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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
NORTHSIDE CREEK P.R.U.D. SUBDIVISION**

North Side Creek, LLC
Declarant

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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
NORTH SIDE CREEK**

This Declaration is executed as of February 10th, 2009, by North Side Creek, LLC, a Utah limited liability company ("**Declarant**").

OBJECTIVES

A. Declarant is the owner of certain real property in Morgan County, Utah, more particularly described on Exhibit A, attached hereto (the "**Property**"). Declarant desires to develop all or portions of the Property as a planned development to be known as "North Side Creek" (the "**Development**").

B. Declarant desires to create a carefully planned community which will provide an attractive place to live. Declarant presently plans to one organized area consisting of 22 lots. Other areas within or adjacent to the Development may be devoted to various recreational purposes, or to public or private parks and open space areas.

C. Declarant will provide leadership in organizing and administering the Development during the development period, but expects property owners in the Development to accept the responsibility for community administration by the time the Development is complete.

D. The purpose of this Declaration is to provide for the ownership, maintenance and use of the Common Areas (defined below) that will be owned and operated by a homeowners association for the benefit of all properties now or later made subject to this Declaration.

E. Funds for the maintenance and development of Common Areas generally will be provided through assessments against those who purchase property within the Development, although to assist with the development of North Side Creek, Declarant may from time to time itself provide some Improvements. For the protection of all owners of property in the Development there will be a system designed to assure that each person who purchased property in the Development will pay an equitable share of the moneys necessary for the maintenance and development of the Common Areas.

F. Declarant desires to subject the Property to the covenants, conditions, restrictions, easements and charges set forth in this instrument for the benefit of the Property and its present and subsequent owners.

G. Declarant hereby declares that the Property will be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and charges, which will run with the Property and will be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and will inure to the benefit of each owner thereof.

Article 1
DEFINITIONS

As used in this Declaration, the terms set forth below will have the following meanings:

1.1 “**Additional Property**” means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2.

1.2 “**Architectural Guidelines**” means the architectural, design and construction guidelines and review procedures adopted pursuant to Section 6.3, as they may be amended.

1.3 “**Architectural Review Committee**” means the committee appointed pursuant to Article 6.

1.4 “**Articles**” means the articles of incorporation of the Association, as may be amended from time to time.

1.5 “**Assessments**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments as described in Article 10.

1.6 “**Association**” means North Side Creek Homeowners Association, Inc., a Utah nonprofit corporation to be formed to serve as the homeowners association for the Development, and its successors and assigns.

1.7 “**Bylaws**” means the bylaws of the Association, as may be amended from time to time.

1.8 “**Class A Member(ship)**” is defined in Section 8.3(a).

1.9 “**Class B Member(ship)**” is defined in Section 8.3(b).

1.10 “**Common Areas**” means those lots or tracts designated as “Community Open Space Parcels” on the Plat or in this Declaration or any declaration annexing Additional Property to the Development, including any Improvements thereon, and will also include Common Easement Areas, Limited Common Areas and any Lots converted to Common Areas.

1.11 “**Common Easement Areas**” means those easements and private roads established for the benefit of all property within the Development pursuant to the Plat or this Declaration or any declaration annexing Additional Property to the Development.

1.12 “**Community Open Space Parcels**” means that parcel B is set aside as open space pursuant to the Northside Creek P.R.U.D. Plat or in any declaration annexing Additional Property to the Development.

1.13 “**County**” means Morgan County, Utah.

1.14 **“Declarant”** means North Side Creek, LLC, a Utah limited liability company, and its successors and assigns if such successor or assignee should acquire Declarant’s interest in the Property, or less than all of Declarant’s interest in the Property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.

1.15 **“Declaration”** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing Additional Property to the Development.

1.16 **“Development”** means North Side Creek.

1.17 **“Improvement”** means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to the Property.

1.18 **“Limited Common Areas”** means any Common Areas established for the exclusive use or enjoyment of certain Lots as designated on the Plat, in this Declaration or in any declaration annexing Additional Property to the Development.

1.19 **“Lot”** means each of Lots 1 through 22, as depicted on the Plat, and any Lot created from Additional Property annexed to the Development.

1.21 **“Management Committee”** is defined in Section 8.4.

1.22 **“Mortgage”** means a mortgage or a trust deed; **“mortgagee”** means a mortgagee or a beneficiary of a trust deed; and **“mortgagor”** means a mortgagor or a grantor of a trust deed.

1.23 **“Owner”** means the person or persons, including Declarant, owning any Lot in the Development, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership will not discharge an Owner from obligations incurred prior to termination.

1.24 **“Person”** means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.25 **“Plat”** means that certain plat entitled “Northside Creek P.R.U.D. Subdivision Plat” in Morgan County, Utah and recorded as Entry Number 115 391, in Book 275, at pages 319 - 322 of the Boof of Plats of Morgan County.

1.26 **“Property”** means the land described on Exhibit A and known as North Side Creek and any other land as may be made subject to the terms of this Declaration by the recordation of a supplemental declaration annexing Additional Property to the Development.

1.27 **“Public Areas”** means areas dedicated to the public or established for public use in the Plat, or in accordance with this Declaration or any declaration annexing Additional Property to the Development.

1.28 **“Residence”** means a building located upon a Lot within the Development and designated for separate residential occupancy.

1.29 **“Rules and Regulations”** is defined in Section 4.5(d).

1.30 **“State”** means the state of Utah.

Article 2

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Binding Effect.** The Property will be held, conveyed, hypothecated, encumbered, used, occupied and improved only in accordance with the provisions of this Declaration, which provisions will run with the Property and will be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and will inure to the benefit of each Owner thereof.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to the Development as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to the Development. The annexation of such real property will be accomplished as follows:

(a) The owner or owners of such real property will record a declaration which will be executed by or bear the approval of Declarant and will, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and will be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The property included in any such annexation will thereby become a part of the Development and this Declaration, and Declarant and the Association will have and will accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property;

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property; and

(iii) incorporate provisions contained in this Declaration with or without modification to become applicable to the Additional Property without a requirement that such provisions be repeated in the declaration applicable to the Additional Property.

(d) There is no limitation on the number of Lots which Declarant may create or annex to the Development, except as may be established by County ordinance. Similarly, there is no limitation on the right of Declarant to annex property to the Development's Common Areas, except as may be established by County ordinance.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation, additional Lots so annexed will be entitled to voting rights as set forth in Section 8.3, and the common expenses will be reallocated as provided in Section 10.9.

2.3 **Withdrawal of Property.** Declarant may withdraw property from the Development only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Property or any Additional Property at any time prior to the sale of the first Lot in the Property or Additional Property, respectively. Such withdrawal will be by a declaration executed by Declarant and recorded in the office of the County Recorder. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn will be eliminated, and the common expenses will be reallocated as provided in Article 10.9 below.

Article 3 LAND CLASSIFICATIONS

3.1 **Land Classifications Within Development.** All land within the Development is included in one or another of the following classifications:

(a) Lots, which will consist of all Lots 1-22 on the Northside Creek P.R.U.D. Subdivision Plat;

(b) Common Areas, which will be the areas designated as "Common Areas," "Community Open Space Parcels," "Common Easement Areas," "Limited Common Areas," or other similar designations, on the Plat; and Parcels A, B, C, D, E, and F are to be owned and maintained by Northside Creek L.L.C.

(c) Public Areas, which will be the areas designated as public parks, trails or streets on the Plat.

(d) Private Property, parcel J to be owned and maintained by Wolff Family LLC. Parcel G to be owned and maintained by Browning Arms Company. Parcels H and I to be owned by Gardner Cottonwood Creek LLC.

3.2 **Consolidation of Lots.** The Owner of two adjoining Lots, subject to the approval of the County, may elect to consolidate such Lots into one Lot. The consolidation will be effected by the Owner's recording in the office of the County Recorder a declaration stating that the two Lots are consolidated, which declaration will include a written consent executed by the County. Thereafter, the consolidated Lots will constitute one Lot for all purposes of this Declaration, including voting rights and Assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned, nor may the consolidation be revoked without the approval of the County.

Article 4 PROPERTY RIGHTS IN COMMON AREAS

4.1 **Owners' Easements of Enjoyment.** Subject to the provisions of this Article, every Owner and its invitees will have a right and easement of enjoyment in and to the Common Areas, which easement will be appurtenant to and will pass with the title to every Lot.

4.2 **Common Easement Areas.** Common Easement Areas will consist of two types: (a) easements reserved over land for signage and visual landscape features and (b) land reserved for private roads and trails. Such areas are to be maintained by the Association, and no changes in the use or improvement of those areas will be permitted without the approval of the Management Committee. Unless otherwise specified in this Declaration, "approval" of the Management Committee will mean advance written approval. No building, wall, fence, paving, landscaping or construction of any type will be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas.

4.3 **Title to Common Areas.** Title to the Common Areas, including Common Easement Areas except for Common Easement Areas reserved for signage or landscaping on public or private land, will be conveyed to the Association by Declarant, free and clear of monetary liens, prior to the date on which Class B Membership in the Association ceases and is converted to Class A Membership as described in Section 8.3.

4.4 **Title to Common Easement Areas** reserved for landscaping and signage across private land, subject to the easements set forth in this Declaration, will pass to the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street rights-of-way.

4.5 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby will be subject to the following and all other provisions of this Declaration:

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property (including, in the case of easements for ingress and egress, the invitees of the Owners of Lots) the following easements over, under and upon the Common Areas, including the Common Easement Areas:

(i) an easement on all Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services

installed by Declarant or with the approval of the Management Committee and any such easement shown on the Plat;

(ii) an easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon;

(iii) an easement for the purpose of making repairs to any existing structures on Common Areas;

(iv) an easement across all Common Easement Areas consisting of private roads for ingress and egress to and from Lots, other Common Areas and publicly dedicated roads; and

(v) an easement across all Common Easement Areas consisting of trails for ingress and egress, by foot or by non-motorized vehicles only, to and from Lots, other Common Areas and publicly dedicated roads or any adjacent public lands.

Declarant or the Association may (and, to the extent required by law, will) grant or assign such easements to the County or other political subdivisions, utilities performing utility services and/or communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Development.

(b) **Use of the Common Areas.** The Common Areas will not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type will be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas will be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas, including Common Easement Areas. Nothing herein will prevent the placing of a sign or signs upon the Common Areas or identifying pathways or items of interest, provided such signs comply with any applicable County sign ordinance. The Management Committee will have authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility.

(c) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots without the approval of (i) at least 80% of the votes cast by Class A Members participating in a meeting in person or by proxy or written ballot, and (ii) the Class B Member (if any). Unless otherwise specified in this Declaration, "approval" of the Class A Membership voting rights will mean approval by the requisite percentage of votes cast by Class A Members participating in a meeting in person or by proxy or written ballot, as specified in the Bylaws. Unless otherwise specified in this Declaration, "approval" of the Declarant or the Class B Member will mean advance written approval. Upon the approval of a majority of the Class A Membership voting rights, the Class B Member (if any) and the County, the

Association may dedicate or convey any portion of the Common Areas to a park district or other public body. Notwithstanding the foregoing, this Section will not apply to Common Easement Areas or to the easements described in Section 4.4.

(d) **Limitations on Use.** Use of the Common Areas by the Owners will be subject to the provisions of this Declaration and to the following:

(i) the right of the Association to suspend such use rights of an Owner to the extent provided in Article 11; and

(ii) the right of the Association from time to time to adopt, amend or repeal rules and regulations ("**Rules and Regulations**") governing the conduct of persons on and the operation and use of the Common Areas as it deems necessary or appropriate in order to ensure the peaceful and orderly use and enjoyment of the Property in accordance with this Declaration and the Bylaws. A copy of the Rules and Regulations, as amended from time to time, will be promptly delivered to each Owner by the Management Committee and will be binding upon the Owners as of the date of delivery, provided the Rules and Regulations may contain general provisions applicable to the entire Development.

4.6 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, its right of enjoyment of the Common Areas to family members and to tenants or contract purchasers who reside on the Property.

4.7 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the current and future owners of Lots in the Development a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or its Affiliates.

Article 5 PROPERTY RIGHTS IN LOTS

5.1 **Use and Occupancy.** The Owner of a Lot in the Property will be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot will be bound by and the Owner will comply with the restrictions contained in and all other provisions of this Declaration and the provisions of any supplement to this Declaration.

5.2 **Easements Reserved.** In addition to any utility and drainage easements shown on the Plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

5.3 **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area will, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

5.4 **Right of Entry.** Declarant, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals and upon reasonable notice to the Lot Owner under the circumstances, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are in compliance with this Declaration. No such entry will be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

5.5 **Utility Easements.** Easements for installations and maintenance of drainage facilities and public utilities are hereby reserved over 10 feet of the front, rear and one side of each Lot, and as otherwise identified on the Plat. Within these easements, no structure, planting or other material will be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Architectural Review Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvements will be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvements partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas will be maintained continuously by the Owner of the Lot, except for those Improvements which a public authority or utility company is responsible to maintain. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on the Plat.

5.6 **Landscape Maintenance.** The Association will have the right to enter on any Lot in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the standards, including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Association's right of access for maintenance will include the right of access to a garage or other part of a Residence on a Lot containing the automatic sprinkling control box and the right to use the water at the expense of the Owner in any amount deemed necessary and appropriate by the Association for maintaining the landscaping in the Lot.

Article 6

ARCHITECTURAL REVIEW

6.1 **General.** No Improvements of any kind, including, without limitation, the construction of any Residence, garage, outbuilding, parking area, driveway, tennis court, walkway, swimming pool, outdoor hot tub or spa, fence, wall, curb, pool, trampoline, swing set or playground equipment, satellite dish or antenna, solar panel, outside air conditioning equipment, or any other permanent structure may be constructed, erected or installed on the Property without the approval of

the Architectural Review Committee (“**Committee**”). No excavation, grading, filling, draining, landscaping or installation or removal of existing vegetation will be made without the approval of the Committee. No approval will be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of its Residence without approval. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the structure will be subject to approval. All Residences constructed on the Lots will be designed by and built in accordance with the plans and specifications of a licensed architect. This Article will not apply to Declarant’s activities. Unless otherwise specified in this Declaration or the Architectural Guidelines, “approval” of the Committee will mean advance written approval.

6.2 Composition of Architectural Review Committee. Prior to the Turnover Meeting (defined in Section 8.8), Declarant will serve as the Committee, provided Declarant may, in its sole discretion, appoint an interim Committee consisting of not less than four persons (at least one of whom will be a professional in the field of architecture), who will serve until replaced by Declarant or until their successors take office at the Turnover Meeting. Declarant may at any time delegate to the Management Committee the right to appoint or remove members of the Committee; provided the Management Committee will acquire the right to appoint or remove members of the Committee no later than the Turnover Meeting. After the Management Committee assumes control of the right to appoint or remove members of the Committee, the Committee will consist of at least four persons (at least one of whom will be a professional in the field of architecture).

6.3 Architectural Guidelines. The Architectural Review Committee will prepare Architectural Guidelines which establish standards, rules, regulations, restrictions and guidelines, in addition to those set forth in Article 7, with respect to, but not limited to, design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping and other matters requiring approval by the Committee pursuant to this Declaration. The Architectural Guidelines will also specify the content of the Application that must be submitted to the Committee by an Owner seeking approval of proposed Improvements and will establish the procedures for submitting the Application. The Architectural Guidelines are incorporated herein and will be deemed to be a part of this Declaration and will be binding on all Owners and their agents, provided the Architectural Guidelines may contain general provisions applicable to the entire Development. In the event of a conflict between the Architectural Guidelines and this Declaration, this Declaration will prevail. The Architectural Committee may, in its sole discretion, amend the Architectural Guidelines, subject to the approval of the Management Committee and the Class B Member (if any). Amendments to the Architectural Guidelines will be applied prospectively only and will not be applied so as to require modifications to or removal of Improvements previously approved once construction of the approved Improvements has commenced. The Architectural Guidelines are not the exclusive basis for Committee decisions, and compliance with the Architectural Guidelines does not guarantee approval of any Application. The Committee will make the Architectural Guidelines available to Owners and builders who seek to construct Improvements within the Development.

6.4 Submission to Committee. The Owner seeking to construct Improvements (“**Applicant**”) will submit an application (“**Application**”) to the Committee for review, as specified in the Architectural Guidelines. The required Application materials will include:

- (a) two full-size sets and one half-size set of architectural plans;
- (b) two full-size and one half-size copy of the site plan with placement on the Lot;
- (c) color samples of exterior façade, including brick and stone; and
- (d) one full-size and one half size landscape drawing.

Plans should show site layout, structural design, exterior elevations and building heights on each elevation, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of the proposed Improvements, as applicable. The Architectural Guidelines and the Committee may require the submission of such additional information as may be reasonably necessary to consider any Application, and may also waive certain submission requirements for proposed improvements of a minor nature.

6.5 Standard. The Committee will have the right to approve any Application in compliance with the Architectural Guidelines and this Declaration if the Committee reasonably determines that proposed Improvements are consistent with, among other things, (a) the architectural character and nature, shape, color, size, material, location and kind of all proposed Improvements, taking in consideration the aesthetic quality of any structure with respect to height, form, proportion, volume, sitting and exterior materials; (b) the adequacy of Lot dimensions for proposed Improvements; (c) the conformity and harmony of exterior design with neighboring Lots and Improvements; (d) the relation of topography, grade and finished ground elevations to that of neighboring Lots and Improvements; (e) the screening of mechanical and other installations; (f) the functional appropriateness with respect to drainage, utility service systems and lighting; and (g) the extent and quality of landscaped areas.

6.6 Approval Procedure. The Committee will make a determination on each Application within 30 days after receipt of a completed Application and all required information. The Committee may (a) approve the Application, with or without conditions; (b) approve a portion of the Application and disapprove other portions; or (c) disapprove the Application. The Committee will notify the Applicant in writing of its decision within five days thereafter. In the case of disapproval, the Committee will specify the reasons for disapproval and/or offer suggestions for curing any objections. In the event the Committee fails to render its decision within 30 days after receipt of a completed Application, approval will not be required and the provisions of this Article will be deemed to have been fully complied with.

6.7 Appeal. Any Owner adversely affected by an action of the Committee may appeal such action to the Management Committee. Appeals will be made in writing within ten days of the Committee’s action and will contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision will be made by the Management Committee within 30 days after receipt of the appeal.

6.8 **Fees; Assistance.** The Committee may collect a reasonable fee—in an amount established by the Management Committee—for reviewing an Application (“**Review Fee**”) and may require the Review Fee to be paid in full before the Committee reviews an Application. The Review Fee may include the reasonable cost of having the Application reviewed by architects, engineers, or other professionals whom the Committee may employ as it deems necessary to perform the review. The Committee may also require an Applicant to submit a deposit (“**Deposit**”)—in an amount established by the Management Committee—to ensure that the Applicant (a) constructs the improvements in accordance with the approved Application (b) keeps its Lot in a condition so as to prevent the rubbish and debris that accumulate during the construction or landscaping process from blowing or collecting on neighboring Lots; (c) reasonably cleans up its Lot at or near the completion of the construction or landscaping process; (d) repairs any damage to the Property caused by the construction or landscaping process, including damage caused by Applicant’s contractors; and (e) otherwise complies in all respects with this Article. The Committee may require that an Applicant pay the Deposit before beginning construction of the improvements or at any time during the construction. The Committee will return the balance of the Deposit to the Applicant as soon as the Committee verifies that the Applicant has complied in all respects with this Article. The Management Committee may change the amount of the Review Fee or the Deposit at any time to cover increasing costs.

6.9 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Committee will have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

6.10 **Liability.** Neither the Committee nor any member thereof will be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

6.11 **Nonwaiver.** Consent by the Committee to any matter proposed to it or within its jurisdiction will not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.12 **Effective Period of Consent.** The Committee’s consent to any proposed Improvements will automatically be revoked one year after issuance unless construction of the proposed Improvements has been commenced or the Owner has applied for and received an extension of time from the Committee.

6.13 **Estoppel Certificate.** Within 30 days after written request is delivered to the Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee will provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so

comply, in which event the certificate will also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer will be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Committee, the Association and all Owners, and such purchaser or mortgagee.

Article 7 RESTRICTIONS

7.1 **Prohibition Against Further Subdivision.** No Lot may be further subdivided or otherwise separated into smaller parcels without the approval of the Management Committee and the County.

7.2 **Permitted Use.**

(a) **Residential Use.** Subject to the provisions of Section 7.2(b), the Property will be used for residential purposes only.

(b) **Commercial Use Restricted.** Except with the consent of the Management Committee, no trade, craft, business, profession, commercial or similar activity of any kind will be conducted on the Property, nor will any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on the Property. Nothing in this Section will be deemed to prohibit (i) activities relating to the rental or sale of Residences; (ii) the right of Declarant, the Association or any contractor or homebuilder to construct a Residence on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Residence as a sales or rental office or model home or apartment for purposes of sales or rental in the Development; and (iii) the right of the Owner of a Lot to maintain its professional personal library, keep his personal business or professional records or accounts, handle its personal business or professional telephone calls, or confer with business or professional associates, clients or customers in its Residence, provided, however, there is no external evidence thereof and such use complies with County home occupation/business ordinances. The Management Committee will not approve commercial activities otherwise prohibited by this Section unless the Management Committee determines that only normal residential activities would be observable outside of the Residence and that the activities would not be in violation of applicable County ordinances.

(c) **Transient Lodging Use Prohibited.** Lots will be used for residential housing purposes only and will not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast," or other uses for providing accommodations to travelers. No lease of any Lot will be for a period of less than 30 days. No Lot will be subjected to time interval ownership.

(d) **Use of Temporary Structures as a Residence Prohibited.** No trailer, mobile home, camper, camper shell, tent, shack, garage, barn, shed, outbuilding, basement of an incomplete building, or temporary building or structure of any kind will be used at any time for a residence, either temporary or permanent. **Drilling, Mining Prohibited.** No oil drilling, oil development operations, oil refining, mining, drilling, prospecting, quarrying, mineral exploration or similar activities will be permitted on the Property. **Unlawful Use Prohibited.** No unlawful use will be

made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property will be observed. **Permitted Structures.** No structures will be erected or permitted to remain on any Lot except a Residences and structures normally accessory thereto which comply with the Architectural Guidelines and are approved by the Architectural Review Committee. Garages, sheds, storage units, private greenhouses, private swimming pools and other outbuildings may be erected and maintained on a Lot, provided they comply with the Architectural Guidelines and are approved by the Architectural Review Committee. The building materials must be harmonious with the dwelling and the roof materials must be the same as the roof materials on the dwelling. No mobile home, trailer house, or other previously erected, used or temporary structure may be installed or maintained on any Lot. No derrick, oil well, tunnel, mineral excavation, shafts or other such structure designed for use in drilling for oil, natural gas, water or minerals will be erected or maintained on any Lot.

7.4 **Minimum Square Footages.** To be established by the recording of a supplement to these recorded restrictions.

7.5 **Setbacks; Orientation.** To be established by the recording of a supplement to these recorded restrictions.

Height. No Improvements with a height in excess of 35 feet, measured from the lowest finished grade of the structure to the ridgeline, excluding chimneys, will be located on Lots.

Out Buildings. To be established by the recording of a supplement to these recorded restrictions.

Completion Required Before Occupancy. No Residence may be occupied prior to its completion and the issuance of a certificate of occupancy by the County.

7.6 **Residence to be Constructed First.** To be established by the recording of a supplement to these recorded restrictions.

Architectural Style and Compatibility of Improvements. To be established by the recording of a supplement these recorded restrictions.

7.7 **Natural Contours, Grading and Drainage.** The natural contours of a Lot may not be modified in excess of 4 vertical feet without approval from the Architectural Review Committee. In any location where cuts exceed a 3 to 1 slope, Lot Owners must do at least one of the following to stabilize the slope until the disturbed area is properly re-vegetated: (a) use silt fencing; (b) use an erosion blanket; or (c) as approved by the Architectural Review Committee, construct a decorative wall or use natural rock. All disturbed areas must be covered with natural soil and planted with grasses or other appropriate plant material. Owners must ensure that cuts and fills do not endanger any adjacent Lots or Common Areas. Each Lot Owner will minimize surface water runoff flowing from its own Lot. Each Owner will be responsible for grading his Lot to required specifications and will not hold Declarant or the Association responsible for any damage caused by drainage on or off its Lot. All grading associated with construction of a Residence will be completed prior to occupancy.

7.8 Fences, Walls, Hedges and Screens. No fences, walls hedges or non-living screens will be constructed on any Lot without approval from the Architectural Review Committee. Vinyl or aluminum slats in chain-link fencing are prohibited. Fences may not be constructed on slopes of 15% or greater. No side-yard or backyard fences may be constructed adjacent to a Common Area fence without approval from the Architectural Review Committee, which Committee may approve such fencing so long as the fence matches the common area fence in height at least 10 feet before the two fences meet. Any Lot Owner wishing to enclose wood rail fencing with wire mesh must coordinate with the Association, which will install standard wire mesh fencing for a fee. No fences, hedges, shrubs or other living landscaping or screens of any kind will be erected so as to pose a hazard to vehicular or pedestrian traffic, particularly near a driveway entrance. Any solid hedge within 20 feet of a front Lot line will be trimmed to a maximum height of 3 feet. Backyard fences will not exceed 6 feet in height. Side yard fences will not extend toward the front of the Lot beyond the front yard setback. Retaining walls exceeding 4 feet in height must be designed and certified as structurally sound by a civil or structural engineer. All fencing, walls, hedges or similar structures will be maintained in a first-class and attractive manner. When an Owner's installation, modification, removal or replacement of a fence, wall, hedge or other structure or landscaping element risks weakening the lateral support of an adjoining Owner's property, such Owner will install and maintain bracing to support and protect against damage to the adjoining Owner's property.

7.9 Maintenance Responsibility. All Lots and the Improvements thereon will be maintained in a clean, sanitary, attractive and marketable condition and in good repair at all times and in such fashion as not to create a hazard or nuisance. Such maintenance will include, without limitation, repair and replacement of roofs, gutters, downspouts, exterior building surfaces, glass surfaces, walks, landscaping and other exterior Improvements. Each Owner will keep all shrubs, trees, grass and plantings of every kind on its Lot neatly trimmed and properly cultivated and will keep its Lot free of trash, weeds and other unsightly material. Each Owner will be responsible for maintaining utility lines within its Lot. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes will be restored within a reasonable period of time. The Association reserves the right to post "No Dumping" signs on vacant Lots. The Association will notify a Lot Owner if Lot maintenance is required. If the Lot Owner has not remedied the problem within 14 days of notification, the Association may perform said maintenance and may fine or assess the Lot Owner for all associated costs.

7.10 Tree Removal. No Owner or contractor or agent of any Owner or contractor will remove any of the existing trees from a Lot, except those trees which the Architectural Review Committee has allowed to be removed in connection with the approval of an Owner's proposed Improvements. In the event that an Owner or contractor or agent of any Owner or contractor will remove any tree from a Lot without first obtaining the written consent of the Architectural Review Committee, the Association will be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy will be in addition to all other rights and remedies of the Association as set forth in this Declaration.

7.11 Nuisances. No nuisance will be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants.

(a) **Noxious or Offensive Activity.** No noxious or offensive activity will be carried out on any Lot or in any part of the Development, including, without limitation, the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of the Development.

(b) **Unsightliness.** No unsightliness will be permitted on any Lot. This will include, without limitation, the open storage of any building materials (except during the construction of any Residence or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers screened from view in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any street. **Lights.** Any outdoor lighting will be designed to direct the light downward and limit the field of light to the confines of the Lot on which it is installed. All outdoor lighting must be approved by the Architectural Review Committee and will comply with the night sky lighting requirements of the County Land Use Management Code. **Sounds.** No continuously barking dogs, loud speakers or other noise-making devices may be used, maintained or permitted to continue on any Lot in a way that annoys or disturbs other Owners or residents in the Development or creates noise that might reasonably be expected to annoy or disturb other Owners or residents in the Development, except for security or fire alarms and noise incident to legitimate construction and maintenance work.

(e) **Pests.** No Owner will permit any thing or condition to exist upon any portion of the Development which will induce, breed or harbor infectious plant diseases or noxious insects or vermin. **Hazardous Activity Forbidden.** No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which could lead to the cancellation of a conventional homeowner's insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous material in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues).

7.13 **Animals.** Except as permitted by this Section 7.13, no wild or dangerous animals, cows, pigs, sheep, fowl, livestock, or animals will be allowed within the Development. Ordinary household pets (but not more than two cats and two dogs) that do not constitute a nuisance may be kept on a Lot. No more than two (2) horses per lot will be allowed with the exceptions of lot 21 and 22 which will both be allowed no more than four (4) horses per lot. Dogs and cats or other household Animals belonging to Owners, occupants or their licensees or invitees within the Development must be kept within an enclosure. The enclosure must be maintained such that the animal cannot escape therefrom. Chain link fencing may not be used to confine animals unless it is completely concealed from view during all seasons of the year. Invisible fencing may be used where appropriate. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. Without exception, all dogs will be restrained on a leash when off the Owner's Lot. Animal owners are responsible to immediately pick up all animal droppings that are deposited on the property outside of their own Lot. In no case may any household pet or other animal be kept at or around the Residence be allowed to create a nuisance for neighboring Lot owners due to noise, odors or otherwise.

7.14 **Motor Vehicles.** To be established by the recording of a supplement these recorded restrictions.

7.15 **Signs.** No signs will be permitted on any Lot or within the Development, except for traffic-control signs placed by the County or temporary signs warning of an immediate danger. For-sale signs may be placed on Lots, provided no such sign may exceed 3 square feet. Declarant may erect signs within the Development for purposes of marketing the Development, including announcing the availability of Lots or providing sales information.

7.16 **Underground Utilities.** All gas, electrical, telephone, television, and any other utility lines in the Development must be underground, including lines within any Lot which service installations entirely within that Lot.

7.17 **Service Facilities.** Clothes lines, service yards and storage yards are prohibited. Exterior mechanical equipment must be screened so as not to be visible from adjoining Lots.

7.18 **Sewer Connection Required.** All Lots are served by sanitary sewer service, and no cesspools, septic tanks or other types of waste disposal systems are permitted on any Lot. All Residences must be connected to the sanitary sewer system.

7.19 **Fuel Storage.** No fuel, oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the Property. Residences will be heated with natural gas, solar or electric heat. Propane or other such containerized fuels may be used only during construction of a Residence until the permanent heating system is installed and operational. Notwithstanding the foregoing, propane tanks for outdoor barbecues will be permitted.

7.20 **Antennas.** Antennas and Solar Panels must be enclosed within a structure and not roof-mounted, except that no more than two satellite dishes, each measuring less than 24 inches in diameter, will be permitted. No ham radio receiver or transmitter antenna or other similar device will be attached to or installed on the exterior portion of any Residence, outbuilding, or Improvement or placed on any Lot within the Development without the approval of the Architectural Review Committee.

7.21 **Mailboxes.** A central mailbox kiosk will be provided for Lots 1 through 18. Lots 19 through 22 will have individual mailboxes.

7.22 **Fireplaces.** In order to reduce air pollution generated by fireplace emissions, all wood stoves and fireplace inserts used on the Property must be EPA-certified. Gas stoves, pellet stoves and decorative gas logs are permitted without restriction.

7.23 **Parking.** Except as may otherwise be provided in the Rules and Regulations of the Association, overnight parking of boats, trailers, off-road motorcycles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight is prohibited on the Property, unless kept within an enclosed garage.

7.24 **Vehicles in Disrepair.** No Owner will permit any vehicle which is either inoperable, in an extreme state of disrepair, or not currently licensed for use on the public roadways to be abandoned or to remain parked on the Common Areas or on any street within the Development for a period in excess of 48 hours. A vehicle will be deemed in an "extreme state of disrepair" when the Management Committee reasonably determines that, by reason of its poor exterior condition, its presence degrades the visual environment of the Development. Should any Owner fail to remove such vehicle within five days following the date on which notice is provided to him by the Association, the Association may have the vehicle removed from the Property at the Owner's expense.

7.25 **Rubbish and Trash.** Dumping of trash or rubbish onto Common Areas or Lots is prohibited. Yard rakings, dirt and other material resulting from landscaping work will not be dumped onto streets or Common Areas. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or Common Area or Lots where deposited by him within ten days following the date on which notice is provided to him by the Management Committee, the Association may have such materials removed at the Owner's expense. Without limiting the generality of the foregoing, the Owners will not allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Lot upon any part of the Property. An Owner will be directly responsible for any violation of this Declaration or damage to any of the Property caused by the Owner's builder(s), contractor(s), or subcontractor(s). The Deposit may be retained by the Architectural Review Committee for any such violation or damage. Nothing contained herein will limit the amount of damages for which an Owner may be liable. The foregoing to the contrary notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified herein, place and maintain upon a Lot no more than one dumpster and one portable toilet facility.

7.26 **Completion of Construction.** The construction of any structure on any Lot, including painting and all exterior finish, will be completed within 12 months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the Architectural Review Committee. The construction area will be kept reasonably clean, free of litter and in workmanlike order during the construction period. If construction has not commenced upon any Lot within 12 months after acquisition by the Owner, the Owner will install the sidewalk, landscape, irrigate and maintain the Lot fully. The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved Lots will be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon will be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

7.27 **Fire Protection.** All stacks and chimneys from fire places in which combustibles, other than natural gas, are burned will be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by County ordinance.

7.28 **Variiances.** A variance from the standards and restrictions set forth in this Article may be allowed only with the approval of the Architectural Review Committee or, where specified, the Management Committee, for good cause shown.

7.29 **Application to Additional Property.** A declaration annexing Additional Property to the Development may establish restrictions governing the use and conduct of the Additional Property that are more or less restrictive than the restrictions governing the Development.

7.30 **Compliance with the Law.** All activities on the Lots and use of the Lots will comply with applicable laws.

Article 8 ASSOCIATION

8.1 **Organization.** Declarant will organize an association of all of the Owners within the Development. Such Association, its successors and assigns, will be organized under the name "North Side Creek Homeowners Association, Inc." and will have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners. Declarant will, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State. The Articles will provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it will automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution will thereupon automatically vest in the successor unincorporated association, and such vesting will thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association will be governed by the Articles and Bylaws as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership.** Every Owner of one or more Lots within the Development will, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Development, be a Member of the Association. Such membership will commence, exist and continue simply by virtue of such ownership, will expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 **Classes of Voting Membership.** The Association will have two classes of voting membership:

(a) **Class A.** Class A Members will be all Owners with the exception of Declarant and will be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons will be Members. The vote for such Lot will be exercised as they among themselves determine, but no more than one vote may be cast with respect to any Lot.

(b) **Class B.** The Class B Member will be Declarant and will be entitled to five votes for each Lot owned by Declarant. The Class B Membership will cease and be converted to a

Class A Membership on the happening of either of the following events, whichever occurs earlier: (i) when 75% of the Lots in the Development have been sold and conveyed to Owners other than Declarant; or (ii) at such time as Declarant may elect in writing to terminate its Class B Membership. **Management Committee.** The affairs of the Association will be conducted by the Management Committee and by such officers as the Management Committee may elect or appoint in accordance with the Articles and Bylaws. Prior to the Turnover Meeting, Declarant will serve as the interim Management Committee; provided, Declarant may, in its sole discretion, appoint an interim Management Committee composed of three directors, who will serve until replaced by Declarant or until their successors take office at the Turnover Meeting, whichever occurs earlier.

8.5 General Powers and Obligations. The Association will have, exercise and perform all of the following powers, duties and obligations:

(a) the powers, duties and obligations granted to the Association by this Declaration;

(b) the powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State; and

(c) any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes to this Declaration made in accordance with its provisions, accompanied by changes in the Articles and Bylaws made in accordance with their provisions and with the nonprofit corporation laws of the State.

8.6 Specific Powers and Duties. The powers and duties of the Association will include, without limitation, the following:

(a) **Maintenance and Services.** The Association will provide maintenance and services for the Development as provided in Article 9 and elsewhere in this Declaration.

(b) **Insurance.** The Association will obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws. **Rulemaking.** The Association will make, establish, promulgate, amend and repeal Rules and Regulations governing the Common Area.

(d) **Assessments.** The Association will adopt budgets and impose and collect Assessments as provided in Article 10. **Enforcement.** The Association will perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Management Committee, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects,

planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Development. **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas, subject to Section 4.5(c), and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Areas, and will accept any real or personal property, leasehold or other property interests within the Development conveyed to the Association by Declarant. **Transfer, Dedication and Encumbrance of Common Areas.** Except as otherwise provided in Section 4.5(c) above, the Association may sell, transfer or encumber all or any portion of the Common Areas to a Person, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes. **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its Members who do not assent to such charges and to such other Rules and Regulations as the Management Committee deems proper. In addition, the Management Committee will have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same. **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. **Liability.** A member of the Management Committee or an officer of the Association will not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Management Committee or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association will indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.8 **Turnover Meeting.** Declarant will call a meeting of the Association for the purpose of turning over administrative responsibility for the Development to the Association not later than 120 days after 75% of the Lots have been sold and conveyed to Owners other than Declarant ("**Turnover Meeting**"). At the Turnover Meeting, Declarant or the interim directors, as the case may be, will resign from the Management Committee and be replaced by their successors, who will be designated as provided in this Declaration and the Bylaws. If Declarant fails to call the Turnover Meeting, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.9 **Appointment of Directors.** Effective as of the Turnover Meeting, the Management Committee of the Association will be composed of four directors, two from each. The directors will be elected by the Owners of Lots. Terms of office of directors will be as set forth in the Bylaws.

Article 9
MAINTENANCE, UTILITIES AND SERVICES

9.1 **Maintenance of Common Areas.** The Association will perform or provide for all maintenance of the Common Areas, Common Easement Areas, and Limited Common Areas, including but not limited to the following areas or facilities located in such Areas: parks, grass, trees, walks, private roads, entrance gates, lighting, signs, parking areas, walkways, trails, utilities and storm water facilities, unless the maintenance thereof is assumed by a public body. Such areas will be maintained in an attractive condition and in a good and workmanlike manner so as to carry out the purpose for which such areas are intended. Pursuant to the requirements of the County Subdivision Ordinance, Declarant will guarantee the performance of the foregoing maintenance obligations for a period of two years from and after the recording of this Declaration.

9.2 **Services.** The Association will provide or contract for such services as the Management Committee may reasonably deem to be of benefit to the Development, including, without limitation, garbage and trash removal for Common Areas and security services for the Development.

9.3 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other Improvements thereon, will be the sole responsibility of the Owner thereof, who will maintain such in accordance with the community-wide standard of the Development. The Association will, in the discretion of the Management Committee, assume the maintenance responsibilities of such Owner if, in the opinion of the Management Committee, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Management Committee will notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 30 days after mailing of such written notice, then the Association will proceed. The expenses of such maintenance incurred by the Association will be reimbursed to the Association by the Owner, together with interest as provided in Section 11.6. Such charges will be an Individual Assessment and lien on the Lot as provided in Article 10.

Article 10
ASSESSMENTS

10.1 **Purpose of Assessments.** The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation and maintenance of the Common Areas and the Lots.

10.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

10.3 **Apportionment of Assessments.** Lots owned by Declarant will not be subject to Assessments until such time as the Lot is occupied for residential use. All other Lots will pay a

pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments and Limited Common Area Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share will be based upon the total amount of each such Assessment divided by the total number of Lots subject to assessment. Subject to the first sentence of this Section 10.3, each Lot will be subject to Assessments, regardless of whether a Residence has been constructed on the Lot.

10.4 Annual Assessments. The Management Committee will from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget will provide for such reserve or contingency funds as the Management Committee deems necessary or as may be required by law, but not less than the reserves required by Section 10.11. Annual Assessments for such operating expenses and reserves (“**Annual Assessments**”) will then be apportioned among the Lots as provided in Section 10.3. The method of adoption of the budget and the manner of billing and collection of Assessments will be as provided in the Bylaws.

10.5 Special Assessments. In addition to the Annual Assessment authorized above, the Management Committee may levy during any fiscal year a Special Assessment (“**Special Assessment**”), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 15% of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Special Assessments will be apportioned as provided in Section 10.3 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Management Committee.

10.6 Emergency Assessments. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner’s Assessments on a current basis, the Management Committee will immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis (“**Emergency Assessment**”). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to 5% of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Emergency Assessments will be apportioned as set forth in Section 10.3 and payable as determined by the Management Committee.

10.7 Limited Common Area Assessments. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas (“**Limited Common Area Assessments**”) will be assessed exclusively to the Lots having the right to use such Limited Common Areas.

10.8 **Individual Assessments.** Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted (“**Individual Assessment**”). Individual Assessments include, without limitation, charges for services provided under Section 8.6(i). Individual Assessments will also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations and for fines or other charges imposed under this Declaration. Unless otherwise provided by the Management Committee, Individual Assessments will be due 30 days after the Management Committee has given written notice thereof to the Owners subject to the Individual Assessments.

10.9 **Annexation of Additional Property.** When Additional Property is annexed to the Development, the Lots included therein will become subject to Assessments from the date of such annexation. Lots owned by Declarant will not be subject to Assessments until occupied for residential use. All other Lots will pay such Assessments in the amount then being paid by other Lots. The Management Committee may, however, at its option, elect to recompute the budget based upon the additional Lots subject to Assessments and additional Common Areas and recompute Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property will not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

10.10 **Operations Fund.** The Association will keep all funds received by it as Assessments, other than reserves described in Section 10.10, separate and apart from its other funds, in an account to be known as the “**Operations Fund**”. The Association will use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Development and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) payment of the cost of maintenance, utilities and services as described in Article 9;
- (b) payment of the cost of insurance as described in the Bylaws;
- (c) payment of taxes assessed against the Common Areas and any improvements thereon; and
- (d) payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

10.11 **Reserve Fund.** The Association will establish a reserve fund for replacement of those Improvements to be maintained by the Association, all or a part of which will normally require functional replacement in more than 3 and less than 30 years (“**Reserve Fund**”). Such Reserve Fund will be funded by Assessments against the individual Lots assessed for maintenance of the items for

which the Reserve Fund is being established. The Assessments under this Section begin accruing against each Lot from the date the Lot is sold by Declarant. Declarant will not be obligated to contribute to the Reserve Fund at the time of the sale of each Lot by Declarant. The amount assessed to each Lot will take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund will be established in the name of the Association and will be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund will be used only for replacement of Common Areas as determined by the Management Committee and will be kept separate from the Operations Fund. After the Turnover Meeting, however, the Management Committee may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Limited Common Area Assessments. The Management Committee may prudently invest the Reserve Fund. Following the second year after the Turnover Meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than 75% of the voting power of the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.12 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Development, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, will be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed under Section 11.6, will be a charge on the land and will be a continuing lien upon the Lot against which each such Assessment or charge is made; provided, however, that no lien will attach to any Lot owned by Declarant until such time as such Lot is subject to Assessment under Section 10.3. Such Assessments, charges and other costs will also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations will be enforced in the manner set forth in Article 11.

Article 11 ENFORCEMENT

11.1 Use of Common Areas. In the event any Owner will violate any provision of this Declaration, the Bylaws or the Rules and Regulations adopted by the Association governing the use of Common Areas, then the Association, acting through the Management Committee, will notify the Owner in writing that the violations exist and that he is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated; (b) impose reasonable fines as an Individual Assessment upon the Owner, in a manner and amount the Management Committee deems appropriate in relation to the violation, which fines will be paid into the Operations Fund; or (c) bring suit or action against the Owner to enforce the

provisions of this Declaration. Nothing in this Section, however, will authorize the Association to deprive any Owner of access to and from its Lot.

11.2 Nonqualifying Improvements and Violation of Declaration. In the event any Owner constructs or permits to be constructed on its Lot an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on its Lot, then the Association will notify the Owner in writing of any such specific violations of this Declaration and will require the Owner to remedy or abate the same in order to bring its Lot, the Improvements thereon and its use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, the Association will, after notice and opportunity to be heard and within 60 days of written notice to the Owner, have the right to do any or all of the following:

(a) impose reasonable fines against such Owner in the manner and amount the Management Committee deems appropriate in relation to the violation and in accordance with Section 57-8a-208 of the Utah Community Association Act, which fines will constitute Individual Assessments for purposes of this Declaration;

(b) enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount will be payable to the Operations Fund, provided that no items of construction will be altered or demolished in the absence of judicial proceedings; or

(c) bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within 30 days of its due date, such Assessment or charge will become delinquent and will bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may (i) suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full; and/or (ii) declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, will the Association deprive any Owner of access to and from its Lot.

(b) The Association will have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine or charge is due. The lien will be foreclosed in accordance with the provisions regarding the foreclosure of mortgages. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale and may acquire, hold, lease, mortgage or convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 11.3(b) Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association will have any other remedy available to it by law or in equity.

11.4 Notification of First Mortgagee. The Management Committee will notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within 60 days after notice of default to the Owner.

11.5 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration will be subordinate to the lien of any Mortgage on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot will not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any Mortgage pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure will extinguish any lien of an Assessment notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, will not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.6 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date until paid at a rate three percentage points per annum above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Management Committee, but not to exceed the lawful rate of interest under the laws of the State. A late charge may be levied for each delinquent Assessment in an amount established from time to time by resolution of the Management Committee; provided, such late charge may not exceed 30% of such Assessment. In the event the Association files a notice of lien, the lien amount will also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee will be established from time to time by resolution of the Management Committee. If the Association prevails in any procedure to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action.

11.7 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but will be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law. Failure by the Association to enforce any covenant or restriction herein contained will in no event be deemed a waiver of the right to do so thereafter. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

Article 12
MORTGAGES

12.1 **Reimbursement of First Mortgagees.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or 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 a policy for such Common Area. First mortgagees making such payments will be promptly reimbursed therefor by the Association.

12.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this Section, will be entitled to exercise the rights of the Owner of the Lot as a Member of the Association to vote at all regular and special meetings of the Members for a period of one year following the date of such notice. During this one-year period, the Association will give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this Section will quote this Section and will be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy by regular mail to the Association at the last known address of each.

Article 13
AMENDMENT AND REPEAL

Until the termination of the Class B Membership, this Declaration may be amended or repealed by an affirmative vote of at least 67% of the voting power of the Class A Members together with the approval of the Class B Member. After the termination of the Class B Membership, this Declaration may be amended or repealed by an affirmative vote of at least 67% of the voting power of the Class A Members. However, (a) no amendment under this Article will create, limit, or diminish special Declarant rights without Declarant's written consent, and (b) no amendment under this Article will change the boundaries of any Lot without the consent of the Management Committee and all Owners of the affected Lots.

Article 14
MISCELLANEOUS PROVISIONS

14.1 **Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration will be a joint and several responsibility and the act or consent of any one or more of such persons will constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them will be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved will then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

14.2 **Affiliates.** Affiliates entering the Property under rights derived from an Owner will comply with all of the provisions of this Declaration and the Rules and Regulations restricting or regulating the Owner's use, improvement or enjoyment of its Lot and other areas within the Property. The Owner will be responsible for obtaining such compliance and will be liable for any failure of compliance by its Affiliates in the same manner and to the same extent as if the failure had been committed by the Owner himself.

14.3 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration will in no event be deemed a waiver of the right to do so thereafter.

14.4 **Construction; Severability; Number; Captions.** This Declaration will be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision will not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Declaration, the singular will include the plural and the plural the singular, and the masculine and neuter will each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and will in no way limit any of the provisions of this Declaration.

14.5 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail will be deemed made 24 hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 90 S 400 W, Ste 330, Salt Lake City, UT 84101-1369; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

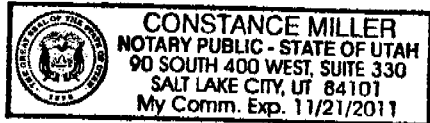
Declarant has executed this Declaration on the date first set forth above.

North Side Creek, LLC,
a Utah limited liability company

By *Rulon C. Gardner*
Name: Rulon C. Gardner
Title: Manager

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on February 9th, 2009, by Rulon C. Gardner, manager of North Side Creek, LLC.



Constance Miller
Notary Public

Exhibit A

Northside Creek P.R.U.D. Subdivision

BOUNDARY DESCRIPTION

Beginning at a point on the section line, said point being North $0^{\circ}10'19''$ West 16.65 feet from the West Quarter Corner of Section 20, Township 5 North, Range 2 East, Salt Lake Base and Meridian, and running;

Thence North $0^{\circ}10'19''$ West 1104.40 feet along the section line;
Thence North $55^{\circ}46'39''$ East 2700.00 feet to the section line;
Thence South $89^{\circ}41'41''$ East 1659.32 feet along the section line;
Thence South $47^{\circ}35'40''$ West 520.37 feet;
Thence South $48^{\circ}58'41''$ West 955.10 feet;
Thence South $47^{\circ}08'47''$ West 1225.38 feet;
Thence South $59^{\circ}15'48''$ West 905.16 feet;
Thence South $62^{\circ}47'20''$ West 697.15 feet;
Thence South $55^{\circ}15'08''$ West 577.92 feet;
Thence South $42^{\circ}29'14''$ West 402.15 feet;
Thence South $41^{\circ}11'53''$ West 156.35 feet;
Thence South $55^{\circ}19'30''$ West 496.68 feet;
Thence North $43^{\circ}13'18''$ West 311.61 feet;
Thence southwesterly 313.46 feet along the arc of a 1033.00 foot radius curve to the right, (center bears North $43^{\circ}17'11''$ West and long chord bears South $55^{\circ}24'17''$ West 312.25 feet, with a central angle of $17^{\circ}23'09''$);
Thence South $64^{\circ}05'52''$ West 14.79 feet;
Thence North $25^{\circ}54'08''$ West 66.00 feet;
Thence North $64^{\circ}05'52''$ East 14.79 feet;
Thence northeasterly 386.77 feet along the arc of a 967.00 foot radius curve to the left, (center bears North $25^{\circ}54'08''$ West and long chord bears North $52^{\circ}38'22''$ East 384.20 feet, with a central angle of $22^{\circ}58'00''$);
Thence North $41^{\circ}10'52''$ East 620.96 feet;
Thence northeasterly 422.49 feet along the arc of a 533.00 foot radius curve to the right, (center bears South $48^{\circ}49'08''$ East and long chord bears North $63^{\circ}53'22''$ East 411.52 feet, with a central angle of $45^{\circ}25'00''$);
Thence North $86^{\circ}35'52''$ East 141.28 feet;
Thence northeasterly 39.45 feet along the arc of a 267.00 foot radius curve to the left, (center bears North $3^{\circ}24'08''$ West and long chord bears North $82^{\circ}21'54''$ East 39.41 feet, with a central angle of $8^{\circ}27'55''$) to the section line and point of beginning. Excepting Parcels G, J, H and I.

Contains 4,403,363 Square Feet, 101.08 acres, 22 Lots, 5 parcels