

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS OF
CHEROKEE SPRINGS RV PARK
WASHINGTON CITY, UTAH

THIS DECLARATION made this 21 day of February, 1991, by
CHEROKEE ENTERPRISES, INC., a Utah corporation, herein called the Developer.

WITNESSETH:

WHEREAS, Developer or assigns is/are the owner(s) of real property described in Article II of the Declaration and desires to create thereon a Recreational Vehicle Park with permanent open spaces and other common facilities for the benefit of the said Recreational Vehicle Park; and

WHEREAS, Developer desires to provide for the preservations of the values and amenities in said Park and for the maintenance of said open spaces and other common facilities, and, to this end, desires to subject the real property described in Article II together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property of each Owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said Park to create an agency to which should be delegated and assigned the powers of maintaining and administering the Park properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Utah, as a non-profit organization, CHEROKEE SPRINGS RV PARK PROPERTY OWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II, Section 2, hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereafter set forth.

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ARTICLE I

RUSSELL SHIRTS * WASHINGTON CO RECORDER
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REQUEST: SOUTHERN UTAH TITLE CO.

Definitions

Section 1. The following words when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to CHEROKEE SPRINGS RV PARK OWNERS ASSOCIATION, INC., its successors and assigns.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration under the provisions of Article II hereof.

(c) "Lot" shall mean and refer to any plot of land or unit containing not less than 1,600 square feet with utility hookups for water, sewer, electricity, which is intended for the location of a

Recreational Vehicle and/or living unit and recorded on any subdivision map of the properties with the exception of Common Properties hereafter defined:

(d) "Common Properties" shall mean and refer to those non-exclusive areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the Association, except portions designated as living units.

(e) "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for the use and occupancy of a manager or residence by a single family.

(f) "Owner shall mean and refer to the record Owner, whether one or more persons or entities of the fee simple title and the equitable owner, whether one or more persons or entities by virtue of a purchase contract in any Lot or Living Unit situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure in which event the mortgagee shall be considered an Owner only so long as the mortgagee continues its right to possession. The Developer shall be the Owner within the meaning of this paragraph of any Lot or Living Unit for which he is, at the date of execution of the covenants and restrictions, the equitable Owner of a contract for the purchase of any Lot or Living Unit and the contract seller for such contract shall not be deemed an Owner.

(g) "Member shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof:

ARTICLE II

Property subject to this Declaration and Additions thereto:

Section 1. Existing Property. The real property, including any permanent Living Unit located upon any Lot, which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Washington City, Washington County, State of Utah, and is more particularly described in Exhibit "A" attached hereto, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Annexation. From time to time the Developer may pursue additional phases of the development which will involve annexation of additional property, as may be purchased and approved by appropriate public authority. At such time as any of said additional properties are subdivided as evidenced by a properly approved and recorded subdivision plat, the Developer may deem such additional properties to be included in the definitions of Article I, Section 1, subparagraphs (b), (c) and (d).

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an owner is defined in Article I, Section 1, subparagraph (f) of any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2 Voting Rights. The Association shall have two classes of voting membership: Class A. Class A members shall be those Owners as defined in Section 1, with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect of any such Lot. In the event such persons fail to agree then their vote shall be cast on a pro rata basis among the respective interests.

Class B. Class B members shall be the Developer. The Class B members shall be entitled to Three votes for each Lot in which it holds the interest required for membership in Section 1, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) On the first of January, 1995, or

(b) at such earlier date as Developer in his discretion considers the development 75% or more completed and so notifies the Property Owners Association.

From and after the happening of these events, whichever occurs earlier: the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interest required for membership under Section 1.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its heirs and assigns, that it shall convey the Common Properties to the Association not later than the 1st day of January, 1995, or at such earlier date in accordance with Article III, Section 2(b). In any event, said conveyance shall be made free and clear of any mortgage or other encumbrance upon the Common Properties.

Section 3. Alienation of Common Properties. The Common Properties may not be alienated without the approval of all holders of first mortgage upon any of the properties subject to assessment.

Section 4. Extent of Members' Easements. The rights of easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Developer and the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties; and

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) the right of the Association, as provided in its Articles and Bylaws to suspend the enjoyment rights of any member for any period not to exceed thirty (30) days for an infraction of its published rules and regulations; and

(d) the right of the Association to charge reasonable admission and other fees for the use of Common Properties; and

(e) the rights of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such

conditions as may be agreed to by the members, provided that no such dedication or transfer determination as to purpose or as to the conditions thereof shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken

Section 5. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties of facilities to those actually residing on the property whether they be members of his family, his tenants, or contract purchasers.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Developer for each Lot owned by him within the Properties hereby covenants and each Owner of any Lot by acceptance of a Real Estate Purchase Agreement of a deed therefore whether of not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (1) regular assessment or charges; (2) special assessment for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and the costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be continuing lien upon the property (lot) against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons who were the owners of such property (lot) at the time when the assessment fell due. (The Association may elect from time to time any remedy with regards to the defaults by Owners without regard to any rule of law concerning the election of remedies.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively for the propose of promoting the recreation, health, safety, aesthetics and welfare of the residents in the Properties and in particular for the improvement, operation and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, perimeter subdivision fences, garbage collection, the payment of water and sewer fees for the Properties as they become due, and at the option of the Association, of the additions thereto, and for the cost of labor, equipment, materials, utilities, property taxes, insurance, management, and supervision thereof.

Section 3. Regular Assessments. The regular monthly assessments shall be 100% of the actual estimated monthly costs of maintenance and operation of the Common Properties and other facilities and the estimated monthly water and sewer fees for the Properties, and may include management fee together with amount necessary to pay into a reserve account for any increases or unexpected expenditures.

The Board of Directors of the Association may, after consideration of the current maintenance costs and future needs of the Association, provide for accumulation of reserves to meet projected needs.

Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments authorized by Section 4 hereof, the Association may levy special assessments for the purpose of defraying, whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of described capital improvements, including the necessary fixtures and personal property related thereto, provided that any shall be by the assent of two-thirds (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, written notice of which shall be sent to all members at least ten (10) days in advance and shall set forth the purpose of the meeting.

Section 5. Assessment Period. The assessment period for regular assessments shall be fixed at a monthly rate and may be adjusted by the Board of Directors in accordance with Section 8 to reflect current estimated costs of maintenance and operations. All assessments must be fixed at a uniform rate for all Lots.

Section 6 Date of Commencement of Regular Assessment. Due Dates. The regular assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors for the Association to be the date of commencement. Developer's unsold and unrented lots are exempt from this assessment.

The regular assessment shall become due and payable on the first day of each month beginning on the month of the commencement date or such other date as fixed by the Board of Directors.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto and keep books of account showing receipts and disbursements which shall be kept in the office of the Association and shall be open to inspection by the Owner at reasonable times.

Written notice of assessment shall thereupon be set to every Owner subject thereto.

Section 8. Effect of Non-payment of Assessment; The Personal Obligation of the Owner. The Lien: Remedies of Association. If the assessments are not paid on the date when due (being the date specified in Section 7, hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then existing Owner, his heirs, personal representatives and assigns. The personal obligation of the then existing Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in the title unless expressly assumed by them, in which case such obligation shall be joint and several.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above and reasonable attorney's fees to be fixed by the court, together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage of mortgages now or hereafter placed upon the properties subject to assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties to the extent of any easement of other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common properties as defined in Article I, Section 1 hereof; (c) all properties temporarily exempted by a separate writing during the construction phase of development.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VI

Easements

Section 1 Easement for Repair and Maintenance. All Lots within the properties shall be subject to an easement in favor of the Association or City of Washington to permit reasonable egress and ingress over areas not occupied by residential pads for all reasonable maintenance purposes as provided herein.

ARTICLE VII

Prohibition an Controls

Section 1. Architectural Controls. No building, storage shed, fence, wall, accessory canopies, or other structure shall be erected or maintained upon the properties, nor shall any exterior addition to or change or alteration or improvements herein be made. Provided however the Association may design and publish to the members such plans and specifications of storage sheds, walls, fences, and other structures, which would benefit the members and the Resort as a whole, which the members at their expense may purchase or construct on their property in the manner to be prescribed by the Association.

Section 2. Landscaping Control. No Lot leveling, planting, landscaping or gardens shall be commenced until a plan thereof has been approved by the Association or the Architectural Committee.

Section 3. Vehicle Requirements. All vehicles shall be recreation vehicles, mobile homes or modular homes. No tent trailers, tents or outdoor camping will be allowed.

Section 4. Use of Lots. No more than one (1) Recreational Vehicle will be permitted or maintained upon any Lot in said subdivision. No boat trailer, boats, or pickup shell shall be stored overnight on any Lot within CHEROKEE SPRINGS RV PARK that may be used, and a charge for said use, if any, shall be at the discretion of the Association.

No sign, temporary or permanent, as For Rent or For Sale signs shall be erected or installed, placed, permitted or maintained on any Lot, except the name of the occupant and Lot number of the Unit.

No laundry may be dried in any location of any Lot.

No Lot or Lots shall be re-subdivided except for the purpose of combining two or more lots into ONE.

No animals, fowl or reptiles shall be kept on the premises except household dog, cat or pets owned by the Owner of the Lot on which they are kept. No animal shall be allowed OFF THE LOT OF THE OWNER EXCEPT ON A LEASH: and no dog, cat or bird pet shall be kept on any Lot by anyone if, in the discretion of the Association, that pet is or becomes a nuisance, threat or otherwise is objectionable to surrounding property owners.

All owners of pets shall be responsible for the clean up of said pet's waste.

No elevated stands of any kind shall be erected, or placed or permitted on any Lots.

No outdoor burning of trash or other debris shall be permitted. This shall not prohibit the use of a normal residential barbecue or other similar outside grill.

No noxious, offensive, or illegal activity shall be carried on upon any Lot. No Lot shall be used in whole or in part for the storage of rubbish, trash, used or new building materials, used or new metal, trucks, automobiles, or machines in whole or in parts. Bicycles, toys and other similar items shall not be left on Lots when not in use but shall be place out of sight. No personal property, substance, thing or material shall be kept on any Lot or any part thereof that will omit foul or noxious odors, or that will cause any noise that might disturb the peace and quiet of the

surrounding property owners, or will cause the Lot or any part thereof to appear in an unclean or untidy condition.

Section 6. Maintenance of Lots. It shall be the responsibility of the Manger to keep the Lot neat and clean, the lawn mowed, and the Lot landscaped in types of landscaping deemed reasonable and compatible so as not to destroy or impair the aesthetic qualities of CHEROKEE SPRINGS RV. PARK.

Section 7. Miscellaneous Prohibitions.

(a) **Repairing Cars.** No major repairing or overhauling of cars or trucks is permitted on the streets, driveways, or parking lots of the park.

(b) **Additional Prohibitions.** Such other actions deemed from time to time by the Association to constitute a nuisance.

Section 8. Professional Management. The Association shall have the right to contract for services or transfer to any corporation, person or partnership, all of his rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants and obligations under this agreement shall remain the sole responsibility of the Association.

ARTICLE VIII

General Provision

Section 1. Duration. The covenant and restrictions of this Declaration shall run with and bind the land, and shall insure to the benefit of and be enforceable by the Association, or the Owner of any Lot and subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of (10) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change or rescind said covenants and restrictions in whole or in part.

Section 2. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restriction shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. In the event the Association or Owner recovers judgment against any person for a violation or threatened violation of any of the covenants herein, the Association or Owner shall also be entitled to recover from such person reasonable attorney's fees. The failure of the Association or 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 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

