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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
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RECORDED FOR CREEK SIDE HOA

DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS,
RESTRICTIONS AND CONDITIONS
AFFECTING THE REAL PROPERTY KNOWN AS:

****CREEK SIDE AT ASPEN
GROVE****
PRD - PLAT A

SECTION I. MAINTENANCE

Section 1.01 ARCHITECTURAL CONTROLS. Architectural Control of Creek Side at Aspen Grove will be under the direction of the Design Review Committee. This Design Review Committee, hereinafter called the Committee, shall consist of upper-management personal employed by Silver Creek Development Group LLC. At such time when 100% of the lots have been sold the lot owners shall meet and elect a new committee to replace the initial committee.

- (A) No building shall be erected, placed, or altered on any lot until the construction plans and specifications, a plot plan showing the location of the structure, and a landscape plan have been submitted to and approved by Silver Creek Development Group LLC.

No structure shall present an unfinished appearance for a period of more than (12) twelve months from the beginning of construction. All construction must be completed within (1) one year after the commencement of construction including all exterior site improvements, and front/ backyard landscaping.

Construction must commence within (6) six months after the purchase of the lot. The Committee may conduct a final inspection to insure completion of both construction and landscaping. Owners will be notified, in writing, of all inspections.

- (B) The Committee's approval, or disapproval, as required in these covenants, shall be in writing.

The Committee shall be substantially governed by the building and zoning ordinances of Pleasant Grove City except where stricter provisions are deemed to be appropriate to maintain the integrity of the development and the overall objectives of the owners/developer of the project.

Section 1.02 DESIGN REVIEW DEADLINE. Upon receipt by the Committee of a written request for approval of architectural and/ or landscape design, the Committee shall, within (7) seven days after receipt of such request, either: (a) approve the plans and/ or landscape design as submitted, or (b) notify the party making such a request of any objections thereto (such objections must be specifically stated by the Committee in writing). Once objections are noted, the requesting party may, within (14) fourteen days thereafter, resubmit its request for approval rectifying any such objections made by the Committee. The Committee shall than have an additional (7) seven days after receipt of said revisions to approve or disapprove the request. Approvals or disapprovals will be submitted in writing.

Section 1.03 LOT MAINTENANCE. Construction sites will be kept clear of any and all debris. At

no time will construction materials and or excavation dirt be permitted on any streets or sidewalks. No rubbish or debris of any kind shall be placed or permitted to accumulate on any adjacent lot or common area space. No odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such lot, or any portion thereof, or activity thereon, unsightly, unsanitary, offensive, or detrimental to any other lot in the development.

Normal construction activities, including parking in connection with the building of improvements on a lot, shall not be considered a nuisance or be otherwise prohibited by this declaration; however, lots shall be kept in a neat and tidy condition during all construction periods. Trash and debris shall not be permitted to accumulate. Supplies of brick, lumber, block and other building materials will be piled only in such areas as approved by the Committee. In addition, any construction equipment and building materials stored or kept on any lot during construction of improvements may be kept only in areas approved by the Committee.

- (A) **Improper Maintenance of Lot.** All owners, without regard to whether or not any improvements have been constructed, shall be responsible for lot maintenance. In the event that: (a) any portion of any lot is so maintained as to present a public or private nuisance or substantially detract from the appearance or quality of the surrounding lots or other common areas; or (b) any portion of a lot is being used in a manner which violates this Declaration; or any owner fails to perform any of its obligations under this Declaration, the Committee shall have the right to cause such landscaping and maintenance to be performed. The cost of such maintenance or repair shall constitute a Maintenance Charge for which said owner's will be held liable under the Maintenance Charge Lien as set forth herein.
- (B) **Notice to Owner.** In the event that any Park Strip or Lot is not maintained or repaired as set forth by this Declaration, the Committee may, by Resolution, make a finding to such effect. This Resolution shall specify the particular condition, or conditions, in writing, that, unless corrected within (14) fourteen days of the date of such notice, the Committee shall have the right, without further notice or demand, to cause the conditions set forth in the Resolution to be corrected at said owner's cost. If at the expiration of said (14) fourteen days the required corrective action has not been taken, the Committee shall be authorized, and empowered, to cause such action to be taken. The cost thereof shall be added to, and become part of; the Maintenance Charge levied against said lot and shall be secured by the Maintenance Charge Lien. The Maintenance Charge shall only be levied against the Lot set forth in the Resolution adopted by the Committee. Written notice of the amount of the Maintenance Charge shall be due and payable in full within (5) five days of the date of such notice.
- (C) **Maintenance Charge Lien.** The Maintenance Charges, together with interest, costs, and reasonable attorney's fees, shall be secured by a lien (the Maintenance Charge Lien), on the lot to which such charges have been attributed. Applicable charges, costs, and expenses shall be continuing servitude and be a charge on the lot, shall attach from the date when the unpaid charge shall become due, and shall be a continuing lien upon the lot against which each such assessment is made until paid in full. Each such Maintenance Charge, together with interest costs and reasonable attorney's fees shall also be the personal obligation of the owner of such lot at the time the Maintenance Charge becomes due. The Maintenance Charge Lien may be foreclosed by the Committee in the same manner as a mortgage on real property upon the recording of a Notice of Delinquent Maintenance Charge as set forth herein; however, there shall be no right to redeem the lot from the purchaser of the lot at any foreclosure sale conducted pursuant to such action. The Committee shall be entitled to purchase the lot at any such foreclosure sale.
- (D) **Effect of Nonpayment.** Any Maintenance Charge not paid within (5) five days of the date written notice has been submitted shall be deemed delinquent and shall bear interest at the

rate of (18%) eighteen percent per annum. The Owner of the applicable lot shall be held liable for all costs, including attorney's fees, which may be incurred by the Committee in collecting the same. The Committee may also record a Maintenance Charge Delinquent notice. This notice shall be executed by a member of the Committee and will set forth the amount of the unpaid assessment, the name of the delinquent owner, and a description of the lot. The Committee may establish a fixed, reasonable fee for reimbursement of costs in recording such a Notice, processing of the delinquency, and recording a release of said lien. This fixed fee shall be treated as part of the Maintenance Charge of the Committee, secured by the Maintenance Charge Lien. The Committee may also file suit against the owner and/ or foreclose against said owner's lot. Commencement of an action against said owner shall not be deemed to be a waiver of the right to foreclose the lien granted herein unless, and until, all amounts due are paid in full. No owner may waive or otherwise avoid liability for the assessments provided herein by abandonment of his/ her lot.

- (E) Priority of Lien. The Maintenance Charge Lien shall be subordinate to any first mortgage lien, or first deed of trust, of which the beneficiary is a lender (or its successors or assigns) and shall also be subject to, and subordinate to, liens for taxes and other public charges. Except as provided above, the Maintenance Charge Lien shall be superior to any and all charges, liens, or encumbrances which may, in any manner, arise or be imposed upon the lot after the date and time of the recordation of the Notice of Maintenance Charge Lien. Sale or transfer of any lot shall not affect the Maintenance Lien.

Section 1.04 REPAIRS OR IMPROVEMENT. No improvements on any lot shall be permitted to fall into disrepair. Such improvements shall, at all times, be kept in good condition so as to not compromise the quality and appearance of the development.

SECTION 2. BUILDINGS

Section 2.01 EASEMENTS

- (A) All setbacks shall be in accordance with Pleasant Grove City's building requirements. Setbacks, to be verified at time of construction, include: (25 ft.) twenty-five foot front yard setbacks and (20 ft.) twenty foot combined side yard setbacks.
- (B) All easements, as shown on the recorded subdivision plat, must be kept free of building encroachment. These easements are part of the lot and shall be maintained by the lot owner.

Section 2.02 EXTERIOR

- (A) Only those exterior materials that will harmoniously support the objectives of the development may be used. Exterior materials must specifically include: (100%) one hundred percent stone, stucco, hardiplank or brick.
- (B) Exterior antennas of any kind are prohibited. Exposed metal flutes, vents, ventilators, or other rooftop protrusions shall be coated or painted with a neutral color that will blend harmoniously with the surrounding landscape and related improvements. No evaporative coolers connected to windows will be allowed.
- (C) All stacks and chimneys from fireplaces in which combustibles other than natural gases are burned shall be fitted with spark arrestors.
- (D) TV dishes will be permitted provided that they are placed, or screened, so as to be invisible to neighboring properties and streets. The Committee must approve the location of all TV

dishes.

- (E) Exterior lighting that is detached from the residence (sport court lighting) will not be allowed unless approved by the Committee. Landscape lighting and path lighting is permissible.

Section 2.03 SQUARE FOOTAGE. The ground floor area of the main structure, exclusive of garage or open porch area, shall not be less than (2000) two thousand square feet for a one-story dwelling. Two story structures, exclusive of garage or open porch area, shall not be less than (2800) two thousand eight hundred square feet above ground.

Section 2.04 GARAGES. One story-attached garages must accommodate at least (3) three vehicles.

Section 2.05 FENCES. Permissible materials for the construction of fences shall be wrought iron, brick, stone, or vinyl. No chain link or wood.

Section 2.06 TRADES/ACTIVITIES. No obnoxious or offensive trade or activity shall be conducted upon any lot, which may be an annoyance to the neighborhood. No clothes drying or storage of any such articles, which are considered unsightly in the opinion of the Committee, will be permitted.

The Committee may abate, or correct, any violation hereunder and the individual lot owner shall be responsible for covering all reasonable expenses incurred thereby. No liability shall attach to the Committee, or its representatives, in acting pursuant to the provision of these covenants and enforcing the terms thereof, including abatement of nuisances.

Section 2.07 SIGNS. No signs, posters, displays, or other advertising devices of any kind shall be erected, or maintained, on any lot without express written consent of the Committee. The restrictions of this paragraph shall not apply to any sign or notice (8) eight square feet or smaller, which states that the premise is for sale.

The Committee may cause all unauthorized signs to be removed. This section shall not apply to any signs used in connection with the original sale of lots and homes by Silver Creek Development Group, LLC.

SECTION 3. LAND USE

Section 3.01 LOT USAGE. Lots shall be used for residential purposes only. No building shall be erected, altered, placed, or permitted to remain on any lot other than a detached, single family dwelling with private garage.

Section 3.02 OUT BUILDINGS. It is understood that out buildings, such as swimming pool and tennis court dressing facilities, may be constructed on any lot provided they are in conformity with the requirements of this Declaration and are approved by the Committee. All pools must be fenced in strict compliance with local ordinances.

Section 3.03 PARKING OR STORAGE OF VEHICLES. No vehicles of any nature shall be parked or stored on any street located within the Subdivision. Licensed passenger vehicles (i.e. visitor vehicles) may be parked on the streets of the subdivision for brief periods of time (i.e. less than 24 hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited. No automobiles, trailers, boats, snowmobiles, motor homes, recreational vehicles, or any other type of vehicle shall be stored on driveways. Such vehicles that are properly licensed and in proper running condition may be stored on side lots if properly screened from view. The Committee must approve the acceptability of the screening structure. The front bumper of such vehicles cannot protrude past the home.

Section 3.04 GARBAGE AND REFUSE DISPOSAL. No lot shall be used as, or maintained as, a dumping ground for rubbish, trash, garbage, or other waste. Such materials shall be placed in covered containers that are screened from view of street traffic except during collection periods.

The burning of rubbish, leaves, or trash within the subdivision is prohibited. Each lot is to be kept free of weeds and other refuse by the lot owner. No unsightly materials or objects are to be stored on any lot in the view of the General Public.

Section 3.05 OIL/ MINERAL MINING. No oil drilling, oil development, operations, oil refining, quarrying or mining operations of any kind, including oil wells, tanks, tunnels, mineral excavations or shafts, shall be permitted in the subdivision.

SECTION 4. LANDSCAPING

Section 4.01 FOILAGE. Trees, lawns, shrubs, and other vegetation provided by the owner, both before and after construction of residence, shall be properly maintained and manicured. Failure to comply will result in replacement of neglected areas at the owner's expense and under the direction of the Committee.

Section 4.02 SOILS/ SLOPE. No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion, or change direction of drainage channels. All materials used to retain and contour the slope of any lot or improvement must conform to the natural elements and color of the subdivision and must be approved, in writing, by the Committee.

Section 4.03 TREES. Lot owners will be required to plant (3) three trees from the Evergreen Family of at least a (8 - 10ft) size in the front yard landscape area. An additional (2) two deciduous trees of at least a (2) two inch-caliber size will also be required in the front yard landscape area. (4) Four deciduous trees of at least a (2) two-inch caliber size in the back yard landscape area will be required. The Architectural Control Committee will approve specific tree families in harmony with the natural elements of the development. Recommended trees include Pine, Spruce, Fir, Aspen, Maple, Oak, Sycamore, and Honeylocust.

Section 4.04 DECORATIVE BOULDERS. Lot owners will be required to provide (4) four, (3 - 4ft) decorative landscape boulders throughout the front yard landscape area.

Section 4.05 PLANTS. Lot owners, with lot sizes less than 18,000 sq/ft, will be required to provide at least (20) twenty, (5 gallon) shrubs in the front yard landscape area. Lot owners, with lot sizes greater than 18,000 sq/ft, will be required to provide at least (30) thirty, (5 gallon) shrubs in the front yard landscape area.

Section 4.06 SPRINKLER SYSTEMS. All front and backyard sprinkler systems are expected to be fully automated and programmable. No exceptions.

Section 4.07 PLANTER STRIP LANDSCAPING. All homeowners will be expected to plant and maintain their individual planter strip areas (equal to the width of each individual lot). Lot owners will be required to plant the planter strip areas with grass from the "Blue Grass Family." To maintain continuity between individual lots, this grass must be purchased from "Emerald Turf" located in Payson. It is required that "Flowering Pear Trees" be planted in set increments throughout the planter strip area. These increments, as well as tree size and condition, must be approved, in writing, by the Landscaping Committee. It is required that an automated sprinkler system be installed in the planter strip area. These

improvements must be completed in conjunction with the front yard landscaping.

Section 4.08 LANDSCAPING COMPLETION DEADLINE. All front yard landscaping must be completed at the issuance of a final occupancy permit. Exceptions for weather and other extenuating circumstances may be granted by the HOA, in writing, for a period not to exceed 1 month. Backyard landscaping must be completed within 6 months.

SECTION 5. CREEK INTERFACE

Section 5.01 CREEK INTERFACE CONTROL. Creek Interface Control of Creek Side at Aspen Grove subdivision will be under the direction of the Creek Review Committee. The Creek Review Committee, hereinafter called the Committee, shall consist of three members; one representative of Silver Creek Development Group, one representative of Robert R. & Judy S. Schow Trust, and one representative from Pleasant Grove City's Parks Department. The initial Creek Review Committee will consist of the following: Geoffrey Granum, President of Silver Creek Development Group; Robert R. Schow, Trustee of Robert R. & Judy S. Schow Trust; and Deon Giles, Director, Pleasant Grove City. At such time when 100% of the creek lots have been sold the lot owners shall meet and elect a new committee member to replace Geoffrey Granum on the committee.

Section 5.02 CREEK INTERFACE. The Creek Interface Committee is organized to preserve the natural setting of the creek side environment. The Creek Interface is defined as the land, on any creek side lot, that is west of the sewer line easement. Also included in the Creek Interface is the land on the west side of Manila Creek which is currently in a conservation easement. This conservation easement guarantees that no structure of any kind may be placed or constructed on the ground in question (refer to attached exhibit). Permissible land usage will include, but may not be limited to: planting of shrubs, trees, grass and other ground covers, water features, pathways, and landscape lighting. Use of the Creek Interface for outbuildings, storage, and collection of any debris including grass clippings, shrubbery clippings, and fencing will be discouraged.

- (a) No construction and/or landscaping (outside of the permissible land usage specified above) shall occur on the Creek Interface until construction plans and specifications, a plot plan showing the location of any structures, and landscape plans have been approved by the Committee as to quality of workmanship and materials, harmony of external design, colors, and size with existing structures, and as to location with respect to topography and finish grade elevation.
- (b) The Committee's approval or disapproval as required in these covenants shall be in writing. The Committee shall be substantially governed by the building and zoning ordinances of Pleasant Grove City except where stricter provisions are deemed to be appropriate to maintain the integrity of the development and the overall objectives of the owner/developer or purchaser or the subject property or where specific provision of these covenants are applicable.

Section 5.03 DESIGN REVIEW DEADLINE. Upon receipt by the Committee of a written request for approval required by this agreement the Committee shall, within 7 days after receipt of such request for approval, either; (a) Approve the plans and specifications as submitted, or (b) Notify party making such request of any objections thereto (such objections to be specifically stated).

If objections are noted, the requesting party may, within 14 days thereafter, resubmit a request for approval rectifying any such objections to the committee. The Committee shall then have an additional 7 days after receipt of said revisions to approve or disapprove said changes. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval by the Committee.

SECTION 6. TERMS. These covenants are to run with the land permanently and shall be binding on all parties in ownership thereof.

SECTION 7. AMENDMENTS. These covenants may be amended upon written approval of at least (¾) three-fourths majority of the owners of lots within the subdivision. Each dwelling unit, upon 100% completion of the subdivision, shall be entitled to (1) one vote for each lot held within the development.

SECTION 8. SEVERABILITY. Invalidation of any of these covenants by judgment, or court order, shall in no way affect the other provisions.

SECTION 9. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

Section 9.01 MEMBERSHIP. Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

Section 9.02 VOTING RIGHTS. The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters:

- (a) **CLASS A.** Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Lot in which such member holds the interest required for such Class A membership.
- (b) **CLASS B.** Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member); provided, however, that such Class B membership shall lapse and become a nullity on the first to happen of the following events:
 - ninety (90) days following the date upon which the total outstanding class A
 - (i) memberships, other than those held by Declarant, equal the total number of class B votes to which Declarant is entitled pursuant to the provisions of Sections 9.02; or
 - on December 31, 2003; or
 - (ii) upon surrender of said Class B membership by Declarant in writing to the
 - (iii) Association.

Upon the lapse or surrender of the Class B membership, as provided in Section 9.02(b)(i) and (ii), Declarant shall be and thereafter remain a Class A member as to each and every Lot in which Declarant holds the interest otherwise required for Class A membership.

MUTIPLE OWNERSHIP INTERESTS. In the event there is more than one Owner of a
Section 9.03
 particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner or the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

Section 9.04 RECORDS OF OWNERSHIP. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the owners and Mortgagees of Lots.

Section 9.05 PLACE OF MEETING. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

Section 9.06 ANNUAL MEETINGS. Annual meetings of the membership of the Association shall be held in the month of September of each year beginning in the year 2002 on such day and time as is set forth in the notice therefore; provided, that after the first such annual meeting, a month other than September may be chosen, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association.

Section 9.07 SPECIAL MEETINGS. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

Section 9.08 NOTICE OF MEETINGS. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

Section 9.09 QUORUM. Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

Section 9.10 ADJOURNED MEETINGS. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 9.09.

Section 9.11 OFFICERS. The Association shall have a President, Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board and organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected.

(a) PRESIDENT. The president shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) VICE PRESIDENT. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall, from time to

time, be imposed on him by the Board.

(c) SECRETARY. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) TREASURER. The Treasurer shall have responsibility for association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the board.

Section 9.12 INITIAL COMPOSITION OF BOARD. Declarant alone shall have the right to select the initial Board of Trustees which may be composed of less than five (5) Trustees but not less than three (3), none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain with declarant until the expiration of three (3) years following the first conveyance of title to any Lot Owner or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 11.13, whichever event shall first occur.

Section 9.13 BOARD OF TRUSTEES: COMPOSITION, ELECTION, VACANCIES. The Association, through its Board of Trustees, is responsible for the maintenance of any Common areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the owners. Subject to the provisions of Section 9.12, the Board shall be composed of four (4) Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first meeting of Owners to elect a Board of Trustees' two (2) to a two-year term, two (2) to a one-year term. As Trustees' terms expire, new Trustees shall be elected for two-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace. As nearly as possible, the makeup of the Board should reflect the ratios existing between Owners of Townhouse Units and Owners of Twin home Units when compared to the total number of Units in the Development.

Section 9.14 INDEMNIFICATION OF BOARD. Each of the Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member or said Board.

Section 9.15 BOARD MEETINGS, QUORUM, and BOARD ACTION. The board of Trustees shall establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority or those Trustees attending a meeting at which a quorum is present shall be sufficient to constitute the action of the board. Action by consent shall require the unanimous consent of all current Trustees.

SECTION 10. DUTIES AND POWERS OF THE ASSOCIATION.

Section 10.01 DUTIES OF THE ASSOCIATION. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of

the Owners and the maintenance and improvement of the Development:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others, provided the same is free and clear of liens and encumbrances.
- (c) The association shall maintain, repair, replace and landscape the Common Areas.
- (d) In connection with its duties to maintain and repair Common Areas, the association will provide maintenance and repair upon the exterior surfaces and roofs of the entry bridge, fences and entry gate including but not limited to, painting, staining, replacing, and caring for roofs, gutters, downspouts, exterior surfaces, and other exterior improvements except glass surfaces.
- (e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
- (g) The Association may employ a responsible corporation, partnership, firm, person, or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days' written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the board deems appropriate.

Section 10.02 POWERS AND AUTHORITY OF THE ASSOCIATION. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under, and by virtue of, the Declaration or the Bylaws, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, the Bylaws and such rules and regulations.
- (b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the common areas and Lots (to the extent necessitated by the failure to do so of the Owners of such Lots) or in exercising any of its rights to

construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

- (i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;
- (ii) Such insurance policies or bonds as the board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;
- (iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;
- (iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
- (v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and
- (vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

Section 10.03 ASSOCIATION RULES. The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable rules and regulations governing, among other things: (a) the use of the common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Property; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of owners and their invitees within the Development.

Section 10.04 LIMITATION OF LIABILITY. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the board, any committee of the Board, or the Managing Agent.

SECTION 11 ASSESSMENTS

Section 11.01 PERSONAL OBLIGATION AND LIEN. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the association the annual, special assessments and Reimbursement Assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. 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 until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessment by waiver of his rights in the common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees. Which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee thereof.

Section 11.02 PURPOSE OF ASSESSMENTS. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common

Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of: taxes and insurance on the Common Areas and Units under any approved coverage; maintenance, repair, and improvement of the common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration or its Articles of Incorporation, Bylaws or rules and regulations.

Section 11.03 ANNUAL ASSESSMENTS. Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the cost of those items set forth in Section 11.02, above.

Section 11.04 ANNUAL BUDGET. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31. On or before December 15 of each fiscal year the Association shall prepare and furnish to each owner and operating budget for the upcoming fiscal year. The operation budget for the first fiscal year shall be prepared and furnished to each owner within thirty (30) days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

Section 11.05 NOTICE AND PAYMENT OF ANNUAL ASSESSMENTS. Except with respect to the fiscal period ending December 31, 2001, the Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year preceding the year for which such annual assessment is made. Each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which each assessment relates; provided, however, the annual assessments for the fiscal period ending December 31, 2001, shall be based upon such portion of the calendar year 2001 as follows the date of recordation of the Declaration and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Trustees, may determine. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions or the Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.

Section 11.06 INTIAL FEES. In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit, whether as a first time or subsequent Owner, the sum of \$100 which sum shall be in addition to any proration of assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary. The phrase "at the time of purchase of his Unit" shall be deemed to mean acquisition by an Owner of his Unit through deed or contract of purchase from a prior Owner, including Declarant.

Section 11.07 MAXIMUM ANNUALU ASSESSMENT. Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$1200.00 per Lot. From and after January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board, each calendar year thereafter, by not more than fifteen percent (15%) above the annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

Section 11.08 SPECIAL ASSESSMENTS. 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 annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment

shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

Section 11.09 UNIFORM RATE OF ASSESSMENT. All annual and special assessments authorized by Sections 11.03 and 11.08, respectively, shall be fixed at a uniform rate for all Lots, provided, however, that no assessments shall be due and payable until a Lot has been both fully improved with a Unit and occupied for the first time by the grantee thereof. During the period of time that Declarant holds the Class B membership in the Association, if assessed fees collected by the Association fail to adequately meet Association expenses attributable to Lots against which assessments have been made and collected, then Declarant shall pay the excess of such expenses up to the maximum monthly charge.

Section 11.10 QUORUM REQUIREMENTS. The quorum at any Association meeting required for any action authorized by Section 11.08, above, shall be as follows: At the first meeting called, the presence of the Owners or proxies entitled to cast sixty percent (60%) of the total votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 11.08, above) 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 11.11 REIMBURSEMENT ASSESSMENT ON SPECIFIC LOT. In addition to the annual assessment and any special assessment authorized pursuant to Section 11.08, above, the Board may levy at any time Reimbursement Assessments (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common areas made on the written request of the Owner of the Lot to be charge; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expenses for maintenance or repair for work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Reimbursement including all overhead and administrative costs, and all attorney's fees and costs, shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or operation obligations of the Association, and shall not give rise to a Reimbursement Assessment against the Lots benefited.

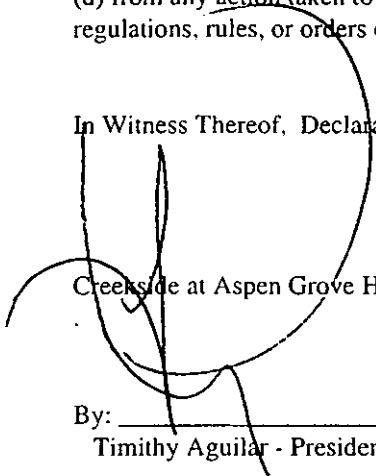
Section 11.12 CERTIFICATE REGARDING PAYMENT. Upon the request of any Owner or prospective purchaser or encumbrance of a Lot and upon the payment of a reasonable fee to the association to cover administrative costs, the association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

Section 11.13 EFFECT OF NONPAYMENT; REMEDIES. Any assessment (whether annual, special or Reimbursement Assessment) not received within ten (10) days of the date of which it becomes due shall be subject to a late charge equal to 10% thereof, which together with interest and costs of collection shall be constitute, and remain a continuing lien on the affected Lot. If any assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the association may bring an action against the Owner who is personally liable therefore or may foreclose its lien against the Lot (including any improvements thereon), or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

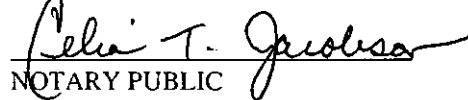
Section 11.14 SUBORDINATION OF LIEN TO FIRST MORTGAGES. The lien of the assessments provided herein shall be subordinated to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercises of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment installment thereafter becoming due.

Section 11.15 NO ABATEMENT. No diminution or abatement of any assessments under the Declaration shall be claimed by or allowed to any Owner for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to any Common Areas of the Development, or any part thereof; (c) the failure of any utility services, landscaping or, snow removal services to be provided to any part of the Development following occupancy by an Owner of a Unit in such part of the Development; or (d) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

In Witness Whereof, Declarant has executed this instrument the 10 of ~~December 2002~~ ^{Jan. 2006}


Creekside at Aspen Grove Home Owner's Association
By: _____
Timothy Aguilar - President

SUBSCRIBED AND SWORN to this
10 day of January, 2006.


NOTARY PUBLIC

