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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF  
CREEKSIDE HOMES**

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THIS IS AN AMENDED AND RESTATED DECLARATION of Covenants, Conditions and Restrictions ("CC&R") that perpetuates the existence of a planned development known as Creekside.

PURPOSE AND INTENT

The Purpose and intent of these Amended and Restated CC&R is to clarify, amend and restate the provisions of previous recorded versions of the CC&R pertaining to Creekside such that in their amendment and restatement said provisions better meet the current circumstances and conditions affecting and influencing the Community of Creekside Homes. Therefore, these covenants, conditions, and restrictions, as amended and restated shall, along with the Articles, By-Laws and Rules shall provide a system of governing structure and a system of standards and procedures for maintenance and preservation of the Properties as a residential community.

DECLARATION

The Owners of Lots, being represented by the Board of Directors of Creekside Village Owners Association hereby declare that all of the Properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to an amended Plat thereof recorded concurrently. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

The Properties are located in St. George, Washington County, Utah, and are described as:  
See Exhibit "A" that is attached hereto and incorporated herein by this reference.

ARTICLE 1  
DEFINITIONS AND CONCEPTS

The following definitions shall control in this Declaration:

1. **"Articles"** means and refers to the Articles of Incorporation of Creekside Village Owners Association.
2. **"Association"** means Creekside Village Owners Association its successors and assigns.
3. **"Board of Directors" and "The Board"** shall mean and refer to the Board of Directors of the CREEKSIDE VILLAGE OWNERS ASSOCIATION.
4. **"Bylaws"** means and refers to the Bylaws of Creekside Village Owners Association.
5. **"Common Area"** shall mean all real property (including the improvements thereto) now owned by the Owners Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public.

The Common Area shall also include but not be limited to non-dedicated roads, sidewalks, driveways, fences, retaining walls, lawns, lamp posts, irrigation systems, signs, dumpsters, recreation areas, including the swimming pool, hot tub, park and playground, as well as any other common areas and facilities which may be acquired by the Owners' Association in the future.

6. **"Creekside"** shall mean and refer to that real property described in exhibit "A", including all buildings and improvements now located or to be constructed thereon.
7. **"Declarant"** means Creekside Village Owners Association, Inc. and its heirs, successors, and assigns.
8. **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.
9. **"Directors", "Board of Directors", or "Board"** means the governing body of the Association.
10. **"Entire Membership"** means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for Class "A" members.
11. **"Governing Documents"** is a collective term that means and refers to this Declaration, the Articles of Incorporation for the Owners Association, the Bylaws, and the Association's Rules and Regulations.
12. **"Limited Common Area"** shall mean and refer to those Common Areas designated on the subdivision plat or in the Declaration as reserved for the use of a certain Lot Owner or Owners to the exclusion of the other Lot Owners, including but not by way of limitation, garages not located within a Lot, porches, patios, driveways, and heating and air conditioning systems located outside the building footprint.
13. **"Lot or Building Pad"** shall be synonymous. Lot or Building Pad shall mean a separately numbered and individually described plot of land or Building Pad shown on the Plat designated as a Lot or Pad for private ownership and the building of a home there upon, but specifically excludes the Common Area and Limited Common Area so indicated on the Plat.
14. **"Lot Owner"** means and is synonymous with the term "Owner".
15. **"Member"** means every person or entity with membership in the Association.
16. **"Mortgage"** includes "deed of trust" and mortgagee includes "trust deed beneficiary."
17. **"Open Space"** means that area shown on the plat entitled Open Space, which is designated a Common Area and shall be treated as Common Area for purposes of ownership, repair, maintenance, etc.
18. **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.
19. **"Plat" or "Map"** means the subdivision Plat recorded in the office of the County Recorder of Washington County, UT, including "Creekside Homes 2<sup>nd</sup> Amendment Plat, consisting of non-dedicated sheet(s), prepared and certified by L. R. Pope, a

- Utah Registered Land Surveyor" or any replacements thereof, or additions thereto.
20. **"Properties"**, **"Property"**, or **"Project"** shall mean and refer to the property described on exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Owners' Association and this Amended Declaration.
  21. **"Recreation Areas"** shall mean and refer to real property, including improvements located thereon, within Creekside for the use and benefit of all Owners purchasing a home within the development. Recreation Areas are also part of the Common Area.
  22. **"Rules"** or **"Regulations"** means and refers to any rules or regulations created by the Board of Directors, pursuant to its authority under the Articles and Bylaws, to govern the Association.
  23. **"Separation Walls"** means: (1) block walls which border the Project and separate it from other developments, public rights-of-way, and adjacent Lots; (2) the walls serving as rear-lot walls and side-lot walls of each Lot in the Project; and (3) other privacy walls and fences constructed by Owners as part of the individual Unit construction upon a Building Pad.
  24. **"Unit or Living Unit"** means and refer to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence. It is further defined as one or more rooms in a dwelling, designated for or occupied by one family for living or sleeping purposes and having kitchen and bathrooms for the use of not more than one family. This definition shall include other related provisions hereof.

"Family" is defined to mean persons related by blood, which includes marriage and children of the marriage, whether single or married, by legal adoption, or by operation of law. It is the intent of this definition that a household shall not consist of two or more unrelated parties which are not related by blood, adoption, or operation of law. By example: A Owner's married child and family shall be considered as "family." However, the brother of an Owner and his family shall not be considered "family," notwithstanding the blood relationship of one of the Owners to the brother. In no case, however, shall any Home within Creekside be occupied by more blood relatives, as described herein, than shall be permitted by the Zoning Ordinances of the City of St. George. Notwithstanding the City Zoning Ordinances, no "family occupancy" shall be allowed which is in violation of this expressed intent and other related provisions of this Declaration.

## ARTICLE 2 PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every lot Owner shall have an equal right and easement of use and enjoyment in and to the Common Area and Recreation Areas which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the association to charge reasonable admission and other fees to non-Owners for the use of any recreational facilities situated upon the common area, provided that such fees charged by the association shall in no way affect its status as a non-profit corporation.
- (b) The right of the Association, in accordance with its Articles and Bylaws and

subsection (d) below, to borrow money for the purpose of improving the common area and in aid thereof to mortgage said property, the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder;

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of any recreational facility for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) With the approval of all the holders of first mortgage liens on Lots, and two-thirds (2/3) of the Owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members has been recorded.

(e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(f) The right of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area for the installation, maintenance and inspection of lines and appurtenances for public or private utilities, and the construction of additional homes.

(g) Violation of the provisions of this Declaration shall be considered a Nuisance. Notwithstanding any other rights of enforcement under the Governing Documents, or by applicable law, the Board for and on behalf of the Association may impose a fifty dollar (\$50.00) fine on an Owner who is found in violation of any provision of this Declaration, which fine shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment for the Owner's Lot as provided herein, for each violation by Owner's lessee/renter of the Governing Documents. Such fine shall be imposed after a ten (10) day notice is given to the Owner of such violation, which notice shall be deemed given on the date such notice is mailed, prepared, first class U.S. mail, to Owner's address as shown on the Association records. The Association may impose an additional fifty dollar (\$50.00) fine on an Owner for each day such violation continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owners Lot and shall be added to the annual assessment as provided in Article 4.

**Section 2. Delegation of Uses.** Any Owner may designate the Owner's right of quiet enjoyment to the Common Areas to the Owner's family, tenants, guests, or contract purchasers who reside on the Owner's Lot ("Guests"). All such quiet enjoyment by family members, tenants, guests or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Directors. The Board of Directors shall have the right to establish rules regarding the use of a particular Common Area at any one time. Among other rules which may be established, the Board may limit the number of permitted Guests who may use a Common Area feature at any one time; a number of Guests in

excess of such limitation shall require that the Owner obtain a Board-issued permit allowing such number of Guests to use a Common Area feature, which permit may, at the sole election of the Board, be approved or denied. Damage caused to the Common Areas by an Owner or an Owner's invited/permitted Guests, if any, including personal property owned by the Association, by a Owner, or by a Guest who has been delegated the right to use and enjoy such Common Areas, if any, by the Owner, shall create a debt to the Association. Debts owed to the Association as a result of such damage to the Common Areas shall be an assessment charged to the Lot Owner, as provided in this Declaration.

**Section 3. Use of Lots and Common Areas.** The homes are intended for and shall be restricted to the following purposes and uses, which restrictions are intended and shall be deemed to be cumulative:

(a) **Residential Use.** Each living unit shall be used and occupied only as a single family residential dwelling by the respective Owner thereof, said Owner's tenant(s), families and domestic servants, and for no other purpose, in accordance with the definition of "Living Unit", herein. No commercial activities of any kind whatsoever shall be conducted in any home or building on any portion of any and all Lots indicated on the Official Subdivision Plat without the prior written approval of the Board. At no time shall the Board approve a day-care center to operate in any living unit in Creekside, notwithstanding St. George City may allow such.

(b) **Non-disturbance.** No Owner, his tenants, guests or invites will suffer anything to be done or kept in his home or elsewhere which will jeopardize the soundness or safety of the buildings, or which will be noxious or offensive or will interfere with or unreasonably disturb the rights of other Owners, or constitute any illegal activity according to the laws and regulations of St. George City, Washington County, and the State of Utah.

(c) **Structural Changes.** No Homeowner will, without the prior written consent of the Board shall engage or undertake any exterior structural alterations or additions. The Board shall, in its evaluation, consider any individual Owner where the Limited Common Area around the Owner's home may be affected by the proposed alterations or additions. The Board shall review and consider the Owner's application and, within thirty (30) days after its receipt of such a request describing the proposed alteration in reasonable detail, shall respond to the Owner's request as to whether such proposed alterations or additions shall be acceptable to the Board, or, whether said request shall be denied. The decision of the Board shall be final.

(d) **Signs.** The Owner of any home will not, without the prior written consent of the Association, display any sign or place any other thing in or upon any door, wall or other portion of the home or Common Area so as to be visible from the exterior. A single standard real estate sign offering the sale of a home shall be allowed. No "For Rent" signs, of any type, shall be allowed at any time. A single "Open House" sign may be allowed only on the day of the open house.

(e) **Use of the Common Area.** The Common Area and limited Common Area are intended for and shall be restricted to those purposes and uses in keeping with their respective functions and the foregoing restrictions regarding the homes to which they are appurtenant.

(f) **Fee Conveyed.** Each Lot shall be conveyed as a separately designated and legally described free-hold estate, the Owner taking title in fee simple, subject to the terms, conditions

and provisions hereof.

(g) Pets and other Animals. Pets are a privilege in Creekside, not a right. No animals, livestock or poultry of any kind may be raised, bred or kept on any Lot or in the Common Area for personal or commercial purposes, except that two (2) dogs, two (2) cats or two (2) other HOA-approved household pets in number may be kept in a Unit, or upon a Lot, subject to the rules and regulations adopted from time to time by the Board. All dogs, while not in a Unit or in the rear-yard privacy area of a Lot shall be kept on a leash and directly supervised by the pet's Owner. Dogs may be kept in the rear-yard privacy area of a Lot; provided, however, that any such dog's Owner is solely responsible for the conduct and actions of the Owner's pet and shall not allow any dog (or other approved pet) to disturb the peace, quiet and enjoyment of other Owners of Creekside.

An Owner of any HOA-approved pet shall be fully obligated and responsible to abide at least the following: a) as required by the City of St. George, dogs must be licensed; each Owner of a dog shall maintain current licensing of his dog; b) Owners shall be able to provide evidence, upon request by the Board, that their dog(s) has been properly vaccinated and is otherwise fit so as not to be a carrier of disease and/or infection; c) Pet Owners shall not allow their pets to defecate or urinate on any Common Area or Lot belonging to others; d) Pet Owners shall immediately clean up after their approved pets. Failure on the part of a pet Owner to abide the provisions of the Item and Board established rules and regulations pertaining to same, shall be in violation of the pet provisions hereof. Such failure may, at the election of the Board, result in a fine in accordance with Article 2.1 (g), per occurrence, as further provided therein. Said fine shall be added to the Lot/Pet Owner's annual assessment and may be treated in the manner provided herein. Repeated violations with respect to a given animal may result in the Board electing to revoke the privilege of the Owner, of a multiple-violation pet, to maintain said pet in Creekside.

(h) Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

(i) Prohibited Uses. No noxious or offensive activities shall be carried on in any lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners or which will interfere with or unreasonably disturb the rights of other Owners or be in violation of existing laws and ordinance of St. George City, Washington County, or the State of Utah.

(j) Alteration of Common Area. Nothing shall be altered, constructed, or removed from the Common Area, except upon the written consent of the Board of Directors.

(k) Prohibited Uses. No Owner shall lease a Unit for transient or hotel purposes. Timeshare is prohibited. No Unit shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Unit rotates among multiple Owners or members of a program on a fixed or floating time schedule over a period of years. Any Owner found to be in violation of this Item, and anything related thereto herein, may, at the election of the Board, be fined in the amount of \$200.00 for each month that said violation continues without remedy to comply with the intent hereof. Said fine shall be in accordance with provision of Article 2, Section 1.(g).

(l) Rentals and Leases. Any lease agreement between an Owner and a lessee shall

be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation and Bylaws of the Association and the Owners' Association Rules and Regulations, as they may be changed from time to time, and that any failure by lessee to comply with the terms of such documents shall be deemed a default under the lease. Furthermore, such infraction shall be deemed a violation by the Owner of the provisions of this and other documents cited above. All leases shall be in writing. A copy of the lease, together with the Creekside Lease/Rental Occupancy Agreement (available from an officer of the Association) signed by the lessee(s) or renter(s) shall be deposited with any officer of the Owners' Association not later than the day of occupancy of the Home by the lessee(s) or renter(s). All leases or rental agreements shall be for a term of not less than six (6) months.

In the event an Owner's Guests fail to abide the provisions of the Declaration, the By-Laws and/or the Community Rules, at the election of the Board, the Board may impose a fine in accordance with Article 2.1.(g), per occurrence, as further provided therein. Said fine shall be added to the Lot Owner's annual assessment and may be treated in the manner provided herein. Repeated violations by a given Owner's renter/lessee/Guest may, at the electing of the Board, result in the Board imposing a fine (Article 2.1.(g)), which fine shall be governed by provisions of said Article and other related Articles hereof. The Board may elect to seek full remedy at law.

(m) Licensed Drivers. All drivers and vehicles driven within Creekside must be properly licensed by local and state authorities. All state and local traffic laws will be adhered to within Creekside. Speed limit within Creekside is 15 mph.

(n) Violation Constitutes a Nuisance. Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration, or rule which may be issued forth from the Board, if violated in whole or in part, is declared to be and shall constitute a Nuisance. Any remedies to resolve or control such nuisances, as determined by the Board, shall be deemed to be cumulative and not exclusive.

Nuisance violations by an Owner's renter/lessee/Guest shall be considered as though the Owner were in violation. It shall be the action of the Board to seek resolution from the nuisance from the Owner, not the Owner's renter/lessee/Guest.

The Board shall be empowered to issue forth a fine(s) in relation to a violation or nuisance as provided in Article 2.1.(g), hereof.

Section 4. Fences, Separation Walls, and Walls. No fences or walls shall be allowed unless approved by the Architectural Control Committee.

(a) Repairs and Maintenance. The repair and maintenance of a party fence/wall shall be shared equally by the Owners who share common use of the fence/wall. Provided, however, in the event the damage, which requires repair that can be shown to be caused by a single Owner's actions or negligence, the cost of repair shall bare solely upon the Owner who has caused the damage.

(b) Right to Contribution. The right of an Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(c) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this section, each party shall choose one arbitrator at his or her expense, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an

arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party at the expense of the refusing party. In the event the two arbitrators fail to agree upon a decision, they shall select a third arbitrator to be paid in equal shares by each party, and that decision shall be decided by a majority of the arbitrators.

**Section 5. Landscaping.** Front yards and side yards to fenced areas shall be landscaped by the Owner and/or builder within thirty (30) days of an Owner taking occupancy, and shall be maintained by the Association. Back yards shall be maintained by Owners in a manner consistent with the nature and quality of the care provided by the Association through its contractor. Back yard maintenance includes landscaping and automatic sprinkling systems.

In the event an Owner fails to care for the Back Yard maintenance in a timely manner and in a fashion consistent with that of the front yard, the Board may exact a fine upon the Owner who has failed to provide proper maintenance of the Back Yard in keeping with the Article II, Section 1(g). Or, the Board may elect to engage a contractor to perform the maintenance duties; the charge therefore shall be levied against the Owner, in keeping with the provisions of Article II, Section 1(g).

**Section 6. Temporary Structures, Equipment, etc.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time except as may be needed for construction purposes. Storage sheds may be allowed in the back yard areas upon approval of the Architectural Control Committee. Any temporary structure utilized during construction shall be immediately removed at the completion of construction activities.

**Section 7. Vehicles - Parking/Maintenance.** Parking of vehicles in Creekside shall be in garages and/or driveways, except as otherwise permitted in this paragraph. For purposes of this Section, "Owner's vehicle(s)" shall be understood to mean those vehicles of the Owner, the Owner's family members, the Owner's tenant(s), and the Owner's guest(s).

Garages and driveways are intended for the purpose of parking an Owner's vehicles. Garages shall not be used for storage of personal property and belonging such that the parking of two vehicles in the garage is rendered impossible. Furthermore, to the practical extent possible, an Owner's vehicles, when temporarily parked on the Owner's driveway, shall not be parked so as to block the sidewalk at the front approach of the driveway or the gutter area, so as to not block foot navigation, trash pick up, and service undertakings within Creekside.

It shall not be permitted for two cars to be parked directly across the street from each other within Creekside. Rather, cars on opposite sides of the street shall park at least one car length, or more, behind or in front of the car on the other side of the street, enabling the passage of a fire truck or other emergency vehicle. This requirement is of the utmost importance to the health, safety and welfare of the Creekside Community in order to maintain a safe, clear 20-foot passing aisle for emergency vehicles, garbage pick-up trucks, service vehicles and the general unencumbered flow of community vehicle, foot and recreational traffic within Creekside.

Temporary guest parking is permitted in the street. Any vehicle parked in the street overnight (between 10:00 p.m. to 8:00 a.m.) may be removed at the direction of the Board. Vehicles parked on sidewalks or on front lawn areas may be removed, also, at the direction of the Board.

No motor home, travel trailer, RV trailer, flatbed trailer, equipment trailer, truck larger than a one-ton pickup or similar vehicle shall be parked in Creekside, unless the Board shall grant written approval to do so. Unauthorized vehicles parked in violation of this provision may be



removed at the direction of the Board. Any vehicle which is inoperable and remains parked within Creekside for a period in excess of 48 hours may be removed at the direction of the Board.

In the event the Board shall direct the removal of a vehicle pursuant to the provisions of this Section 7, then neither the Board, nor the Association, nor any individual acting on behalf of either shall have any liability to a lot Owner or to the Owner of the vehicle on this account. The Owner of the vehicle shall bear the towing, storage and related expense. In the event the Association incurs any expense on account of such removal, the Owner of the vehicle shall immediately reimburse the Association on request and if reimbursement is not made on request, then all sums due the Association shall be secured by a lien against the lot of the lot Owner who is responsible for the parking of the vehicle as though the same were an assessment per Article IV of this Declaration.

No maintenance or repair of any vehicle shall be conducted within Creekside except within an enclosed garage with the garage door in 'down or closed' position.'

**Section 8. Garbage Removal.** All rubbish, trash, and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. Owner shall use only St. George City approved garbage cans and trash receptacles, which shall be kept in a location such as to not be visible from passers-by in the community of Creekside. All empty trash receptacles shall be removed from the place of collection on the day of collection. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any lot unless obscured from view of adjoining lots in the patio areas or in the unit.

**Section 9. Electronic Antennas.** No television, radio, or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on the exterior of any living units or structures on the lots in said tract. A satellite dish not exceeding twenty (20) inches shall be allowed with Association approval to be attached on the rear or rear-side eave lines. In no case shall such antenna be placed on the roof of the home or on any tower adjacent or near thereto.

**Section 10. Limited Common Area and Designated Parking.** A Lot Owner is entitled to use of the Limited Common Area adjacent and appurtenant to that Owner's Lot, if any, and to use of the parking area, if any, designated with the Owner's Lot number on the Plat, all to the exclusion of other Owners. The Association, through its Directors, may adopt rules and regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

### ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every Owner is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

**Section 2. Voting Rights.** The Association has one class of voting membership, Class "A." Class A Members are all Members. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast

at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

Previous versions of these CC&Rs referred to a "Class B Members" and "Class B Voting Rights." Inasmuch as the rights of the original Declarant under said versions has expired, "Class B" rights shall no longer exist.

#### ARTICLE 4 FINANCES AND OPERATIONS

**Section 1. Authority to Assess Owners.** The Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents.

**Section 2. Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments authorized in the Governing Documents, including but not limited to: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) additional assessments; (4) emergency assessments; (5) any other amount or assessment levied or charged by the Association or Board of Directors pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of the Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

**Section 3. Purpose of Assessments.** The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of any property, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area and/or Limited Common Area; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of Common Area which must be replaced on a periodic basis; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Directors, for the payment of other charges including (without limitation) maintenance, management, utility, cable television, trash collection,

sewer and water charges.

**Section 4. Maximum Annual Assessment.** Until January 1 following recording of this Declaration, the maximum annual assessment shall be Eighteen Hundred Dollars (\$1,800.00) per Lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased each year by a maximum of ten percent (10%) without a vote of the membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that such change may be made by the Board and any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose.

The actual annual assessment need not increase annually. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each owner as provided in this Declaration. The Board must set the actual annual assessment to be an amount at or less than the Maximum Annual Assessment.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**Section 6. Additional Assessments.** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of St. George (the "City") or other utility provider in maintaining, repairing or replacing the utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City or other utility provider up to and including the meters for individual units, and that they are installed and shall be maintained to City or utility provider specifications. The Association may also levy such additional assessments as may be necessary from time to time for the payment of any professional services deemed necessary and desirable by the Board.

**Section 7. Emergency Assessments.** Notwithstanding anything contained in this Declaration, the Board, without Membership approval, may levy emergency assessments, increase annual assessments, or levy special assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual

assessment. An emergency situation is one in which the Board finds:

- (a) An expenditure, in its discretion, required by an order of a court, or to settle litigation;
- (b) An expenditure necessary to repair or maintain the Properties or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; or
- (c) An expenditure necessary to repair, maintain, or cover actual Association expenses for the Properties or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.).

**Section 8. Single Lot Assessment.** The Association may also levy a special assessment against any Member and/or Member's Lot to reimburse the Association for costs incurred in bringing a Member and/or the Member's Lot into compliance with the provisions of the governing documents. A Single Lot Assessment may be levied upon the vote of the Board after notice and the opportunity to be heard.

**Section 9. Notice and Quorum for Any Action Authorized Under This Article 4.** Written notice of any meeting of Members called for the purpose of taking any action authorized under provisions of this Declaration shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 10. Uniform Rate of Assessment; Periodic Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Section 11. Date of Commencement of Annual Assessment; Payment Due Dates.**

- (a) The annual assessment provided for herein shall commence to accrue upon issuance of a certificate of occupancy for a Unit on a Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.
- (b) At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment. Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

- (c) The assessment due dates shall be established by the Directors. The Directors may

provide for the payment of annual, special, and/or additional assessments in equal installments throughout the assessment year on a monthly or quarterly basis.

(d) The Board may require advance payment of assessments at closing of the transfer of title to a Lot.

(e) The Directors shall prepare a roster of Lot Owners in the Properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(f) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

**Section 12. Effect of Non-Payment of Assessment - Remedies of the Association.** Any assessment or installment thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition the Directors may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

(a) The Directors may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or © may restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Member or any and all rights such Member has to the use and enjoyment of the Common Area and facilities.

(b) There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure.

**Section 13. Exempt Property.** The following property subject to this Declaration is exempt from the assessments created herein:

(a) All property dedicated to and accepted by any local public authority;

(b) All Common Area and Limited Common Area.

**Section 14. Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

**Section 15. Books, Records, and Audit.** The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

**Section 15. Assessments to Owners of Vacant Lots.** Commencing March 1, 2000, Owners of vacant Lots will be assessed a sum equal to fifty percent (50%) of the HOA Monthly Assessment.

#### ARTICLE 5 INSURANCE

**Section 1. Casualty Insurance on Insurable Common Area.** The Directors shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

**OWNERS SHALL MAINTAIN AT THEIR OWN EXPENSE HAZARD (FIRE) AND LIABILITY INSURANCE ON THEIR RESPECTIVE LOTS AND CONTENTS.**

The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their Guest(s), invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Units, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Directors are empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

Section 3. Liability Insurance. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause of endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 4. Fidelity Insurance. The Directors may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5. Annual Review of Policies. The Directors shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

## ARTICLE 6

### ARCHITECTURAL CONTROL COMMITTEE

#### Section 1. Architectural Control Committee.

(a) The Board of Directors shall appoint an Architectural Control Committee ("ACC") composed of three (3) or more representatives. Said Architectural Control Committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the Property subject to this Declaration. In the event the Board fails to appoint an Architectural Control Committee, the Board shall act as the Architectural Control Committee.

(b) The Architectural Control Committee shall adopt reasonable rules and regulations for

the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The Architectural Control Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to members who have made application to the Architectural Control Committee for approval of plans.

(c) Unless authorized by resolution of the Board, the members of the Architectural Control Committee shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the Architectural Control Committee shall be paid such compensation as the Architectural Control Committee determines.

Section 2. Submission and Approval. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural Control Committee is required.

(a) Two (2) complete sets of building plans and specifications shall be filed with the Architectural Control Committee, together with a site or plot plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the Architectural Control Committee may determine from time to time, and an application and such supporting material, such as samples of building materials, as the Architectural Control Committee deems necessary. No work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Architectural Control Committee pursuant hereto. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee.

(b) Said Architectural Control Committee shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

(c) The Architectural Control Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

(d) In the event said Architectural Control Committee fails to approve or disapprove in writing any such plans within thirty (30) days after the submission thereof to the Architectural Control Committee, then approval shall be deemed to have been given.

(e) The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The Architectural Control



Committee's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.

(f) The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

Neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of Units and Lots, and the maintenance of the Common Areas, without the prior written approval of at least sixty-seven percent (67%) of the Entire Membership

#### ARTICLE 7 EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner. Each Owner shall be responsible for maintenance to the exterior of the Unit owned, the Limited Common Area adjacent and appurtenant to the Unit, and any Separation Walls surrounding the Owner's Lot. The Directors shall, however, in the default of an Owner to perform such maintenance, which is the Owner's responsibility, and after a majority vote of the Board finding said default, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life health, property or safety), provide exterior maintenance upon such Unit, Lot or Separation Wall and any Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Lot and/or Unit as a Single Lot Assessment.

Section 2. Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the Common Area. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Lot outside the walls of the Unit, and the Limited Common Areas adjacent and appurtenant to the Units may be altered by Rule of the Association.

#### ARTICLE 8 SEPARATION WALLS, FENCES, AND WALLS

Section 1. Separation Walls. Owners may construct block walls which border the Property and separate the Project from other developments, public rights-of-way, and which separate adjacent Lots within the Project, and such walls shall be deemed Separation Walls. The separation Walls that are built as a part of the original construction upon the Properties and placed on the dividing line between the Lots shall constitute a party wall.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Separation Walls.

Section 2. Repair and Maintenance. Separation Walls are considered to be owned by the Owner or Owners enjoying the presence and use of said Walls. Owners shall be maintained by the Owners of the Lots on which such Separation Walls are constructed. Separation Walls shall also include other yard/privacy walls and fences constructed previously to the filing of this Amended and Restated Declaration. The Owners of the Lots on which Separation Walls are constructed, shall have exclusive use to such Separation Wall and shall be responsible for the cost of any repair and/or maintenance of the Separation Walls. In the event an Owner fails to repair or maintain a Separation Wall, the Association shall have the right to enter upon any Owner's Lot for the purpose of repairing and maintaining said Separation Walls in the event an Owner defaults in the duty to so maintain and repair. The cost of said repair or maintenance shall become a lien against the Owner's Lot and shall be added to the annual assessment as provided in Article 4. No changes or alterations shall be made to a separation walls by a Lot Owner without prior written approval of the Architectural Control Committee.

Section 4. Destruction by fire or Other Casualty. If a Separation wall is destroyed or damaged by fire or other casualty the Owners which share such Separation Wall between their respective Lots shall bear the responsibility to repair or replace the Separation Wall. In the event Owners fail to adequately repair or replace any such damaged Separation Wall, then the Association shall have the right to enter the Owner's Lot and to perform such repair or replacement, and the cost thereof shall become a lien on the Owner's Lot and shall be added to the annual assessment as provided for in Article 4.

Section 5. Decoration. No Owner shall paint, construct any addition to, color, or otherwise decorate the interior or exterior surface of a Separation wall. Any Owner found in violation hereof shall bear the entire cost of refurbishing and restoring the affected Separation wall to its original condition, consistent with other portions of the Separation Walls.

Section 6. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by negligent or willful act causes a separation Wall to be damaged or exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

Section 7. Arbitration. In the event of any dispute arising in connection with a Separation Wall, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

Section 8. Applicability. this Article shall be applicable to walls build by all parties or Owners for the purposes stated in Section 81.

## ARTICLE 9 EASEMENTS

Section 1. Encroachments. Each Lot and the Property included in the Common and Limited Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Owner. A valid

easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing Lots is partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Lots or Common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

**Section 2. Utilities.** There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Owner of the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof.

**Section 4. Police, Fire and Ambulance Service.** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Area in the performance of their duties.

**Section 5. Maintenance by Association.** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any Lot to perform the duties of maintenance and repair.

**Section 6. Easement for Association.** The Association shall have a transferable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

**Section 7. Owners' Easements of Enjoyment.** Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service, and other fees for the use of any service of the Association or provided upon the Common Area, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the Plat as appurtenant to a Lot.

(b) The right of the Association to limit the number of guests of Members using the

Common Area.

(c) The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against the Member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association with the approval of sixty-seven percent (67%) of the Entire Membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility, or as otherwise set forth in this Amended and Restated Declaration.

(e) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

(f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(g) The terms and conditions of this Declaration.

(h) The right of the Association, through its Directors, to adopt rules and regulations concerning use of the Common Area.

(i) The right of the Association to take such actions as it may deem necessary so long as the expansion of the Properties shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 8. Easements of Record. The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE 10 CONDEMNATION

Section 1. Condemnation. If at any time or times the common areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the common areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or hereafter in the hands of the Association which are proceeds for the taking of any portion of the common areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any lot(s) or portion(s) thereof is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner(s) of such lot(s) or portion(s) thereof to such Owner(s) and any first mortgagee(s) of such lot(s), as their interests shall appear, after deducting the proportionate share of said lot in the cost of debris removal.

ARTICLE 11  
AMENDMENTS

Section 1. Amendment. This Declaration may be amended by an instrument signed by the Association Board President, following the obtaining by the Board of an approving vote of not less than sixty-seven percent (67%) of the Entire Membership. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective. Association's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety in accordance with the provisions of this Declaration.

ARTICLE 12  
AMENDMENT

This Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Entire Membership. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective. Association's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety in accordance with the provisions of this document.

ARTICLE 13  
MISCELLANEOUS

Section 1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman or any member of such Committee.

Section 2. Interpretation. The captions which precede the Articles and Sections of this declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this declaration shall not affect the validity or enforceability of the remainder hereof.

Section 3. Covenants to Run With the Land. This declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the members. All parties who hereafter acquire any interest in a lot or in the common areas shall be subject to, the terms of this declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this declaration and failure to comply with any of the foregoing shall be ground for an action by the Association or any aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a lot or in the common areas, the party acquiring such interest consents to, and agrees to be bound by each and every provision of this declaration.

Section 4. Effective Date. This declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

#### ARTICLE 14 GENERAL PROVISIONS

Section 1 Enforcement. The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner the reasonable attorney fees incurred with respect to such enforcement. The Board may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, provided the Board has given said Owner three (3) days written notice and an opportunity for a hearing. An Owner who cures his violation within the three (3) days of receiving notice may not be levied against.

Section 2. Severability. All of said conditions, covenants, and restrictions contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or restrictions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired; and the Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Interpretive Conflicts. In the event of any conflict between the provisions of this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control.

Section 5. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required

to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7 Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8 Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration.

ARTICLE 15  
ASSIGNMENT OF RIGHTS

All of the rights and powers of Association herein contained may be delegated, transferred, or assigned, in whole or in part. To be valid, said delegation, transfer, or assignment must be via a written instrument recorded in the office of the Washington County Recorder.

IN WITNESS WHEREOF, the undersigned President of the Board, on behalf of the the Members of the Creekside Village Owners Association, who have voted in the affirmative, by a margin of not less than 67% of its Members, according to the provisions hereof, hereunto set his hand this 27 day of March, 2007.

Creekside Village Owners Association, Inc.

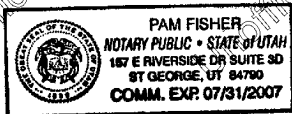
By [Signature]  
President

STATE OF UTAH  
COUNTY OF WASHINGTON

On this 27<sup>th</sup> day of March, 2007, before me personally appeared KENT JAMISON whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President of Creekside Village Owners Association, Inc., and that the foregoing instrument was signed by proper authority, and acknowledged before me that he executed the document in the capacity and for the purposes stated in it.

NOTARY PUBLIC [Signature]

Commission Expires 3/3/2007  
Residing in St. George, UT



**SURVEYOR'S CERTIFICATE**

LLOYD RIED POPE, HEREBY CERTIFY THAT I AM A PROFESSIONAL ENGINEER AND REGISTERED LAND SURVEYOR AND THAT I HOLD CERTIFICATE OF REGISTRATION # 153069 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND PUBLIC STREETS TO BE KNOWN AS:

**CREEKSIDE HOMES 2ND AMENDMENT**

AND THAT THE SAME HAS BEEN CORRECTLY STAKED ON THE GROUND AS SHOWN ON

**BOUNDARY DESCRIPTION**

SG-CSH

BEGINNING AT A POINT S 0°40' 10" E 224.27 FEET ALONG THE CENTER SECTION LINE FROM THE CENTER 1/4 CORNER OF SECTION 26, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG THE ORIGINAL PLATTED BOUNDARY AS FOLLOWS: S 57° 33' 00" E 768.61 FEET; THENCE S 36° 09' 25" W 149.79 FEET; THENCE S 64° 29' 17" E 44.59 FEET; THENCE S 18° 20' 21" W 139.70 FEET; THENCE S 15°39' 48" W 448.01 FEET; THENCE N 89° 04' 56" W 179.00 FEET; THENCE N 00°55' 04" W 56.52 FEET; THENCE N 22°53' 39" W 17.04 FEET TO A POINT ON A 25.00 FOOT RADIUS CURVE TO THE RIGHT; ( RADIUS POINT BEARS N 22°53' 39" W ) THENCE NORTHERLY 78.54 FEET ALONG THE ARC OF SAID CURVE WITH A DELTA OF 180 DEGREES; THENCE LEAVING SAID CURVE N 22°53' 39" W 75.70 FEET; THENCE N 16°05' 07" W 92.12 FEET; THENCE S 53°17' 22" W 40.00 FEET; THENCE N 36°42' 38" W 146.30 FEET; THENCE N 54°32' 20" W 51.98 FEET TO A ORIGINAL PLATED BOUNDARY CORNER; THENCE CONTINUING ALONG SAID PLAT BOUNDARY AS FOLLOWS: N 01°25' 00" W 351.78 FEET; THENCE N 56°13' 06" W 37.11 FEET; THENCE N 28°47' 25" E 124.92 FEET; THENCE N 56°45' 43" W 315.69 FEET TO A POINT ON A 683.94 FOOT RADIUS CURVE TO THE LEFT; ( BEARING TO THE RADIUS POINT IS N 52°39' 33" W ) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 58.38 FEET WITH A DELTA OF 04° 53' 27"; THENCE N 32°27' 00" E 112.00 FEET; THENCE S 57°33' 00" E 155.66 FEET TO THE POINT OF BEGINNING.

CONTAINING 10.28 ACRES

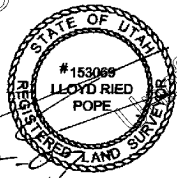


SECTION 1/4  
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2N (NOT

*[Signature]*

LLOYD RIED POPE—PROFESSIONAL ENGINEER AND REGISTERED LAND SURVEYOR NO. 153069

DATE: 3-5-07



**OWNER'S DEDICATION**

ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNER OF ALL THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED THE SAME TO BE AMENDED INTO PRIVATE, COMMON AND COMMON AREAS, AND PRIVATE ROADS TO BE HEARFTER KNOWN AS:

**"CREEKSIDE HOMES 2ND AMENDMENT"**

DOES HEREBY DEDICATE TO THE COMMON USE AND ENJOYMENT OF ALL THE LOT OWNERS IN SUBDIVISION, BUT NOT TO THE USE OF THE GENERAL PUBLIC, ALL COMMON AREAS (INCLUDING THE ROADWAYS) SHOWN ON THIS PLAT, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATION OF SAID COMMON AREAS AS MORE PARTICULARLY SET FORTH IN THE "DECLARATION OF