

This a typed version of the Booktree HOA Declaration #1. Please excuse any errors; they have been typed as accurately as possible. Please refer to the originals or the Board of Directors with any questions.

Book 1098 Page 921

#### HOMES ASSOCIATION DECLARATION

THIS DECLARATION, made on this 11th day of August, 1972, by Mill Creek of Kansas, Inc.,

WITNESSETH:

WHEREAS, Mill Creek of Kansas, Inc. is the owner of all of the following described land situated in Clay County, Missouri, more particularly described as:

- All lots of 1 to 2, inclusive, Block 1
- All lots of 1 to 17, inclusive, Block 2
- All lots of 1 to 6, inclusive, Block 3
- All lots of 1 to 13, inclusive, Block A
- All lots of 1 to 13, inclusive, Block B

All of the above described land located in BROOKTREE as shown on the plat of Brooktree, a subdivision of land 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, Mill Creek of Kansas, Inc. is now developing the above described land and desires to create and maintain a residential neighborhood possessing features of more than ordinary value to the said community.

NOW, THEREFORE, in order to assist it and its grantees in providing the means necessary to bring about the development of the above described land, Mill Creek of Kansas, Inc. does now and hereby subject all of the lots located in Brooktree as shown on the recorded plat thereof, to the covenants, charges and assessments set forth and contained in this Declaration, subject, however, to the limitations hereinafter specified.

#### 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 enumerated above and shown on said plat of Brooktree. If or when other land shall, in the manner hereinafter provided, 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, all alleyways, all parks, and all similar places the use of which is dedicated to or set aside for the use of the general public, or for the general use of all 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. The word "common area" shall mean and refer to such land as may be designated as such on the plat of Brooktree or which may hereafter be designated as such on subsequent plats of Brooktree or which may be created by separate document filed for that purpose with the Recorder of Deeds of Clay County, Missouri by Mill Creek of Kansas, Inc.

Book 1098 Page 922

#### 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 "THE BROOKTREE HOMES ASSOCIATION". The Association shall be incorporated under the laws of the State of Missouri as a corporation not for profit. Membership in the Association shall be limited to the owners of 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. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the owner or owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.

#### SECTION 3. USE OF COMMON AREAS.

The owners of land within the district as it may exist from time to time shall have the exclusive right to the use of all undedicated common areas as designated on the plat of Brooktree or as may be designated on subsequent plats of Brooktree or as may be created by separate document filed for that purpose with the Recorder of Deeds of Clay County, Missouri by Mill Creek of Kansas, Inc.

The BROOKTREE HOMES ASSOCIATION shall have the right and power to make reasonable rules and regulations which shall govern the use of the said undedicated common areas.

#### SECTION 4. OTHER LANDS – HOW THEY MAY BE ADDED.

Mill Creek of Kansas, Inc. may from time to time add to the district such land as is now or hereafter owned or approved for addition by said Company, 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 within Clay County, Missouri, or any political subdivision thereof.

#### SECTION 5. POWER AND DUTIES OF THE ASSOCIATION.

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 restriction which may have been heretofore or may hereafter be imposed upon any of the land in such district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that ??? 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

BOOK 1098 PAGE 923

- (1) CONT. 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 streets, sidewalks, and other public places shown on the plat of Brooktree, 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 City, Township, 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.
- (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, which such services are not available from any public source.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) To exercise control over such easements as it may acquire from time to time.
- (12) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes and special assessments on such real estate as may be owned by it; and to 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.

- (13) To levy and collect the assessments which are provided for in this Declaration.
- (14) To provide for the maintenance of swimming pools, playgrounds, tennis courts, public and private streets, parking areas, walks, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in any public or private street, common area, parking or other public place shown on the plat of BROOKTREE, or created by separate instrument from land included as part of said Brooktree, or designated as common area on the plat of any additional land which may later be added to the district as provided in Section 3. hereof.

#### SECTION 6. METHOD OF PROVIDED 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 and lying 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 land subject thereto, which said assessable land shall be deemed to be all of the above enumerated lots in the aforesaid plat of Brooktree 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 this general fund and may levy and collect an annual assessment not exceeding \$120.00 for each lot on which a dwelling has been erected and within the district as now or hereafter established; provided, however, that in respect to the year in which a dwelling is constructed on any certain lot covered by this Declaration, the assessment for the said year shall be pro-rated on the basis of the date of occupancy of said dwelling.
- (2) The maximum annual assessment upon each lot as aforesaid may be increased by an amount not exceeding one hundred per cent (100%) of the \$120.00 original maximum annual assessment which the Association may levy and collection from year to year, provided that 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 therefore; and provided further, that the maximum annual assessment upon each lot as aforesaid may be increased by an amount not exceeding one hundred fifty per cent (150%) of the said \$130.00 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, sixty per cent (60%) of the members present at such meeting authorize such an increase by an affirmative vote therefor.
- (3) Unless the increase 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 specially 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 6, 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 this agreement may be in effect, that substantial changes may occur in the economic status of the United States as a whole and of the Clay County, Missouri 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, three-fourths (3/4) of the members present at such meeting voting in the affirmative therefor, shall be sufficient to require the Association to request the County Court of Clay County, Missouri, 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 Clay County Court should refuse to act, the Association shall petition the Circuit Court of Clay County, Missouri, to name a board of three (3) disinterested parties to act in the stead of Clay County Court. 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 Clay County Court or a board selected by the said Circuit 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 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 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 or decrease 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, 1973, and it shall be fixed and levied prior to December 1, 1972, and shall be payable on January 1, 1973 and on January 1 of each year thereafter. It will be the duty of the Association to notify all owners of assessable lots 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 1<sup>st</sup> of each year for the next succeeding fiscal year beginning on January 1<sup>st</sup>, 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 1<sup>st</sup> of any year, then it shall become due and payable not later than thirty (30) days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the Trustee shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment within the limits herein provided for on a pro rata basis for the period of time ending December 31, 1972. 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.

- (1) The assessment provided for herein 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. 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 eight per cent (8%) per annum from the first day of January, but if the assessment is paid before February 1<sup>st</sup>, or within thirty (30) days from the date of the assessment, if the assessment is made subsequent to December 1<sup>st</sup> for the calendar year beginning January 1<sup>st</sup>, then no interest shall be charged.
- (2) On or after February 1<sup>st</sup> of each year, beginning February 1, 1973, or within thirty (30) days from the date of levying the assessment for the calendar year during which and for which the assessment is levied, 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 Clay County, Missouri, 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 non-payment of assessments in the office of the Recorder 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 \$2.00, 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. Such fee 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 8. EXPENDITURES ??????? TO ASSESSMENTS FOR CURRENT YEAR.

The association shall at no time expend more money within any one (1) year than the total amount of the assessment for that particular year plus any surplus which it may have on hand from the 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 assessment of any future or subsequent year except for utilities.

#### SECTION 9. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all owners of land in the district

BOOK 1098 PAGE 927

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 10. TEMPORARY TRUSTEE.

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, Mill Creek of Kansas, Inc. 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 Mill Creek of Kansas, Inc. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of Mill Creek of Kansas, Inc., and its relinquishment of its rights as temporary Trustee. Mill Creek of Kansas, Inc. 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 it in this Section 10, 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 11. 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 12. AMENDMENT

By written consent of the owners of two-thirds (2/3) of the lots within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the office of the Recorder of Deeds of Clay County, Missouri, this instrument may be modified and amended, provided, however, that no right to exceed the maximum annual assessment herein provided for may be given.

#### SECTION 13. HOW TERMINATED

This Declaration may be terminated, and all of the land now or hereinafter affected may be released from all the terms and provisions thereof, by 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 Recorder of Deeds of Clay County, Missouri.

#### SECTION 14. 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 Mill Creek of Kansas, Inc., and upon its successors and assigns.

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