

07/13/1978

PREAMBLE

Deed restrictions, by their very nature, are designed to control - to control growth, to control development, and to control use of the property to which the restrictions apply. Unfortunately, no set of deed restrictions can be comprehensive enough to afford adequate control and yet flexible enough to allow adaption to an ever-changing world. The key to successful deed restrictions, therefore, is enforcement. To fail to enforce them is to forego control; to enforce them inflexibly is to eliminate the freedoms essential to a happy and productive community life. Your Board of Directors feels it is important that the MCF deed restrictions be interpreted and applied reasonably, uniformly, consistently, and in the best interests of all the landowners over the long term.

With these considerations in mind, the Board has endeavored to identify the acceptable middle ground between strict construction and virtual rejection of the MCF deed restrictions in order to guide their future enforcement. Attempting to identify this middle ground essentially is a question of personal taste - one man's trash is another's treasure. In order to broaden the base from which this personal taste would derive, the Board appointed a five-member Architectural Review Committee, in accordance with Article VIII of the restrictions - Approval of Plans - and requested that it draft guidelines for interpretation of the restrictions.

The Committee's guidelines, following review, minor modification, and adoption by the Board, have been "incorporated" into the deed restrictions as underlined material.

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THIS IS THE IDENTIFICATION PAGE FOR DOCUMENT NUMBER

TMW0571
MCF DEED RESTRICTIONS

05/08/84

THIS PAGE MUST REMAIN WITH THIS DOCUMENT

AT ALL TIMES

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VAB

DECLARATION OF RESTRICTIONS, COVENANTS AND
HOMES ASSOCIATION DECLARATION
OF
MILL CREEK FARMS
A SUBDIVISION OF JOHNSON COUNTY, KANSAS

THIS DECLARATION is made this 13th day of July, 1978, by Mill Creek Farms, Ltd., hereinafter called Developer.

ARTICLE I

Section 1. STATEMENT OF INTENT.

[a] The Developer is the owner of the property described in Article III of this Declaration and desires to create thereon a residential community with private roads, trails and open spaces, and other common facilities for the benefit of the community.

[b] The Developer desires to provide for the preservation of the values in said community and for the maintenance of the facilities; and to this end, desires to subject the real property described in Article III to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the said property and each owner thereof.

[c] The Developer deems it desirable for the preservation of the values of the community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing assessments and charges hereinafter created.

[d] The Developer shall incorporate under the laws of the State of Kansas as a not for profit corporation, Mill Creek Farms Homes Association, for the purpose of exercising the functions above described.

[e] Therefore, the Developer desires that the real estate described in Article III below, shall be held, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE II

Definitions

Section 1.

The following words when used in this Declaration shall have the following meanings:

[a] "Association" shall mean and refer to the Mill Creek Farms Homes Association.

[b] "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 Mill Creek Farms.

[c] "Common Properties" shall mean and refer to the private roads, trails, lake and other open spaces to be held in the name of Mill Creek Farms Homes Association and devoted to the common use and enjoyment of all the owners and residents of The Properties.

[d] "Lot" shall mean and refer to any separately owned tract shown by the survey of The Properties but excepting the Common Properties.

[e] " 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.

[f] "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.

[g] "Member" shall mean and refer to all those owners who are members of the Association as provided in Article VI hereof.

[h] "Developer" shall mean Mill Creek Farms, Ltd., a Kansas limited partnership, its successors and assigns.

[i] "Street" shall mean the private roads and rights of way therefore as shown on the survey of The Properties subject to easements for utilities and held by the Developer or the Association for the use of the Members and Owners, their families and guests, and of public officials while acting in such capacity.

[j] "Front Property Line" shall mean the property line of any tract abutting the right of way line of any Street.

[k] "Structure" shall mean any thing that is constructed, built, erected, or emplaced upon a Lot or upon the outside of any dwelling erected on any Lot within The Properties, regardless of whether all or any portion of the materials used in such construction, building, erection, or emplacement are or were derived from within or without the Lot itself.

ARTICLE III

Property Subject To This Declaration

Section 1.

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

Starting at the NE corner of the NW quarter Section 11, Township 13, Range 23, Johnson County, Kansas, thence S 0°48'48" E 271.93' to the point of beginning, thence S 89° 31' 15" W 2630.41' to the W side of said section, thence S 0°44'59" E 2171.59', thence N 89°23'33" E 2215.57' to the SE corner of the NW quarter, thence N 0°48'48" W 2336.17' to the point of beginning.

ARTICLE IV

Use of Lots

Section 1.

No Lot shall be used for any purpose other than as the site for the construction of one private single family residence, except that one outbuilding may be erected for the purpose of guest house, storage or horse shelter. The outbuilding must be built to be compatible with the residence on the Lot and with other surrounding structures; shall have a gable or hip roof design. Such outbuilding structure shall not exceed eighteen feet in height and shall not contain more than six hundred feet of ground floor space, for each two and one-half acre lot; for each additional full one-half acre in lot size the floor space of the barn may be increased one hundred and twenty square feet, with the total square footage not to exceed one thousand square feet at ground level.

Inside storage, or outside storage in accordance with a site plan, including screening measures, approved by the Architectural Review Committee, shall be provided for motor homes, trailers, boats and other related recreation vehicles, tractors, all garden equipment, and inoperable cars or cars under repair. Construction equipment may not be kept on any lot except during initial construction of the dwelling and during the 90-day period following initial occupation of the dwelling. All playground equipment must be located in the rear of the house.

Section 2. Lot Area.

Only one single family dwelling may be constructed upon a Lot. Each lot shall contain a minimum surveyed acreage of 2.500 acres. Any subdividing of a lot(s) must be approved by the Board

of Directors, in writing, prior to such subdivision. Vehicle access to each lot shall be via private driveway entering and exiting the Lot from/to a street. Driveways or roadways from/to any public road may not be established without prior approval of the Architectural Review Committee and the Board of Directors. Ingress/egress over such driveway or roadway must be secured by a gate/fence to be approved at the time approval of the access itself is granted.

Section 3. Dwelling Frontage.

Every Dwelling erected on any Lot shall front on or present the more substantial frontage to the Street on which the Lot fronts. Dwellings on corner Lots shall so far as practicable present a frontage to all abutting Streets. This restriction may, upon special request to and approval by the Architectural Review Committee, and subject to approval by the Board of Directors, be waived to permit access to the solar angle, or for such other reasons as the Committee and the Board deem reasonable and necessary.

* Section 4. Setback Lines.

No structure shall be less than 75 feet to the Front Property Line and not less than 60 feet to any side or rear Lot line.

Section 5. Dwelling Size.

No Dwelling shall be constructed on any Lot unless it meets the following area requirements:

[a] One story Dwellings shall have a ground floor area of not less than 2000 square feet.

[b] One and one-half story and two story Dwellings, not less than 1000 square feet on the ground floor and a minimum total of 2200 square feet.

[c] Split levels shall have a minimum of 1400 square feet on the ground level with a total square foot minimum of 2200 square feet.

The above area requirements are exclusive of porches and attached garages.

In addition, each dwelling shall have a minimum frontage of 65 lineal feet.

Section 5. Approval of Plans.

Construction shall not commence on any Dwelling or out-building or other improvement, including, without limitation, fences, swimming pools, ponds, or lakes, or any other type of

structure, until plans have been approved by the Developer or its successor, the Homes Association. The Board recognizes the safety factor inherent in swimming pool fences, and will make all reasonable efforts to accommodate a homeowner desiring to fence his pool, as well as considerations of safety. In all material respects, all structures must conform to the plans approved as aforesaid.

Section 6. Minor Variances and Encroachments.

Any of the provisions of Sections 1 through 5 of this Article may be waived or a variance permitted provided such variance shall not exceed 10% of the area requirement or 10 feet of the setback requirement, by a written modification of the Restrictions applicable only to the particular Lot and executed by the Developer or the Homes Association after it succeeds to the rights of the Developer.

Section 7. 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 permanent residence, "permanent" to mean occupied more than 30 days in any calendar year. No residence shall be moved from another location to any Lot herein.

Section 8. Waste Disposal.

All septic tanks, laterals or other sewage disposal facilities shall be constructed and maintained in compliance with the County and State Public Health Regulations and regulations of the Developer or Association as may be applicable. All such tanks, laterals and sewage disposal facilities shall include a jet aeration system. The Association, in conjunction with the Developer, shall approve, in writing and prior to the initiation of construction, the design and construction standards of the tank, lateral field and other sewage disposal facilities, and may require verification that the contractor or other individual who is to install same is qualified to do so in accordance with the approved plans. Construction of such facilities shall not commence until such approval has been obtained.

Section 9. 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.

Section 10. Livestock and Animals.

No livestock, animals or poultry of any kind shall be kept on any of The Properties, except dogs, cats or other house-

hold pets and horses or ponies. All animals shall be confined to the owners' property or otherwise held under their control.

Section 11. Driveways.

All driveways shall be hardsurfaced of either asphalt or concrete and of such construction so as to be equal or better than the general road system serving the Lots. All driveways must be completed within 90 days of the date on which the dwelling is initially occupied, unless special permission for delay has been granted by the Architectural Review Committee, and approved by the Board of Directors.

Section 12. Fences.

Split rail fences shall be used on all road frontages and common area frontages. Common fences between lots or on rear lot lines may be woven wire with wood posts. Additional specifications on fence construction shall be provided by the Developer or the Association (after the Common Properties are conveyed to the Association).

Additional Specifications:

- (1) All split rail fences are to be three-rail, split cedar.
- (2) Common fences are to be as close to 47 inches tall as is reasonably practicable.
- (3) Woven wire fences are to be constructed with line posts a minimum of 2 inches in diameter, with a 6 inch post every tenth post. Posts shall be placed on 10 foot centers.
- (4) All privacy fences must be approved by the Architectural Review Committee.

Section 13. Utilities.

All utilities, including phone lines, gas lines, power cables, and TV cables, shall be underground. In addition, the following guidelines shall govern placement of other utility facilities.

1. Satellite Receivers: Placement shall conform to all set-back requirements. A three foot berm shall be constructed around the receiver on all sides, except the side opening to the "receiving angle." Evergreen screening trees and shrubs shall be planted on the berm to screen the receiver so as to minimize, to the maximum extent reasonably practicable, the view of the receiver from any road. Construction or emplacement of the receiver shall not commence until a site plan, including details of placement

of the receiver on the lot and screening measures, has been approved by the Architectural Review Committee and the Board of Directors.

2. Wind Generators: Placement shall conform to all set-back requirements. Construction shall not commence until a site plan, including details of placement of the generator on the lot and screening measures, has been approved by the Architectural Review Committee and the Board of Directors.

3. Oil or Gas Wells: Same general restrictions as on wind generators, above.

4. Water Wells: Same general restrictions as on wind generators, above.

5. Solar Panels: All panels shall be flush mounted on the roof and/or the side of the dwelling. Except in unusual circumstances, and subject to specific approval by the Architectural Review Committee and the Board of Directors, panels shall not be mounted on the front of the dwelling. Panels may be mounted on the ground subject to approval of a site plan, including screening proposals, by the Architectural Review Committee.

6. TV and Radio Antennae: No TV or radio antenna, whether for sending or receiving signals, may be mounted on the exterior of any dwelling, or on any lot outside the dwelling.

7. Vent Pipes: Exterior pipes for venting furnaces, wood burning stoves, water heaters, and any other exhaust gases must be enclosed in a "chase" matching the exterior of the house, and cannot be installed until specific approval therefor has been granted by the Architectural Review Committee.

ARTICLE V

Streets and Common Properties

Section 1. Use.

Subject to the provisions of Section 4 of this Article, every member shall have a right and easement of enjoyment in and to the Streets and Common Properties and any easements, if granted, shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title To Streets.

The Developer may retain the legal title to the Streets until such time as it has completed construction thereof and

until such time as in the opinion of the Developer, the Association is able to maintain the same but notwithstanding any provisions herein, the Developer herein covenants for itself, its successors and assigns, that it shall convey the Streets and rights of way thereof as private roads subject to any utility easements, to the reservations and restrictions of record and to the right of access thereto and use thereof by all duly constituted public officials while acting in such capacity, to the Association not later than January 1, 1982

Section 3. Title to Common Properties.

The Developer 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 Developer, the Association is able to maintain the same but notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the Common Properties, subject to utility easements and to reservations and restrictions of record to the Association not later than January 1, 1982.

Section 4. Extent of Members Easements.

The right and easements of enjoyment created hereby as to the Streets and Common Properties shall be subject to the following:

[a] The right of the Developer and of the Association to assign or convey sewage, water, drainage and other utility easements over, through or under all or any part of the Streets and Common Properties.

[b] The right of the Association to dedicate or transfer all or any part of the Streets and Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer shall be effective unless an instrument signed by members representing two-thirds of the eligible votes of the said Association has been recorded agreeing to such dedication or transfer and unless written notice of the propose agreement and action hereunder is sent to every member at least thirty days in advance of the meeting of the Association at which any such action is taken.

ARTICLE VI

Membership and Voting Rights in the Association

Section 1. Membership.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association provided that any such person or entity who holds

such interest merely as a security for performance of an obligation shall not be a member.

Section 2. Voting Rights.

Each member shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1 of this Article. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to each such Lot.

ARTICLE VII

Assessments

Section 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 for capital improvements 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.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in The Properties and particularly for the maintenance, snow removal, mowing, repair of streets and rights of way, the care and preservation of open spaces on the Common Properties, payment of taxes and insurance thereon, the providing of trash and garbage collection, the providing of security services, and any other general maintenance and care for the general upkeep of the common areas.

Section 3. Basis and Maximum of Annual Assessments.

Until the Common Properties are conveyed by the Developer to the Association, the annual assessment shall be \$120.00 per Lot. From and after the conveyance of the Common Properties by the Developer to the Association, the annual assessment shall be set by vote of the members as hereinafter provided. Assess-

ments shall commence January 1, 1979, and may be paid in semi-annual installments.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, at any time after the conveyance of the Common Properties by the Developer to the Association, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of deferring in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Streets or the Common Properties, including the necessary fixtures and personal property related thereto. Provided, that any such assessment shall have the assent of two-thirds of the votes of members voting in person or by proxy at any meeting duly called and properly held for this purpose, written notice of which shall be sent to all members at least thirty days in advance, such notice setting forth the purpose of the meeting.

Section 5. Amount of Annual Assessments.

Subject to the limitations of Section 3 hereof, 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.

Section 6. Quorum for Any Action Authorized Under Sections 3, 4, and 5 of This Article Relating to Assessments.

The quorum required for any action relating to assessments as covered by Sections 3, 4 and 5 of this Article 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 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.

Section 7. Date of Commencement of Assessments.

The annual assessments provided for herein shall commence on the date fixed by the Board of Directors of the Associa-

tion. 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. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. 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.

Section 9. 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 such interest thereon 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 rate of 8% per annum and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose a lien against the property and there shall be added to the amount of such assessment, the costs of preparing and filing a complaint in such action if allowed by law and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and any reasonable attorney's fees if allowed by law, together with the costs of the action.

Section 10. 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.

Section 11. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the municipal authority and devoted to public use; (b) all Streets and Common Properties as otherwise defined herein. Notwithstanding any provisions herein, no land or improvements devoted to a Dwelling use shall be exempt from such assessments, charges or liens.

ARTICLE VIII

Approval of Plans

Section 1. Review by Developer or by Association.

No sign, building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to the Association (or the Developer if prior to the time that Common Properties are conveyed over to the Association); for approval in writing as to harmony of external design and location in relation to surrounding structures and topography. The Board of Directors of the Association may appoint an architectural review committee to carry out the responsibilities of this approval. In the event the Board or designated committee (or Developer if applicable) fail to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The Architectural Review Committee was established as a permanent Committee by resolution of the Board of Directors adopted at its meeting held September , 1983. Pursuant to such resolution, the Committee consists of the Developer, three (3) non-Board lot owners, and one Board member sitting as a Board representative, and who shall cast a vote on Committee business only in event of a tie vote among the other members of the Committee. All actions taken by the Committee are subject to review and approval by the Board of Directors as it deems necessary.

ARTICLE IX

General Provisions

Section 1. 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 Association or by the Owner of any land subject to this 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 ten (10) years unless an instrument signed by the then Owners 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 made and recorded three (3) years in advance of the effective date of such change and unless written notice of the proposed Agreement is sent to every Owner at least sixty (60) days in advance of any action taken.

Section 2. 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.

Section 3. 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 Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. 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.