

**MILL CREEK MEADOWS  
HOMES ASSOCIATION DECLARATION  
(By-laws)**

**Section 1. General**

The name of the Association is the Mill Creek Meadows Home Owners Association (HOA).

The HOA is a corporation not organized for profit, and no dividend shall be declared by the board nor shall any part of the net earnings or income of the HOA be distributed to its members.

The HOA has been organized to take actions and do all things necessary or desirable to carry out the obligations and exercise the rights and powers imposed upon or given to the HOA pursuant to the Declaration of Covenants (Restrictions?), Conditions of Restrictions for Mill Creek Meadows executed by ???? a Kansas Limited Liability company and recorded with the Register of Deeds for Johnson County, Kansas on ?????? in Book ??? at Page ??? as Document No. ????? (as the same may be hereafter amended , the "Declaration"). On ???? Vans Holding Company, Inc. assigned all of its rights in the Declaration to the Mill Creek Meadows Home Owners Association, a Kansas Limited Liability company.

The principal offices of the HOA shall be located at 5330 Lakecrest Drive, Shawnee, KS 66218.

**Section 2. Definition of Terms**

District - The term "District" as used in this Declaration shall mean, unless extended as hereinafter provided, all of those lots and tracts of MILL CREEK MEADOWS, a subdivision in the City of Shawnee, County Johnson, State of Kansas.

Public places - The term "Public Places" as used herein shall be deemed to mean all streets and all gateways, entrances, ornamental areas and similar places, including those areas shown on said plat of MILL CREEK MEADOWS (Enclosure 1), together with all improvements which may be situated thereon, the use of which is dedicated to or set aside for the general use of all of the owners within the district.

Common area - The term "Common Area" as used herein shall be deemed to be the area identified on said plat and have been heretofore dedicated for use as a community swimming pool, parking area or other recreational areas.

Member - The term "member" as used herein shall be deemed to be all fee simple title Owners ("owner") of any numbered lot or plat ("Improved Lot") as shown on any plat recorded against the district.

HOA – The term "HOA" as used herein shall be deemed to be the Mill Creek Meadows Home Owners Association composed exclusively of Members from within the district and organized as board members, committee members and other Members as

set forth in this agreement.

### **Section 3. Powers And Duties Of The HOA**

All public places and common areas, together with all improvements thereon and thereto shall be under the management and control of the HOA, subject to that control had and exercised by the City of Shawnee, County of Johnson, State of Kansas, or any of them.

1. The HOA shall have the following powers and mandatory duties:

(a) To care for, spray, trim, protect, replace and replant trees, shrubbery, bushes, flowers, and grass in public places where trees, shrubbery, bushes, flowers, grass and sod have once been planted or located; and to care for, spray, trim, protect, place, replace, plant and replant trees, shrubbery, bushes, flowers, grass and sod in the public places, specifically including common and public areas set aside for the exclusive use and benefit of the Members in the District.

(b) To provide, maintain, protect and, when necessary, design, construct, reconstruct and replace protective lighting within the District when adequate service of that type is not available from any public source.

(c) To provide for the maintenance of any gateways, entrances and ornamental features now existing or which may hereafter be erected or created in said District in any public street or on any land set aside for the exclusive use of the Members in the District.

(d) To hereafter pay all taxes and annual installments of special assessments that may be levied against public areas within the district.

(e) To enforce, either in its own name or in the name of any Members within the District, any or all building restrictions 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 this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or 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 HOA as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Member having the contractual right to do so from enforcing in his own name any such restrictions.

(f) To levy and collect the assessments which are provided for in this Declaration.

2. The HOA shall have the following additional powers and duties which it may exercise and perform whenever in its discretion it may deem it necessary or desirable, to-wit:

(a) To provide such lights as the HOA may deem advisable on gateways, entrances or other features, and in other public or common places, when such facilities are not available from any public source.

(b) 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.

(c) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(d) To merge or consolidate with or enter into agreements of cooperation with other similar homes associations now in existence of hereinafter created applicable to other residential subdivisions adjacent to or in the same geographical area as is MILL CREEK MEADOWS.

### 3. Methods for providing general funds.

(a) For the purpose of providing a general fund to enable the HOA to perform its duties and to construct, purchase, operate or maintain the improvements provided for herein, all lots in the district shall be subject to an annual assessment to be paid to the HOA by the respective Members thereof. The amount of the annual assessment shall be fixed by a meeting of the Members of the HOA to be held during the month of October in each calendar year.

(b) The assessments provided for herein shall commence January 1, 2007. Thereafter, each assessment shall be due and payable on the last day of January of each year. Payment of the assessment is the responsibility of the Member of record as of January 1 of the year in which the assessment is due. It will be the duty of the HOA to give notice to all Members on or before the first day of January of the amount of the assessment on each lot owned by them. Failure of the HOA to levy the assessment prior to January first of any year shall not invalidate any such assessment subsequently levied for that particular year, nor shall failure to levy assessment for any one year affect the right of the HOA to do so for any subsequent year. When the assessment is levied subsequent to January first of each year, then the payment thereon shall become due and payable not later than thirty (30) days after the date of the levying of the assessment.

(c) The entire assessment shall be considered late on the first day following the date it is due and payable as above set forth. Late payments are subject to a \$50.00 charge. In the event of failure of any of the members to pay any installment of such assessment on or before the first day of the second month following the due date of such installment, then such installment shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Additionally, the Members shall lose the privileges of HOA membership. These privileges may include, but are not limited to: the right to vote in HOA meetings, use of the pool and other recreational areas, and access to the trash removal service until the debt is paid or arrangement for payment has been made.

(d) Nonpayment of any assessment provided for herein within ninety (90) days of the due date shall cause said assessment to be deemed delinquent. Nonpayment of

any installment of any assessment provided for herein within ninety (90) days from the due date of such installment shall cause the entire unpaid portion of said assessment, including all installments due in the future, to be deemed delinquent. Payment of both principal and interest shall be enforced as a lien on said property through proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the HOA to bring suits to enforce such liens promptly after they become delinquent.

(e) The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon any property subject to assessment; provided, however, that such subordination shall apply only to the assessments or installments thereof which have become due and payable prior to the sale of such property pursuant to a foreclosure of such mortgage or power of sale under such deed of trust, or prior to a conveyance to the mortgagee or beneficial owner in lieu of foreclosure. Such sale shall not relieve such property from liability for any assessments or installments thereof thereafter becoming due nor from the lien of any such subsequent assessments or installments.

(f) Such liens shall continue for a period of one (1) year from the date of delinquency and no longer unless within such year suit shall have been instituted for collection, in which case the lien shall continue until termination of the suit and until the sale of the property under the execution of judgment establishing same.

#### **Section 4. Home Owner Association Board**

The HOA shall have a Board of six (6) officers in number, elected in accordance with its Articles of Incorporation and Bylaws, who shall be charged with the management of the HOA.

The number of officers which shall constitute the whole board shall be six (6) however; the President of the board shall not be a voting member unless an additional vote is required to break a tie within the board. Therefore, the number of voting officers shall always be an odd number. The number of officers may be changed by an amendment of these Declarations adopted by the board.

#### **Section 5. Meetings**

The HOA will meet with Members at least once in each year. These meetings of the Members of the HOA shall be held on the first Wednesday of each October, at the place where such meeting of the Members is held or at such other place as may be selected by the board.

1. Notice of Meeting. At least thirty (30) days prior to any meeting of the HOA, it shall give notice to all Members of lots in the district of the place, time and purpose of regular and special meetings of the HOA and shall designate the place where payment of assessments shall be made and other business in connection with said HOA may be transacted; and, in case of any change of said address, the HOA shall give notice to all Members of lots in the district of its new address. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, with postage prepaid thereon, and addressed to the person entitled to such notice at the last

address listed with the HOA for such person or if a notification of the time and location of the meeting is clearly posted on the HOA web site and on the common area message boards thirty (30) days before the day on which the meeting is to take place.

2. Special Meetings. Special meetings of the board may be called at any time by the President, any Vice-President, the Secretary or any director. A special meeting may be held at any place within or without the State of Kansas as designated in the notice of such meeting.

3. Notice of Special Meeting. Written notice of each special meeting of the board, stating the place, day and hour of the meeting, and the business to be conducted at such meeting, shall be either (a) mailed to each member of the HOA at his or her residence or place of business at least three days before the day on which the meeting is to be held, or (b) personally delivered or sent by overnight courier or by telephone, fax, or e-mail at least two days before the day on which the meeting is to be held. The notice may be given by any member of the HOA board or his or her designated representative.

4. Voting. Issue of common interest to the Members of the District shall be put to a vote during regular or special meeting of the HOA or by participation of the Members through the HOA web site. Issues are decided by voting as indicated below.

(a) Simple Majority. Fifty-one (51) percent of Members who vote during an HOA meeting or during the period prescribed shall constitute a simple majority. Issues which require a simple majority vote:

- Amending HOA By-laws and Restrictions.
- The HOA entering into legal or financial agreements that continues for more than one calendar year.
- Raising the HOA dues levy by more than 5% in one year.
- The levy of any special assessment against the members of the HOA.

(b) Quorum. A majority of Members must vote to constitute a quorum for the transaction of business. If a quorum does not vote on any issue, the board may continue the voting period without notice other than announcement at a meeting or on the web site, until a quorum is represented. Issues which require a quorum vote:

- Dissolution of the HOA.
- Adding or removing homes or developments to/from the HOA.

5. Action without a Meeting. The board may take the following actions by approval of a simple majority of the officers of the board:

- Raise the HOA dues levy by 5% or less in one year.
- Negotiate and contract for services supporting the requirements of the HOA.
- Approving architectural changes requested or recommended by members of the HOA.

## **Section 6. Officers of the Board**

The HOA officers shall be elected by Members through ballots sent to the Members. The winner shall be decided by a simple majority of the returned ballots. Officers shall include a President, Secretary, Treasurer and Vice-President as well as any other special non-voting officers as the board may from time to time determine, each of whom shall serve for a term of two years. One half of the board, three members (Vice President, Treasurer, and one at-large member) shall be elected in each odd numbered year and the other three members (President, Secretary, and the second at-large member) shall be elected in the even numbered years. Board members may only hold one office per term.

### **1. Duties. The officers of the HOA shall have the following duties:**

(a) President. The President shall be the chief executive and operating officer of the HOA, with general executive powers and duties of supervision and management of the business of the HOA, and shall see that all orders and resolutions of the board are carried out. The President shall execute all contracts, agreements, leases, deeds, easements, notes, mortgages, payments and other documents and instruments on behalf of the HOA except when the execution thereof is expressly delegated by these Bylaws or by the board to some other officer or agent of the HOA. The President shall preside at all meetings of the members at which the President is present, and shall have such other duties, powers and authority as may be prescribed elsewhere in these Bylaws.

(b) Vice-President. The Vice-President shall perform such duties and have such powers as the board may from time to time prescribe or which the President may from time to time delegate. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice-President shall execute contracts, agreements, leases, deeds, easements, notes, mortgages and other documents and instruments on behalf of the HOA, and shall preside at all meetings of the Members, except that if the Vice-President is not available to preside at a meeting of the board, the President shall designate a member of the board to so preside.

(c) Secretary. The Secretary shall record all proceedings of the board of directors and the members in a book to be kept for that purpose and shall perform like duties for committees when required. The Secretary may also give, or cause to be given, notices of all meetings of the Members and special meetings of the board, and shall keep, or cause to be kept, a list of Members of record, and shall perform such other duties as may be prescribed by the board or which the President may from time to time delegate. The Secretary, or such other person as the board designates, shall have custody of the corporate seal of the HOA and shall have authority to affix the seal to any instrument requiring it. The Secretary may attest any document or instrument signed by the President, Vice-President or other authorized person on behalf of the HOA.

(d) Treasurer. The Treasurer shall have custody of the HOA's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the HOA and shall deposit all moneys and other valuable effects in the name and to the credit of the HOA in such depositories as may be designated by the board. Subject to the provisions of this Article, the Treasurer shall monitor the funds of the HOA, keeping appropriate records of any disbursements, and shall render to the

board, at its regular meetings or when the board so requires, an accounting of all transactions and of the financial condition of the HOA. The Treasurer shall be bound by the budget established by the homeowners at the annual HOA meeting. In case additional funding is needed, the board or the assigned committee shall petition the budget committee.

(e) At Large Members. The board shall always have two at-large members. These elected officers shall have the right to vote as full members of the board.

2. Vacancies. Any vacancies in the board, however created, must be filled within three months. Positions with less than six months to a regular election may be filled by a simple majority vote of board members and the person elected shall only serve until that term expires. Positions more than six months from election are filled by a simple majority voting members.

3. Removal. Any one or more officers may at any time be removed from office, with or without cause, at any special meeting of the Members called for such purpose, by a simple majority of the Members voting.

4. Resignation. Any officer may resign at any time upon written notice to the board of directors. Such resignation shall take effect at the time specified in such notice, or, if no time is specified, upon receipt of such notice by the board and the election and qualification of the resigning officer's successor, and the acceptance of such resignation shall not be necessary to make it effective.

5. Compensation.

a. Reimbursement. No officer shall receive compensation for the services he or she may render to the HOA. However, any officer may be reimbursed for actual expenses incurred in the performance of his or her duties as an officer.

b. Liability. No Member of the HOA shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of, services performed pursuant to this Declaration.

c. Authority. The HOA shall have the rights, powers, duties and obligations set forth in the Declaration.

d. Termination. The HOA shall cease to exist on the date on which, the Members of the HOA receive the approval of a quorum of the HOA Members and file a document declaring the termination of the HOA.

## **Section 7. Committees**

The HOA shall appoint committees to assist in administering the responsibilities of these Declarations. The following committees shall be maintained at all times unless deemed unnecessary by a simple majority vote of the HOA board.

1. Budget Committee. The Budget committee is tasked with creating a budget for the upcoming year as well as a five (5) year plan, which shall be presented to and voted on by the homeowners at each annual HOA meeting. The committee will review HOA expenditures and ensure that accounts remain balanced. The committee makes investment decisions for long term capital planning and assists in determining budgets for the various committees and community improvement activities. The committee also conducts a quarterly review of account and expenditure records and assists the treasurer with the annual reports that reflect how money was spent as well as how money is planned to be spent in support of the community. Each year these reports are provided as part of the annual HOA meeting.

2. By-law and Architectural Control Committee. Update HOA by-laws and restrictions. Review and makes recommendations to the Board on architectural changes. Assist the Board with enforcement of MCMHOA by-laws and covenants.

3. Landscape/Pool Committee. Maintain common areas through out the neighborhood and review proposals for enhancing the neighborhood appearance. Assess and recommend improvements needed for the pool area. Manage lawn care provider and pool care maintenance.

4. Social Committee. Responsible for planning and implementing community social events.

5. Other Committees. The HOA may create other committees as may be deemed necessary or desirable from time to time, the members of which shall be appointed and shall have such rights, powers, duties and obligations as shall be determined by the board of directors.

## **Section 8. Membership**

Every person or entity who is a record owner of a fee interest in any lot as defined herein, including a purchaser under a Contract for Deed, shall be a Member of the HOA; provided, that any such person or entity, other than a contract seller, who holds such interest merely as a security for the performance of any obligation shall not be a Member.

## **Section 9. Voting Rights**

The HOA shall have only one class of membership. Each Member shall have one (1) vote for each lot in which he holds the interest required for membership by the preceding section and upon which he shall not be late in the payment of assessments; provided, however, when more than one person holds an interest or interests in any lot, all such persons shall be Members and the vote for such lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any such lot.



## **Section 10. To Observe All Laws**

Said HOA shall at all times observe all applicable State, county or other laws or regulations and if at any time any of the provisions of this Declaration shall be found to be in conflict with such laws such provisions shall become null and void, but no other parts of this Declaration not in conflict therewith shall be affected thereby. The HOA shall have the right to make such reasonable rules and regulations and provide the means to enforce such rules and regulations as will enable it to adequately and properly carry out the provisions of this Declaration.

## **SECTION 11. Amendment And Termination**

At any time the owners of fifty-one percent (51%) or more of the lots with the district may, by an appropriate instrument (in one or more counterparts) executed, acknowledged and filed for record in the office of the Register of Deeds for Johnson County, Kansas:

- (1) Give additional powers to the MILL CREEK MEADOWS, HOA; or
- (2) With the consent of the Governing Body of the City of Shawnee, Kansas, terminate this Declaration and release all of the lands then affected thereby from all of the terms and provisions hereof.

## **Section 12. Covenants Running With The Land**

All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon the undersigned, its successors and assigns.  
IN WITNESS WHEREOF, the undersigned has caused these to be executed the day and year first above written.

STATE OF KANSAS, JOHNSON COUNTY, SS.:

BE IT REMEMBERED, That on this XX day of XXXX, XXXX, before me, a Notary Public in and for said County and State, came \_\_\_\_\_

\_\_\_\_\_, virtue of the laws of the state of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the foregoing instrument of writing and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

Notary Public

\_\_\_\_\_  
My appointment expires: