

**THE DECLARATIONS, AS FOLLOWS, ARE FOR INFORMATIONAL PURPOSES ONLY. IF YOU REQUIRE A COPY OF THE ORIGINAL, YOU MAY OBTAIN ONE BY CONTACTING THE REGISTER OF DEEDS OFFICE AT THE JOHNSON COUNTY COURTHOUSE OR CONTACT BARND'S BROTHERS VOICE MAIL LINE AT (913) 752-4182.**

**DECLARATION OF RESTRICTIONS FOR HOMESTEAD CREEK**

This Declaration is made this 30<sup>th</sup> of JUNE 1987 by HOMESTEAD, INC. A Kansas Corp. hereinafter called Owner.

**ARTICLE I**

**STATEMENT OF INTENT**

Owner owns the real estate commonly known as HOMESTEAD CREEK in Johnson County, Kansas, as more specifically identified in the Addendum to this Declaration. Owner desires to provide for the preservation of values in the development of said property for residential purposes and for the maintenance of facilities, and therefore, desires to subject the subject real estate to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Owner to incorporate Homestead Creek Homes Association as a not-for-profit corporation, which Association shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges.

THEREFORE, the Owner hereby declares that the subject real estate be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described proportions or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

**ARTICLE II**

**DEFINITIONS**

For the purpose of these Restrictions, the following words shall be defined as follows:

- (1) "Association" shall mean and refer to Homestead Creek Homes Association, a Kansas not-for-profit corporation.
- (2) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as Homestead Creek which Owner may in its discretion include.
- (3) "Common Properties" shall mean and refer to all open spaces, street islands, and frontage on certain lots of Homestead Creek to be held in the name of the Owner or its successor, the Association, and dedicated to the common use and enjoyment of all the lotowners and residents of the properties.
- (4) "Lot" shall mean and refer to any separately-owned parcel as may be shown by any recorded subdivision plat of the properties, with the exception of Common Properties as heretofore defined.

(5) "Dwelling" shall mean and refer to any portion of a building situated upon the properties designed and intended for use and occupancy as a residence by a single family.

(6) "Lotowner" 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. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon proceeding instead of foreclosure.

(7) "Owner" shall mean and refer to Homestead, Inc., a Kansas Corporation, its successors and assigns.

(8) "Front Property Line" shall mean the property line of any lot abutting the right-of-way of any street.

(9) "Outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

### ARTICLE III

#### Section 1.

##### Use of Lots

Only one single-family dwelling may be constructed upon any lot conveyed for residential purposes.

No boats, trucks, trailers, buses, campers, or recreational vehicles, tractors, or mowers shall be parked on the driveway, front, side or back yards, for a period of more than two (2) weeks at a time; or if the same becomes an annoyance or nuisance to the neighborhood. No radio, television, satellite dish, or any other type of transmitting or receiving antennae may be erected or maintained outside of or on top of any residence on any of the lots without the prior written consent of Owner. No windmills or wind driven electrical generating systems of any type may be erected or maintained outside of or on top of any residence on any of the lots without the prior written consent of Owner. No solar or sun energy systems of any type may be erected or maintained outside of or on top of any residence on any of the lots without prior written consent of Owner.

#### Section 2.

##### Setback Lines

No part of any residence, except as hereinafter provided, may be erected or maintained on any of the lots nearer to the front street or the side street than is the front building line or the side building line shown on the final plat of any phase of Homestead Creek in which such residence is located, as such final plat is recorded in the office of the Register of Deeds of Johnson County, Kansas. The first plat of Homestead Creek is recorded in said office at book 66 of Plats, at page 7. Provided, however, that Homestead, Inc., a Kansas Corporation shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such lot, to change any building line that is shown on said plat on any such lot or lots, so long as the change conforms to such front, rear and side setback lines as are contained in the Municipal Building Code for the City of Olathe, Kansas, as the same is now enforced or may hereafter be amended.

### Section 3.

#### Dwelling Site

Any residence one story in height erected on any of said lots zoned R-1 shall contain a minimum of sixteen hundred (1600) square feet of enclosed floor area. The word "enclosed floor area" as used herein shall mean and include in all cases area on the first and second floor of the residence enclosed and finished for all-year occupancy computed on outside measurement of the residence, and shall not mean or include any area in basement, garage, porch or attic finished or unfinished. No residence erected on any of said lots shall be more than two stories in height, unless consented to in writing by the Owner. Owner shall have and hereby reserves the right to reduce the floor area requirement set forth above, provided the total reduction for any one residence may not exceed twenty (20) percent of such minimum floor area requirement for such residence.

### Section 4.

#### Approval of Plans

No residence or outbuilding may be erected on the above described property unless and until the plans, elevations, location and grade thereof have been submitted to the Owner and by it, approved in writing; nor shall any change, alteration, or addition be made in the exterior of any such residence or outbuilding after the original construction thereof (including, but not limited to room additions, decks and patios or coverings therefor, and other exterior alterations), until approval thereof has been given, in writing, by the Owner. Architectural control in the properties shall be solely the function of the Owner. Owner may, at its option, delegate all or any part of the function of architectural control to the Board of Directors of the Association. If such delegation is made, architectural control shall be the function and obligation of the Board of Directors, and it may not be delegated to a separate architectural control committee or similar group. Any such delegation by the Owner of all or part of its architectural control function to the Board of Directors of the Association shall not be effective unless done in writing and signed by a person authorized to act on behalf of the Owner.

### Section 5.

#### Walls and Roofs

Exterior walls of all buildings, structures, and appurtenances thereto shall be made of brick, stone, stucco, wood shingles, wood siding, wood paneling, glass blocks, or any combination thereof. Windows, doors and louvres shall be of wood or metal and glass. Roofs shall be covered with wood shingles, wood shakes, composition shingles, asphalt shingles, built-up asphalt, slate or tile. Exteriors, except roofs and shake sidewalls shall be covered with not less than two coats of good paint or stain. (No building shall be permitted to stand with its exterior in an unfinished condition for longer than five 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 three (3) months.

### Section 6.

## Temporary Dwellings

No structure of a temporary nature and no trailer, mobile home, basement, tent, garage, barn or other outbuilding shall at any time be used as a residence. No residence shall be moved from another location to any lot herein.

### Section 7.

#### Fences

All fences are to be of wood construction and a maximum height of six (6) feet.

### Section 8.

#### Animals

No animal of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, as long as they are in compliance with the Municipal Code for the City of Olathe, Kansas, as the same is now enforced or may hereafter be amended.

### Section 9.

#### Driveways

All driveways must be improved with hard surface, consisting of a minimum of four (4) inches of reinforced concrete or other materials approved in writing by Owner. Gravel driveways or driveways consisting of a crushed rock base with prime and seal coat will not be permitted.

### Section 10.

#### Signs

No sign, advertisements, billboards, or advertising structures, of any kind may be erected or maintained on any of said lots without the consent, in writing, of Owner; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each lot or tract as sold and conveyed, which advertising board shall not be more than seven (7) square feet in size and may be used for the sale and exclusive purpose of advertising for sale or lease the lot or tract upon which it is erected.

### Section 11.

#### Oil Tanks

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

(4)

### Section 12.

#### Trash and Nuisances

No trash, garbage, ashes, junk, junk cars, or other refuse or debris shall be thrown, dumped, or placed on any lot, on the streets, or the common properties, or be permitted to accumulate or remain on any lot. Noxious weeds and plants shall be kept seasonably mowed and dead or unsightly growth removed on improved lots.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, including mechanical work on automotive or other equipment of any kind.

It is understood that Owner shall retain the right to keep and maintain such materials and equipment they deem to be reasonably necessary to further development of this and adjacent property owned by Owner.

### Section 13.

#### Miscellaneous Provisions

- A. **Garage Doors:** All doors on garages located on the lots hereby restricted shall be kept closed, except when opened for the purpose of parking or removal therefrom of motor vehicle.
- B. **Exterior clotheslines and poles:** No exterior clothesline or poles may be erected or maintained on any of the lots hereby restricted unless approved by Owner in writing.
- C. **Exterior Christmas lights and/or decorations:** No exterior Christmas lights and/or decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 15<sup>th</sup> of each calendar year.
- D. **Garage, porch or basement sales:** No garage, porch or basement sales may be conducted on any of the lots hereby restricted without the prior consent in writing by Owner.
- E. **Dogs running at large:** Dogs shall be confined. No dogs shall be allowed to run at large on the property hereby restricted.
- F. **Exterior basketball goals:** No exterior basketball goals shall be erected on any of the lots hereby restricted, without prior consent in writing by the Owner.
- G. **Swimming pools:** No above ground swimming pools may be constructed or maintained on any of the lots hereby restricted without prior consent in writing by Owner.
- H. **Greenhouses:** No greenhouses may be constructed or maintained on any of the lots hereby restricted, without prior consent in writing by Owner.
- I. **Air conditioners:** No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence.
- J. **Light:** No bright light (Mercury Vapor or Sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Owner.

(5)

### Section 14.

#### Utilities

All utilities from Owner's source into building sites shall be underground. Owner reserves the right to locate, erect, construct, maintain, and use or authorize the location, erection,

construction, maintenance, and use of drains, sanitary and storm sewers, gas and water main and lines, electric and telephone lines and other utilities, and to give or grant right-of-ways or easements therefor over and upon any part of said land described herein.

**Section 15.**

**Home Occupations**

No business or occupation shall be conducted upon or managed from any dwelling in the properties, except as allowed by ordinances of the City of Olathe, Kansas, as home occupations. Any business or occupation for which a special use permit is required, or which is otherwise not allowed as a home occupation by ordinances of the City of Olathe, Kansas, shall not be conducted or managed from any dwelling in the Properties without the prior written consent of the Owner.

**Section 16.**

**Landscape Easement**

All portions of the Properties reserved, set aside or granted as a landscape easement or license, as indicated by mark, symbols or legend on any plat of land contained within the Properties and filed with the Office of the Register of Deeds of Johnson County, Kansas, shall be interpreted as the grant by Owner of an easement or license on, over and across any land so indicated to Homestead Creek Homes Association. Said easement or license shall give the Association the right to enter upon, over and across any land on which such an easement or license is granted, for the purpose of improving, maintaining, landscaping, designing, and otherwise controlling the design and appearance of any area so indicated.

**ARTICLE IV**

**HOMES ASSOCIATION**

**Section 1.**

Every owner of a lot which is subject to assessment shall be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

**Section 2.**

The association shall have two classes of voting membership:

**Class A.** Class A members shall be all lot owners, with the exception of the Owner (Homestead, Inc., a Kansas Corp.) and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

**Class B.** The Class B member(s) shall be the Owner Homestead, Inc., a Kansas Corp. and shall be entitled to twenty-five (25) votes for each lot owned.

(6)

**Section 3.**

**Articles of Incorporation and Bylaws**

Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be set forth in its Articles of Incorporation and Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any

provisions of Kansas laws applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Kansas law shall control.

## ARTICLE V

### COMMON PROPERTIES

#### Section 1.

##### Owners' Right to Retain

The Owner may retain the legal title to the common properties until such time as it has completed improvements thereon and until such time as in the opinion of the Owner, the association is able to maintain the same. The Owner or its assigns, shall have a right over all streets to develop adjacent land and Owner shall have a right of access on all streets for the purpose of developing adjacent land.

#### Section 2.

##### Lot Owners' Easements of Enjoyment

Every lot owner shall have a right and easement of enjoyment in and to the common properties which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the common properties;

(b) The right of the association to suspend the voting rights and right to use of the recreational facilities by a lot owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors.

#### Section3.

##### Delegation of Use

Any lot owner may delegate, in accordance with the bylaws, its right of enjoyment to the common properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

(7)

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### Section 1.

##### Creation of the Lien and Personal Obligation of Assessments

The Owner, for each lot owned within the properties, hereby covenants, and each lot owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association:

- (1) Annual assessments or charges, and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, 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 interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. His personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2.**

**Purpose of Assessments**

The assessments levied by the association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common properties. The Board of Directors of the Association will have the power to fix the assessments, both annual and special, in such amounts as the Board shall determine, in its descretion.

**Section 3.**

**Special Assessment for Capital Improvements**

In addition to the annual assessments authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person at a meeting called for this purpose.

**Section 4.**

**Notice and Quorum for any Action Authorized Under Section 3**

Written notice of any meeting called for the purpose of taking any action authorized under section 3 of this article shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members entitled to cast 50 percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting

(8)

shall be one-half (1/2) of the required quorum at the preceding meeting. If the required quorum is not present at any such subsequent meeting, another meeting may be called subject to the same notice requirement, and the required quorum at the second subsequent meeting, or any subsequent meeting thereafter called for lack of a quorum, shall continue to be one-half of the required quorum at the initial meeting called for such purpose. In no event shall the required quorum fall below the presence of members entitled to cast twenty-five percent of all the votes of each class of membership. No such subsequent meeting shall be held more than sixty days following the preceding meeting.



**Section 5.**

**Uniform Rate of Assessment**

Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

**Section 6.**

**Date of Commencement of Annual Assessments: Due Dates**

The annual assessments provided for herein shall be estimated, determined and billed in advance for the coming calendar year. The annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every lot owner subject thereto. The due date shall be established by the Board of Directors. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the association as to the status of assessments on the lot is binding upon the association as of the date of its issuance.

**Section 7.**

**Effect of Non-Payment of Assessments: Remedies of the Association**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the prime lending rate as established by the First National Bank of Kansas City, Missouri, as of the due date of the assessment. The association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability or the assessments provided for herein by non-use of the common properties or abandonment of his lot.

**Section 8.**

**Subordination of Lien to Mortgages**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

(9)

**ARTICLE VIII**

**GENERAL PROVISIONS**

**Section 1.**

**Property Subject To This Declaration: Additions Thereto**

1. **Existing Property.** The Real property which is and shall be held, transferred, sold, conveyed and occupied subject to this declaration as of the date of this declaration is that property more specifically identified in the addendum to this declaration.

2. **Additions to Existing Property.** Owner reserves the right to add additional real estate to this declaration in any of the following manners:

(a) If Owner is the owner of any real estate located in Homestead Creek subdivision to the City of Olathe, Johnson County, Kansas, or non-platted land abutting said subdivision, Owner may add any part thereof to this declaration without the consent of Class A members of the association at any time by filing of record a supplementary declaration of covenants, conditions and restrictions, which shall subject said additional real estate and all improvements thereon to all covenants, conditions, restrictions and easements set forth in this declaration. Said supplementary declaration may contain such additional covenants, conditions and restrictions applicable solely to said additional real estate as may be necessary or desirable as determined by the Owner. In no event, however, shall such supplementary declaration modify or add to the covenants established by this declaration for the existing property without the written consent, obtained after at least thirty (30) days notice, of sixty percent (60%) or more of the Class A memberships and all Class B memberships of the association.

**Section 2.**

**Duration**

The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owner, or its successors and assigns, or by the lotowner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by then lotowners of two-thirds of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Agreement is sent to every lotowner at least sixty (60) days in advance of any action taken.

**Section 3.**

**Notices**

Any notice required to be sent to any member of lotowner 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 a member or lotowner on the records of the Owner or Association at the time of such mailing.

(10)

**Section 4.**

**Enforcement**

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

**Section 5.**

**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 effect any other provisions which shall remain in full force and effect.

**Section 6.**

**Amendment**

By written consent of the owners of the area of land within the district as then constituted; evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended.

**Section 7.**

**Insurance**

The Board of Directors of the Association shall obtain and maintain, to the extent reasonably available, such forms, types and amounts of insurance coverage as the Board, in its discretion, deems advisable. Types of insurance the Board may obtain shall include, but are not limited to, casualty insurance to cover damage or loss, up to the replacement cost, of improvements located upon real estate owned by the Association by reason of fire or other hazard covered by a standard extended coverage endorsement; casualty insurance to cover such other risks as shall customarily be covered with respect to property similar in construction, location and use; public liability insurance; workmen's compensation insurance to the extent necessary to comply with any applicable law; a legal expense indemnity endorsement, or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director shall have been made a party by reason of his or her services as such; fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers; and such other policies of insurance, including blanket policies of insurance for the common properties, if authorized by applicable Kansas law and by the Board of Directors of the Association.

HOMESTEAD, INC.  
A Kansas Corporation

\_\_\_\_\_  
By: Denis C. Stewart, President

(11)

STATE OF KANSAS  
COUNTY OF JOHNSON

BE IT REMEMBERED, That on this 30<sup>th</sup> day of June, 1987, came Denis C. Stewart, who is personally known to me to be the same person who executed the within instrument of writing on behalf of HOMESTEAD, INC., A Kansas Corporation, and duly acknowledged the execution of the same.

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

**Mary Ellen Shields, Notary Public**