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*Margaret M. Brenner*  
MARGARET M. BRENNER  
47-08-0530  
DEP

TITLE COMPANY

1025549

MILL CREEK RUN

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 23<sup>rd</sup> day of July, 1975, by CREEK MILL CORPORATION, a Kansas corporation, (hereinafter referred to as "Declarant"), its successors and assigns;

WITNESSETH:

WHEREAS, Declarant is the owner of the real property set forth in Schedule A attached hereto and made a part hereof by reference as though fully set forth herein, and which real property is all in Johnson County, Kansas, and is being developed by Declarant as "Mill Creek Run"; and

WHEREAS, Declarant has constructed or intends to construct a planned unit development on said real property described in Schedule A, consisting of residential townhouse units and certain common areas, community facilities and improvements related thereto; and

WHEREAS, Declarant is also the owner of other real property located in Johnson County, Kansas, as set forth and described in Schedule B attached hereto, and which real property described in said Schedule B abuts and adjoins the real property described in Schedule A; and

WHEREAS, said real property described in Schedule B is not platted as of this date, but said Schedule B real property may be platted and added or annexed to the property described in Schedule A and developed by Declarant for additional residential units, such as townhouses, condominiums, multi-family or single family, and related common areas, common facilities and improvements; and

WHEREAS, there is no manner in which the Declarant can foretell the future in such a way as to be able to guarantee or represent that said other real property described on Schedule B, or any part thereof, will be annexed or added to said real property described on Schedule A for such additional residential units or for additional common areas, common facilities or improvements thereto; and

WHEREAS, there is no obligation, commitment, representation, warranty, or promise by the Declarant to annex or add all or any

portion of said real property described on Schedule B to the area of the real property described on Schedule A; and

WHEREAS, Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens, as hereinafter set forth, upon the real property described on Schedule A hereto for the benefit of the Declarant, its successors, assigns and its future grantees, to protect the value and desirability of the planned unit development project to be known as Mill Creek Run; and

WHEREAS, if the real property described on Schedule B, or any part thereof, be hereinafter annexed or added to said real property described on Schedule A for purposes of additional development, although not required to be done, any such additional annexed or added area out of said Schedule B area is to likewise be subject to all of the covenants, conditions, restrictions and easements set forth hereinafter by following the procedures therefor as hereinafter set out; and

WHEREAS, Declarant has incorporated, under the laws of the State of Kansas, as a nonprofit corporation, the Mill Creek Run Property Owners Association, (hereinafter referred to as the "Association"), for the efficient preservation of the values and amenities in said community, and for the purpose of exercising the functions of a community association as set forth hereinafter for the benefit of said real estate and all additions thereto, if any.

NOW, THEREFORE, Declarant hereby declares that the real estate described in Schedule A hereto, and such additions thereto as may hereafter be made, pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the real estate, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1.

"Declaration" shall mean the covenants, conditions and restric-

tions, and all other provisions herein set forth in this entire document, as same may be from time to time amended.

Section 2.

"Association" shall mean and refer to Mill Creek Run Property Owners Association, a not-for-profit corporation, formed pursuant to the not-for-profit corporation laws of the State of Kansas, by Articles of Incorporation filed with the Secretary of State, for the State of Kansas, on the 30th day of May, 1975, and with the Register of Deeds of Johnson County, Kansas, on the 3rd day of June, 1975, in Book No. 1036, at Page 533.

Section 3.

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

Section 4.

"Property" or "Properties" or "Real estate" shall mean and refer to the land described in Schedule A hereto, which becomes subject to these declarations, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 5.

"Common Area and Facilities" shall mean all that part of the real estate and all improvements located thereon (except all lots and townhouse units and all personal property) owned by the Association for the common use and enjoyment of the residents of Mill Creek Run.

Common Area and Facilities shall include:

(a) All real estate now owned or hereafter conveyed to the Association in fee simple title and shown on any recorded tract subdivision plat or plat of survey thereof, and improvements thereon, which are intended to be devoted to the common use and enjoyment of the members.

(b) All community buildings, swimming pools, tennis courts, playground equipment, recreational facilities, structures, trees, landscaping, lighting equipment, decorative equipment or other improvements located upon real estate designated as Common Area.

(c) All paved private drives, streets and open parking areas located upon real estate designated as Common Area.

(d) All installations on common areas of central services for the benefit of more than one (1) owner such as television antennas, gas grills, incinerators, trash receptacles, pipes, wires, conduits, sewers, water lines, and other public utility lines and facilities situated thereon.

(e) All easements, rights and appurtenances belonging thereto and necessary to the existence, maintenance and safety of the project.

(f) All personal property owned by the Association intended for use in connection with the operation of swimming pools, tennis courts, recreational facilities, buildings, structures or other facilities of the Association.

Section 6.

"Lot" shall mean and refer to any plot of land shown upon any recorded tract subdivision plat or plat of survey thereof with the exception of Common Areas as hereinbefore defined.

Section 7.

"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.

Section 8.

"Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to a Lot and Townhouse Unit, including contract sellers. The term "Owner" shall not mean any mortgagee or trustee under a deed of trust unless and until such mortgagee or trustee has acquired fee simple title to a Townhouse Unit pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 9.

"Member" shall mean and refer to each Owner as provided herein in Article III.

Section 10.

"Mortgagee" shall mean and refer to any such person, persons or entities under a first deed of trust or first mortgage secured by a Lot and Townhouse Unit.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION:  
ADDITIONS THERETO

Section 1.

Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Lenexa, Johnson County, Kansas, and is more particularly described in Schedule A attached hereto.

Section 2.

Additions to Existing Property. Declarant reserves the right to add additional real property and Townhouse Units to this Declaration in any of the following manners:

(a) Additions by the Declarant. If Declarant, at any time, owns any real property located in Johnson County, Kansas, abutting said real property as described in Schedule A attached hereto, Declarant may add any part thereof to this Declaration at any time without the consent of Class A members of the Association by filing of record a supplemental declaration of covenants, conditions and restrictions, which shall subject said additional real property and all improvements thereon to all covenants, conditions, restrictions and easements set forth in this Declaration. For this purpose, "abutting" shall mean and be deemed to include real property separated by a street or other area dedicated to public use. Said supplemental 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 Declarant. 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 (60%) percent or more of the Class A memberships and all Class B memberships of the Association.

(b) Upon a merger or consolidation of the Association with another not-for-profit corporation (such as a condominium association adopted with regard to other property which might at a future time be developed as a condominium) as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated not-for-profit corporation, or, alternatively, properties, rights and obligations of another not-for-profit corporation may, by operation of law, be added to the properties, rights and obligations of the Association as the surviving not-for-profit corporation, pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one (1) project. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants, conditions, and restrictions established by this Declaration for the existing property and for any additions thereto established by a supplementary declaration.

ARTICLE III  
MEMBERSHIP

Section 1.

Membership and Voting Rights in the Association. Every person or entity who is an Owner of fee simple interest in one (1) or more Lots and Townhouse Units shall be a Member of the Association. Ownership of such Lots and Townhouse Units shall be the sole qualification for Class A membership.

Section 2.

Types of Memberships in the Association. The Association

shall have two (2) 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 this Declaration, and such additional real estate as may be made subject to this Declaration or any supplemental declaration prepared and filed for record, pursuant to the provisions of Article II hereof; 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(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.

Section 3.

Quorum, Proxies, Voting.

(a) Ten (10%) percent of the outstanding Class A and all of the Class B memberships of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Association.

(b) At all meetings of the Association, a Class A or Class B Member may vote in person or by proxy executed in writing by such Member. Such proxy shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his Lot. No one Owner of a Class A membership may vote more than one (1) additional vote by proxy.

Section 4.

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 as set forth in its Articles of Incorporation or Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting, and quorum requirements are in

NOTE  
PROXY



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

ARTICLE IV  
COMMON AREAS AND FACILITIES -  
RIGHTS OF OWNERS AND OF THE ASSOCIATION

Section 1.

Enjoyment. Subject to Section 2 of this Article IV, each Member of Mill Creek Run Property Owners Association shall have a right and easement of enjoyment in and to the Common Areas and Facilities, and such easements shall be appurtenant to and shall pass with the title to each Lot and Townhouse Unit. Said rights shall extend to all Owners, to members of the family of an Owner, and the tenants, guests and invitees of an Owner, and to contract purchasers who reside in any Unit, provided that said rights are subject to the covenants, conditions and restrictions contained herein and to any and all rules and regulations promulgated by the Association pursuant to the provisions hereof. The Class A membership in the Association of each Owner shall be deemed to be conveyed with the deed applicable to each Lot and Townhouse Unit, even though such interest is not expressly mentioned or described in the deed. Each Owner may use the Common Area and Facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Owners.

Section 2.

Regulations and Suspension of Rights. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Board of Directors of the Association to prescribe rules and regulations and fees governing the use, operation and maintenance of all Common Areas and Facilities, including all swimming pools, tennis courts and other recreational facilities.

(b) The right of the Association to suspend the right of any Owner to use all or any part of the recreational facilities located upon Common Areas for any period during which any assessments against said Owner remain unpaid.

*Clubhouse*

(c) The right of the Association to charge reasonable admission and use fees for the use of any of said recreational facilities to defray costs of the operation thereof.

(d) The right of the Association to dedicate or transfer part of the Common Area to any public agency, authority, or any public utility to provide necessary utility services to the Owners.

(e) The right of the Board of Directors of the Association to fix penalties for the violation of said rules and regulations.

(f) The right of the Association to charge a reasonable fee of up to Fifty and no/100 (\$50.00) Dollars per year for each dog or cat belonging to an Owner of a Townhouse Unit.

✓ (g) The right of the Association to borrow money for the benefit of the Association and the Owners of Townhouse Units, provided, however, the repayment of such loan shall not be or become the personal obligation of the Owners of Townhouse Units.

(h) The right of the Association to rent a portion of the Association clubhouse facility to Declarant or any affiliated or successor development company for a period of up to ten (10) years at a rental of Nine Hundred Sixty and no/100 (\$960.00) Dollars per year and such other reasonable terms as the Association and Declarant deem appropriate.

### Section 3.

No Restrictions on Access to Units. The Board of Directors of the Association may not, in any event, revoke, limit, restrict, or suspend, in any way, the right of any Owner to use and enjoy the private drives, streets, and parking areas located upon the real estate owned by the Association. As a right running with the real property, ownership of each Lot and Townhouse Unit shall include the right to use and enjoy all walks, pavement, driveways, parking areas, entrances and exits owned by the Association. There shall always be

access by other pedestrians and vehicles to and from each Lot and Townhouse Unit to a public street or to a private street leading to such public street. ✓

Section 4.

Title to Common Areas. The Declarant may retain the legal title to areas designated as Common Areas or portions thereof until such time as it has completed improvements thereon, but not withstanding any provision herein, the Declarant hereby covenants that it shall convey Common Area and portions thereof to the Association free and clear of all liens and encumbrances. Members shall have all the rights and obligations imposed by the Declarations with respect to such Common Area, except that the Association shall not be liable for payment of taxes and insurance for such Common Area until it is so conveyed.

ARTICLE V  
COVENANTS FOR MAINTENANCE FEES OR CHARGES

Section 1.

Creation of the Lien and Personal Obligation of Fees or Charges; Regular and Special Fees and Charges. Each Owner, by acceptance of the deeds therefor, whether or not it shall be so expressed in any such deed or conveyance for each unit owned, hereby covenants and agrees, and shall be deemed to covenant and agree to pay to the Association or its nominees:

- (a) Regular fees or charges; and
- (b) Special fees or charges for capital improvements to be fixed, established and collected from time to time as hereinafter provided.

Section 2.

Purpose of Regular Fees or Charges. The regular fees or charges levied by the Association shall be used for the following purposes:

- (a) Routine repair, maintenance and care of interior private streets, exterior building surfaces, roofs, trees, shrubs, grass, utility lines, and conduits, outdoor lighting equipment, walks and other exterior improvements, including

exterior fences, as set forth in Article VII, Section 2, of this Declaration.

(b) Ad valorem and other taxes on land and improvements owned by the Association.

(c) Management, including necessary legal and accounting, expenses of the Association.

(d) Contingency reserves as determined from time to time by the Board of Directors of the Association.

(e) Insurance premiums for all insurance secured by the Board of Directors of the Association pursuant to this Declaration. Until applicable Kansas law allows blanket policies of casualty insurance as set forth hereinafter in this Declaration, such insurance premiums to be paid from regular fees and charges shall be limited to insurance premiums for public liability and property damage insurance covering all Common Areas and Facilities and workmen's compensation insurance to the extent deemed necessary by the Board of Directors to comply with any and all applicable laws. Regular fees and charges may be used for the payment of insurance premiums for casualty insurance applicable to each Lot and Townhouse Unit, if blanket policy of casualty insurance is available under applicable Kansas law, and if the Board of Directors of the Association elects to convert to a blanket policy of casualty insurance, all as set forth hereinafter.

(f) The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration or that the Board of Directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, Bylaws, or by this Declaration.

Section 3.

Regular Fees or Charges; Limits Thereon. Prior to November 1 of each calendar year, the Board of Directors of the Association shall prepare a budget for the ensuing twelve (12) months, and such budget

shall cover the estimated costs of maintaining the Common Areas and performing all of the obligations and exercising the powers established under this Declaration. On the basis of this budget, the monthly assessments for each Owner of each Townhouse Unit for the ensuing year shall be established by the Association on the basis that the costs as estimated under such budget shall be borne equally by the Owners of the units. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices, and the Association shall employ a firm of certified public accountants to render a written audit of its operations for each calendar year, and a copy of such written audit shall be available to any Mortgagee of the Owner of each unit. Upon reasonable notice, Mortgagees and Owners shall have the right to examine the books and records of the Association at the offices of the Association during normal business hours.

Until November 1, 1976, the maximum regular fees or charges shall be Thirty-five and no/100 (\$35.00) Dollars per unit per month.

*Over*  
(a) From and after November 1, 1976, the maximum regular fees or charges may be increased each year by the Board of Directors of the Association without a vote of the memberships in conformance with the annual rise, if any, of the Kansas City Consumer Price Index for urban wage earners and clerical workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics for the quarter next preceding the effective date of the increase in Association fees.

(b) From and after November 1, 1976, the maximum regular fees or charges may be increased, each year, by the Board of Directors, the amount of increase, if any, being that authorized by the Consumer Price Index formula set forth above, and an additional three (3%) percent above the fees or charges for the previous year without a vote of the memberships.

(c) From and after November 1, 1976, all increases above the amount authorized by the Consumer Price Index

formula and three (3%) percent shall not be effective unless approved by the Board of Directors and sixty (60%) percent of the votes of Class A memberships and all Class B memberships, who are voting in person or by proxy at a meeting duly called for said purpose, written notice of which shall be sent to all Class A and Class B Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

(d) Regular fees or charges shall remain constant from November 1 through October 31 of the next succeeding year.

Section 4.

Special Fees or Charges for Capital Improvements. In addition to the monthly fees or charges authorized by Article V hereof, the Board of Directors may levy in any year a special fee or charge applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction or reconstruction and estimated repairs and replacements of any capital improvements. Such special fees or charges shall, however, require an affirmative vote of fifty-one (51%) percent of the Class A memberships, and all of the Class B memberships who are present and voting in person or by proxy at a special meeting called for the purpose of considering the special fee or charge after not less than thirty (30) days and not more than fifty (50) days notice in writing to each Member of the Association, stating the time, purpose and place of said meeting. Such special fees or charges shall be due and payable at the time and in the manner as approved by fifty-one (51%) percent of the Class A memberships and all of the Class B memberships voting at said meeting.

Section 5.

Uniform Rate of Fees or Charges. Both regular and special fees or charges must be fixed by the Board of Directors of the Association at a uniform rate for all Townhouse Units.

Section 6.

Date of Commencement of Regular Fees or Charges: Due Date.  
Regular fees or charges shall be due and payable to the Association

on the first day of each month in equal monthly installments. All Townhouse Unit Owners of any completed Townhouse Unit other than the Declarant, its successors or assigns, shall be obligated to pay assessments, when the warranty deed conveying fee simple title to the completed Townhouse Unit has been issued and delivered. Assessments may also be paid by, for and on behalf of Owners by their Mortgagees or holders of a Deed of Trust under such terms and agreements as the Association may from time to time deem appropriate by action of its Board of Directors.

Section 7.

Duties of the Board of Directors with Respect to Fees or Charges.

(a) At least thirty (30) days prior to November 1, 1976, and at least thirty (30) days in advance of each annual assessment period of November 1 through October 31 thereafter, the Board of Directors shall, by resolution, determine the amount of the regular fee or charge pursuant to Article V, Section 3. Written notice of such regular fee or charge shall be given to each Townhouse Unit Owner. Failure of the Association to give written notice of any regular fee or charge prior to November 1 of any year shall not invalidate any such fee or charge levied thereafter, nor shall failure to levy any regular fee or charge for any one (1) year affect the right of the Association's Board of Directors to do so for any subsequent year.

Any Townhouse Unit Owner who becomes subject to fee or charge subsequent to November 1 of any year by receiving a warranty deed for said Townhouse Unit shall commence payment of such fee or charge on a prorata basis commencing on the date said deed is issued and delivered.

(b) The Board of Directors shall, upon demand at any time, furnish to any Owner liable for fees or charges hereunder a certificate in writing signed by the President or Secretary of the Association, setting forth whether all fees or charges have been paid to date. A reasonable charge

may be made by the Board of Directors for the issuance of such certificate. Such certificate shall be recorded in Office of the Register of Deeds of Johnson County, Kansas, and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.

(c) The Association, acting by its Board of Directors, shall enforce payment of the fees or charges in accordance with the provisions of Section 8 of this Article V.

Section 8.

Effect of Nonpayment of Fees or Charges, the Personal Obligations of the Owner; the Lien; Remedies of the Association; Maintenance and Enforcement of Lien by Declarant.

(a) If any fee or charge or any part thereof is not paid on the date when due, then the unpaid amount of such fee or charge shall become delinquent and shall thereupon be a continuing lien on the Lot and Townhouse Unit of the nonpaying Owner, and shall bind such unit in the hands of the then Owner, his heirs, executors, administrators, successors and assigns. No Owner may waive, have waived, or otherwise escape liability for the fees or charges provided herein by nonuse of any Common Areas and Facilities owned by the Association or by the abandonment of his Lot and Townhouse Unit.

(b) If any fee or charge or part thereof is not paid within thirty (30) days after the due date, the same may bear interest thereon at one and one-half (1 1/2%) percent per month (eighteen (18%) percent per annum) if the Board of Directors by resolution elects to assess interest on any such nonpaid fee or charge.

(c) The Association, acting by its Board of Directors, may by resolution elect to commence an action in the District Court of Johnson County, Kansas, against the Owner personally obligated to pay the same, and the Owner of record of any Lot and Townhouse Unit, in the event the same has



been transferred, to enforce payment of said delinquent fee or charge and to foreclose the lien against said Lot and Townhouse Unit. The lien against any Lot and Townhouse Unit shall continue for a period of five (5) years from the date of delinquency and no longer unless such action shall have been filed. In the event such action is filed within five (5) years from the date of delinquency, the lien shall continue until termination of the action and until sale of the Lot and Townhouse Unit under the execution of judgment establishing the same.

Section 9.

Subordination of the Lien to Mortgagees; Notice of Nonpayment to Mortgagees. The lien of the fees or charges, regular and special, provided for herein shall be subordinate and inferior to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot and Townhouse Unit subject to fees or charges; provided, however, that such subordination shall apply only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such unit, pursuant to a decree of foreclosure of any such mortgage or pursuant to the terms and conditions of any such deed of trust or a deed in lieu of foreclosure. Said sale or deed in lieu of foreclosure shall not relieve such unit from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any such subsequent fee or charge. Any holder of a first mortgage or deed of trust who acquires title of any Lot or Townhouse Unit pursuant to foreclosure or deed in lieu of foreclosure, shall take title free of any claims for unpaid fees or charges against the Lot and Townhouse Unit which accrued prior to the date title is acquired by said holder of the mortgage or deed of trust except for claims for a prorata share of such unpaid taxes or charges resulting from a prorata reallocation of such unpaid fees or charges to all Lots and Townhouse Units, including the Lot and Townhouse Unit so acquired by the holder of the mortgage or deed of trust.

Section 10.

Notice. The Mortgagee of each Townhouse Unit will be given

written notice by the community Association if the Owner is in default of the payment of any dues or assessments imposed by the Association or is in default with respect to any other obligation imposed by the Association, and the Mortgagee will receive written notification from the Association of any default which is not cured within thirty (30) days.

Section 11.

Exempt Property. The following property subject to this Declaration and dedication shall be exempted from the fees, charges and liens created herein:

(a) All property dedicated and accepted by any municipality or public utility for public use and purposes.

(b) All Common Areas and Facilities.

(c) All Townhouse Lots and Units owned by the Declarant; provided, however, that so long as Declarant is the owner of any Class B memberships, Declarant agrees to pay to the Association any deficits occurring on a month-to-month basis, which deficit occurred as a result of insufficient funds to adequately maintain the Common Areas.

ARTICLE VI  
INSURANCE

Section 1.

Insurance to be Obtained and Maintained by the Association.

The Board of Directors of the Association shall obtain and maintain, to the extent reasonably available, at least the following:

(a) Casualty insurance naming the Association as insured for the benefit of the Owners in an amount equal to the full replacement value (i.e., one hundred (100%) percent of "replacement costs" exclusive of land, foundation and excavation), respectively, of the improvements located upon real estate owned by the Association with an "agreed amount" endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Directors with the assistance of the insurance company

affording such coverage), such coverage to afford protection against at least the following:

(i) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement;

(ii) Such other risks as shall customarily be covered with respect to property similarly in construction, location and use, including but not limited to cost of demolition, vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage, and such other insurance as the Board of Directors may from time to time determine; and

(b) Public liability insurance, in such amounts and in such forms as may be considered appropriate by the Board of Directors, including, but not limited to, water damage, legal liability, hired automobile, nonowned automobile, liability for property of others, and any and all other liability incident to the ownership and/or use of the Common Area and Facilities, respectively, such policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or the Owners; and

(c) Workmen's compensation insurance to the extent necessary to comply with any applicable laws; and

(d) 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; and

(e) Fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Owners shall be maintained, naming the

Association as insured in an amount equal to no less than one and one-half (1 1/2) times the Association's annual operating expenses and reserves.

(f) Such other policy of insurance, including blanket policies of insurance for Townhouse Units, if authorized by appropriate Kansas law and by the Board of Directors of the Association.

Section 2.

Insurance to be Obtained and Maintained by Townhouse Unit Owners. The Owner of any Lot and Townhouse Unit shall obtain and maintain casualty insurance, insuring all improvements owned by the Owner against loss by fire, lightening, windstorm or other casualty and extended coverage in an amount equal to a full replacement value (i.e., one hundred (100%) percent of replacement costs exclusive of land, foundation and excavation), respectively, with an "agreed amount" endorsement without deduction or allowance for depreciation, and the insurer shall waive any "increase of hazards" provision of its policy and any "apportionment of loss" provision of its policy in the event there is any other insurance insuring the same risk. All premiums for such insurance shall be paid by each Owner. Such insurance policy shall be in a form acceptable to the Board of Directors of the Association or its manager and shall include a loss payable clause in favor of Mill Creek Run Property Owners Association, as insurance trustee, for the benefit of each Owner and their Mortgagees, as their interest may appear, or jointly, to the Townhouse Unit Owner, the Mill Creek Run Property Owners Association, and the Mortgagee. In the event of loss, each Owner shall give notice to the Board of Directors of the Association, or its manager, and the Board of Directors of the Association or its manager shall be authorized to make proof of loss if the same is not promptly made by each Owner. All insurance companies are authorized to make payments for such loss directly to the Mill Creek Run Property Owners Association, as insurance trustee for each Owner and their Mortgagee as their interests may appear. The Association, as insurance trustee, shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect

any insurance proceeds nor for the form or content of the policies. The sole duty of the Association shall be to receive such proceeds as are paid and hold the same in trust for the purposes stated herein for the benefit of the Townhouse Unit Owners and their respective Mortgagees as their interest may appear. No Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of any mortgage debt any insurance proceeds. For purposes of administering all provisions of the Declaration relating to insurance, the Association acting by and through its Board of Directors is irrevocably appointed agent for each Unit Owner and for each Mortgagee, holder of deed of trust, or other lien upon a Lot or Townhouse Unit. The Association, acting by its Board of Directors, or its duly authorized manager, shall have the authority to adjust all claims arising under all insurance policies and the authority to execute and deliver releases upon the payment of claims. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee shall be disbursed only in payment of the costs of replacement, reconstruction of repair of the damaged improvements. If the cost of replacement, reconstruction or repair of an individual Townhouse Unit shall exceed the amount of insurance proceeds received by the insurance trustee, such excess shall be a special assessment against said Lot and Townhouse Unit to be paid by the Owner of said Lot and Townhouse Unit. If the cost of replacement, reconstruction or repair of an individual Townhouse Unit shall so exceed the amount received from said insurance proceeds, said excess cost shall be paid by the Unit Owner to the Association as insurance trustee to be added to the funds received from said insurance proceeds, and the same shall be disbursed for reconstruction or repair of the Unit. The Board of Directors of the Association may employ an architect or other qualified person who shall be in charge of all reconstruction and repair of all improvements. Each request for disbursement of insurance proceeds held by the Association as insurance trustee shall include a certificate of the architect or other qualified person employed by the Association to the effect that

all work then completed has been performed in accordance with plans and specifications approved by the Board of Directors of the Association and all applicable building codes. All insurance policies shall be subject to the extent available to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of AAA plus or better in Best's Insurance Guide, or some other equivalent insurance guide reference directory.

(b) Exclusive authority to negotiate losses under such policy shall be vested in the Board of Directors of the Association, as agent or trustee for the Townhouse Unit Owner and his Mortgagee.

(c) All policies shall provide that such policies may not be cancelled or substantially modified, including cancellation for nonpayment of premium, without at least thirty (30) days prior written notice to the Townhouse Unit Owner, the Board of Directors, the Association, and the Mortgagee.

(d) All policies shall provide that the Mortgagee will be notified by the insurance company of any claim for recovery of damages exceeding One Thousand and no/100 (\$1,000.00) Dollars.

(e) All policies shall contain a waiver of subrogation by the insurer as to claims against the Association, the Board of Directors, the Owner of any individual Townhouse Unit and/or their respective agents, employees and tenants.

(f) The Owner of any Lot and Townhouse Unit may obtain additional insurance at their own expense, including liability insurance to cover accidents or damage to persons or property occurring within his or her own individual Townhouse Unit. Each individual Townhouse Unit Owner may purchase insurance upon his own personal property and any additional improvements located within his individual Townhouse Unit. Such

insurance shall contain the same waiver of subrogation provisions set forth above. In the event applicable Kansas insurance laws and regulations authorize the Association to purchase one (1) or more blanket policies of casualty insurance, naming the Association as insured for the benefit of every Owner and Mortgagee, the Board of Directors may elect to purchase and maintain such insurance. In such event, the provisions of this Declaration relating to individual policies of casualty insurance shall no longer apply. Such policy or policies of blanket insurance shall, however, in any event, provide coverage for each Townhouse Unit upon such terms and conditions as the Board of Directors of the Association may deem appropriate provided, however, that in any event, the coverage shall be not less than the coverage required by this Declaration applicable to individual policies of casualty insurance. Annually, the Association may require evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each Owner.

ARTICLE VII  
MANAGEMENT, MAINTENANCE, REPAIRS,  
ALTERATIONS AND IMPROVEMENTS

Section 1.

Manager or Managing Agent. The management, repair, alteration and improvement of all improvements constructed upon real estate owned by the Association and all other property, as set forth hereinafter as the responsibility of the Association, shall be the responsibility of the Board of Directors of the Association. The operation of the Home Owners Association may be overseen by a professional manager who may be employed by the Association. Said Board of Directors may delegate all or any portion of its authority to said manager or managing agent. Such delegation shall be evidenced by a management contract which shall not exceed one (1) year in duration and which shall set forth such duties and responsibilities as the Board of Directors may from time to time determine.

Section 2.

Maintenance, Repair, Alteration and Improvements.

(a) By the Association; From the proceeds of fees and charges received pursuant to Article V of this Declaration, the Association shall provide routine repair, maintenance and care for interior private streets, exterior building surfaces, roofs, walls, and other exterior improvements, including exterior fences, and all trees, shrubs and grass (within the Common Areas. The frequency and the materials to be used in the performance of all such routine repair, maintenance and care shall be in the sole discretion of the Board of Directors of the Association and shall not be subject to the control of any Owner. In the event that the need for such maintenance, care or repair or extraordinary services to any Townhouse Unit is caused by the modification of the original design of a Townhouse Unit, the addition of improvements by the Owner, or through the willful or negligent act of an Owner, family, guests, or invitees, the cost of such maintenance, care, or repair not covered by insurance shall be added to and become an additional fee or charge, in addition to the fee or charge to which such Owner's Unit is subject, and must be paid by or on behalf of said Owner within thirty (30) days after written demand therefor from the Board of Directors of the Association and shall be enforceable and secured by a lien as in the case of all other fees or charges.

(b) By individual Owners: The responsibility of each individual Owner shall be as follows:

(i) To maintain, repair and replace at his expense all portions of his Lot and Townhouse Unit which are not the responsibility of the Board of Directors of the Association, including, but not limited to, all appliances, heating, plumbing, electrical, air conditioning, air conditioning compressors and related facilities, fixtures, or installations, and any portion of any utility



services located within the Lot and Townhouse Unit, including all (patios), grass, trees, shrubs and all other improvements located within a fenced yard appurtenant to his Lot and Townhouse Unit. Each Owner shall be responsible for the repair, maintenance, care, painting, and replacement of fences, windows and other glass surfaces, doors, and all interior improvements and fixtures which are appurtenant to each Townhouse Unit, including, without limitation, responsibility for all breakage, damage, malfunction, painting, repair and maintenance thereof; provided, however, that all exterior lighting fixtures to which a service line runs to a meter in the name of the Association shall be maintained by the Association.

(c) Improvements and Alterations. No Owner can paint or otherwise decorate or change the appearance of any exterior portion of his Townhouse Unit or fence without the prior written consent of the Board of Directors of the Association.

Except for original construction by the Declarant, and except for purposes of maintenance and repairs as provided in this Declaration, no building, fence, wall, sports equipment, machinery, or other improvements or structures shall be commenced, elected, placed, moved or maintained upon the real estate, the Lot or any individual Townhouse Unit, nor shall any exterior addition to or change (including any change in color) or alterations therein be made until the complete plans and specifications showing the precise and exact nature, kind, shape, height, setback, materials, color and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association or by an Architectural Control Committee appointed by the Board of Directors.

The Architectural Control Committee, if appointed by the Board of Directors, shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors, and such persons shall serve at the pleasure of the Board of Directors.

In the event the Board of Directors fails to appoint an Architectural Control Committee, then the Board of Directors shall constitute the Committee. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required and ordered to adopt or promulgate any rule or regulation or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like, pursuant to the authority contained in this Declaration.

(d) Approvals. Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Declaration, and upon approval by the applicable governmental agency authorized to issue building permits, a copy of such plans and specifications and a copy of all building permits as approved shall be deposited among the permanent records of the Association, and a copy of such plans and specifications and building permits bearing such approval in writing shall be returned to the applicant submitting the same. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Declaration within sixty (60) days after such plans and specifications (and all other material and information required by the Committee) has been submitted to it in writing, then no approval will be required and this Article will be deemed to have been fully complied with.

(e) Limitations. Construction or alterations in accordance with plans and specifications approved by the

Architectural Control Committee shall be commenced within six (6) months following the date upon which the same are approved, and shall be substantially completed within twelve (12) months following the date of commencement or within such longer period as the Committee shall specify in its approval. In the event construction is not commenced within said period, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed in compliance with the provisions of this Article and shall again be required. There shall be no deviation from plans and specifications approved by the Committee without prior consent in writing of the Committee. Approval for use on any Lot or any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications or any elements or features thereof in the event such plans and specifications are subsequently submitted for use upon any other Lot or Lots.

(f) Certificate of Compliance. Upon the completion of the construction or alteration of any building, fence, wall or other improvements or structure in accordance with plans and specifications approved by the Architectural Control Committee, the Committee shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall or other improvements or structures referred to in said certificate have been approved by the Committee and constructed or installed in full compliance with the provisions of this Article, and with such other provisions and requirements of this Declaration as may be applicable.

(g) Rules and Regulations. The Architectural Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be

submitted for approval and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural Control Committee shall be final except that any Owner who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the Board of Directors of the Association, and, upon the written request of such Owner, shall be entitled to a hearing before the Board of Directors. The vote of a majority of the Board of Directors shall be required to reverse or otherwise modify any decision of the Architectural Control Committee.

(h) Enforcement - Right to Remove or Correct Violations. In the event any building, fence, wall, sports equipment or other improvement or structure shall be commenced, erected, placed, moved or maintained upon any Lot otherwise than in accordance with the provisions and requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article and without the approval of the Architectural Control Committee required herein, and, upon written notice from the Board of Directors, or the Architectural Control Committee, such building, fence, wall, sports equipment or other structure or improvements shall be promptly removed. In the event the same is not removed,

or the violation is not otherwise terminated within fifteen (15) days after notice of such violation is delivered to the Owner of the Lot upon which such violation exists, then the Association shall have the right, through its agents and employees (but only after a resolution of the Board of Directors or the Architectural Control Committee), to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate such violation and the cost thereof (including legal and court costs incurred by the Association to enforce the provisions hereof) may be assessed against the Lot upon which such violation occurred, and when so assessed, a statement for the amount thereof shall be rendered to the Owner of said Lot at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot, and all respects (and subject to the same limitations) as provided in Article V, Section 8 of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article, or any of the other provisions or requirements of this Declaration, exist on such Lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry of inspection.

ARTICLE VIII  
PARTY WALLS AND EASEMENTS FOR ENCROACHMENTS

Section 1.

Townhouse Units may have at least one (1) wall in common with an adjoining Townhouse Unit, which common wall or walls will be built on a dividing line between Lots. Each such common wall shall be a party wall and the rights and obligations of the Owners of such party walls shall be as follows:

(a) General Rules. To the extent not inconsistent with this Article, all laws applicable to party walls and liability for property damage due to negligence or willful acts or omissions in the State of Kansas shall apply thereto. No Owner of any Townhouse Unit shall cut through or make penetration through a party wall for any purpose whatsoever.

(b) Party Fence. Each fence which is built and placed on the dividing lines between Lots and Townhouse Units shall constitute a party fence, and the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply to such party fences. No Owner of any Townhouse Unit shall cut through or make penetration through a party fence for any purpose whatsoever.

(c) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance to the party wall or party fence shall be shared by the Owners who make use of the wall or fence, except such repair and maintenance required to be made by the Association as set forth hereinbefore.

(d) Destruction by Fire or Other Casualty. If a party wall or fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, said wall or fence shall be repaired or replaced by the Owners thereof and the cost of such repairs or replacement shall be borne equally without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

(e) Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid for by the insurance provided for herein, an Owner, who by his negligence or willful act causes or permits any party wall or fence

or portion thereof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

(f) Right to Contributions. The right of any Owner to contributions from any other Owner under this Article shall be appurtenant to the Lot and Townhouse Unit and shall pass to such Owner's successors in title.

(g) Arbitration. In the event of any dispute arising concerning any party wall or party fence, the same shall be determined by compulsory arbitration. Each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator and the decision shall be by a majority of all the arbitrators. If any party refuses to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall have the authority to select an arbitrator for the refusing party.

ARTICLE IX  
UTILITY EASEMENTS, EASEMENTS FOR ENCROACHMENTS, EASEMENTS  
FOR SUPPORT, EASEMENTS FOR INGRESS AND EGRESS TO LOTS,  
OVERHANG EASEMENTS FOR LOTS AS SHOWN ON RECORDED PLATS OF SURVEY,  
AND GENERAL EASEMENTS FOR BENEFIT OF THE ASSOCIATION

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Section 1.

Utility Easements. The Declarant will install or cause to be installed lines, pipes, conduits, meters and other utility facilities referred to as "utility lines" for the purpose of providing such sewer, electricity, gas, water and telephone services to the individual Townhouse Units, and to the Common Areas. To insure that such utility lines, photocell lights, meters and other utility equipment shall be kept, maintained, restored, repaired and replaced, Declarant hereby grants to the Association, its successors and assigns, and to the public utilities of Lenexa, Kansas, and Johnson County, Kansas, and any and all other public utilities, for the benefit of the Owners, the following permanent rights, licenses and easements:

(a) An easement to keep, maintain, restore, repair and replace any such utility lines, photocell lights,

meters and other utility equipment over, under and across any Association property or Lot and Townhouse Unit for the purpose of maintaining, restoring, repairing or replacing any utility lines, and for the purpose of reading any meters installed with respect to any such utility line.

(b) If, in order to maintain, restore, repair or replace the utility line or other utility equipment that serves more than one (1) Townhouse Unit, it becomes necessary to break through walls, excavate or otherwise damage a Townhouse Unit, or Association property entered, the damages caused by such entry shall be repaired and the Townhouse Unit or Association's property entered shall be restored to substantially the same condition as prior to such damage, as a common expense of the Association. Expenses applicable to removal of obstructions in a sewer line from the basement floor to the top floor of an attached Townhouse Unit shall be assumed and paid by the Owner of such Unit and shall not be a common expense.

(c) If it becomes necessary to maintain, restore, repair or replace utility lines to serve more than one (1) Townhouse Unit, then the cost of such maintenance, restoration, repair or replacement to its former condition shall be a common expense of the Association.

#### Section 2.

Easement for Encroachments. Each building and all utility lines and other improvements as originally constructed on each unit, shall have an easement to encroach on any other unit and upon the common areas and dedicated areas as originally constructed and laid out; and the common areas, dedicated areas and each building and all utility lines and other improvements as originally constructed thereon, shall have a reciprocal easement for encroachment upon each unit and any portions of the property. Such encroachments may occur as the result of overhangs in the design, and location of buildings, utility lines and other improvements across boundary lines between and among units, common areas and dedicated areas.



Section 3.

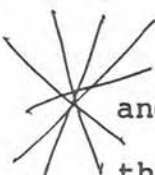
Easement for Support. Every portion of a Unit, of utility easements and lines, of any portion of the properties contributing to the support of another Unit, utility easement and lines, improvement, or another portion of the properties shall be burdened with an easement of support for the benefit of all other such Units, utility easements and lines, improvements and other portions of the properties.

Section 4.

Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the real estate for ingress and egress, installment, operation, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, television, electricity, gas and drainage facilities, together with the right to remove any obstructions that may be placed in such easement area that would constitute interference with the use of such easement or with the use, maintenance, operation or installation of such utilities or drainage facilities. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical line, water line or other utilities may be installed or relocated upon property owned by the Association or by Owners until approved by Declarant so long as it owns any portion of the property and thereafter by the Association's Board of Directors. Neither Declarant nor any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, flowers or other improvements located on the land covered by said easements. The Owners of the respective Townhouse Units shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve Units or the Common Areas, but each Owner shall have an easement in and to the aforesaid facility as shall be necessary for the use, maintenance and enjoyment of his Townhouse Unit. The Owner of a Townhouse Unit is prohibited from disconnecting any utility line, meter, photocell light device, or any other utility equipment, and all Owners of Townhouse Units are prohibited from intentionally interrupting the utility services

rendered to Owners of other Townhouse Units or the Common Areas. All expenses incurred by the Association in reconnecting or repairing utility services as the result of the intentional disruption of such service by a Townhouse Unit Owner shall be assessed against said Owner. It shall be the obligation of the Association to maintain all sewer lines and facilities from the basement or exterior of Townhouse Units to the City sewer line, such lines to be located within such easement areas. All expenses for such maintenance shall be a common expense to be paid from fees and charges received by the Association pursuant to this Declaration.

Section 5.



Easement for Ingress and Egress. The Declarant hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, for the benefit of each Owner, an easement for ingress and egress to each Lot and Townhouse Unit over and across all Common Areas and Facilities.

Section 6.

Association Easements. The Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, an easement over, under and across all real estate subject to this Declaration, for the benefit of each Owner, for the purposes of executing any of the powers, rights or duties granted to or imposed upon the Association by the terms of this Declaration, the Articles of Incorporation, or Bylaws of the Association.

Section 7.

Construction and Development Easement. The Declarant shall have an easement of ingress and egress for the purpose of construction and development of any part of the properties, of additional units thereon or of additional land to be annexed to the properties, so long as the exercise of such easement does not unreasonably interfere with the use of the recreational facilities, or common areas and provided that such easement does not apply to individual Owners, nor to the limited common areas appurtenant to the completed and conveyed individual units, if any such limited common areas are included in this Declaration.

Section 8.

Overhang Easements for Lots as Shown on Respective Plats of Survey. These easements so designated and shown on the Plat of Survey, each filed heretofore and contemporaneously herewith this Declaration for Tracts 15, 16, 17, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Plat of Mill Creek Run, and each of which delineates as shown on each Plat of Survey an "Overhang Easement for Lot A" over parts of Lots B and C and "Overhang Easement for Lot F" over parts of Lots D and E, are hereby granted as permanent easements to be used as living quarters over the so-burdened Lots for the respective benefit of said Lots A and F, with said easements to exist in the area as is built over the garages serving said Lots B and C and serving said Lots D and E, which garages include also storage space and passageways, and the said parts of these Lots B and C and Lots E and F over which such overhang easements exist are to be conveyed as part of the fee title to said burdened Lots B and C and Lots E and F. Said "overhang easements" lie within the building lines of said Lots A, B, C, D, E and F as shown, so marked and shaded, on said respective plats of survey. Further, these respective "overhang easements" shall extend from the ceiling of the garage over which they are constructed and upwards to the respective roofs as are built for said living quarters of these Lots A and Lots F on each platted tract. Also, said garage ceilings which also comprise the floors for the said living quarters easements shall be considered and declared to be party walls within the meaning and with the same covenants respecting them as is elsewhere in this Declaration set out (Article VIII) respecting the vertical party walls, with mutual support easements also being granted and declared as to such respective ceilings and floors within the meaning set out in Article IX, Section 3, of this Declaration.

ARTICLE X  
USE RESTRICTIONS

Section 1.

Use of Land as Single Family Residence. Each Townhouse Unit will be constructed upon an individual Lot and appurtenant easements therefor as set out on the plat of survey of each platted tract and evidenced by a warranty deed to be recorded in the Office of the Register of Deeds for Johnson County, Kansas. Each Townhouse Unit

conveyed shall be designated by a separate legal description of the Lot on which the same is constructed together with a designation of all easements appurtenant thereto, and said Lot conveyance shall constitute a fee simple estate subject to the terms and conditions and provisions hereof. Each Townhouse Unit shall be used solely for a private residence, and no professional business or commercial use shall be made of the same or any portion thereof, nor shall an Owner's or tenant's use of the Unit endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

Except for improvements owned by the Association, only Units, which are single family residences which may be joined together by a common wall or walls and/or common roofs and/or foundations, shall be constructed upon the real estate subject to this Declaration. No Unit shall be erected or placed upon the real estate unless the same shall contain a minimum of five hundred (500) square feet of total floor area exclusive of porches, unfinished basements, attics or garages. No appurtenant building or other structure will be permitted to be constructed on any Lot without the prior consent of the Architectural Control Committee as provided herein above.

Section 2.

Design and Location of Townhouse Units: Additional Use Restrictions.

(a) After the original construction by the Declarant, no Townhouse Units shall be erected, placed, altered or externally improved on any Lot until the building plans and specifications, exterior color scheme, materials, grading and location thereof have been approved in writing by the Association Board of Directors or the Architectural Control Committee, as set forth in this Declaration.

No structure of a temporary character, trailer, vehicle, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot or within the subdivision at any time as a residence, either temporarily or permanently.

(c) No clotheslines, signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted.

No awnings, canopies, shutters or radio and television antennas shall be affixed to or placed upon an exterior wall, window or roof of a Townhouse Unit without the prior written consent of the Association's Board of Directors.

In the event any Mortgagee becomes the Owner of a Townhouse Unit by reason of foreclosure or a deed in lieu of foreclosure, the restriction agreement on "for sale" or "for rent" signs shall not apply for the period of time said Mortgagee is the Owner of said Townhouse Unit, however, such signs must be of a reasonable size.

(d) No storage of any type shall be allowed at any time on the Owner's property except within the private enclosed Townhouse Unit or garage of the Owner, and the same shall not be stored in such manner as to be exposed to public view. Storage within a garage shall not be so great as to cause an Owner to not use his garage for the purpose of parking his car. No boat, camper, trailer, truck, mobile home or self-propelled recreational vehicle of any type whatsoever may be parked, stored, or otherwise located at any location within the area affected by these restrictions except for a period of time reasonably necessary for loading or unloading of personal property into the same by the Owner, provided, however, that no person shall be allowed to use such vehicle for cooking or sleeping purposes at any time or for any reason whatsoever. All such vehicles shall be parked within the confines of the storage area designated by the Association for such purposes. A reasonable storage fee may be charged by the Association for parking within the storage area.

(e) No major repairs, rebuilding or maintenance of any vehicle shall be permitted except within the private enclosed garage, if any, of the Owner. No major repair, rebuilding or maintenance of any vehicle shall be permitted in open parking areas or carports. This includes, but is not limited to, automobiles, trucks, campers, trailers and boats. No nonoperable vehicle of any kind, nor any vehicle

without current license tags may be kept on or within any Unit, yard, driveway or street in front of any Unit at any time.

(f) The foregoing covenants of this Declaration shall not apply to the activities of the Association or the activities of the Declarant, its agents and employees. The Declarant may maintain, while constructing and selling Townhouse Units in or upon such portions of the real estate as Declarant may determine, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

(g) No dog or other animal pen or run may be maintained at any time or place. No animals, livestock or poultry of any kind shall be raised, bred or kept at any time or place, except dogs, cats or other common household pets, not to exceed a total of two (2) per Townhouse Unit, which may be kept, provided that they are not kept, bred or maintained for any commercial purposes. All such pets must be confined at all times within the interior of the Unit, within the fenced area of a Townhouse patio or on a leash under the direct supervision and control of the Owner.

(h) All rubbish, trash or garbage or unsightly debris shall be kept so as not to be seen from the neighboring Units and streets.

(i) All fixtures and equipment installed within a Townhouse Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Townhouse Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse Unit or impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Townhouse Units or their Owner.

(j) No vehicles shall be parked on streets or driveways except in designated parking areas nor parked so as to obstruct ingress and egress by Owners of Townhouse Units, their families, guests and invitees, except for the reasonable means of emergency, construction, or service vehicles for a time limited to as briefly as possible. Except for the reasonable means of emergency, construction, delivery or pickup, or service vehicles, no truck exceeding one-half (1/2) ton pickup size shall be permitted to park in the Properties.

(k) Except in the individual fenced patio areas appurtenant to a Townhouse Unit, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's Board of Directors or their designated Architectural Control Committee. No chain link boundary fence shall be allowed upon any Townhouse Lot.

(l) No noxious or offensive activity shall be carried on in any Townhouse Unit or upon the Common Areas nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners and to the neighborhood.

(m) All garage doors shall be kept closed except during times required for ingress and egress to and from garages.

ARTICLE XI  
GENERAL PROVISIONS

Section 1.

Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the real estate subject to this Declaration, and shall inure to the benefit of and be enforceable by Mill Creek Run Property Owners Association, or the Owner of any Townhouse Unit, subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty

(30) years from the date that this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners of the Townhouse Units has been recorded, agreeing to abolish said covenants, conditions and restrictions or to change said covenants, conditions and restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change; provided, further, that no such agreement to change shall be applicable to existing buildings on the Properties; and provided, further, that no such change shall be effective on less than thirty (30) days prior notice to Owners.

Section 2.

Amendments by Declarant. Until such time as the first Townhouse Unit is conveyed by Declarant, Declarant, at its sole discretion, may abolish said covenants, conditions and restrictions or change them in whole or in part.

Section 3.

Amendment by Owners. Except as provided in Sections 1 and 2 of this Article XI, the covenants, conditions and restrictions of this Declaration may be abolished, amended and/or changed in whole or in part only with the consent of sixty (60%) percent of all Class A and one hundred (100%) percent of all Class B memberships, evidenced by a document in writing bearing each of their signatures. Notwithstanding the foregoing, without the consent of all holders of first mortgage liens, the covenants, conditions and restrictions set forth in this document may not be amended to:

(a) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner or his Townhouse Unit.

(b) Abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned directly or indirectly by the Association, provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use



of such property by Declarant shall not be deemed a transfer within the meaning of this clause.

No amendment or change shall be voted upon until at least thirty (30) days prior written notice has been given each Owner and Mortgagees of record of a Townhouse Unit.

Section 4.

Enforcement. Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Mill Creek Run Property Owners 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 5.

Compliance by Mortgagees. Mortgagees of Townhouse Units may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of the policy for common property, and such first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6.

Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7.

Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 8.

Notices. All notices required to be given hereunder shall be deemed to have been delivered when deposited with the United States

Postal Service, postage prepaid, addressed to the Owner at the street address assigned to his Townhouse Unit by the governing body of the City of Lenexa, Kansas, or addressed to Declarant, or its delegate, at such place as may be designated to the Association by the Declarant, provided, however, said notice may be delivered by any other means.

Section 9.

Condemnation. Notwithstanding anything contained in this Declaration, if any Lot or Townhouse Unit or any part or parts thereof or all or any part or parts of the Common Areas or Common Area facilities are made the subject matter of any condemnation or eminent domain proceeding, any and all proceeds received therefrom or in connection therewith shall first be applied to any mortgage or mortgages of record in the order of their priority, then to any due and unpaid real estate taxes or other tax assessment, then to any due and unpaid assessments levied pursuant to this Declaration, and the balance, if any, shall then be paid to the Owner of the Lot or Townhouse Unit involved, or in the case of the Common Areas or Common Area facilities, any balance shall be paid to the Association. The Owner of each Lot or Townhouse Unit, or in the case of the Common Areas or Common Area facilities, the Association shall give timely written notice to the holder of any mortgage or other similar lien of any such proceeding or proposed acquisition.

IN WITNESS WHEREOF, Creek Mill Corporation, being the Declarant herein, has caused this instrument to be executed by its President and to have its seal affixed hereto this 23<sup>rd</sup> day of July, 1975.



Attest:

Nancy Maxwell  
NANCY MAXWELL Secretary

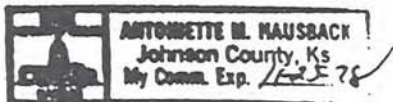
CREEK MILL CORPORATION

By Fred Farber  
FRED FARBER President

STATE OF Kansas )  
 ) SS.  
COUNTY OF Wyandotte )

On this 23<sup>rd</sup> day of July, 1975, before

me, appeared Fred Farr, to me personally known, who being by me duly sworn did say that he is the President of Creek Mill Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Fred Farr acknowledged said instrument to be the free act and deed of said corporation.



*Antonette M. Hausback*  
Notary Public

My commission expires:

November 25, 1978

SCHEDULE A

A part of the NE1/4 of Section 33, Township 12, Range 24, now in the City of Lenexa, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the North line of the NE1/4 of said Section 33, and 634.08 feet East of the Northwest corner thereof, as measured along said North line; thence N 90° E, along the North line of the NE1/4 of said Section 33, a distance of 525.74 feet; thence S 0° 27' 30" E, a distance of 316.30 feet; thence S 89° 32' 30" W, a distance of 139 feet; thence N 0° 27' 30" W, a distance of 120.50 feet; thence S 89° 32' 30" W, a distance of 113 feet; thence S 0° 27' 30" E, a distance of 193.06 feet; thence S 12° 30' E, a distance of 104.47 feet; thence N 77° 30' E, a distance of 123.50 feet; thence S 12° 30' E, a distance of 45.52 feet; thence N 85° 31' 27" E, a distance of 128.14 feet; thence S 10° 59' 05" W, a distance of 442.39 feet; thence S 84° E, a distance of 94.81 feet, to a point of curvature; thence Easterly, along a curve to the left, having a radius of 475 feet, and a central angle of 11° 53' 38", a distance of 98.60 feet, to a point of tangency; thence N 84° 06' 22" E, a distance of 60 feet, to a point of curvature; thence Easterly, along a curve to the right, having a radius of 425 feet, and a central angle of 5° 45', a distance of 42.65 feet, to a point of tangency; thence N 89° 51' 22" E, a distance of 30.67 feet; thence S 6° 30' 55" W, a distance of 50.34 feet; thence S 89° 51' 22" W, a distance of 24.83 feet, to a point of curvature; thence Westerly, along a curve to the left, having a radius of 375 feet, and a central angle of 5° 45', a distance of 37.63 feet, to a point of tangency; thence S 84° 06' 22" W, a distance of 60 feet, to a point of curvature; thence Westerly, along a curve to the right, having a radius of 525 feet, and a central angle of 11° 53' 38", a distance of 108.98 feet, to a point of tangency; thence N 84° W, a distance of 149 feet, to a point of curvature; thence Westerly, Northwesterly and Northerly, along a curve to the right, having a radius of 515 feet, and a central angle of 90° 06', a distance of 809.86 feet, to a point of tangency; thence N 6° 06' E, a distance of 414.36 feet, to the point of beginning.

SCHEDULE B

A part of the NE1/4 of Section 33, Township 12, Range 24, now in the City of Lenexa, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the South line of the N1/2 of the NE1/4 of Section 33, Township 12, Range 24, Johnson County, Kansas, said point being S 89° 51' 22" W from the Southeast corner of the N1/2 of the NE1/4 of said Section 33, a distance of 1253.81 feet; said point also being the intersection of the Westerly right-of-way line of Widmer Road as platted, and the South line of the N1/2 of the NE1/4 of said Section 33, said point of intersection also being the Southwest corner of CANDLELIGHT SQUARE - FIRST PLAT; thence continuing S 89° 51' 22" W, along the South line of the N1/2 of the NE1/4 of said Section 33, a distance of 1403.66 feet to the Southwest corner thereof; thence N 0° 27' 30" W, a distance of 1294.99 feet, along the West line of the said N1/2 of the NE1/4 of said Section 33, to a point on the Southerly right-of-way line of 87th Street, said point being S 0° 27' 30" E, 30 feet from the Northwest corner of the N1/2 of the NE1/4 of said Section 33; thence N 90° E, along said Southerly right-of-way line of 87th Street, a distance of 1159.82 feet; thence S 0° 27' 30" E, a distance of 325 feet; thence N 90° E, a distance of 176.11 feet; thence S 77° 51' 10" E, a distance of 127.41 feet; thence N 13° 18' 35" E, a distance of 290.66 feet; thence N 4° 54' 10" E, a distance of 69.20 feet to a point on the Southerly right-of-way line of 87th Street; thence N 90° E, a distance of 75.28 feet to the Northwest corner of CANDLELIGHT SQUARE - FIRST PLAT; thence S 4° 54' 10" W, along the Westerly line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 81.15 feet; thence S 13° 18' 35" W, continuing along the Westerly line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 294.65 feet; thence S 10° 59' 05" W, continuing along the Westerly line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 536.27 feet; thence S 6° 30' 55" W, continuing along the Westerly line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 62.76 feet; thence N 89° 51' 22" E, continuing along the line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 25.17 feet; thence S 6° 30' 55" W, continuing along the Westerly line of CANDLELIGHT SQUARE - FIRST PLAT, a distance of 337.28 feet to the point of beginning. . .except. . .the following described tract of land: Beginning at a point on the North line of the NE1/4 of said Section 33, and 634.08 feet East of the Northwest corner thereof, as measured along said North line; thence N 90° E, along the North line of the NE1/4 of said Section 33, a distance of 525.74 feet; thence S 0° 27' 30" E, a distance of 316.30 feet; thence S 89° 32' 30" W, a distance of 139 feet; thence N 0° 27' 30" W, a distance of 120.50 feet; thence S 89° 32' 30" W, a distance of 113 feet; thence S 0° 27' 30" E, a distance of 193.06 feet; thence S 12° 30' E, a distance of 104.47 feet; thence N 77° 30' E, a distance of 123.50 feet; thence S 12° 30' E, a distance of 45.52 feet; thence N 85° 31' 27" E, a distance of 128.14 feet; thence S 10° 59' 05" W, a distance of 442.39 feet; thence S 84° E, a distance of 94.81 feet, to a point of curvature; thence Easterly, along a curve to the left, having a radius of 475 feet, and a central angle of 11° 53' 38", a distance of 98.60 feet, to a point of tangency; thence N 84° 06' 22" E, a distance of 60 feet, to a point of curvature; thence Easterly, along a curve to the right, having a radius of 425 feet, and a central angle of 5° 45', a distance of 42.65 feet, to a point of tangency; thence N 89° 51' 22" E, a distance of 30.67 feet; thence S 6° 30' 55" W, a distance of 50.34 feet; thence S 89° 51' 22" W, a distance of 24.83 feet, to a point of curvature; thence Westerly, along a curve to the left, having a radius of 375 feet, and a central angle of 5° 45', a distance of 37.63 feet, to a point of tangency; thence S 84° 06' 22" W, a distance of 60 feet, to a point of curvature; thence Westerly, along a curve to the right, having a radius of 525 feet, and a central angle of 11° 53' 38", a distance of 108.98 feet, to a point of tangency; thence N 84° W, a distance of 149 feet, to a point of curvature; thence Westerly, Northwesterly and Northerly, along a curve to the right, having a radius of 515 feet, and a central angle of 90° 06', a distance of 809.86 feet, to a point of tangency; thence N 6° 06' E, a distance of 414.36 feet, to the point of beginning.