

BYLAWS OF THE
MILL CREEK RUN PROPERTY OWNERS ASSOCIATION

ARTICLE I. ASSOCIATION OF OWNERS

Section 1. These Bylaws are adopted in accordance with that certain Declaration of Covenants, Conditions and Restrictions (the "Declaration") dated 23 of July, 1975, with respect to Mill Creek Run, a subdivision in Lenexa, Johnson County, Kansas, made by Creek Mill Corporation, a Kansas Corporation, ("Declarant"). Administration of Mill Creek Run (the "Project") shall be vested in the Mill Creek Run Property Owners Association (the "Association"). The Project shall be operated and managed in accordance with the provisions of the Declaration and these Bylaws.

ARTICLE II. DEFINITIONS

Section 1. "Association" shall mean and refer to Mill Creek Run Property Owners Association, a Kansas, not-for-profit corporation, its successors and assigns.

Section 2. "Board" shall mean the Board of Directors of the Mill Creek Run Property Owners Association.

Section 3. "Building" shall mean a structure composed of Units.

Section 4. "Common Areas" shall mean all land, including any and all improvements, within the Project, not within a Lot, owned by the Association for the common use and enjoyment of the Owners, and the tenants and invitees of each. "Common Area facilities" shall mean all property, real and personal, which is constructed or located on, in, under or above the Common Areas or which is used in connection with any of the foregoing.

Section 5. "Declarant" shall mean and refer to Creek Mill Corporation, a Kansas Corporation, its successors and assigns.

Section 6. "Declaration" shall mean and include the Declaration of Covenants, Conditions and Restrictions filed with respect to Mill Creek Run and any and all amendments thereto.

Section 7. "Lot" shall mean and refer to any plot of land, shown upon any recorded tract subdivision plat or map or plat of survey of the Project with the exception of the Common Areas.

Section 8. "Unit" or "Townhouse Unit" shall mean and refer to that portion of a building which is designed and used solely for single-family residential purposes and the Lot and appurtenant easement areas to such lot upon which such Townhouse Unit is constructed, and shall include a patio or balcony, if any. The area thereof shall be computed from the outside wall, if any, or from the center of any common wall. Appurtenant thereto and included therein shall be membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner (including Declarant), whether one or more persons or entities, of fee simple title to any Lot or townhouse unit which is subject to the Declaration and any amendments thereto, including contract sellers, but excluding any interest held merely as security, whether by mortgage or otherwise.

Section 10. "Parcel" shall mean and refer to the property described in Exhibit A of the Declaration.

Section 11. "Project" shall mean and refer to that certain real property which is or shall be described on any plat or amended plat of Mill Creek Run and all buildings and improvements thereon, and such additions thereto as may hereafter be brought within it by a plat or amended plat and brought within the Declaration, originally or by amendment, and within the jurisdiction of the Association.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. The Owner of each Unit shall be a member of the Association until such time as his ownership ceases for any reason, at which time his membership shall automatically terminate. Declarant shall also be a member of the Association, so long as Declarant owns a Lot or Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment, and the conveyance or other transfer of ownership of a Unit shall coincidentally transfer membership in the Association, together with all of the rights, benefits and burdens of such ownership as set forth in the Declaration and the Bylaws of the Association. Members may vote at any meeting in person or by written proxy duly filed with

the Secretary of the Association as set forth in Article IV, Section 5 hereof.

Section 2. For purposes of voting on any issue, the Association shall have two classes of voting memberships:

(a) Class A. Class A Members shall be all owners except the Declarant. Class A Members shall be entitled to one (1) vote for each Lot and Townhouse Unit in which they hold the interest required for membership by Article III, Section 1. When more than one (1) person holds such interest in any Lot and Townhouse Unit, all such persons shall be Members and the vote for such units shall be exercised as they, among themselves, determine; but in no event shall more than one (1) vote be cast with respect to any one (1) unit.

(b) Class B. Each Class B membership shall be issued to the Declarant. Nine (9) Class B memberships shall be issued to Declarant for each Lot or Townhouse Unit owned by Declarant. Each Class B membership shall be entitled to one (1) vote. As each Townhouse Unit is sold by Declarant, the buyer shall receive a Class A membership, and Nine (9) Class B memberships shall be cancelled. All Class B memberships outstanding shall be surrendered by the Declarant to the Board of Directors of the Association for cancellation, upon the happening of either of the following events, whichever occurs first:

(i) When the last of the Townhouse Units has been constructed and sold upon the real estate described in Article I, Section 4, of the Declaration, and such additional real estate as may be made subject to the Declaration or any supplemental declaration prepared and filed for record, pursuant to the provisions of Article II thereof; or

(ii) July 1, 1995.

Upon surrender and cancellation of all Class B memberships,

Declarant shall have no right, title or interest, as a Class B Member, in or to the Common Area and Facilities, and any and all other personal property or real estate owned by the Association; provided, however, that should the Class B memberships be cancelled pursuant to Section 2(b)(ii) above, then in that event Declarant shall be issued one (1) Class A membership for each Nine (9) Class B memberships so cancelled, and Declarant shall then become a Class A Member with all rights, privileges and obligations of a Class A Member. Upon surrender and cancellation of each Class B membership, the Declarant shall have no right to vote such membership at any regular or special meeting of the Association for any purpose whatsoever.

ARTICLE IV. MEETINGS

Section 1. The first annual meeting of the Association shall be held at its principal office at 7:30 P.M. on the fourth Tuesday of the second calendar month following the close of the Association's fiscal year, or part thereof, and all subsequent meetings shall be held on the same day at the same time. If that date is a legal holiday, the said meeting shall be held on the next succeeding business day. The meetings shall be held at the principal office of the Association, which shall be maintained within the Project, or at such other place within or without the State of Kansas as the Board may designate. Notice thereof shall be given pursuant to Section 3 of this Article IV.

Section 2. Special meetings may be held at any time upon a call of the President of the Association, or of the Class B membership, or of one-fourth (1/4) of all members of the Class A membership. Upon receipt of such call, the Secretary of the Association shall send notices of the meeting pursuant to Section 3 of this Article IV.

Section 3. Except as otherwise provided in the Declaration or Articles of Incorporation, a written notice of every meeting of the Association stating whether it is an annual meeting or special meeting, and the purpose therefor, shall be given by the Secretary at least

ten (10) days before the date set for such meeting. Such notice shall be given to each member by either leaving the same at the member's Unit or by mailing it, postage prepaid, addressed to such member at the member's Unit or such other address as the member may designate in writing. Such notice shall also be given to the holder of each mortgage or other similar lien at the address furnished the Association by the lien holder. Each lien holder shall have the right to designate a representative to attend any such meeting, provided that none of such representatives shall have a vote as to any matter considered at any such meeting. If notice is given pursuant to the provisions of this Section, the failure of any member or lien holder to receive actual notice of a meeting shall in no way invalidate the meeting, any of its proceedings, or any action taken.

Section 4. At any meeting of the Association, the presence of ten (10%) percent of outstanding Class A and all of Class B members, whether in person or by proxy, shall constitute a quorum and the concurring vote of a majority of those members represented shall be valid and binding on the Association, except as otherwise provided by these Bylaws and the Declaration.

Section 5. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a Unit is jointly owned, then by all joint owners, and such written authorization shall be filed with the Secretary of the Association, and unless limited by its terms, such authority shall be deemed good and valid until revoked in writing.

Section 6. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by a vote of more than fifty per cent (50%) of the outstanding votes represented at such meeting, whether a quorum be present or not, without notice other than the announcement at such meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

ARTICLE V. BOARD OF DIRECTORS

Section 1. The affairs of the Association shall be governed by a Board of Directors, which shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not prohibited by law and are not reserved for the members by the Declaration, the Articles of Incorporation, or these Bylaws. The initial Board shall be composed of three (3) persons, who need not be members of the Association, at least one of whom shall be an officer of Declarant. Said initial Board shall serve until the next annual meeting of the Association, but not less than twelve (12) months, at which time the next Board shall be elected as herein provided, which Board shall be composed of six (6) persons, at least one of whom shall be an officer of Declarant. Of the said six Directors, three shall serve a one (1) year term and three shall serve a two (2) year term. Such Board shall serve until the next annual meeting of the Association, but not less than twelve (12) months. The Board elected at said next annual meeting shall be composed of nine (9) persons, of whom three shall be elected for a two (2) year term and three for a three (3) year term. The Board shall thenceforth be composed of not less than nine (9) persons, each elected to a three year term. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three years. The intent and purpose of the staggered expiration of the terms of the Directors is that the term of office of at least one-third of the Directors shall expire annually.

Section 2. The Association, through the Board of Directors, shall have the following duties:

- (a) To operate, maintain, repair and replace the Common Areas and Common Area facilities, and the exterior of each building, as more fully set forth in the Declaration, except the patio area and glass of each Unit, which shall be the responsibility of each Owner;
- (b) To fix the amount of the assessments against each Lot and Unit pursuant to Article V of the Declaration, and to give the Owner or Owners of each Unit affected notice

of such assessments as provided in the aforesaid provisions of the Declaration;

- (c) To collect all assessments, monthly, annual and special, from the Owners, including but not limited to foreclosure of the lien against any Lot for which assessments are not paid pursuant to the Declaration or to bring an action at law against the Owner obligated to pay the same, or both;
- (d) To designate, hire or contract with, and dismiss personnel necessary for the aforesaid maintenance and operation;
- (e) To do such other acts as from time to time are reasonably necessary to maintain the quality, or appearance, or both of them, of the Project;
- (f) To keep or cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the members at each annual meeting of the members and at any special meeting when such statement is requested in writing at least 24 hours prior to such meeting by one-fourth (1/4) of the Class A members entitled to vote;
- (g) To procure and maintain such insurance as is set forth in the Declaration, and such other insurance as it deems prudent or necessary;
- (h) To cause all officers or employees having fiscal responsibilities to be bonded, as required by the Declaration.

Section 3. The Association, through the Board, shall have the following powers:

- (a) To adopt and publish rules and regulations governing the use of the Common Areas and Common Area facilities, and the personal conduct of the members and their guests thereon and therein, and to establish penalties for the infraction thereof;
- (b) To exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(c) To perform, install, and maintain any and all other functions, measures, and items deemed necessary by the Association for the convenience, benefit, and enjoyment of the Owners, and to fix, levy and collect as a common expense or otherwise any assessment necessary to pay the cost of any of the foregoing.

Section 4. The Board may employ for the Association a professional management agent or manager to perform such duties and services as the Board shall authorize, including, but not limited to, the duties and powers listed in the foregoing Sections of this Article V. The compensation therefor shall be established by the Board and shall be considered as and included in common expenses. Any management agreement shall not exceed one year, renewable by agreement, and shall provide that it may be revoked, modified, or otherwise amended by a majority of the outstanding votes present at a duly constituted meeting of the Association upon 30 days' written notice thereof. The Board may employ any other employee or agent to perform such duties at such compensation as the Board may establish.

Section 5. The Directors shall be nominated by a Nominating Committee or by nomination from the floor at the annual meeting of the members and shall be elected by a majority of the outstanding votes present at such annual meeting. Each Director shall be elected to serve a term of three years, except as provided in Section 1 hereof, and shall hold office until his successor has been duly elected.

Section 6. Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so selected shall serve until a successor is elected at the next annual meeting of the Association.

Section 7. At any regular or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by a majority of the outstanding votes present

and a successor may then and there be elected to fill the vacancy by a similar vote. Any Director whose removal has been proposed by an Owner shall be given an opportunity to be heard at the meeting.

✓ Section 8. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director or corporation with which a Director may be involved for services performed by him for the Association, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken.

Section 9. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, provided that they shall meet at least annually. Notice thereof shall be given to each Director, personally or by mail, addressed to his residence, or by telephone, at least ten (10) days prior to the date thereof, stating the time and place thereof.

Section 10. Special meetings of the Board may be called by the President on ten (10) days' notice to each Director, given personally or by mail, addressed to his residence, or by telephone, which notice shall state the time, place and purpose of the special meeting. Special meetings of the Board shall be called by the President or by the Secretary in like manner and on like notice upon the written request to either of them of at least one-third of the Directors.

Section 11. Before or at any meeting of the Board, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by any Director at any meeting of the Board shall be deemed a waiver of notice by him of the time and place thereof. If all of the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the acts of a majority of the Directors present at such meeting

shall be the acts of the whole Board. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

ARTICLE VI. OFFICERS

Section 1. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Board may appoint an Assistant Treasurer and an Assistant Secretary and other such officers as in their judgment may be necessary. One person may hold the office of Secretary and Treasurer, otherwise each office shall be held by different persons.

Section 2. The officers of the Association shall be elected annually by the Board and shall hold office at the pleasure of the Board.

Section 3. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board.

Section 5. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If the Vice President is absent or unable to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as may from time to time be imposed upon him by the Board.

Section 6. The Treasurer shall have the responsibility for the Association's funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements. He shall be responsible for the deposit of all moneys of the Association in

such depositories as may from time to time be designated by the Board.

Section 7. The Secretary shall attend and keep the minutes of all meetings of the Board and of the Association and shall give all notices provided by these Bylaws, and the Declaration. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a Secretary pro tem who shall keep the minutes of such meeting.

Section 8. All agreements, contracts, deeds, leases, checks and other instruments of the Project shall be executed by any two of the following: President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board from time to time.

Section 9. No officer shall receive any compensation for acting as such, unless a resolution authorizing remuneration for services shall have been unanimously adopted by the Board before any such services are undertaken.

ARTICLE VII. OBLIGATION OF OWNERS

Section 1. The Owner or Owners of every Unit shall be obligated to pay the assessments pursuant to Article V of the declaration by acceptance of a deed for any such Unit. Such assessments shall be established and shall be paid pursuant to the Declaration, and all Owners shall be subject to the remedies set forth in said Declaration if such assessments are not paid in a timely fashion.

Section 2. No Owner shall permit or perform, nor fail to perform, any act or activity which does or may cause damage to his Unit or any other Unit or the Common Areas or Common Area facilities, or any other activity which may be noxious or a nuisance or injure the reputation of the Project. Each Owner must perform promptly all maintenance and repair work within his own Unit, which if omitted would affect the Common Areas, other Units, or the Project in whole or in part. All internal installations in the Unit, such as water, light, power, sewage, telephone, sanitary installations, and all other accessories belonging to the Unit, shall be repaired and

maintained at the Owner's expense. Each owner shall reimburse the Association for any expenditure incurred in repairing or replacing any of the foregoing damaged through the Owner's negligent act or omission.

Section 3. The agents or employees of the Association shall have the right to enter each and any Unit in case of an emergency originating therein or threatening damage to any such Unit, any other Unit, the Common Areas or Common Area facilities, whether or not the Owner or occupant is present at the time.

Section 4. The purchaser of any Unit shall promptly cause to be duly recorded in the office of the Register, of Deeds of Johnson County, Kansas, the deed of conveyance to him of his Unit and shall file a copy of such deed with the Board.

ARTICLE VIII. LIABILITY OF DIRECTORS AND OFFICERS

Section 1. No director or officer of the Association shall be liable for the acts or defaults of any other officer or director thereof, or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.

Section 2. Each officer and director of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities, including attorneys' fees, actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties.

ARTICLE IX. REGULATIONS

Section 1. In order to assure the peaceful and orderly use and enjoyment of the Project, the Board may from time to time adopt, modify and revoke, in whole or in part, such reasonable rules and regulations governing the conduct of persons with respect

to the Common Areas and Common Area facilities, as the Board may from time to time deem necessary. All such rules and regulations, including subsequent amendments and modifications thereto, shall be delivered promptly to each Owner at their respective Units, and thereafter shall be binding upon all members of the Association, their tenants, guests, and invitees, provided that such delivery shall be conclusive upon each Owner unless a different address is specified in writing to the Association. Notwithstanding the provisions hereof, the regulations may be modified and amended by the concurring vote of 75% of the outstanding votes of the Association.

ARTICLE X. DEVELOPMENT

Notwithstanding anything to the contrary herein or in the Declaration, Creek Mill Corporation, its successors or assigns, the developer of the Project, shall be entitled to appoint the Board of Directors, shall determine and fix the amount of the assessments described in Articles V and VII of the Declaration and select the members of any committees required by these Bylaws or the Declaration, and all requirements for meetings shall be deemed waived by the members of the Association, until such time as Class B membership shall convert to Class A Membership; provided, however, that from and after the said conversion of membership, Creek Mill Corporation, its successors or assigns, shall no longer be entitled to appoint directors and determine assessments, whereupon the administration of the Project shall be fully and completely managed by the Association and its Board of Directors as herein provided.

ARTICLE XI. OPERATION OF ASSOCIATION

Section 1. The Association shall appoint an architectural control committee as provided in the Declaration, and a nominating committee as provided in these Bylaws, and such other committees as are appropriate from time to time.

Section 2. The books, records, and papers of the Association shall during reasonable business hours be subject to inspection by any member and to the holder of any mortgage or similar lien or their duly appointed agents. The Declaration and Bylaws of the Association shall also be available for inspection by any

member at the principal office of the Association and additional copies of such document may be purchased at reasonable cost.

ARTICLE XII. AMENDMENT

These Bylaws may be amended, modified, or revoked in any respect from time to time by vote of 75% of the outstanding votes of the Association, at a meeting duly called for such purpose; provided, however, that the contents of these Bylaws shall always contain those matters which are required to be contained herein by the Laws of Kansas; provided, further, that the Association shall give notice of any meeting called to so amend these Bylaws to the holders of all first mortgages or similar liens.

ARTICLE XIII. GENERAL PROVISIONS

Section 1. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provision thereof.

Section 2. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 3. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 4. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one of such provisions shall not affect the validity or enforceability of any other provision hereof.

Section 5. In the event of any conflict between these Bylaws and the provisions of the Laws of the State of Kansas, the latter shall govern and apply.

Section 6. The Association or the Board on behalf of the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, any and all restrictions, conditions, covenants, reservations, liens, obligations and charges now or

hereafter imposed by the provisions of these Bylaws, or by the Articles of Incorporation or by the Declaration.

IN WITNESS WHEREOF, we, being all of the Directors of Mill Creek Run Property Owners Association, a Kansas Not-for-Profit Corporation, hereby adopt the foregoing Bylaws this ____ day of _____, 1975.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the Mill Creek Run Property Owners Association, a Kansas Not-for-Profit corporation, and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the ____ day of _____, 19__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 19__.

Secretary