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STATE OF KANSAS  
COUNTY OF JOHNSON 1999  
FILED FOR RECORD

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SARA FULLMANN  
REGISTER OF DEEDS

ASHTON ESTATES HOMES ASSOCIATION DECLARATION

SARA FULLMANN  
REGISTER OF DEEDS

ASHTON;

ASHTON, 2ND PLAT, LOTS 152 and 174;  
ASHTON, 3RD PLAT, LOTS 178 THROUGH 189, 194, 196  
202 TO 206, 208, 209, 211, 213, 215, 216, 218 TO 220,  
222, 223, 227, 229, 230, 232, 233, 234, 236 TO 247;  
ESTATES OF ASHTON, 1ST PLAT, LOTS 1 THROUGH 12  
ALL IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS

This Declaration is made this 24 day of DECEMBER,  
1992, by Tiger Construction Co., Inc., a Missouri corporation, the  
Developer, and Tim J. Hoelting and Virginia L. Hoelting; Michael A.  
Everhart and Janette W. Everhart, and C & H Properties, Inc., being  
some of the owners within Ashton, Johnson County, Kansas.

ARTICLE 1

STATEMENT OF INTENT

1.1 Tiger Construction Co., Inc. is developing a  
residential community which will be known as Ashton.

1.2 The plat of Ashton, Lots 1 through 141, has previously  
been recorded in Book 55, at page 34, Register of Deeds, Johnson  
County, Kansas; the plat of Ashton, 2nd Plat, Lots 142 through 176,  
has previously been recorded in Book 67, page 10, Register of Deeds,  
Johnson County, Kansas; the plat of Ashton, 3rd Plat, Lots 177 through  
247 has previously been recorded in Book 69, page 17, Register of  
Deeds, Johnson County, Kansas; and the plat of Estates of Ashton, 1st  
Plat, Lots 1 through 12, has previously been recorded in Book 79, page  
19, Register of Deeds, Johnson County, Kansas.

1.3 Restrictions of Ashton, Lots 1-5, 37, 38, 50-52, 60-  
120 have been recorded in Volume 2045, pages 831-834; restrictions of  
Ashton, Lots 6-21, 23-27, 53-59 have been recorded in Volume 2368,  
pages 820-823; restrictions of Ashton, Lots 22, 28-36, 39-49, 121-141  
have been recorded in Volume 2461, pages 173-176; restrictions of  
Ashton, 2nd Plat, Lots 142-176 have been recorded in Volume 2683,  
pages 528-531; restrictions of Ashton, 3rd Plat, Lots 177-247 have  
been recorded in Volume 2762, pages 741-744; restrictions of Estates  
of Ashton, Lots 1-12 have been recorded in Volume 3462, pages 698-702,  
all in the office of the Register of Deeds, Johnson County, Kansas.

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VOL 3938 PAGE 292

28.00  
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1.4 It is the intent with this declaration to impose upon the above described plats a homes association declaration which will be the common homes association for all of Ashton.

1.5 For the preservation of the value of the community, there shall be created a homes association to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing assessments and charges hereinafter created. The homes association shall have the obligation of maintaining the common areas and all storm water and detention facilities or system within the platted area.

1.6 The Developer will incorporate under the laws of the State of Kansas a not-for-profit corporation designated Ashton Homes Association, for the purpose of exercising the functions herein described.

1.7 Therefore, the Developer desires that the real estate described in Article 3, as well as any additional real estate that may be added as provided herein from time to time, shall be held, sold, conveyed and occupied subject to the covenants, charges and liens set out in this declaration.

## ARTICLE 2

### DEFINITIONS

2.1 "Association" shall mean and refer to Ashton Estates Homes Association.

2.2 "Homes Association Property" shall mean:

(i) all common properties deeded to the Ashton Estates Homes Association by the Developer,

(ii) all easements for gateways, entrances, monuments, landscape barriers and other similar ornamental areas and related utilities and landscaping constructed or installed by the Developer,

(iii) all other areas and places, together with all improvements thereon or thereto, the use, benefit or enjoyment whereof is intended for all of the owners within the District,

also referred to as Common Areas.

2.3 "District" shall mean all of the above-described lots in Ashton and Estates of Ashton, all Homes Association property, Common Areas, and all additional property which hereafter may be subject hereto in the manner provided herein.

2.4 "Lot" shall mean and refer to any separately numbered tract upon the recorded subdivision plat or after a dwelling is built thereon, any portion of such lot or tract upon which there is a dwelling unit.

2.5 "Dwelling" shall mean and refer to any portion of the building situated upon the properties designed and intended for use and occupancy as a residence.

2.6 "Owner" shall mean and refer to the record owner whether one or more persons or entities of the fee simple title to any lot situated upon the properties but shall not mean or refer to the mortgagee unless such mortgagee has acquired title pursuant to foreclosure or any proceeding instead of foreclosure.

2.7 "Member" shall mean and refer to all those owners who are members of the Association as provided in ARTICLE 4 hereof.

2.8 "Developer" shall mean Tiger Construction Co., Inc., a corporation, or its successors by assignment as provided herein.

2.9 "Street" shall mean the public streets shown on the plat.

### ARTICLE 3

#### PROPERTY SUBJECT TO THIS DECLARATION

3.1 The real property which is subject to and shall be held, sold, conveyed and occupied subject to this Declaration is as follows:

~~Ashton~~; Ashton, 2nd Plat, Lots 152 and 174; Ashton, 3rd Plat, Lots 178 through 189, 194, 196, 202 to 206, 208, 209, 211, 213, 215, 216, 218 to 220, 222, 223, 227, 229, 230, 232, 233, 234, 236 to 247; and Estates of Ashton, 1st Plat, Lots 1 through 12, all in the City of Olathe, Johnson County, Kansas,

and any later additions as provided herein.

## ARTICLE 4

### ASSOCIATION MEMBERSHIP

4.1 Membership and Voting Rights in the Association. Every person or entity who is an owner of a fee simple interest in one or more units shall be a member of the Association. Ownership of such unit shall be the sole qualification of Class A membership.

4.2 Types of Membership in the Association. The Association shall have two classes of voting memberships:

4.2.1 Class A. Class A members shall be all owners of units except the Developer. Class A members shall be entitled to one vote for each unit in which they hold the interest required for membership by paragraph 4.1. When more than one person holds such interest in any unit, all such persons shall be members and the vote for such unit shall be exercised as they, among themselves, determine; but in no event shall more than one vote be cast with respect to any one unit.

4.2.2 Class B. Every Class B membership shall be issued to the Developer based upon the number of lots upon the property described in this Declaration held in Developer's name. Three Class B memberships shall be issued to developer for each lot that Developer proposes to develop with a unit. Each Class B membership shall be entitled to one vote. As each unit or lot is sold by Developer, the buyer shall receive a Class A membership, and three Class B memberships shall be cancelled. All Class B memberships outstanding shall be surrendered by the Developer to the Board of Directors of the Association for cancellation within four (4) months after 75% of the units in the project have been conveyed to unit purchasers. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration in the event of FHA or VA loans on units: Annexation of additional properties, dedication of common area and amendment to this homes association declaration.

ARTICLE 5

POWERS AND DUTIES OF THE HOMES ASSOCIATION

5.1 In addition to the powers granted by other portions of this Declaration, the Association shall have the power and authority to do and perform all acts as may be deemed necessary or appropriate by its Board of Directors to carry out the purpose of this Declaration, including without limitation:

5.1.1 To enforce in its own name any and all building or use restrictions which have been imposed upon the lots. This shall not be construed to prevent any owner from enforcing any building or use restriction in his/her own name.

5.1.2 To maintain and exercise control over all Homes Association Property and Common Areas.

5.1.3 Maintain public liability, workmen's compensation, fidelity, fire and extended coverage, director and officer liability in other insurance with respect to the activities of the Association and the property of the Association.

5.1.4 To levy and collect assessments.

5.1.5 To enter into agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer and the Association.

5.1.6 To engage the services of a management company or other person or entity to carry out and perform the functions and powers of the Association.

5.1.7 To exercise any architectural and ascetic control and authority given and assigned to it by the Declaration or any other instrument.

5.1.8 To make reasonable rules and regulations and to provide means to enforce such rules.

5.1.9 To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws.

## ARTICLE 6

### ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments. The owner of each lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, hereby agrees to pay to the Association such annual assessments or charges for special assessments as may be fixed, established and constructed from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due.

6.2 Purpose of Assessments and Special Assessments.

6.2.1 The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents within the subdivision and to carry out the powers and duties of the Association. Special assessments resulting from maintenance and repair of certain lots or improvements may also be made as provided in this Declaration.

6.2.2 The Association shall have the option to cut and otherwise maintain lawns and shrubbery if neglected by the owner and in the event such maintenance is elected by the Homes Association, the cost may be included in the assessments levied by the Association against such lot or tract.

6.3 Assessment - When and on What Lots. The annual assessment shall be set by a vote of the members as hereinafter provided. All lots shall receive an assessment whether or not improved except lots held by the Developer or an approved builder.

6.4 Amount of Annual Assessments and Collection in Installments. Subject to the limitations of paragraph 5.3 above, the Association may establish annual assessments as needed for current maintenance costs and needs of the Association. The annual assessments shall be established at any meeting of the Association

duly called for this purpose with written notice to all members at least thirty days in advance, said notice setting forth the purpose of the meeting. Further, the assessments shall be established only by two-thirds of the votes of those members who are voting in person or by proxy at the meeting. Special assessments for maintenance and repair of a lot or dwelling unit may be determined by the board of directors. Annual assessments may be collected in monthly installments and special assessments may be collected as one assessment or in installments as determined by the board of directors.

6.5 Quorum. The quorum required for any action relating to assessments as covered herein shall be as follows:

At the first meeting called for that purpose, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, another meeting may be called subject to the notice requirements set forth in this article and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty days following the preceding meeting and so on until a quorum is achieved.

6.6 Date of Commencement of Assessments. The annual assessments provided for herein shall commence on the date fixed by the board of directors of the Association. The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement.

6.7 Board of Directors and Officers, Duties. The Association shall be governed by a board of directors elected by the members. The directors shall elect a president, vice president, secretary and treasurer. The board of directors of the Association shall fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty days in advance of such date or period and shall at that time prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall upon demand at any time furnish to any owner liable for such assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

6.8 Effect of Non-Payment of Assessment: Lien; Remedies of Association. If the assessments are not paid on the date when due as set by the board of directors, then such assessment shall become delinquent and shall, together with interest and costs of collection, if allowed by law, become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. A personal obligation of the then owner to pay such assessment however shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum rate allowed by the Laws of Kansas and as set out in the Bylaws of the Association. The Association may file a certificate of nonpayment of assessment in the office of the Register of Deeds of Johnson County. For each certificate filed, the Association shall be entitled to collect from the owner a fee of \$50.00 which shall be added to the assessment and lien on the lot. The filing of the certificate shall constitute a lien and thereafter the same may be foreclosed as mortgage liens are foreclosed under the laws of the State of Kansas. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and any reasonable attorneys' fees if allowed by law, together with costs of the action. The Association may also bring an action at law against the owner personally obligated to pay the assessment.

Such liens shall continue for a period of five (5) years from date of delinquency 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 foreclosure judgment.

6.9 Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE 7

GENERAL PROVISIONS

7.1 Assignment of Developers Rights. The Developer may assign its rights as Developer herein to any successor developer and may also transfer to the Homes Association all of its rights or obligations of approval and enforcement of the provisions of this Declaration.

7.2 Mortgage or Conveyance of Common Property. Common or Homes Association property shall not be mortgaged or conveyed without the vote of at least 2/3 of the lot owners.

7.3 Duration. This Declaration shall continue in effect unless amended or terminated as provided in this paragraph. At any time the owners of 2/3 or more of the lots within the district may, by an appropriate instrument in one or more counterparts, executed, acknowledged and filed of record in the office of the Register of Deeds, Johnson County, Kansas:

7.3.1 Give additional powers or otherwise amend this Declaration, or

7.3.2 Terminate this Declaration and release all of the lands then affected thereby from all of the terms and conditions hereof.

7.4 Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

7.5 Enforcement. The covenants and restrictions set out in this Declaration may be enforced by the Association or by any owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages or both, and against the land to enforce any lien created by these covenants. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.6 Severability. In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way affect any other provision which shall remain in full force and effect.

7.7 Covenant Running with the Land. All provisions of this Declaration shall be deemed to be a covenant running with the land.

7.8 Extension of District. The Developer shall have, and expressly reserves the right, from time to time, to add to the existing district and to the operation of the provisions of this Declaration such other (without reference to streets and rights-of-way) lands as they may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration of 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 of 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 good faith.

IN WITNESS WHEREOF, the parties hereby execute this instrument on the day and year first above written.

~~ASHTON,~~  
ASHTON, 2ND PLAT, Lot 152;  
ASHTON, 3RD PLAT, Lots 178-189,  
194, 202-206, 208, 209, 211,  
213, 215, 216, 218-220, 222, 223,  
227, 229, 230, 232, 233, 234,  
236-247;  
ESTATES OF ASHTON, 1ST PLAT, Lots  
1-7, 9-10; all in the City of Olathe,  
Johnson County, Kansas

TIGER CONSTRUCTION CO., INC.,  
a Missouri Corporation

BY *R. Bradley Taylor*  
R. Bradley Taylor, President

Lot 174, ASHTON, 2ND PLAT;  
Lot 11, ESTATES OF ASHTON, 1ST  
PLAT

*Michael A. Everhart*  
Michael A. Everhart  
*Janette W. Everhart*  
Janette W. Everhart

Lot 196, ASHTON, 3RD PLAT  
Lot 12, ESTATES OF ASHTON, 1ST  
PLAT

Tim J. Hoelting  
Tim J. Hoelting  
Virginia L. Hoelting  
Virginia L. Hoelting

Lot 8, ESTATES OF ASHTON, 1ST  
PLAT

C & H PROPERTIES, INC.  
BY John W. Hanna  
John W. Hanna, President

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

The foregoing document was acknowledged before me this 24 day of December, 1992, by R. Bradley Taylor as president of Tiger Construction Co., Inc., a Missouri corporation, on behalf of the corporation.

Robert G. Pruitt  
Notary Public

My Appointment Expires:

July 24, 1995

ROBERT G. PRUITT  
Notary Public - State of Kansas  
My Appt. Expires 7-24-95

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

The foregoing document was acknowledged before me this 12th day of January, 1993, by Michael A. Everhart and Janette W. Everhart, husband and wife.

Stasha A. White  
Notary Public

My Appointment Expires:

7/13/94

STASHA A. WHITE  
Notary Public - State of Kansas  
My Appt. Expires 7/13/94

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

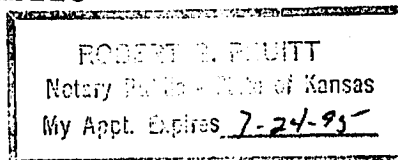
The foregoing document was acknowledged before me this 26 day of January, 1993, by Tim J. Hoelting and Virginia L. Hoelting, husband and wife.

Robert C. Pratt

Notary Public

My Appointment Expires:

July 24, 1995



ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

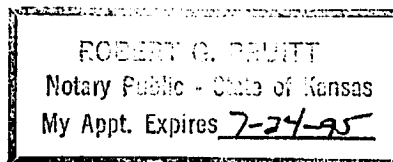
The foregoing document was acknowledged before me this 24 day of December, 1992, by John W. Hanna as president of C & H Properties, Inc., a Kansas corporation, on behalf of the corporation.

Robert C. Pratt

Notary Public

My Appointment Expires:

July 24, 1995



7.6 Severability. In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way affect any other provision which shall remain in full force and effect.

7.7 Covenant Running with the Land. All provisions of this Declaration shall be deemed to be a covenant running with the land.

7.8 Extension of District. The Developer shall have, and expressly reserves the right, from time to time, to add to the existing district and to the operation of the provisions of this Declaration such other (without reference to streets and rights-of-way) lands as they may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration of 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 of 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 good faith.

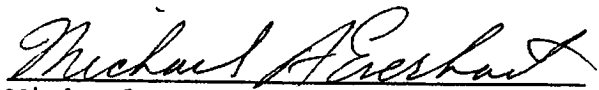
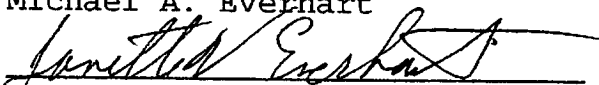
IN WITNESS WHEREOF, the parties hereby execute this instrument on the day and year first above written.

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ASHTON, 3RD PLAT, Lots 178-189,  
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BY   
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Tim J. Hoelting  
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Virginia L. Hoelting  
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Lot 8, ESTATES OF ASHTON, 1ST  
PLAT

C & H PROPERTIES, INC.

BY John W. Hanna  
John W. Hanna, President

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

18th The foregoing document was acknowledged before me this  
day of May, 1993, by R. Bradley Taylor as  
president of Tiger Construction Co., Inc., a Missouri corporation, on  
behalf of the corporation.

Ronda K. Mills  
Notary Public

My Appointment Expires:

RONDA K. MILLS  
Notary Public - State of Kansas  
My Appt. Expires 8/10/94

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

17th The foregoing document was acknowledged before me this  
day of May, 1993, by Michael A. Everhart and  
Janette W. Everhart, husband and wife.

Robert G. Pruitt  
Notary Public

My Appointment Expires:

July 24, 1995

ROBERT G. PRUITT  
Notary Public - State of Kansas  
My Appt. Expires 7-24-95

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

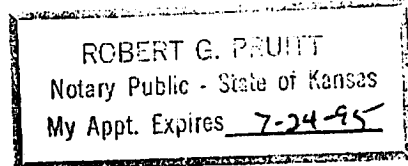
The foregoing document was acknowledged before me this 17<sup>th</sup> day of May, 1993, by Tim J. Hoelting and Virginia L. Hoelting, husband and wife.

Robert G. Pruitt

Notary Public

My Appointment Expires:

July 24, 1995



ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

The foregoing document was acknowledged before me this 17<sup>th</sup> day of May, 1993, by John W. Hanna as president of C & H Properties, Inc., a Kansas corporation, on behalf of the corporation.

Robert G. Pruitt

Notary Public

My Appointment Expires:

July 24, 1995

