

**OAK VALLEY HOMES ASSOCIATION
LENEXA, KANSAS
HOMES ASSOCIATION DECLARATION**

Originally filed in the State of Kansas,
County of Johnson, June 29, 1987

Rubie M. Scott
Register of Deeds

This declaration made this 25th day of June, 1987 by ACUFF RHODES GROUP, a Kansas general partnership having its principal place of business in Johnson County, Kansas.

**SECTION 1.
DEFINITION 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 herein above described and shown on the plat of **Oak Valley**. 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, include in 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 the owners within the district, or which, may, with the appropriate consent, be used by all 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 2.
MEMBERSHIP IN ASSOCIATION**

The owners of all of the land herein above 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 Valley 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 qualification of its members and of their rights to participate in its meetings and proceedings.

**SECTION 3.
OTHER LANDS – HOW THEY MAY BE ADDED**

The ACUFF RHODES GROUP, its successors and or assigns, 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 4.
POWER AND DUTIES OF THE ASSOCIATION**

It is the purpose of the ACUFF RHODES GROUP, its successors and or assigns, 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. ACUFF RHODES GROUP, its successors and or assigns, 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 Acuff Rhodes Group 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 hereto fore 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 or 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 re-sow grass and replace sod in any common area shown on the plats of Oak Valley, or on property which may hereafter be dedicated for common use; to care for protect, replant, repair and replace any landscaping, statuary and grass sod in islands and parklets located within the public right of way.
- 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 judgement 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 or 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 Valley 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, park 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 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 5 METHOD OF PROVIDING GENERAL FUNDS

1.- For the purpose of providing the 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 of 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 to 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 plats of Oak Valley 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 One Hundred Twenty Dollars (\$120.00) for each lot on which a single dwelling has been "erected" 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 One Hundred Twenty Dollars (\$120.00) 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 One Hundred Twenty Dollar (\$120.00) 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 meeting authorizes such an increase by an affirmative vote therefor.

3.- Unless the increases provided for in paragraph (2) of this Section 5 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 that 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 3. and in either such event the rescission shall be effective commencing on the first day of the 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 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 for 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 Commissioners of Johnson County, Kansas, to set a new and reasonable maximum annual assessment for the purpose 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. The decision of a majority of either of such Boards shall be effective until amended by further actions 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 or paragraph (4) of this Section 5 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 the 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, 1988, and it shall be fixed and levied prior December 1, and shall be payable on January 1, of each year. 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 the date giving the amount of the assessment on each tract owned by them and the date when such assessment is due. 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 sufficient and proper notice for these purposes, or for any other purpose of this declaration where notices are required.

SECTION 6
LIEN ON REAL ESTATE

1.- The assessment provided for by Section 5 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, then such assessment shall bear interest at the rate of ten percent (10%) per annum from the first day of February. In the event of the failure of any owner to pay the assessment, expenses incurred in pursuing legal remedies may also be recovered.

SECTION 7
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 contracts shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the Association shall have no power to make a contract affecting the assessments of any future or subsequent year except for utilities.

SECTION 8
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.

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 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.