be held, written or printed notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than forty (40) days before the date of the meeting either personally or by mail.

6.2 Notice. Notice of the amount of assessments against the lot held by a particular owner shall be deemed sufficient if a written or printed notice of the amount of said assessment is deposited in the United States Post Office, with postage prepaid, and addressed to the respective lot owners at their last known address.

6.3 When Assessments Levied and Due. The annual assessments shall be fixed and levied for each fiscal year. The first assessment shall be for the fiscal year beginning 1980. Assessments for each fiscal year shall be fixed and levied at least forty-five (45) days prior to January 1 of the fiscal year to which they apply. All assessments shall be due and payable on the first (1st) day of January for the fiscal year to which they are applicable and shall be delinquent thirty (30) days thereafter.

On or before December 1 of each year, the Association shall notify the owners of all lots subject to assessment at such owner's last known address. This notice shall state the amount of the assessment for the coming fiscal year and that the assessment is due on January 1 of the approaching fiscal year.

Provided, however, that the failure of the Association to make an assessment prior to December 1 of any year for the approaching fiscal year shall not invalidate any such assessment subsequently made for that fiscal year; nor shall the failure to make an assessment for any one year affect the right of the Association to do so for any subsequent year. In the event that an assessment is made later than thirty-one (31) days prior to the beginning of the fiscal year to which it applies, then the assessment shall be due and payable not later than thirty (30) days from the date that notice of the assessment is mailed to the owner, and delinquent thirty (30) days after such assessment is due and payable.

6.4 Lien on Real Estate. All assessments shall become delinquent and constitute a lien on the lot of each owner thirty (30) days after the date on which the assessment is due and payable as set forth in Section 6.3. In the event that any property owner fails to pay the assessment on or before the date it becomes delinquent, then such assessment shall bear interest at the rate of ten percent (10%) per year from the date of delinquency until paid.

Assessments not paid within thirty (30) days from the date the assessment is due and payable shall be delinquent and payment of both principal and interest may be enforced as a lien on the owner's lot 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 suit to enforce such liens as soon as they become delinquent.

shall be deemed sufficient if a written or printed notice of the amount of said assessments is deposited in the United States Post Office, with postage prepaid, addressed to the respective members at their last-known addresses.

6.103 When Assessments Levied and Due. The annual assessment shall be fixed and levied for each fiscal year. The first assessment shall be for the fiscal year beginning 1980. Assessments for each fiscal year shall be fixed and levied at least forty-five (45) days prior to January 1 of the fiscal year to which they apply. All assessments shall be due and payable on the first day of January for the fiscal year to which they are applicable and shall be delinquent thirty (30) days thereafter.

On or before December 1 of each year, the Association shall send an assessment notice to each member. This notice shall state the number of living units with respect to which an assessment has been levied, the amount of the assessment per living unit, the total amount of the assessment owed by such member, and the fact that the assessment is due on January 1 of the approaching calendar year. It is provided, however, that the failure of the Association to make an assessment prior to December 1 of any year for the approaching fiscal year shall not invalidate any such assessment subsequently made for that fiscal year; not shall the failure to make an assessment for any one year affect the right of the Association to do so for any subsequent year. In the event that an assessment is made later than thirty-one (31) days prior to the beginning of the fiscal year to which it applies, then the assessment shall be due and payable not later than thirty (30) days from the date that notice of the assessment is mailed to the member; and said assessment shall be delinquent thirty (30) days after such assessment is due and payable.

6.104 Lien on Real Estate. All assessments shall become delinquent and constitute a lien on the lot, tract or parcel of land on which the living unit or living units or the non-paying member are situated thirty (30) days after the date upon which the assessment is due and payable as set forth in Section 6.103. In the event that any member fails to pay the assessment on or before the date it becomes delinquent, then such assessment shall bear interest at the rate of ten percent (10%) per year from the date of delinquency until paid. Payment of both principal and interest on delinquent assessments may be enforced as a lien on the owner's lot 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 suit to enforce such liens as soon as they become delinquent.

6.105 Termination of Liens. Assessment liens shall continue for the period of one (1) year from the date upon which they become delinquent, and no longer; provided, however, that if, within one (1) year from the date of delinquency, suit shall have been instituted for the collection of the assessment, such liens shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing the lien.

6.106 Limitation on the Amount of Expenditures. The Association shall at no time spend or contract to spend within any one year an amount which exceeds the total amount of assessments for that particular year and any surplus which the Association may still hold from a previous year.

6.2 Special Assessments to Pay the Cost of Construction Facilities or Improvements to Association Property. The Association shall have the power to levy special assessments against the lots, tracts and parcels of land subject to this declaration for the purpose of constructing improvements or facilities on Association property; provided that the construction of such facilities or improvements must be first approved by the members of the Association in the manner set forth in Section 5.3 hereof.

Special assessments levied by the Association under this section shall become due and payable thirty (30) days after written notice to each member at such member's last known address stating the amount of the assessment against each living unit, the total amount of living units for which the member is being assessed, the total amount of the assessment due from such member, and that the assessment is due and payable thirty (30) days after the date of the notice.

Special assessments levied under this section shall become delinquent and shall be a lien on the lot, tract or parcel of land of each member against whom the assessment has been levied thirty (30) days after the date upon which the assessment is due and payable. In the event an owner fails to pay a special assessment before the date upon which the assessment becomes delinquent, then the assessment shall bear interest at the rate of ten percent (10%) per annum from such date. After a special assessment is delinquent, payment of both principal and interest may be enforced as a lien on the lot, tract or parcel of land of such member in any court in Johnson County, Kansas having jurisdiction for the enforcement of such liens.

ARTICLE VII

SPECIAL MEETINGS

Special meetings of the members of the Association may be called by the president or board of directors of the Association or by that proportion of the members of the Association entitled to cast one-twentieth (1/20) of the votes which can be voted at such meeting. If a special meeting is to be held, written or printed notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered to each member of the Association, either personally or by mail, not less than five (5) nor more than forty (40) days before the date of the meeting.

ARTICLE VIII

ADDITIONAL POWERS GIVEN TO THE ASSOCIATION

The Association may be given such additional powers as may be desired by the members, and this instrument may be otherwise amended by the written consent of the owners constituting two-thirds (2/3rds) of the total number of eligible votes as defined in Article II, evidenced by an agreement duly executed, acknowledged and recorded in the office of the Register of Deeds of Johnson County, Kansas.

ARTICLE IX

TO OBSERVE ALL LAWS

The Association shall at all times observe all state, county and other laws. If at any time any of the provisions of this agreement shall be found in conflict with the laws of the state, county, or any other duly constituted authority, then such provisions shall become null and void. However, other provisions of his agreement, not in conflict with the laws of any duly constituted authority, shall not be affected.

ARTICLE X

COVENANTS RUNNING WITH THE LAND

This declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions of this declaration by an affirmative vote of owners constituting two-thirds (2/3rds) of the total number of eligible votes as defined in Article II. This declaration shall be terminated if the owners constituting two-thirds (2/3rds) of the total number of eligible votes as defined in Article II execute and acknowledge an appropriate agreement or agreements for that purpose and file the same in the office of the Register of Deeds of Johnson County, Kansas.

IN WITNESS WHEREOF, Bleakley Development Co., Inc. by the authority of its Board of Directors, and Persimmon Hill Greenway Association, by the authority of its Board of Directors, have caused these presents to be executed by their Presidents and their corporate seals to be hereto affixed.

(SEAL)
ATTEST
Name: Todd E. Bleakley
Title: Asst. Secretary
Todd E. Bleakley

BLEAKLEY DEVELOPMENT CO., INC.

By: Charles E. Bleakley President
Name: Charles E. Bleakley
Title: President

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this 19 day of July, 1978, before me, appeared Charles E. Bleakley, to me personally known, Bleakley Development Co., Inc. a being by me duly sworn, did say that he is the President of Bleakley Development Co., Inc., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Charles E. Bleakley acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Olathe, Kansas, the day and year last above written.

Sam McCaffree
Notary Public Within and For
Said County and State

My Commission Expires:
Feb. 8, 1982

SAM McCAFFREE

