

**Amended Declaration of
Covenants, Conditions and Restrictions of
Creekside Homes**

and

**By-Laws of
Creekside Homeowners Association**

July 20, 1995

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FOR CREEKSIDE HOMEOWNERS ASSOCIATION

Table of Contents - CCR's

Article 1	Definitions	Page
Section 1	Definitions	1
Section 2	Property	1
Section 3	Common Area	1
Section 4	Lot	2
Section 5	Member	2
Section 6	Owner	2
Section 7	Conveyance	2
Section 8	Living Unit	2
Section 9	Declaration	2
Section 10	Creekside	2
Section 11	Limited Common Area	2
Section 12	Board of Directors	2
Section 13	Recreation Areas	3
Article 11	Property Rights	
Section 1	Owners' Easements of Enjoyment	3
	(a) Right to charge reasonable fees.	3
	(b) Right to borrow money.	3
	(c) Right to deny use of facilities.	3
	(d) Right to sell, exchange or transfer.	3
	(e) Right to protect common areas.	4
	(f) Right to grant and reserve easements.	4
	(g) Right to levy fines against owners.	4
Section 2	Delegation of Uses.	4
Section 3	Use of Lots.	4
	(a) Residential Use.	4
	(b) Non-disturbance.	4
	(c) Structural Changes.	4
	(d) Signs.	5
	(e) Use of the Common Area.	5
	(f) Fee Conveyed.	5
	(g) Animals	5
	(h) Obstruction of Common Area.	5
	(i) Prohibited Uses.	5
	(j) Alteration of Common Area.	6
	(k) Time sharing prohibited.	6
	(l) Leases.	6
	(m) Licensed drivers.	6
Section 4	Fences and Walls.	6
	(a) Repairs and Maintenance.	6
	(b) Right to Contribution.	6
	(c) Arbitration.	6
Section 5	Landscaping.	7
Section 6	Temporary Structures, Equipment, etc.	7
Section 7	Parking of Vehicles, Boats, Trailers, etc.	7
Section 8	Garbage Removal.	7
Section 9	Electronic Antennas.	7
Article III	Membership and Voting Rights.	
Section 1	Membership.	7
Section 2	Rules and Regulations	8
Section 3	Consent in Lieu of Vote.	8
	(a) Consents to be obtained 90 days prior.	8

	(b) Determination of number of votes.	8
	(c) Change of ownership of lots.	8
	(d) Consent of all members of lot required	8
Section 4	Reserve Fund.	8
Article IV	Covenant for Maintenance Assessments	8
Section 1	Personal Obligation and Lien.	8
Section 2	Purpose of Assessments.	9
Section 3	Special Assessments.	9
Section 4	Special City Assessment.	9
Section 5	Quorum Requirements.	9
Section 6	Equal Rate of Assessment.	10
Section 7	Monthly Assessment Due Dates.	10
Section 8	Certificate Regarding Payment.	10
Section 9	Effect of Non-Payment - Remedies.	10
Section 10	Insurance.	10
Article V	Architectural Control	11
Section 1	Architectural Control Committee.	11
Section 2	Submission to Committee.	11
Section 3	Standard.	11
Section 4	Approval Procedure.	11
Section 5	Construction.	11
Section 6	Disclaimer of Liability.	12
Section 7	Nonwaiver.	12
Article VI	Condemnation	12
Section 1	Condemnation	12
Article VII	Amendments	12
Section 1	Amendment.	12
Article VIII	Miscellaneous	13
Section 1	Notices.	13
Section 2	Interpretation.	13
Section 3	Covenants to Run With the Land.	13
Section 4	Effective Date.	14

Table of Contents - By-Laws

		Page
I	Name and Location	1
Section 1	Name is Creekside Homeowners Association.	1
Section 2	Principle Office.	1
II	Definitions	1
Section 1	Articles.	1
Section 2	Association.	1
Section 3	Member.	1
Section 4	Properties.	1
Section 5	Declaration.	1
Section 6	Lot.	1
Section 7	Common Areas.	2
Section 8	Owner.	2
Section 9	Board of Directors.	2
Section 10	Development.	2
III	Meetings of Members	2
Section 1	Annual Meeting.	2
Section 2	Special Meeting.	2
Section 3	Place of Meeting.	2
Section 4	Notice of Meeting.	2
Section 5	Quorum.	3
Section 6	Proxies.	3
Section 7	Necessary Vote.	3
IV	Board of Directors	3
Section 1	Number, tenure and qualifications.	3
Section 2	Compensation.	3
Section 3	Action Taken Without a Meeting.	3
V	Powers and Duties of the Board of Directors	3
Section 1	Powers	3
	(a) Adopt and publish rules and Regs.	3
	(b) Suspend rights of members.	4
	(c) Exercise powers, duties and authority.	4
	(d) Declare vacant seat on Board of Dir.	4
	(e) Employ manager, contractor, etc.	4
Section 2	Duties	4
	(a) Keep complete record of all acts.	4
	(b) Supervise all officers, agents, etc.	4
	(c) Fix the amount of monthly assessment.	4
	Foreclose Liens.	4
	(d) Issue Certificates.	5
	(e) Maintain liability insurance.	5
	(f) Require bonds.	5
	(g) Cause common area to be maintained.	5

VI Nomination and Election of Directors 5

Section 1 Nomination. 5
Section 2 Election. 5

VII Meeting of Directors 6

Section 1 Regular Meetings. 6
Section 2 Special Meetings. 6
Section 3 Notice. 6
Section 4 Quorum. 6
Section 5 Vacancies. 6

VIII Architectural Control Committee 6

Section 1 Number, Composition and Function. 6
Section 2 Manner of Acting. 6
Section 3 Compensation. 7
Section 4 No Liability for Damages. 7

IX Officers 7

Section 1 Number and Qualification. 7
Section 2 Tenure. 7
Section 3 Vacancies. 7
Section 4 President. 7
Section 5 Vice-President. 8
Section 6 Secretary. 8
Section 7 Treasurer. 8
Section 8 Past President. 8
Section 9 Compensation. 8
Section 10 Indemnification. 8

X Assessments 9

Section 1 Obligation to pay assessments. 9

XI Amendments 9

Section 1 By-Laws may be Amended. 9
Section 2 Articles shall control. 9

XII Miscellaneous 9

Section 1 Fiscal Year. 9

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

THIS AMENDED DECLARATION of covenants, conditions and restrictions (hereinafter called "Declaration") is made by owners in Creekside Homes, a planned unit development, at St. George, Utah.

WITNESSETH

WHEREAS, Creekside Homes at St. George (Creekside) consists of certain property (the property) in the County of Washington, State of Utah, which is more particularly described on the attached Exhibit "A", and outlined on the attached map, Exhibit "B", and

WHEREAS, the undersigned are the owners of homes and other improvements heretofore constructed or hereafter to be constructed upon the property and it is their desire to amend the Declaration of Covenants, Conditions and Restrictions of Creekside,

NOW, THEREFORE, the undersigned declare that all of the property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

Section 1. "Homeowners' Association" shall mean and refer to the CREEKSIDE HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "Property" 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 Homeowners' Association and this Amended Declaration.

Section 3. "Common Area" shall mean all real property (including the improvements thereto) now owned by the Homeowners' 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 nondedicated roads, sidewalks, driveways, fences, retaining walls, lawns, lamp posts,

watering systems, signs, dumpsters, recreation areas including the swimming pool, hot tub, park and playground, and delivery systems for utilities such as gas, water, electricity, telephone, sewer, cable TV and the like, as well as any other common areas and facilities which may be acquired by the Homeowners' Association in the future.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the property, with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners' Association.

Section 6. "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.

Section 7. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any owner by a warranty deed or other document of title and shall not mean the mere execution of an installment sales contract.

Section 8. "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.

Section 9. "Declaration" shall mean and refer to the Amended Declaration of Covenants, Conditions and Restrictions applicable to the property recorded in the office of the Washington County Recorder's Office, State of Utah.

Section 10. "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.

Section 11. "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.

Section 12. "Board of Directors" and "The Board" shall mean and refer to

the Board of Directors of the CREEKSIDE HOMEOWNERS ASSOCIATION.

Section 13. "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.

**ARTICLE II
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) The Board is empowered to levy fines against unit owners when these rules are violated. A written "first notice" will be sent to the responsible owner advising him of a violation and requesting that it be corrected. If the infraction is not corrected within fifteen (15) days, or sooner if determined to be appropriate and reasonable by the Board, or is repeated, a second notice will result in an appropriate fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars for each infraction. If the fine is not paid within sixty (60) days, the Board is empowered to place a lien on the owners property. The amount of the lien to bear interest at the rate of eighteen percent (18 %) per annum from the date of filing plus other preparation costs, filing and recording fees and legal expense that may be applicable.

Section 2. Delegation of Uses. Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family or his tenants who reside on the property.

Section 3. Use of Lots. 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 home shall be used and occupied only as a single family residential dwelling by the respective owner thereof, their tenants, families and domestic servants, and for no other purpose.
- (b) **Nondisturbance.** No owner, his tenants, guests or invitees 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 Association (and any other persons required by the

Bylaws or by law), make any structural alterations to the exterior of the building or garage or any portion or portions of the Common Area or Limited Common Area, without the approval of the Board of Directors of the Association. The Association shall answer in writing to any written request by a homeowner for its consent to any structural alterations of his/her home within thirty (30) days after its receipt of such a request describing the proposed alteration in reasonable detail.

- (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. "Open House" signs will be allowed only on the day of the designated 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) **Animals.** No animals of any kind shall be raised, bred or kept on any lot, except that cats, dogs, 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 Association provided that the Association may place conditions on such, including the right to cause the dog to be removed if the dog becomes an annoyance to other lot owners. All pets must be kept in a fenced yard of the lot or on a leash in the Common Areas.
- (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) **Time Sharing Prohibited.** No owner of any home or lot shall allow or permit any form of time sharing ownership.
- (l) **Leases.** Any lease agreement between a homeowner 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 Homeowners' Association Rules and Regulations, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing. A copy of the lease shall be deposited with any officer of the Homeowners Association, and shall be for a term of not less than three (3) months.
- (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. Speed limit within the project is 10 mph.

Section 4. Fences and Walls. No fences or walls will 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 make use of the fence/wall.
- (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, including landscaping and sprinkling systems.

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. Parking of Vehicles, Boats, Trailers, etc. No recreational vehicles, boats, travel trailers, trucks, or similar equipment shall be permitted to be parked in Creekside unless written approval is given by the Board. Any motor vehicle which is inoperable that remains parked in the development over seventy two (72) hours shall be subject to removal by the Association at the owner's expense. Such expense of removal shall be secured by the lien for assessment provision previously provided. No motor vehicle whatsoever may be parked on the project except in driveways or garages. Exceptions: temporary guest overnight parking is allowed on the street. Any and all vehicle repair shall be conducted inside the garage.

Section 8. Garbage Removal. All rubbish, trash, and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. 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 or antenna may be placed in back yard areas obscured from public view, provided it is approved by the Association in writing.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a lot on which a home is or may be constructed which is subject to assessment shall be a member of the Association.

When more than one person owns an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot.

Section 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.

Section 3. 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. The following additional provisions shall govern any application of this Section:

- (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 shall be determined as of the date on which the last consent is signed.
- (c) 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.
- (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.

Section 4. 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.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Personal Obligation and Lien. 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.

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

Section 3. 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 of being fully paid with funds generated by monthly assessments, or (b) the cost of any construction, reconstruction, or unexpected 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 that 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.

Section 4. 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, including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 5. 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 (1/2) 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.

Section 6. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all developed lots.

Section 7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence upon the first use of Creekside amenities, such as use of water or yard care. 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 fifteen (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.

Section 8. 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.

Section 9. 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 percent (5%) 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.

Section 10. Insurance. The association will maintain liability insurance.

property insurance on its pool, jacuzzi, buildings and equipment associated therewith and the masonry walls, fences, signage, lighting, mailboxes, and other items of use in the Common Areas of Creekside. It is incumbent on each owner or prospective purchaser to provide his/her own insurance on the house or structures and its contents as well as liability insurance. This is commonly known as "Homeowners Insurance." People who are renting homes in Creekside should furnish their own "Renters" insurance for their own protection.

ARTICLE V ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member committee the function of which shall be to insure that all exteriors of living units and landscaping within the property harmonize with existing surroundings and structures. The Committee shall be composed of owners. If such a committee is not appointed, the Board itself shall perform the duties required of the Committee.

Section 2. Submission to Committee. No living unit, accessory or addition to a living unit, landscaping, or other improvement of a lot which is visible from the common areas shall be constructed, maintained, or accomplished, and no alteration, repainting, or refurbishing of the exterior of any living unit shall be performed, unless submitted to and approved by the Architectural Control Committee.

Section 3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on lots within the property conform to and harmonize with existing surroundings and structures. The Board may formulate general guidelines and procedures. The adopted 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.

Section 4. Approval Procedure. Any plans and specification 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.

Section 5. Construction. Once begun, any improvements, construction, landscaping, or alteration 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.

Section 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, drawing 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.

Section 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.

ARTICLE VI 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 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.

ARTICLE VII AMENDMENTS

Section 1. Amendment. Any amendment to this declaration shall require the affirmative vote of at least two-thirds (2/3) of all votes which members present in person or by proxy are entitled to cast at a meeting duly called for such purpose. 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 fifty percent (50%) of all the 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 requirement set forth in the foregoing portion of this Section) at which a quorum shall be one-half (1/2) 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. In such instrument, an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

ARTICLE VIII 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.

EXECUTED this 20th day of July, 1995.

CREEKSIDE HOMEOWNERS ASSOCIATION

By: *P. David D. Fin*
President

State of Utah

: ss.

County of Washington :

On the 20th day of July, 1995, personally appeared before me *David M. ...*, who being by me duly sworn did say that he is the President of the Creekside Homeowners Association and that the declaration was signed on behalf of said Association.

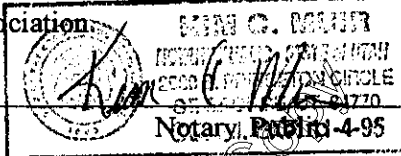


EXHIBIT "A"

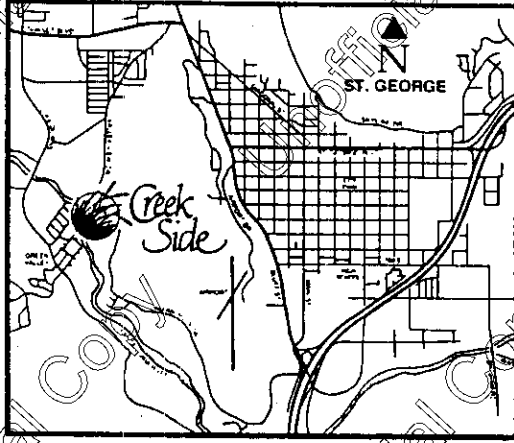
LEGAL DESCRIPTION
CREEKSIDE HOMES

BEGINNING AT A POINT BEING S 0°04'10" 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 S 57°33' E 768.61 FEET; THENCE S 36°09'25" W 149.79 FEET; THENCE S 64°29'17" E 44.58 FEET TO A POINT ON AN OLD FENCE LINE; THENCE FOLLOWING ALONG SAID OLD FENCE LINE FOR 4 COURSES AS FOLLOWS: S 18°20'21" W 139.70 FEET, S 15°39'48" W 448.01 FEET, N 89°04'56" W 404.01 FEET, N 10°39'34" E 151.365 FEET, N 3°17'56" E 123.305 FEET, N 12°43'49" W 94.17 FEET, N 39°56'13" W 42.605 FEET, N 1°25' W 351.78 FEET, N 56°13'06" W 37.11 FEET, N 28°47'25" E 124.92 FEET, AND N 56°45'43" W 315.69 FEET TO A POINT ON A 683.94 FOOT RADIUS CURVE TO THE LEFT (BEARING TO RADIUS POINT N 52°39'33" W) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE 58.38 FEET; THENCE N32°27'00" E 112.00 FEET; THENCE S 57°33'00" E 155.66 FEET TO THE POINT OF BEGINNING.

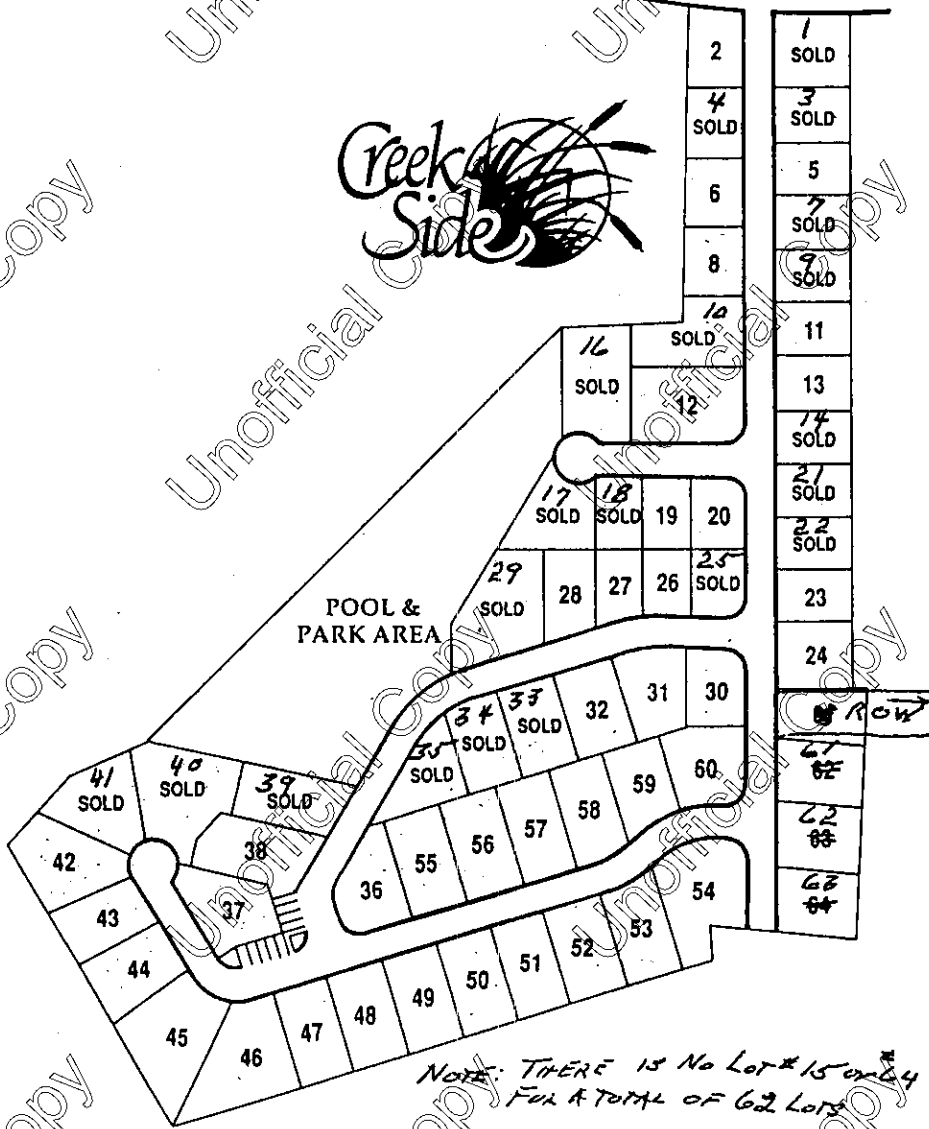
CONTAINING 11.852 ACRES

00505584 Bk 0923 Pg 0087

EXHIBIT "B"



VALLEY VIEW DRIVE



BY-LAWS
OF
CREEKSIDE HOMEOWNERS ASSOCIATION

I. NAME AND LOCATION

Section 1. Name. The name of the corporation is the Creekside Homeowners Association, a Utah nonprofit corporation.

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

II. DEFINITIONS

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

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Creekside Homeowners Association.

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

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

Section 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.

Section 5. "Declaration" shall mean and refer to the instrument entitled Amended Declaration of Covenants, Conditions, and Restrictions of Creekside Homes executed and acknowledged by Declarant on the 20th day of July, 1995, 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 or amended Declaration(s).

Section 6. "Lot" shall mean and refer to any of the separately numbered and individually described plots of land on the recorded plat with the exception of the Common Areas.

Common Areas.

Section 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.

Section 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.

Section 9. "Board of Directors" or "the Board" shall mean and refer to the Board of Directors of the Association.

Section 10. "Development" shall mean and refer to Creekside Homes.

III. MEETINGS OF MEMBERS

Section 1. Annual Meeting. A meeting of the members shall be held annually during a month and on a day and time set by the Board. The purpose of the annual meeting shall be the election of the Directors, 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 Directors is not held 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.

Section 2. Special Meetings. A special meeting of the members for any purpose or purposes may be called by the President, by the Board, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the membership.

Section 3. Place of meeting. The Board of Directors may designate any place within Washington County, Utah, as the place for any annual meeting or for any special meeting called by the Board.

Section 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.

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

Section 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.

Section 7. Necessary Vote. Except as concerns the election of directors 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 as a meeting shall be sufficient for the adoption of any matter voted on by the members.

IV. BOARD OF DIRECTORS

Section 1. Number, Tenure and Qualifications. The affairs of the Association shall be managed by a Board of Directors composed of the President, Vice President and five (5) elected directors, but which may be as few as three elected directors. At each annual election, the successor(s) for the directors 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 directors may be made only by amendment of the Articles. Each director shall hold office until his/her term expires and until his/her successor has been duly elected and qualified.

Section 2. Compensation. Directors shall not be paid any salary or other compensation for their services as directors and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as directors.

Section 3. Action Taken Without a Meeting. The directors 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 directors. Any action so taken shall have the same effect as though taken at a meeting of the directors.

V. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors 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 of a member and the rights to use recreational facilities which may be provided 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 those powers, duties and 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 Directors to be vacant in the event such member shall be absent from four consecutive regular meetings of the Board of Directors without cause; and

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

Section 2. Duties. It shall be the duty of the Board of Directors 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 (1/4) of the 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) Timely undertake to foreclose the lien against any lot for which assessments are not paid within thirty (30) 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 payments;

(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 Directors, the Association, after approval by two-thirds ($\frac{2}{3}$) 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 at the owners expense.

VI. NOMINATION AND ELECTION OF DIRECTORS

Section 1. **Nomination.** Nomination for election to the Board of Directors 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 Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the President 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 Directors 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.

Section 2. **Election.** Elections to the Board of Directors 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

Section 1. **Regular Meetings.** A regular meeting of the Board of Directors shall be held without notice other than the section immediately following, and at a place designated by the President. The Board of Directors may provide by resolution the time and any place within Washington County, State of Utah, for the holding of additional regular meetings without notice other than such resolution.

Section 2. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the president or any three (3) directors. The person or persons calling a special meeting of the Board may fix any place within Washington County, State of Utah, as the place for holding such meeting.

Section 3. **Notice.** Proper notice stating the place, day and hour of any special meeting of the Board shall be given to all directors at least three (3) days prior to the meeting date. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting unless the director 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 nor the purpose of any meeting need be specified in the notice thereof.

Section 4. **Quorum.** A majority of the Directors 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 Directors at a meeting at which a quorum is present shall constitute the act of the Board of Directors unless the act of a greater number is required by law.

Section 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 Directors even though such remaining directors constitute less than a quorum. A director thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in the office.

VIII. ARCHITECTURAL CONTROL COMMITTEE

Section 1. **Number, Composition, and Function.** The Board of Directors 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.

Section 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 act or determination of the committee.

Section 3. Compensation. The Board of Directors may provide by resolution that members of the Committee shall be paid specified and reasonable compensation for their services as committee members. The amount of compensation must have the concurrence of a majority of the owners at the annual meeting.

Section 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 the Declaration.

IX. OFFICERS

Section 1. Number and Qualification. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary and a Treasurer, who need not be members of the Board of Directors, and such other officers as the Board may from time to time create by resolution.

Section 2. Tenure. The officers and directors of the Association shall be elected at 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 qualified or until he resigns or is removed for cause. Any officer may be removed by the Board by majority vote whenever in its judgment the best interests of the Association would be served thereby.

Section 3. Vacancies. A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the Board of Directors for the unexpired portion of the term of the person previously in office.

Section 4. President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, 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 Directors. 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 Directors 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 Directors may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The

and the Association shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with any claim or liability arising out of his own willful misconduct or gross negligence. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Director or officer of the Association may otherwise be entitled by law.

X. ASSESSMENTS

Section 1. As more fully provided in the Declaration, each member 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 (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent 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

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

Section 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.

XI. MISCELLANEOUS

Section 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.