

DECLARATION OF RESTRICTIONS  
TO  
BROOKTREE

WHEREAS, Mill Creek of Kansas, Inc., a Kansas Corporation, authorized to do business in Missouri, is the owner and proprietor of BROOKTREE, a subdivision in Clay County, Missouri, which plat was recorded in the office of the Recorder of Deeds of Clay County, Missouri, in Book 14 of Plats at Page 41, and

WHEREAS, the said Mill Creek of Kansas, Inc. has heretofore dedicated to the public all of the streets and roads shown on said plat for the use by the public, and

WHEREAS, Mill Creek of Kansas, Inc., now desires to place certain restrictions on the following described land, to-wit:

All of Lots 1 to 2, both inclusive, Block 1

All of Lots 1 to 17, both inclusive, Block 2

All of Lots 1 to 6, both inclusive, Block 3

All of Lots 1 to 13, both inclusive, Block A

All of Lots 1 to 13, both inclusive, Block B

NOW, THEREFORE, in consideration of the premises, Mill Creek of Kansas, Inc., for itself and its successors, and assigns, and for its and their future grantees, hereby agrees that all of the lots shown on the above described plat shall be and they are hereby restricted as to their use in the manner hereinafter set forth.

**DEFINITION OF TERMS USED**

For the purpose of those restrictions, the word "street" shall mean any street, road, drive, or avenue of whatever name, as shown on said plat of Brooktree.

The word "outbuilding" shall mean an enclosed, covered structure, not directly attached to the residence to which it is appurtenant.

The word "lot" may mean either any lot as platted, or any tract or tracts of land as conveyed, which may consist of one or more lots, or part or parts of one or more lots, as platted, and upon which a residence may be erected in accordance with the restrictions hereinafter set forth, or as set forth in the individual deeds from Mill Creek of Kansas, Inc., or from its successors and assigns. A corner lot shall be deemed to be any lot as platted, or any tract of land as conveyed, having more than one street contiguous to it.

**PERSONS BOUND BY THESE RESTRICTIONS**

All persons and corporations who now own or shall hereafter acquire any interest in the above described lots hereby restricted shall be taken to hold and agree and covenant with the owner of said lots, and with its successors and assigns to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof and the construction of residences and improvements thereon for a period of time ending on July 1, 1997, provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

**SECTION I. USE OF LAND**

None of the lots hereby restricted may be improved, used or occupied for other than private residence purposes and no flat or apartment house, though intended for residence purposes, may be erected thereon. Any residence erected or maintained on any of the lots hereby restricted shall be designed for occupancy by a single family. No business buildings shall be erected nor business of any nature conducted, on the land herein described, nor shall anything be done thereon which may be or become a nuisance to the neighborhood.

**SECTION II. REQUIRED HEIGHT OF RESIDENCES**

Any residence erected on any of the lots hereby restricted shall not be more than two (2) stories in height, provided, however, that a residence more than two (2) stories in height may be erected thereon with the consent in writing of Mill Creek of Kansas, Inc.

### **SECTION III. FRONTAGE OF RESIDENCES ON STREETS**

Any residence erected wholly or partially on any corner lot, or any part or parts thereof, shall front or present a good frontage on the street or streets designated by mill creek of Kansas, Inc., in its deed to said lot or pat thereof.

It is provided, however, that if any part less than the whole of any corner lot is acquired by the owner of an inside lot, contiguous to said corner lot, then, as to the part of such corner lot so acquired, the provisions hereof requiring a residence erected on a corner lot to front or present a good frontage on the street or streets designated by Mill Creek of Kansas, Inc. shall not be operative, but the part of the corner lot so acquired shall be deemed to be a part of the inside lot to which it is contiguous, as to the restrictions governing the frontage of the residence on the street, and said part of any such corner lot so acquired shall be subject to the restrictions applicable to the inside lot.

### **SECTION IV. SETBACK OF RESIDENCES FROM STREET**

(a) No part of any residence or fence, except as hereinafter provided, may be erected or maintained on any of the lots hereby restricted, nearer to the front street or the side street than is the front building or the side building line shown on said plat of Brooktree, on the lot or lots on which such residence may be erected, provided, however that Mill Creek of Kansas, Inc. shall have, and does hereby reserve the right in the sale conveyance of any of said lots, to change any building line shown thereon, and may at any time with the consent in writing of the then record owners of the fee simple title to any such lot, change any such building line which is shown on said plat, on any such lot or lots or which may in such sale and conveyance be established by it, provided, however, that no fences or walls more than two (2) feet high may be erected nearer the front street than the front building line of the house as erected, nor nearer the side street than the side building line of the house as erected.

(b) Those parts of the residence which may project to the front of and be nearer to the front street and the side streets than the front building lines and the side building lines shown on said plat, and the distance which each may project are as follows.

(c) Window projections: bay, bow, or oriel, dormer and other projecting windows may project beyond the front building lines and the side building lines not to exceed three (3) feet.

(d) Miscellaneous Projections: Cornices, spoutings, chimneys, brackets, pilasters, grillwork, trellises and other similar projections, and any other projections for purely ornamental purposes, may project beyond the front building lines and side building lines not to exceed four (4) feet.

(e) Vestibule Projections: Any vestibule not more than one (1) story in height may project beyond the front building lines and the side building lines not to exceed four (4) feet.

(f) Porch Projections: Unenclosed, covered porches, balconies, and porte cocheres may project beyond the front building lines not to exceed six (6) feet, on corner lots unenclosed, covered porches, balconies, and porte cocheres may project beyond the side building lines not to exceed six (6) feet.

(g) Cantilever Projections: Upper stories on any dwelling may project beyond the front building lines and the side building lines not to exceed three (3) feet.

### **SECTION V. REQUIRED SIZE OF RESIDENCE**

Any residence erected on any lot in Brooktree shall contain a minimum of one thousand (1,000) square feet of enclosed floor area, and any residence one and one-half (1-1/2) stories or two (2) stores in height erected on any said lots, shall contain a minimum of seven hundred fifty (750) square feet of such enclosed floor area on the first floor thereof.

The words "enclosed floor area" as used herein shall mean and include, in all cases, areas on the first and second floor of the residence enclosed and finished for all year occupancy, computed on outside measurements of the residence and shall not mean or include any areas in basements, garages, porches, or attics, provided, however, that certain interior areas above the first floor need not be immediately finished for occupancy if the residence is so designed and built that such areas can be finished at a later date without any structural changes being made in the exterior of the residence. Mill Creek of Kansas, Inc., reserves the absolute and incontestable right to determine whether the enclosed floor area of any split-level or bi-level residence (as distinguished from traditional one and one-half (1-1/2) or two (2) story residences), and/or the enclosed floor area of the first floor thereof, meets the minimum requirements provided for hereunder, and such determination shall be final. Mill Creek of Kansas, Inc., hereby also reserves the right to reduce any of the enclosed floor area requirements set forth above.

#### **SECTION VI. FREE SPACE REQUIRED**

The main body of any residence, including attached garages, attached greenhouses, ells, and porches, enclosed or unenclosed, covered or uncovered, but exclusive of all other projections set forth above in Section IV, erected or maintained on any of the lots hereby restricted, or on any part or parts thereof, as shown on the aforesaid plat, shall not occupy more than eighty per cent (80%) of the width of the lot on which it is erected, measured in each case on the front building line as shown on the aforesaid plat, or as established by Mill Creek of Kansas, Inc. in the conveyance of any lot, or on such front building line produced to the side lines of the lots, whichever line is of greater length, without the approval in writing of Mill Creek of Kansas, Inc.

#### **SECTION VII. RIGHT TO APPROVE PLANS**

No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision, and as to location of the building with respect to topography and finished ground elevation by the Art Committee which is initially composed of the following three members:

Phil R Acuff, 4402 West 93rd Terrace, Prairie Village, Kansas

John W. Acuff, Thompson Road, Lee's Summit, Missouri

Erwin D. Rhodes, 4909 West 96th Terrace, Overland Park, Kansas.

In the event of the death or resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove such design and locations, or to designate a representative with like authority, and to designate a successor. In the event said committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of said building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have such fully complied with. Neither the members of such committee, nor its designated representative, shall be entitled to any compensation or services performed pursuant to the covenant. At any time, the then record owners of a three-fourths majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

Anything in this Declaration of Restrictions to the contrary notwithstanding, Mill Creek of Kansas, Inc., its successors and assigns, shall have, and do hereby reserve, the right to determine the location of all buildings upon the respective lot or lots, except as it may be restricted in the making of such

determination by the provisions of Sections IV and VI herein, and the relation of the top of the foundation thereof to the street level.

#### **SECTION VIII. MAINTAINING SIGHT DISTANCE**

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

#### **SECTION IX. REQUIRED BUILDING MATERIALS**

Exterior walls of all buildings, structures, and appurtenances thereto shall be of brick, stone, wood shingles, wood siding, wood paneling, plate glass, Masonite, or a combination thereof. Windows, doors and louvers shall be of wood or metal and glass. Roofs shall be covered with wood shingles, wood shakes, slate or tile. Any building products which may come into general usage for dwelling construction in this area after the date of these restrictions shall be acceptable if approved in writing by the Art Committee. All wood and Masonite exteriors, except roofs and shake sidewalls shall be covered with a workmanlike finish of paint and/or stain, unless another finish is approved in writing by the Art Committee. No building shall be permitted to stand with its exterior in an unfinished condition for longer than nine months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than six months.

#### **SECTION X. SODDED YARDS**

The entire front, rear and side yards of every lot in Brooktree, and the unpaved portions of street easements contiguous thereto, shall be sodded with bluegrass at the earliest time after construction of a dwelling on said lot as the weather will permit, and in no instance will seeding or plugging be considered a substitute for such original sodding without the consent in writing of the Art Committee.

#### **SECTION XI. OUTBUILDING PROHIBITED**

No building or other detached structures appurtenant to the residence may be erected on any of the lots hereby restricted without the consent in writing of the Art Committee.

#### **SECTION XII. OIL TANKS PROHIBITED**

No tank for the storage of fuel may be maintained above the surface of the ground on any of the lots hereby restricted, without the consent in writing of the Art Committee.

#### **SECTION XIII. OUTSIDE ANTENNAS PROHIBITED**

No radio or television antennas may be kept or maintained on any of the lots hereby restricted except within the confined of a dwelling unit erected thereon.

#### **SECTION XIV. RESTRICTIONS ON MAINTENING PETS**

No wild, semi-wild or domestic mammals, reptiles or birds may be kept or maintained upon any of the lots hereby restricted without the consent in writing of the Art Committee, except that no more than two (2) dogs, two (2) cats, two (2) rabbits, or two (2) birds may be kept on any such lots without such consent.

#### **SECTION XV. BILLBOARDS PROHIBITED**

No signs, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any of the lots hereby restricted without the consent in writing of the Art Committee, provided, however, that permission is hereby granted for the erection and maintenance of not more than two (2) advertising boards on each lot or tract as sold and conveyed, which advertising boards shall not more than six (6) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the lot or tract upon which they are erected; and provided further, that nothing in this section shall be construed to prohibit the erection of subdivision entrance structures by Mill Creek of Kansas, Inc., its grantees, assignees, or licensees at such place or places as it or they may determine, which structures may or may not display the name of said subdivision.

#### **SECTION XVI. AUTOMOBILE REPAIRING AND STORAGE OF AUTOMOBILES, BOATS, TRAILERS, ETC.**

No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any of the lots hereby restricted except that automotive repairs on a non-commercial basis and not for hire may be conducted in any enclosed garage built on the said premises and permitted under other provisions of these restrictions.

No automobile, truck, motorcycle, motorbike, motor scooter, boat, airplane, house trailer, boat trailer, camping trailer, motor home, or vehicle of any other type of description may be stored upon any of the lots hereby restricted, except that such storage (except storage for hire) shall be permitted within the confines of any building built on any of the lots hereby restricted and permitted under other provisions of these restrictions. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two (2) automobiles but not including a pick-up truck with camper, in any condition and in a reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots hereby restricted.

#### **SECTION XVII. EASEMENTS**

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of Brooktree.

#### **SECTION XVIII. DURATION OF RESTRICTIONS**

Each of the restrictions herein set forth shall continue and be binding upon Mill Creek of Kansas, Inc., and upon its successors and assigns, until July 1, 1997, and shall automatically be continued thereafter for successive periods of twenty-five (25) years each, provided, however, that the owners of the fee simple title to more than fifty percent (50%) of the front feet of all of the lots hereby specifically restricted, and set forth in this instrument, may release all of the land which is hereby restricted from any one or more of the restrictions herein set forth, on July 1, 1997, or at the end of any successive five-year (5) period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the office of the Recorder of Deeds of Clay County, Missouri, prior to June 21, 1997, or at least ten (10) days prior to the expiration of any successive five-year (5) period after July 1, 1997.

#### **SECTION XIX. RIGHT TO ENFORCE**

The restrictions herein set forth shall run with the land and bind the present owner, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of the lots hereby restricted, and with its successors and assigns and with each of them, to conform to and observe said restrictions, as to the use of said lots and the construction of improvements thereon, but no restrictions herein set forth shall be personally binding on any

corporation, person or persons, except in respect of breaches committed during its, his or their seisin of, or title to said land; and Mill Creek of Kansas, Inc., its successors and assigns, and also the owner or owners of any of the lots hereby restricted shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the restrictions above set forth, in addition to ordinary legal actions for damages, and failure of Mill Creek of Kansas, Inc., its successors or assigns, or any owner or owners of any lot or lots hereby restricted to enforce any of the restrictions herein set forth at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter. Mill Creek of Kansas, Inc., may, by appropriate agreement made expressly for that purpose, or by means of express words to that effect, contained in a deed to any lots restricted hereby, assign or convey to any person or corporation all of the rights, reservations and privileges herein reserved by it in respect to all or any part of said lots, and upon such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign these rights, or any one or more of them, at any time or times, in the same way and manner as though directly reserved by them, or it, in this instrument.

**SECTION XX. ADDITION OF OTHER LAND**

Mill Creek of Kansas, Inc. shall have, and expressly reserves, the right from time to time to add such other land as it may now own or hereafter acquire, to the operation of the provisions of this Declaration of Restrictions, by executing and acknowledging any appropriate agreement or agreements for that purpose, and filing the same for record in the office of the Recorder of Deeds of Clay County, Missouri. When any other land is so subjected to the provisions hereof, whether the same consists of one or more tracts or whether said additions shall be made at one or more times, said land so added shall be subject to all of the terms and provisions hereof, in the same manner and with like effect as though the same had been originally described herein and subjected to the provisions hereof.

IN WITNESS WHEREOF, Mill Creek of Kansas, Inc., by authority of its Board of Directors, has caused these presents to be executed by its President and Secretary, and its corporate seal to be hereto affixed this 11<sup>th</sup> day of August 1972.

BE IT REMEMBERED, That on this 11<sup>th</sup> day of August, 1972, before me the undersigned, a Notary Public in and for said County and State came Phil R. Acuff, President of Mill Creek of Kansas, Inc., and Ronald S. Reuter, Assistant Secretary of said corporation, who are personally known to me to be the same persons who executed the within instrument of writing as President and Assistant Secretary, respectively, and said Phil R. Acuff, as President of said corporation, duly acknowledged the execution of the same as President of said corporation; and Ronald S. Reuter, Assistant Secretary of said corporation duly acknowledge the attestation of the same as such Assistant Secretary, for an on behalf of said corporation, and that he affixed thereto the common seal of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

**END OF DOCUMENT FOR SIGNATURE PAGE/NOTARY INFORMATION PLEASE  
SEE ORIGINAL SCANS.**