

M-29984
MAIL TO:
KRISER HOMES & COMMUNITIES
1404 S 730W
PAYSON UT 84651

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ENT 113768;2001 PG 1 of 26
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2001 Nov 05 3:06 pm FEE 159.00 BY AB
RECORDED FOR KRISER HOMES & COMMUNITIES

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS AND BY-LAWS

FOR
THE MAPLES AT BROOKSIDE

THIS DECLARATION, made on the date hereinafter set forth by *Maples at Brookside Inc.*, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in *Payson*, County of *Utah*, State of *Utah*, known as The Maples at Brookside, Plat C, which is more particularly described as:

COMMENCING AT A POINT WHICH IS S00°21'36"E 747.48 FEET ALONG THE SECTION LINE AND EAST 196.00 FEET FROM THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S 89°39'40" E 68.75 FEET; THENCE S 03°09'02" W 100.86 FEET; THENCE S 14°37'19" W 64.78 FEET; THENCE S 02°05'00" W 71.88 FEET; THENCE S 26°04'41" E 370.78 FEET; THENCE S 08°28'29" E 50.74 FEET; THENCE S 89°43'15" E 121.55 FEET; THENCE S 18°17'42" E 424.33 FEET; THENCE SOUTH 352.47 FEET; THENCE S 20°46'40" E 352.42 FEET; THENCE S 85°30'43" E 423.09 FEET; THENCE SOUTH 155.13 FEET; THENCE S 89°59'56" E 376.19 FEET; THENCE S 13°34'47" W 636.59 FEET; THENCE S 13°59'44" W 340.88 FEET; THENCE WEST 254.70 FEET; THENCE N 12°00'17" E 108.81 FEET; THENCE N 05°19'18" W 57.70 FEET; THENCE N 08°36'57" E 140.71 FEET; THENCE N 23°34'00" W 145.77 FEET; THENCE N 81°23'04" W 200.82 FEET; THENCE N 03°27'49" E 82.02 FEET; THENCE S 85°55'24" W 103.13 FEET; THENCE S 80°46'53" W 57.33 FEET; THENCE N 88°34'17" W 110.48 FEET; THENCE S 89°30'00" W 65.00 FEET; THENCE N 89°33'08" W 97.00 FEET; THENCE S 00°26'52" W 6.00 FEET; THENCE N 89°33'08" W 272.50 FEET; THENCE N 00°26'52" E 1564.48 FEET; THENCE N 00°00'33" W 746.53 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINING 34.49 ACRES, MORE OR LESS. BASIS OF BEARING; N 64°59'47" W BETWEEN THE WITNESS CORNER TO THE NORTHWEST CORNER OF SECTION 20 AND THE WEST MOUNTAIN #2 BACKSITE TOWER.

Note: Lot #259 shall be excluded from these CC&R's except that the Lot shall be kept clean and orderly. Lot #258 shall abide by these CC&R's except that the house structure may be non-conforming.

NOW THEREFORE, Declarant hereby declares that all of the properties described above 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, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to *The Maples at Brookside*, its successors and assigns, and shall include all Lot Owners of *The Maples at Brookside* subdivision.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Living Dwelling" shall mean and refer to any dwelling structure built upon any Lot, which is shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Cottage Lot" shall mean and refer to lots 169 through 184, and lots 232 through 239.

Section 8. "Declarant" shall mean and refer to *Maples at Brookside Inc.*, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which 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 maintenance fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. Owners are responsible for all rule compliance by all family members and delegate members.

Section 3. Owners' Responsibilities Within the Common Area.

- (a) Any Owner may not damage, remove or modify any Common Area or improvements thereon. Any such action by an Owner or his assigned delegate shall be corrected by the Owner responsible for such actions at Owners expense and to the agreement and satisfaction of the Association.
- (b) Persons under the age of 18 are not permitted in Common Areas after 10:00 PM unless accompanied by an Owner.
- (c) Littering, garbage and other waste left in Common Areas is prohibited.
- (d) Motorcycle or other motorized vehicle riding on any landscaped area or children's play area is prohibited.
- (e) Owner's personal property left in Common Areas is prohibited.

- (f) Owners or tenants shall not permit any activity which would result in cancellation of insurance on structure or contents thereof or which would be in violation of any public law, ordinance or regulation, including but not limited to, the consumption of alcoholic beverages, loud or obnoxious music or loud noises or disruptive behavior.
- (g) Repair, maintenance, or construction on personal property or vehicles is prohibited in common areas.
- (h) It is understood that within the Common Areas of the Association, there is a bike trail and creek that have been designed for the benefit, enjoyment and recreation of the Association and the general public; pursuant to UCA 57-14-1 to 57-14-7.

Section 4. Driving and Vehicles. The Association has established but is not limited to the following Covenants, Conditions and Restrictions within the Association.

- (a) Driving motor-powered vehicles on sidewalks or landscaped areas is prohibited. All drivers of motorized vehicles must have a valid driver's license.
- (b) Reckless driving or speeds in excess of 10 mph within driveway or parking areas is prohibited.
- (c) All vehicles, of any kind, will conform to any state, municipal or Association law governing licensing and operating condition of vehicle.
- (d) Vehicles in violation of parking rules may be towed at vehicle owners expense.
- (e) Pedestrians crossing any of the streets within the Association have the right-of-way.

Section 5. Insurance. As established in the Association By-Laws, the Association shall procure and maintain adequate liability and hazard insurance on property owned by the Association. Owners and tenants are responsible for their own insurance for contents and personal property.

- (a) Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area and amenities insured against loss or damage by fire for the full insurance replacement cost thereof. The Association may obtain additional insurance against such other hazards and casualties as the Association may deem desirable, and may also insure any other property, whether real or personal, which is owned by the Association, against loss or damage by fire and such other hazards as may be deemed desirable, with the Association as the owner and beneficiary of such insurance. Insurance coverage shall be written in the name of the Association, with the proceeds to be used by the Association for the

repair or replacement of the property for which the insurance was carried. Premiums for this insurance carried by the Association are expenses that shall be paid by the General Common Assessments made by the Association.

- (b) Replacement or Repair of Common Area Property. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. This Reconstruction Assessment is in addition to any other General Common Assessments made against such Lot Owners.
- (c) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 6. Pets. Livestock, poultry, illegal or large animals of any kind are prohibited within the Association as per Association and city zoning law. Domesticated animals or household pets which are not considered dangerous or do not have dangerous propensities may be kept in the residences but shall not be kept, bred or maintained for commercial purposes. The Board shall have the right and power to prohibit or place any condition on any particular pet from being kept within the Properties should the Board feel in its discretion that the keeping of that pet violates the letter or intent of this Declaration.

- (a) A pet otherwise permitted may be maintained in the Association so long as it is not a nuisance to the community. Actions which will constitute a nuisance include, but are not limited to, any annoying or unreasonable howling, crying, barking, scratching, screeching, running at large, attacking, chasing or worrying any person or animal, or any unsanitary or offensive practice.
- (b) Pet owners are strictly liable and fully responsible for all personal injuries and/or property damage caused by their pets. The Association is not liable for personal injuries and/or property damage cause by members' pets or animals. Pet owners are responsible for their pet's droppings within the Association and Common Areas.
- (c) All pets must be registered and inoculated as required by law.

- (d) All pets must be leashed when outside any dwelling. Pets running loose shall be turned over to an animal control agency.
- (e) All pet ownership must meet the requirements of the Payson City animal ordinance.

ARTICLE III

PROPERTY COVENANTS, CONDITIONS AND RESTRICTIONS FOR SINGLE FAMILY LOTS

Section 1. Use of Lots. All building structures shall be submitted to and approved by the Architectural Control Committee before any construction begins (See Article VII). No Lot or Living Dwelling shall be used, occupied or altered in violation of law or these Covenants, Conditions and Restrictions, so as to create a nuisance or interfere with the rights of any Owner. Each single-family dwelling shall house only one residing family in accordance with Payson City ordinance. Each Living Dwelling shall not be used for commercial, retail or industrial purposes, except for reason of in-home business, office or hobby.

Section 2. Building Location. Each Living Dwelling or building shall be located such that:

- (a) No building shall be located on any Lot nearer than 16 feet to the front property line, or nearer than 16 feet to any side street property line, except for specified Cottage Lots. For Cottage Lots 178 through 184, no building shall be located nearer than 10 feet to the front property line, or nearer than 10 feet to any side street property line.
- (b) The minimum side yard for any Living Dwelling is 6 feet. The total width of the two required side yards shall not be less than 16 feet, except for specified Cottage Lots. For Cottage Lots 178 through 184, the minimum side yard will not be less than 5 feet. No Living Dwelling shall be located on any Lot nearer than 20 feet to the rear property line, except for specified Cottage Lots. For Cottage Lots 178 through 184, the rear yard shall not be less than 15 feet. Secondary structures may be located within 5 feet of a rear or side property line, but no secondary structures shall be closer than 5 feet of an adjoining Lot. Secondary structures must be attractive, maintained, and must have exterior colors and roofing similar to the primary structure.
- (c) Eaves, roof projection, roof overhang and steps shall not be considered as a part of a Living Dwelling when positioning building upon any Lot.

Section 3. Signs. All permissible signs must meet the requirements of the Payson City sign ordinance. Except for signs displayed by any builder or developer during the development and sale of

Lots and the construction of Living Dwellings thereon, no signs shall be erected or maintained on any Lot, except:

- (a) Such signs as may be required by legal proceedings.
- (b) "For Sale" or "For Rent" signs for temporary and reasonable purposes.
- (c) Such signs as used in conjunction with the sale, completion and entrance of the Properties.
- (d) Such signs as deemed necessary for warnings and caution as pertaining to the safety of the public.

Section 4. Machinery and Equipment. No large machinery or equipment of any kind shall be placed, stored, used, operated or maintained in, on or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Dwelling or appurtenant structures. Any machinery or equipment that is allowed on a Lot shall be screened from view behind the front yard setback and shall not be a nuisance to the community.

Section 5. Maintenance and Repair. No Living Dwelling, building, structure or landscaping and fencing upon any Lot shall not be permitted to fall into disrepair and at all times shall be kept in good condition. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces, hence contributing to the beauty and value of the neighborhood. Under extreme circumstances;

- (a) In the event an owner of any single family dwelling shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the dwelling and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such dwelling is subject.
- (b) Board of Directors shall cause that a written notice by certified mail be sent to any Lot Owner that they are not in compliance with the CC&R's. Lot Owners shall be given a reasonable time, usually 15 days, to comply before fines or action can be taken.

Section 6. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly,

offensive, or detrimental to other Owners. No Living Dwelling or Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Living Dwellings or Lot.

Section 7. Trash Container and Collection. All garbage and trash shall be placed and kept in covered containers. As much as is possible, such containers shall be maintained as not to be visible from the front road or neighboring Lots, except to make them available for collection, and then only for the shortest time necessary to effect such collection. All Cottage Lot owners shall place trash receptacles along 910 West or 1500 South for collection.

Section 8. Ground Water and Soil Erosion. If the Lot Owner chooses to design his home with a basement, he is encouraged to obtain a Soils Engineer's study and follow recommendations therein. Declarant shall not be responsible for waterproofing, removing ground water, or any liability incurred by Owner or others as a result of ground water. It is the responsibility of each Owner to have runoff water draining away from, and not onto adjacent Lots. Each Owner shall be responsible to perform his site work in such a manner as to minimize erosion and runoff. Any desired or necessary retaining walls are the responsibility of each Lot Owner and must meet the requirements of the Maples at Brookside Plat C development agreement with Payson City.

Section 9. Recreational and Other Vehicles. No large trucks and commercial vehicles belonging to Owners or other residents of the Living Dwelling shall be parked within or adjacent to the Lot, except temporary parking, not to exceed twenty-four (24) hours. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot driveway or front of a dwelling, private or public street, except that these restrictions shall not apply to emergency repair to vehicles. Boats and motor homes, or recreational vehicles, other than regularly used passenger cars and light trucks which may be parked upon driveway areas, must be kept on side or rear yards behind the front yard setback, and when possible, obscured from the front view

Section 10. Building Structures and Accessories. Every Living Dwelling exclusive of garages, shall have a minimum finished area above the grade level of the Lot of One Thousand One Hundred (1100) square feet for a single-level residence and One Thousand Four Hundred (1400) square feet for a two-story.

- (a) Building Height. No building shall be erected to a height in excess of thirty-five (35) feet above the finished street grade. No Living Dwelling shall be erected to a height less than one (1) full story above the finished street grade. The Architectural Control

Committee shall have the power to further limit the number of levels and stories and the height of structures in its sole and absolute discretion.

- (b) Garages. An attached garage of not less than 20 feet by 20 feet must be erected for each Living Dwelling and must be fully enclosed to accommodate a minimum of two (2) cars, but not more than (3) cars. Carports are not permitted.
- (c) Exterior Building Materials. Brick, stone, or stucco is required to cover at least 80% of the home exterior. The colors and materials on the homes shall be varied to improve the aesthetics of the development. Color combinations should blend well as to enhance the overall look of the home. Extreme color combinations and designs are not permitted.
- (d) Home Style for Cottage Lots. Each Cottage lot must build a cottage style home or a home style that is approved by the Architectural Control Committee and Payson City.
- (e) Roofs. Roofing materials will consist of 25-year architectural shingles or better. Roof pitch shall not be less than 6/12 over the main portion of the structure.
- (f) Home Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings, shall be constructed of materials consistent with the colors, textures and materials approved for the Living Dwelling, and shall be integral to the architecture of the Living Dwelling.
 - (1) Mailboxes. Mailboxes will be located in centralized locations in accordance with the U.S. Postmaster requirements.
 - (2) Solar Equipment. If solar panels are used, they are to be integrated into the roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be hidden from view.
 - (3) Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be copper or colored to match adjacent roofing material.
 - (4) Fences and Walls. Individual Lot fences, which are located within the minimum setback lines of the street, shall be of light colored vinyl, brick, stone, wrought iron or combinations of such materials. Wooden or chain link fences are not permitted. Fences are not to exceed 36 inches in the front yard, and not to exceed six (6) feet in the back and side yard.

- (5) Fences and Walls for Cottage Lots. Cottage Lot fences shall be of non-obscuring wrought iron and shall not exceed five (5) feet in the back and side yard. Walls and fences are not permitted within the front yard setback. The color and style of all Cottage Lot fences shall be uniform and approved by the Architectural Control Committee. Any changes to the color or style must be approved by a 2/3-majority vote of the Cottage Lot Owners. For additional privacy, Cottage Lot Owners are encouraged to use natural habitat style landscaping.
- (6) Antennas. All antennas are restricted to the attic or interior of a dwelling. Satellite dishes shall be allowed, provided they are screened from view when ever possible.
- (7) Pools, Spas, Fountains, Game-courts. Pools, spas, fountains and game-courts shall be located to avoid impacting adjacent Lots or Living Dwellings with light or sound. No game court shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring Living Dwellings. No unsightly structures shall be constructed or permitted.
- (g) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view. Air conditioning units and swamp coolers are not permitted on roofs or through windows.
- (h) Landscaping Guidelines and Requirements. Front yard landscaping must be in place upon occupancy of the Living Dwelling. For each Living Dwelling, landscaping of entire yard, including grass, trees, and shrubs, must be completed within twelve (12) months following completion or occupancy. All demolition, clearing, grubbing, stripping of soil, excavation, and compaction and grading must be performed within the confines of the Lot. Each Lot Owner will commence construction of a home within twelve (12) months of Lot purchase or the Owner shall be required to provide landscaping for said Lot within twelve (12) months of purchase.
- (1) It is encouraged that landscaping include wooded cluster of trees and shrubs. A minimum of six (6) trees per lot is required with at least half being planted in the front yard. The remaining landscaping shall be groomed grass and other

landscaping materials and plant life. A maple tree is required in the front of each Living Dwelling and can be counted as one of the 6 trees required.

- (2) The Developer retains the right to plant one maple tree in a specified location within the front yard of each Lot. After planting, maintenance of the tree is the Owners responsibility. If the tree dies or needs removal, a like tree of at least a 2" caliper (diameter) will be planted.
- (3) Each Lot must have a functional automated watering system.
- (4) Each Lot Owner is responsible for retaining all soil erosion and water drainage, including but not limited to, rain, snow melt and sprinklers within their own Lot. Any desired or necessary retaining walls are the responsibility of each Lot Owner.
- (5) Cottage Lot Owners are required to preserve on the Lot as much of the natural trees and shrubs as is reasonably possible. Cottage Lot Owners may replace the current natural trees and shrubs as long as the new trees and shrubs are phased in over time so that the natural habitat and appearance will be maintained.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot all such persons shall be members. The vote for such Lot shall be exercised, but in no event shall more than one vote be cast with respect to any Lot. If any members are unable to agree how their vote shall be cast, no vote shall be cast for that Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A

membership when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and amenities. In extreme cases, when a Lot or Single Family Dwelling jeopardizes the value of the Properties in the development, the Association may cause the Lot and/or exterior of a Single Family Dwelling to be maintained. This assessment is neither an admission fee nor a user fee nor a charge within the dictates of UCA 57-14-6.

Section 3. Assessment Structure. The assessment and allocation of costs within the Association shall be as followed:

- (a) **General Common Area and Amenities Assessments:** This includes, common expenses and equal assessments for all property of the Association which benefit all Property residents without prejudice such as, but not limited to, Open spaces, Entrance signs, Play Areas, Bike Trail, Creek, and Neighborhood Parks.
- (b) **Single Family Lot Assessments:** This includes, common expenses and equal assessments for any areas and property of the Association which benefit all Single Family Lot residents without prejudice, which at present we (the Declarant) know of none.

Section 4. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be twelve dollars (\$12.00) per Single Family Lot for General Common Area Assessments.

Total Single Family Lot Assessment: \$12.00 per month.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership. The maximum annual assessment may be increased above 5% by a simple majority vote of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 & 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Single Family Lots. These assessments may be collected on a monthly basis or annual basis as deemed necessary by the Board of Directors.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of deed to an Owner. The first annual assessment shall be adjusted according to the number

of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

- (a) Declarant reserves the right to delay, or postpone the date of commencement of annual assessments for all Owners until such time that there is substantial completion of Common Area. If Declarant chooses to delay or postpone assessment commencement due dates, Declarant shall give written notice to all Owners within 30 days prior to the new annual assessment commencement.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 8 percent per annum. The Association may bring an action at law against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments.

ARTICLE VI

COVENANT VIOLATION ASSESSMENT

Section 1. Violation Assessment. Procedures and specifications used by the Association for fines and assessments levied upon individuals in violation of Association Covenants, Conditions and Restrictions shall be established by the Board of Directors. Such fines shall not exceed \$100.00 per notice.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and

specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Any Owners complaints of rule infractions must be made in writing to the Association Board of Directors. Any consent or approval given under these rules shall be revocable at any time. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 1.1 Appeals. Members shall have the right to appeal decisions of the Board of Directors to the Appeals Committee. A fee of \$25.00 must be paid by the member to the Association for each appeal.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty percent (60%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

- (a) Declarant reserves the right to annex additional land into the Association without the consent of the members within 5 years of the date of this instrument, provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of the Declaration of Covenants, Conditions and Restrictions.

BY-LAWS
OF
"THE MAPLES AT BROOKSIDE"
ASSOCIATION

ARTICLE I

NAME AND LOCATION. The name of the association is *The Maples at Brookside*, hereinafter referred to as the "Association". The principal office of the association shall be located at 1404 S. 730 W. Payson, Utah 84651, but meetings of members and directors may be held at such places within the State of Utah, County of Utah, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to *The Maples at Brookside*, its successors and assigns, and shall include all Lot Owners of *The Maples at Brookside* subdivision.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

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

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performances of an obligation.

Section 6. "Declarant" shall mean and refer to *Maples at Brookside, Inc.*, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of Utah County Recorders.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of the incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the second Wednesday of the same month of each year thereafter, at the hour of 7:00 o'clock, P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the next week following.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors or upon written request of one-fourth (1/4) of the Class A members who are entitled to vote.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the members address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the **place, day and hour** of the meeting, and, in the case of a special meeting, the **purpose of the meeting**.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each lot may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERMS OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of nine (9) directors, who need not be members of the Association.

Section 2. Terms of Office. At the first annual meeting the members shall elect three directors for a term of one year, three directors for a term of two years and three directors for a term of three years; and at each annual meeting thereafter the members shall elect three directors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority of the voting members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. 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 approved shall have the same effect as though taken at a meeting for the directors.

ARTICLE V

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 Board of Directors shall appoint the Nominating Committee prior to each annual meeting of the members, to serve from the close of such annual meeting until the 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 may be made from among members or non-members.

Section 2. Elections. Election to the Board of Directors shall be 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 Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

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 Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right of use of the recreational facilities of a member during any 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 60 days for the infraction of published rules and regulations;

- (c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, or independent contractor, or such other employees as they deem necessary, and to prescribe their duties. With respect to hiring any employees, subcontractors, insurance agents, etc., a board member shall abstain from discussion and voting should it involve any conflict of interest.

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 Class A members who are entitled to vote;
- (b) supervise all officers, agents and employees of this 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 annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any property 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, upon demand by any person, a receipt certificate for any assessments that have been paid;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

- (g) cause the Common Area to be maintained.
- (h) under extreme circumstances cause the exterior of the Single Family Lots and any vacant Lot to be maintained if failure to do so by any Owner would jeopardize the value of the properties in the development.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and a vice president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

- (b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keeping the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Board of Directors shall appoint committees as deemed appropriate and necessary to carry out its purposes.

Section 1: Architectural Control Committee: The association shall appoint an Architectural Control committee as provided in the Declaration. This committee shall consist of 3 individuals, who need not be members of the Association.

Section 2: Nominating Committee: The association shall appoint a Nominating Committee as provided in these By-Laws

Section 3: Appeals Committee: The association shall appoint an Appeals Committee. This committee shall consist of 9 individuals, who need not be members of the Association. Within this committee there shall be a chairperson chosen by a majority vote by all other appeals committee members. At least 7 members must be present to constitute a quorum. A majority vote is necessary for a binding decision. This decision is final. The duties of this Appeals Committee shall be:

- (a) To hear appeals from association members regarding decisions made by the Board of Directors.
- (b) Make a ruling to uphold or overturn the Board of Directors decision and report ruling to Board of Directors.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall be at all times, during reasonable business hours, subject to inspection by any member. The Declaration and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments, which are secured by continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due, shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessments shall bear interest from the date of delinquency at the rate of 8 percent annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII
AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B membership.

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

ARTICLE XIII
MISCELLANEOUS

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 recordation.

IN WITNESS WHEREOF, I, being the Declarant of The Maples at Brookside, have hereunto set my hand this 25th day of Sept., 2001.

Drew A. Kriser, President of Maples at Brookside, Inc.
President

State of Utah

: ss.

County of Utah

On the 25th day of September, 2001, personally appeared before me, Drew A. Kriser, President of Maples at Brookside, Inc., who duly acknowledge to me that he executed the above document on behalf of said company.



Terelyn J. Planck
Notary Public