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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
CREEKSIDE HOMES PHASE I

This Declaration is made and executed this 18 day of February, 1987, by CREEKSIDE VILLAGE DEVELOPMENT, INC. (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the record owner of that certain parcel of real property (the Property) described in Exhibit "A" of this Declaration. Declarant desires to create on the Property a planned unit development with certain Common Areas for the benefit of the Development and the Owners of Lots therein.

B. Declarant desires to provide for the preservation and enhancement of the property values and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described in Exhibit "A" of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah as a nonprofit corporation, CREEKSIDE VILLAGE DEVELOPMENT, INC.

D. Declarant intends to annex Phase II Land whose Owners will become Members of the Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth, and as set forth in the plat recorded concurrently herewith.

I. DEFINITIONS.

When used in this Declaration (including in that portion hereof under "RECITALS") the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof (and in particular in accordance with the provisions of Article XI) concerning amendments.

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or supplements to this Declaration which are to occur in conjunction with the expansion of the Development.

2. Plat shall mean and refer to the Phase I portion of the plat of the "CREEKSIDE TOWNHOMES" consisting of 1 page, executed and acknowledged by Declarant, prepared and certified by Reed Pope, a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Washington County, Utah, concurrently herewith, also as the same may hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XI concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

3. Property shall mean and refer to all of the real property which is covered by the Phase I Plat, a description of which is stated in Exhibit "A" of this Declaration, and such portions of Phase II Land which are annexed to the Development as provided herein. The land upon which such expansion may occur is described at Exhibit B hereto designated as "Phase II" land.

4. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase I on the Plat. Upon recordation of Supplementary Declaration(s) for Phase II, Lot shall include the separately numbered and individually described plots of land shown in the additional Phases of the Plat.

5. Common Areas shall mean and refer to that portion of the property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

6. Living Unit shall mean 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.

7. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in a Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

8. Association shall mean and refer to CREEKSIDE VILLAGE OWNERS ASSOCIATION.

9. Articles and By-Laws shall mean and refer to the Articles of Incorporation and the By-Laws of the Association.

10. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the CREEKSIDE VILLAGE OWNERS ASSOCIATION.

11. Member shall mean and refer to every person who holds membership in the Association.

12. Mortgagee shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust.

13. Development shall mean and refer to the CREEKSIDE VILLAGE TOWNHOMES created by this Declaration as it exists at any given time.

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14. Declarant shall mean and refer to CREEKSIDE VILLAGE DEVELOPMENT, INC., its successors and assigns, or with any successor or assign to whom all or substantially all of its interest in the development of the Property is conveyed

15. Front Yard Area shall mean and refer to the yard area of each Living Unit.

16. Phase II Land shall mean and refer to that portion of the Plat designated as "Boundary Description-Phase II" and also set forth in Exhibit "A" attached hereto and made a part hereof, which sets forth the property upon which Declarant may expand the project in one or more phases.

17. Supplementary Declaration shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of this Declaration to all or any portion within Phase II lands and may contain such complementary or amended provisions for such additional land as are herein required by the Declaration.

#### II. DESCRIPTION OF PROPERTY

The property which is initially associated with the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

Phase I of the property shall consist of 21 lots and living units. The units shall be of such construction as is approved by Declarant, or the Architectural Control Committee, as the case may be.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way, all easements and rights-of-way of record, any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

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RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

(i) To construct and complete The improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;

(ii) To construct and complete on the Phase II Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion;

(iii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or successor may reasonably determine to be appropriate.

If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. Such easement shall be in favor of the City of St. George or such utility as is providing the service. All sewer, water and electric lines shall be owned by the City of St. George. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

### III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all the Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events.

(a) When the total number of votes held by all Class A members equals the total number of votes held by the Class B Member.

(5) The expiration of five (5) years after the first lot is conveyed.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may grant the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

2. Form For Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

All of Lot \_\_\_\_\_ of CREEKSIDE HOMES PHASE I, according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a lot.

3. Transfer of Title. Declarant agrees that it shall, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Areas of the Development, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of the County of Washington and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service, and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5 Encroachments If any portion of a Living Unit or improvement constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists

V ASSESSMENTS

1. Personal Obligation and Lien Declarant, for each Lot owned by it, (subject to the express reservation contained in paragraph 3 below of this section V) and each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due

2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting

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the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of taxes and insurance on the Common Areas, maintenance, repair, replacement, and improvement of the Common Areas; management and supervision of the Common Areas, establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. Base for Assessment. Each Living Unit which is certified for occupancy and each unimproved Lot which has been conveyed to an Owner shall be assessed at a same and equal rate. For the purpose of assessment, the term "Owner" shall exclude the Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, who shall pay no assessment unless a unit constructed on a lot is occupied for a permanent residence, provided that the Declarant or its assigns shall have the obligation to subsidize the association until control of the association passes to unit owners. Subsidization shall be defined as the payment of the reasonable cash needs of the association for ordinary and necessary maintenance expenses (not including reserves or capital replacement) In no event, however, shall the subsidy exceed the monthly assessments.

4. Special Assessments In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part (a) any expense or expenses not reasonably capable for being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Special City Assessment. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such 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 in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

6. Quorum Requirements The quorum required for any action

authorized by Section 4 above shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

7. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of paragraph 3 above regarding the Declarant, or his assigns.

8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least 15 days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

9. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

10. Effect of Non-payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge equal to five (5) percent of each delinquent amount due, and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.



11. Tax Collection From Lot Owners by Washington County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his monthly assessment will be required to pay to the Association his prorata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such prorata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustees may require, in its discretion a special assessment to pay such taxes, or they may be included in the regular assessment budget.

#### VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units. Each Lot and Living Unit and related Limited Common Area shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in Paragraph 2 of this Article VI.

2. Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. Notwithstanding the provisions regarding Lot and Living Unit and Limited Common Area maintenance by Owners, the Association shall maintain the front yard and side yard area of each unit (whether or not designated as Limited Common Area) (back to fenced areas, if any), further provided that in the event an Owner of any Lot in the Property shall fail to maintain his Lot in a manner satisfactory to the Architectural Control Committee or the Board, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents, employees, or through an independent contractor to enter upon such Lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner and any other improvements erected thereon (but not the interior of his Living Unit). The costs incurred by the Association in maintaining, repairing or restoring those portions of a lot maintainable by the Owner shall then be added to and become an assessment and lien against the lot as described in Section V. 1. and subject to collection as described in Section V. 9. of this Declaration.

3. Utilities. The owners shall pay for the monthly water, sewer, and garbage pickup for each Lot, unless other billing

arrangements with the utility are approved by the Board. Each Lot Owner shall pay for all other utility services which are separately billed or metered to individual lots by the utility or other party furnishing such service. Any utilities not chargeable to a unit shall be paid by the Association.

**4 Insurance.** The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Creekside Townhomes Owners Association, Inc., for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) A fidelity policy or policies to protect against dishonest acts on the part of Trustees, Officers, Manager, Employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one-hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least

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thirty (30) days prior written notice to all first mortgagees of Lots.  
The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of

the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(9) Lots and Living Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Living Unit and acts and events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the Mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the Mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may choose to obtain a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Living Units on the Lots with a co-insurance clause and each Owner of such Lots shall be designated as additional insureds. The cost of such insurance shall be part of the assessment for such Lot.

(10) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

(11) Flood Insurance. The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that

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at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

#### VII. USE RESTRICTIONS

1. Senior Citizen Project - Phase II. Declarant reserves unto itself or its assigns the right to designate phases, or areas, which shall be limited in ownership and use to senior adults. Phase II or any portion thereof may be so designated. Declarant herein reserves the right to place such restrictions as to purchasers, residents (permanent or temporary), and/or tenants in Phase II. Declarant also reserves the right to specify, at the time of placing such restrictions, the conditions and procedures, or exceptions therefrom.

2. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

3. Use of Lots and Living Units. Each Lot has been or shall be improved with a Living Unit, each to be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the

## Common Areas

4. Fences No fences will be allowed unless installed by the Declarant, or approved by the Architectural Control Committee. It is contemplated that Declarant will fence back yards (but shall not be required to do so)

5. Landscaping. Front yards and side yards to fenced areas (if any) shall be landscaped by the owner within sixty (60) days of an owner taking occupancy, and shall be maintained by the Association. Back yards shall be maintained by Owners.

6. Non-residential Use. No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, (except as may be installed as a convenience by the Declarant or Association) or other such non-residential purposes. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales and construction office during the construction and sales period.

7. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any lot advertising the property for sale or rent except signs used by Declarant, its successor or assigns, to advertise the property during the construction and sales period.

8. Quiet Enjoyment No noxious or offensive trade or activity shall be carried on upon any lot or any part of the Property, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Living Unit or which shall in any way increase the rate of insurance.

9. Temporary Structures, Equipment, Motor Vehicles, Etc No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time except as may be needed for construction purposes by the Declarant or Owner. 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. No trailer, boat, truck larger than 3/4 ton, or similar equipment shall be permitted to be parked on the Project unless written approval is given by the Board. No motor vehicle whatsoever may be parked on the project except in designated parking areas.

10. Animals. No animals of any kind shall be raised, bred or kept on any lot, except that cats or other quiet household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise or otherwise, to Lot Owners. In general dogs shall not be allowed unless approved in writing by the Declarant or the Association provided that Declarant or the Association may place conditions on such, including the right to cause the dog to be

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guidelines and procedures shall be incorporated in the Book of Resolutions and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

6. Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

7. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

8. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas and which occurs at any time during the seven-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah. Declarant shall further have the right to designate the location and design of any common area amenities including, but not limited to clubhouse, pool or other recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this paragraph.

9. Declarant's obligation. Declarant hereby covenants in favor of each Owner: (a) that all living units erected by it, or caused to be erected by it, and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another and (b) that on or before seven years from the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, there shall be substantially completed and useable as part of the Common Areas all open spaces in the locations shown on the Plat.

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## IX. 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 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 thereafter 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.

## X. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagee shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 75% of all first Mortgagees and 75% of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior appearance of Living Units, the exterior maintenance of Living Units under certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least 75% of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by



Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or  
 (b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article X nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice whenever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such

payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption from any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of 75% of first Mortgage liens on the Lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

#### XI. ANNEXATION OF ADDITIONAL LAND

1. Annexation by Declarant. Declarant may expand the Property subject to this Declaration by the annexation of all Phase II Land. (See Exhibit "B" hereto for description of Phase II land.) The annexation of such land shall become effective and extend the plan of this Declaration to such property upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration or similar instrument which:

(i) describes the land to be annexed or incorporated by reference within the description contained in Phase II portion of the Plat,

(ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of

the Property, subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants, conditions complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

When such annexation becomes effective, said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of Lots in said real property shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within Phase II property.

2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) The annexed land must be part of the land which is Phase II Land as of the date of this Declaration, as described at Exhibit "B" hereto. However, Declarant reserves the right to expand the borders of Phase II land to contiguous land within 1,000 feet of exterior borders, but with no obligation to do so and no claim as to right, title or interest to said land.

(b) Declarant shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for, the Property to exceed 200 total Lots, or 188 units in Phase II property.

(c) Declarant's right to annex land to the Property shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

(d) All Lots added shall be for residential purposes as provided for in this Declaration.

(e) Additional Living Units when constructed shall be consistent with the initial improvements in terms of quality of construction and compatible with existing structures on the Property (with respect to Living Units or common area improvements built by Declarant or their assigns), (or as approved by the Architectural Control Committee if not built by Declarant or its assigns.)

(f) The configuration of annexed land as to lot size, common areas and the nature, quantity or quality of improvements shall be in discretion of the Declarant or its assigns. Additional amenities may (in the discretion of Declarant) be added to future common areas of the Project. No assurances can therefore be given.

(g) Declarant reserves unto itself and its assigns the right to create limited common areas and facilities within any

portion of the annexed land. No assurances can therefore be made with respect to such items.

3. Declarant's Right to Amend. Until all portions of the Phase II Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration and or the Plat as may be reasonably necessary or desirable:

(i) to adjust the boundaries of the Lots, including adding or deleting common areas (by filing an appropriate amended Plat) to accommodate design changes or changes in type of units or adjustment to lot configuration;

(ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information;

(iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Declaration;

(iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development; or

(v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

4. Expansion of Definitions. In the event the Property is expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded e.g., "Property" shall mean the real property described in Article II of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

## XII. MISCELLANEOUS

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 Managing Agent or 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.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the

Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require:

(a) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and,

(b) so long as the Class B membership exists, the written consent of Declarant.

Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred. Notwithstanding anything herein contained to the contrary, until eighty percent (80%) of the Lots in the Development have been sold to purchasers, Declarant shall have, and it hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable;

(a) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgagee requirements, or

(b) to better insure, in light of then existing circumstances or information, workability of the Arrangement which is contemplated by this Declaration.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease his Lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, inter alia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the FV laws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

(c) The lease of any Unit shall be limited to a 30-day minimum.

7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct all Common Areas and amenities thereto indicated on the Plat.

8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9. 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 other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10. Covenants to Run With 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 Declarant, 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.

11. 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.

EXECUTED the day and year first above written.

CREEKSIDE VILLAGE DEVELOPMENT, INC.

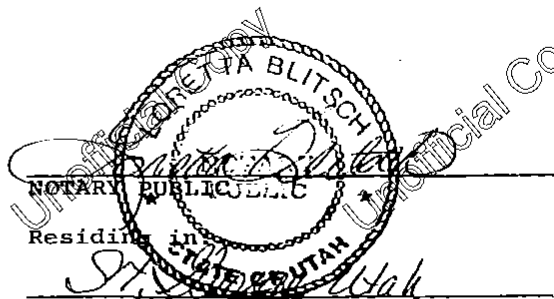
By: Edward M Burgess  
Declarant

STATE OF UTAH, )  
 : ss.  
COUNTY OF WASHINGTON. )

On the 19th day of FEBRUARY, 1987, personally appeared before me Edward M. Burgess who being by me duly sworn did say that he is the president of CREEKSIDE VILLAGE DEVELOPMENT, INC. and that the Declaration was signed on behalf of said Corporation and said person acknowledged to me that said Corporation executed the same.

My Commission Expires:

11-6-88



**310168**

**EXHIBIT "A"  
LEGAL DESCRIPTION OF  
CREEKSIDE HOMES PHASE I**

Beginning at a point South 0°40'10" East 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 South 57°33' East 418.84 feet; thence South 32°27' West 80.00 feet; thence South 87°14'18" West 52.02 feet; thence South 30°00' West 480.09 feet; thence North 1°25'00" West 348.62 feet; thence North 56°13'06" West 37.11 feet; thence North 28°47'25" East 124.92 feet; thence North 56°45'43" West 315.69 feet to a point on a 683.94 foot radius curve to the left (center bears N 52°39'33" W); thence Northeasterly 58.38 feet along the arc of said curve to the point of tangency; thence North 32°27' East 112.00 feet; thence South 57°33' East 156.66 feet to the point of beginning. Containing 3.452 acres.



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EXHIBIT "B"  
LEGAL DESCRIPTION  
CREEKSIDE HOMES  
Phase II Expandable Property

Beginning at a point South 0° 40' 10" East 224.27 feet along the Center Section Line and South 57° 33' East 418.84 feet from the Center ¼ corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence South 33° 27' 00" West 80.00 feet; thence South 87° 14' 18" West 52.02 feet; thence South 30° 00' 00" West 480.09 feet; thence South 1° 25' 00" East 3.14 feet; thence South 12° 43' 49" East 94.19 feet; thence South 3° 17' 56" West 123.305 feet; thence South 10° 39' 34" West 151.865 feet; thence South 89° 04' 56" East 404.01 feet; thence North 15° 39' 48" East 448.01 feet; thence North 18° 20' 21" East 139.70 feet; thence North 64° 29' 17" West 44.59 feet; thence North 36° 09' 25" East 762.99 feet, more or less to the Southwesterly Line of Indian Hills Drive, said point being on a 2033.00 foot radius curve to the right (bearing to radius point is North 50° 05' 08" East); thence Northwesterly 341.69 feet along the arc of said curve to a point on the Easterly Line of Willow Run Condominiums; thence leaving Indian Hills Drive and running South 35° 58' 30" West 343.59 feet; thence South 35° 48' West 399.99 feet; thence North 57° 33' West 36.53 feet to the point of beginning.

By L.R. Pope  
2-18-87

REQUEST: DIXIE TITLE COMPANY  
BOOK 442 PAGE 358-400  
FILE 4800 ABS  
1987 FEB 19 PM 4:09  
DOCUMENT 310168  
HERBERT S. BENTLEY  
WASHINGTON CITY, INDIANAPOLIS  
BY *Blk*

**310168**

BY-LAWS

OF

CREEKSIDE VILLAGE OWNERS ASSOCIATION

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BY-LAWS

310168

OF

CREEKSIDE VILLAGE OWNERS ASSOCIATION

I. NAME AND LOCATION

1. Name. The name of the corporation is the Creekside Village Owners Association, a Utah nonprofit corporation.

2. Principal Office. The principal office of the Association shall be located at Washington County, Utah, and meetings of Members and trustees may be held at such places within the County of Washington, State of Utah, as may be designated by the Board of Trustees.

II. DEFINITIONS

When used in these By-Laws the following terms shall have the meaning indicated:

1. Articles shall mean and refer to the Articles of Incorporation of the Creekside Village Owners Association.

2. Association shall mean and refer to to the Creekside Village Homeowners Association, a Utah nonprofit corporation which is organized by the filing of the Articles.

3. Member shall mean and refer to every person who holds membership in the Association.

4. Properties shall mean and refer to all real property which becomes subject to the Declaration together with such other real

property as may hereafter be annexed thereto under the provisions of the Declaration.

5. Declaration shall mean and refer to the instrument entitled "Declaration of Covenants, Conditions, and Restrictions of the Creekside Village Townhomes, Phase I," executed and acknowledged by Declarant on the 10 day of February, 1986, and filed for record in the office of the County Recorder of Washington County, Utah, as the same may from time to time be supplemented by Supplementary Declaration(s) or amended.

6. Lot shall mean and refer to any of the separately numbered and individually described plot of land on recorded Phase I Plat of the Properties with the exception of the Common Areas. Upon recordation of the Supplementary Declaration for Phase II, Lot shall include such plots of land contained in Phase II.

7. Common Areas shall mean and refer to those areas of land shown on any recorded Plat of the Properties and intended to be devoted to the common use and enjoyment of the Members.

8. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

9. Board of Trustees or the Board shall mean and refer to the Board of Trustees of the Association.

10. Development shall mean and refer to Creekside Village Townhomes, Phase I.

### III. MEETINGS OF MEMBERS

1. Annual Meeting. The first annual meeting of the Members shall be held during the month of DECEMBER at the date and time set by the Board. Thereafter an annual meeting of the Members shall be held during the same month of each succeeding year. The purpose of the annual meeting shall be the election of the trustees, subject to the provisions of Section 1 of Article IV hereof, and the transaction of such other business as may come before the Members. If the election of trustees is not filled on the day designated herein for the annual meeting, the Board shall cause such election to be held at a special meeting of the Members as soon thereafter as is convenient.

2. Special Meetings. A special meeting of the Members for any purpose or purposes may be called by the President, by the Board, by the Class B member, or upon written request of the Members who are entitled to vote of one-fourth ( $\frac{1}{4}$ ) of all of the votes of the Class A membership.

3. Place of Meeting. The Board of Trustees may designate any place within Washington County, Utah, as the place for any annual meeting or for any special meeting called by the Board. If no designation is made, the place of meeting shall be the registered office of the Association.

4. Notice of Meetings. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to all Members at least ten but not more than thirty days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid within the required time period to the person who appears as a Member at the latest address for such person appearing in the records of the Association at the time of mailing.

5. Quorum. Except as otherwise provided in the Articles, in the Declaration, or by law, more than 50% of the membership present (by lots) in person or by proxy shall constitute a quorum at any meeting of the Members.

6. Proxies. At any meeting of the Members a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the secretary of the Association before or at the time of the meeting. Unless otherwise provided therein no proxy shall be valid after eleven months from the date of its execution.

7. Cumulative Voting. At each election for trustees the vote attributable to a Lot may be accumulated by the Member or Members and entitled to half of the same by giving one candidate as many votes as the number of the Trustees to be elected multiplied by the number of votes concerned shall equal, or by distributing the total votes so determined among any number of candidates. A plurality shall be sufficient for the election of a candidate.

8. Necessary Vote. Except as concerns the election of trustees and except with respect to those proposals which under the Articles, under the Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all those which members present in person or represented by proxy are entitled to cast at a meeting shall be sufficient for the adoption of any matter voted on by the Members.

#### IV. BOARD OF TRUSTEES

1. Number, Tenure and Qualifications. Except for the initial Board of Trustees appointed by Declarant which may function until such time as the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member, the affairs of the Association shall be managed by a Board of Trustees composed of five (5) individuals, but which may be as few as three (3) and shall be Three (3) initially. The Trustees shall be classified with respect to the time for which they shall severally hold office, by dividing them into three classes, to be known as classes "A", "B", and "C". Of the Trustees first chosen, Class A shall consist of one trustee to hold office for one (1) year; Class B shall consist of two trustees, each to hold office for two (2) years; and Class C shall consist of two Trustees, each to hold office for three (3) years. At each annual election, the successor(s) to the class of Trustees whose terms shall expire in that year shall be elected to hold office for the term of three (3) years. Any change in the number of Trustees may be made only by amendment of the Articles. Each Trustee shall hold office until his

term expires and until his successor has been duly elected and qualifies. Notwithstanding anything herein contained to the contrary, Declarant reserves the right to appoint the members of the Board of Trustees, or their successors until the occurrence of the event mentioned at the outset of this Section 1 of Article IV.

2. Initial Board. Notwithstanding anything to the contrary herein contained, the initial Board selected by Declarant may consist of three persons. The persons who are to serve as the initial trustees are as follows:

<u>Name</u>	<u>Address</u>
<u>Edward M Burgess</u>	<u>645 So Kelley View Dr</u> <u>St George Utah</u>
<u>James Stahl</u>	<u>Po Box 1653</u> <u>St George Utah</u>
<u>Charles Bess</u>	<u>Po Box 463</u> <u>Cedar City Utah</u>

3. Compensation. The Board may provide by resolution that the Trustees shall be paid their expenses, if any, by attendance at each meeting of the Board. Trustees shall not be paid any salary or other compensation for their services as Trustees and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Trustees.

4. Action Taken Without a Meeting The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so taken shall have the same effect as though taken at a meeting of the Trustees.



## V. POWERS AND DUTIES OF THE BOARD OF TRUSTEES

1. Powers. The Board of Trustees shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their guests thereon, and establish penalties for the infractions thereof;

(b) suspend the voting rights and the rights to use recreational facilities which may be provided of a Member during a period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) exercise for the Association of powers duties, authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles, or the Declaration;

(d) declare the office of a Member of the Board of Trustees to be vacant in the event such Member shall be absent from four consecutive regular meetings of the Board of Trustees without cause; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

2. Duties. It shall be the duty of the Board of Trustees to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Class A Members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the monthly assessment against each Lot and to send written notice of such assessment to every owner subject thereto as provided in the Declaration.

(2) foreclose the lien against any Lot for which assessments are not paid within thirty days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) procure and maintain adequate liability, hazard and other insurance on property owned by the Association as required by the insurance provisions of the Declaration;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Areas to be maintained, and, also, if an Owner of any Lot shall fail to maintain his Lot and the Living Unit located thereon in a manner satisfactory to the Architectural Control Committee and/or the Board of Trustees, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents or employees, or through an independent contractor, to enter upon his Lot and to repair, maintain and restore the Lot and the exterior of the Living Unit and any other improvements erected thereon.

#### VI. NOMINATION AND ELECTION OF TRUSTEES

1. Nomination. Nomination for election to the Board of Trustees shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Trustees, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Trustees prior to each annual meeting of the Members, to serve from the close of such annual meeting until close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among Members.

2. Election Elections to the Board of Trustees shall be made by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles.

#### VII. MEETING OF DIRECTORS

1. Regular Meetings. A regular meeting of the Board of Trustees shall be held without notice other than this section immediately after, and at the same place as, the annual meeting of the Members. The Board of Trustees may provide by resolution the time and any place within the State of Utah or the holding of additional regular meetings without notice other than such resolution.

2. Special Meetings. Special meetings of the Board of Trustees may be called by or at the requests of the president or any three Trustees. The person or persons calling a special meeting of the Board may fix any place within the State of Utah as the place for holding such meeting.

3. Notice. Written or printed notice stating the place, day, and hour of any special meeting of the Board shall be given to all directors at least three days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed postage prepaid at least three business days before the meeting date to each Director at his address. Attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting unless the Trustee attends for the express purpose of objecting to the

transaction of any business because the meeting is not properly called or convened. Neither the business to be transacted at nor the purpose of any meeting need be specified in the notice thereof.

4. Quorum. A majority of the Trustees then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Trustees at a meeting at which a quorum is present shall constitute the act of the Board of Trustees unless the act of a greater number is required by law.

5. Vacancies. Any vacancy on the Board, subject to the provisions of Section 1 of Article IV, may be filled by the affirmative vote of a majority of the remaining Trustees, even though such remaining Trustees constitute less than a quorum. A Trustee thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in the office.

#### VIII. ARCHITECTURAL CONTROL COMMITTEE

1. Number, Composition, and Function. The Board of Trustees shall appoint a three-member committee the function of which is to enforce and administer the provisions of the Declaration (relating to control of improvements and landscaping within the property). The committee need not be composed of Members. Members of the committee shall hold office at the pleasure of the Board. If such a committee is not appointed, the Board itself shall perform the duties required of the committee.

2. Manner of Acting. The act, concurrence, or determination of any two or more committee members, whether such act, concurrence, or determination occurs at a meeting, without a meeting, at the same

time, or at different times, shall constitute the fact or determination of the committee.

3. Compensation. The Board of Trustees may provide by resolution that members of the committee shall be paid specified and reasonable compensation for their services as committee members.

4. No Liability for Damages. The 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 of the Declaration.

IX. OFFICERS

1. Number and Qualifications. The Officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. Any two (2) or more offices, other than the office of President and Secretary, may be held by the same person. Officers need not be Members of the Association.

2. Tenure. The Officers of the Association shall be elected by the Board of Trustees annually at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting it shall be held as soon thereafter as is convenient. Each Officer shall hold office until his successor has been duly elected and qualifies or until he is removed. Any Officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

3. Vacancies. A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the

Board of Trustees for the unexpired portion of the term of the person previously in office.

4. President. The President shall be the principal executive Officer of the Association and, subject to the control of the Board of Trustees, shall exercise general supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and of the Board of Trustees. If the President is not present then the Vice-President shall preside. Except in cases where the signing and execution thereof is expressly delegated by the Board of Trustees or by these Articles to some other Officer or agent of the Association or where required by law to be otherwise signed or executed, the President, together with the Secretary or any other Officer of the Association authorized by the Board of Trustees may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Trustees.

5. Vice-President. In the absence of the President or in the event of his death, inability, or refusal to act, the Vice-President shall perform all of the duties of the President. When so acting he shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall perform such duties as may from time to time be assigned to him by the President or by the Board of Trustees.

6 Secretary The Secretary shall keep minutes of meetings of the Members and of the Board of Trustees in one or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these Articles, the Declaration, and Law, shall maintain the membership list required by these Articles, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the President or by the Board of Trustees

7 Treasurer As required by the provisions of the Declaration the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine. The Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other depositories as are selected by the Board, shall perform all accounting, financial record-keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and, in general, perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the President or by the Board of Trustees

8 Compensation Officers shall not be paid any salary or other compensation for their services as such and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their services as Officers



## X ASSESSMENTS

1. As more fully provided in the Declaration, each Member (subject to exceptions provided for Declarant) is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made, provided, however, that such lien shall be subordinate to the lien of any first mortgage. Any assessment which is not paid when due shall be delinquent. If the assessment is not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 18% per annum together with a late payment service charge equal to five percent (5%) of each delinquency, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, late payment service fee, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

## XI AMENDMENTS

1. These By-Laws may be amended, at any regular or a special meeting of the Board of Trustees, by a vote of the majority of the Board of Trustees.

2. In the case of any conflict between the Articles and these By-Laws, the Articles shall control, and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

XII. MISCELLANEOUS

1 The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the initial Trustees of the Creekside Village Owners Association have hereunto set our hands this 11<sup>th</sup> day of February, 1986

Edward M Burgess

Chk G. Rosa

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