

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF
CHOLLA CREEK
PHASE I,
A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

THIS DECLARATION of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in Hurricane, Washington County, State of Utah, this 19 day of June, 1996, by CFH DEVELOPMENT COMPANY, L.C., a Utah Limited Liability Company, hereinafter called "Declarant"

RECITALS

A. Declarant owns that certain real property located in the City of Toquerville, Washington County, Utah, which is more particularly described below.

B. Declarant will convey the property subject to certain protective covenants, conditions, restrictions, reservations, liens, charges, and assessments as provided hereafter.

C. The Cholla Creek Homeowners Association, a Utah Non-Profit Corporation ("Association"), will be formed or has been formed to administer the terms of this Declaration. Owners of lots within the property described below shall be members of the Association.

D. It is the desire and intention of Declarant to convey certain common area to Association.

E. It is the desire and intention of Declarant to dedicate the streets as shown on the Official Plat Map to the Town of Toquerville.

F. Declarant intends to annex expandable land whose owners will become members of Cholla Creek Homeowners Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Declaration of Covenants, Conditions and Restrictions for the property shall provide as follows:

DECLARATION

Declarant declares that all of the property described below and all expandable property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, liens, and to the Official Plat Map recorded concurrently. This is for the purpose of protecting the value and desirability of said property. This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding upon all parties having any right, title, or interest in the described property, or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

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FOR: TERRA TITLE CO

The properties are located in Toquerville, Washington County, Utah, and are more particularly described as follows:

(see Exhibit A attached hereto which is incorporated by this reference)

The properties shall also include all expandable land as more particularly described as follows:

(see Exhibit B attached hereto which is incorporated by this reference)

ARTICLE I DEFINITIONS

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning.

Section 1. "Board of Trustees" shall mean and refer to the governing board of the Association.

Section 2. "Common Area" shall mean all real property (including the improvements thereto, if any) owned by the Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public (e.g., roads dedicated to use by the public). The Declarant may increase the common area by deeding additional property to the Association. Specifically exempted from common area are lots and dedicated public streets which are identified on the official plat of "Cholla Creek Phase I" and/or plats prepared pursuant to Article X, as recorded on the official records of the Washington County Recorder and as the same, may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration, or supplements to this Declaration which are to occur in conjunction with the expansion of the project. Common Area shall also include all land which the Association has an easement right in, if any.

Section 3. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any owner by a warranty deed or other document of title and shall also mean the execution an installment sales contract.

Section 4. "Declarant" shall mean, CFH Development Company, L.C., a Utah limited liability company, its successors and assigns, if such successors or assigns (1) by written agreement shall be given Declarant's rights and (2) acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the properties, and any amendments or supplements thereto, recorded in the office of the Recorder of Washington County, State of Utah.

Section 6. "Expandable Land" shall mean and refer to those portions of land set forth in Exhibit B attached hereto and made a

part hereof, which sets forth property upon which Declarant may expand the Project in one or more phases.

Section 7. "Home" shall mean and refer to any detached single-family residential dwelling constructed or placed on a lot within the Project.

Section 8. "Homeowners Association" or "Association" shall mean and refer to Cholla Creek Homeowners Association, its successors and assigns, a Utah non-profit corporation.

Section 9. "Lot" shall mean and refer to any plot of land shown upon any recorded plat map of the Properties and specifically excepting Common Area and areas dedicated to the use of the general public.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Mortgagee" shall mean and refer to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

Section 12. "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 a part of the Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

Section 13. "Plat" or "Plat Map" shall mean and refer to the Phase I portion of "Cholla Creek" and/or plats prepared pursuant to Article X, as recorded in the office of the County Recorder of Washington County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which are to occur in conjunction with the expansion of the Project as provided herein.

Section 14. "Properties," "Property" and "Project" shall mean and refer to that certain real property herein before described and such additions thereto as many hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with the expansion of the Project as provided herein.

Section 15. "Supplemental Declaration" shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of this Declaration to all or any portion within the expandable land and containing such complimentary or amended provisions for such additional land as are herein required by this Declaration.

Section 16. "Utilities" shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area. This Easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area. Fees charged by the Association shall in no way affect its status as a non-profit corporation.

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws and with the approval of two-thirds of each class of membership to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of the common area or any recreational facility for any period during which any assessment against his Lot remains unpaid; and for a period not exceeding sixty (60) days for any infraction of its published rules and regulations.

(d) With the approval of all the holders of first mortgage liens on lots, and owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be, agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless (1) all owners consent in writing to the dedication or sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes, agreeing to such dedication, sale, or transfer and the legislative body of the Town of Toquerville approves the Plat change that is necessitated by the dedication, sale, or transfer, at a public hearing held in accordance with Utah Code Ann. §10-9-801 et. seq. (1953, as amended).

(e) The right of the Association to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Members. The granting of an Easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) all owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes and the legislative body of the Town of Toquerville approves the Plat change necessitated by the abandonment, partition, subdivision, encumbrance, sale, or transfer at a public hearing held in accordance with Utah Code

Ann. §10-9-801 et. seq. (1953, as amended).

(f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(g) The right of the Declarant and of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.

(h) The right of the Association to make, publish and enforce reasonable rules pertaining to the regulation and use of all common areas by owners, guests, invitees and tenants of owners.

(i) The terms of this Declaration.

(j) The right of the Association with approval of two-thirds of each class of owners to enter into Agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration.

(k) The right of the Town of Toquerville and any other governmental entity or quasi-governmental body having jurisdiction over the property to access and to have the right of ingress and egress over open spaces and Common Areas contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

Section 2. Delegation of Use. Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on the property. All such use by family members, tenants, guests or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the member, shall create a debt to the Association. Debts owed to the Association as a result of Damage to the Common Area and facilities shall be an assessment charged to the Lot owner as provided in Article IV.

Section 3. Title to the Common Area. The Declarant covenants that it will convey fee simple title, subject to consent from lien holders having a security interest therein, the Common Area to the Association at the time of or prior to the conveyance of the first Lot. The Declarant further covenants and agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and closing of the last Lot within the Project as the same may be expanded and additional phases to be annexed from time to time.

In accepting the Deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in

good repair and condition at all times and to operate the Common Area at its own expense in accordance with high quality standards. Said conveyance of the Common Area shall also be subject to, (i) any state of facts an accurate survey may show, and (ii) Easements and rights-of-way of record or in equity.

Section 4. Rules. A Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the properties, and persons within the properties. These rules of the Association shall be available for inspection and copying by the members during reasonable hours.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. Classes of Membership. The Association shall have two classes of membership:

(a) Class A. Class A member(s) 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 owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at an Association meeting by any of such co-owners, whether in person or in proxy, shall be conclusively presumed to be both attributable to the Lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting by another co-owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) 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 a Class A membership on the happening of either of the following events, whichever occurs earlier:

1. When eighty percent (80%) of all lots owned in the project by Declarant are sold; or
2. On December 31, 2007.

(c) Changes in Voting Procedure. If Declarant shall exercise his option to add additional lots by platting additional phases, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, including that developer may regain his Class B voting status for all lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

**ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each subsequent 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: (a) annual assessments, (b) special assessments, (c) insurance assessments, if any, (d) additional assessments, (e) individual assessments, (f) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (g) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who is owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to a Lot owner's successor in Title unless expressly assumed by them.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of the members. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; management and supervision of the Common Areas; repair and maintenance of the common areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

Section 3. Basis and Maximum of Annual Assessments. Until January 1, 1997, the base annual assessment shall be \$180.00 per lot.

(a) From and after January 1, 1997, the maximum annual assessment may be increased by the Board of Trustees each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1997, the maximum annual assessment may be increased more than fifteen percent (15%) only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.

(c) The Board of Trustees shall fix the annual assessment at an amount not in excess of the maximum.

(d) Each lot which has been conveyed to an owner shall be assessed according to the schedule set forth above. For the purpose of assessment, the term "owner" shall exclude lots owned by Declarant, who shall pay no assessment unless it constructs a home on a lot and it is occupied for a permanent residence, provided

that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association as provided in Article III passes to lot owners. Subsidization shall be defined as "the payment of a reasonable fee to meet the needs of the Association for ordinary and necessary maintenance expenses upon the Common Areas, but which amount shall not include the payment of reserves for capital replacement." In no event shall the subsidy required of the Declarant hereunder exceed the monthly assessment that otherwise would be chargeable under this Section 3.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association with approval of two-third (2/3) of each class of members may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration.

Section 5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of utilities in maintaining, repairing or replacing utility lines and facilities thereon.

Section 6. Individual Assessments. Each owner of a lot shall also be assessed from time to time for (i) all fines, penalties and damages to which its owner is subject as a result of a violation of the terms of this Declaration and rules and regulations prescribed by the Board for the use of the Common Area, (ii) for damages caused to the Common Area by the negligence or willful misconduct of such owner, and (iii) for any other liability, indebtedness or other obligation of the owner to the Association arising under the provision of this Declaration. Notice of all Individual Assessments shall be given by the Board to the Owner of each lot assessed within fifteen (15) days of the adoption of the Individual Assessment. Individual Assessments shall be due and payable within thirty (30) days following written notice thereof by the Board.

Section 7. Notice and Quorum for any Action Authorized Under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Rate of Assessment. Annual, special and capital

assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

Section 9. Regular Assessments: Due Dates. The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees on either a quarterly or annual basis, or some combination thereof.

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments not paid within thirty (30) days after the due date, thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lower rate as the Trustees shall determine appropriate) until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

(a) Remedies. For delinquent assessments the Association shall be entitled to (1) bring an action at law against the owner, personally obligated to pay such delinquent assessment without waiving the lien or assessment or (2) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of selling Deeds of Trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (3) withhold, interrupt, or terminate any or all services performed by the Association in behalf of the delinquent member.

(b) Additional Remedies. In addition to the remedies stated above, Trustees may assess a late fee for each delinquent installment which shall not exceed twenty percent (20%) of the installment.

(c) Costs and Attorneys Fees. The costs and expenses of any judicial action, arbitration, sale or foreclosure, preparation of Notice of Lien, and any other costs and expenses directly or indirectly related to the delinquent payment, including reasonable attorneys fees, shall be an assessment charged to the Lot owner.

(d) Right to Bring Action. Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of

such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or trust deed lien on real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, sell and convey the same.

Section 11. Non-use and Abandonment. No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Lot.

Section 12. Subordination of the Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. Any first mortgagee, who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the lot's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

(a) All Properties dedicated to and accepted by any local public authority;

(b) The Common Area.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V SEPARATION FENCES

Section 1. Separation Fences. Declarant may construct, at its

discretion, landscaping fences which co border the Project and separate same from other developments and public right-of-ways. Such fences shall be deemed separation fences and shall not be a part of the Common Area. Separation fences may also include yard fences constructed by lot owners. It is the intent of the Declarant that all such separation fences shall be deemed to be owned and to be maintained by the individual Lot owner. Separation fences shall also include fences constructed by Declarant for the purpose of separating Common Areas from Lots.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, general rules of law regarding separation fences and liability for property damage due to negligence or acts of omissions shall apply thereto.

Section 3. Repair and Maintenance. The Lot owner shall be responsible for the cost of repair and maintenance of separation fences. No changes or alterations to separation fences shall be made by lot owners without approval of the Architectural Control Committee. The Association may repair or maintain separation fences should the Lot owner fail to do so at the Lot owner's expense and all costs reasonably incurred shall become a lien upon such owner's lot and shall be added to the assessment as provided in Article IV.

Section 4. Right to Contribution Runs with Land. The right of any owner or the Association to contribution from any other owner and/or the Association under this Article shall be appurtenant to the land and shall pass to such successors in title or assignees of the Association.

ARTICLE VI ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

Section 1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to insure that all exteriors of homes and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of owners. If such a committee is not appointed, the board itself shall perform the duties required of the committee. The Declarant shall have the right to appoint members of the Architectural Control Committee until the happening of either of the following events, whichever occurs earlier: (1) when ninety percent (90%) of the lots owned in the project by the Declarant are sold, or (2) on December 31, 2007.

(a) Submission to Committee. No home, accessory or addition to a home, landscaping, or other improvement of a lot shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any home shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

(b) Meetings of Committee. The Architectural Committee

shall meet from time to time as may be necessary to perform its duties hereunder. Any action taken by the Architectural Committee shall require the written approval of a majority of its members.

(c) Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on lots within the property conform to and harmonize with existing surroundings and structures. The committee shall have the right to refuse to approve any such plans or specifications and shall have the right in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building or other structure so planned and the outlook from adjacent or neighboring property. The board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

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

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

(f) Disclaimer of Liability. Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any owner for any damage, loss, or prejudice suffered or claimed on account of:

- (1) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;
- (2) The development or manner of development of any of the property; or
- (3) Any engineering or other defect in approved plans and specifications.

(g) Non-Waiver. The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

(h) Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas and which occurs at any time during the three (3) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah. Declarant shall further have the right to designate the location and design of any common area amenities, however Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 2. Building Restrictions.

(a) Building Type and Size: All lots shall be used only for single family residential purposes, and no professional or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident. The building or structure permitted to be erected, placed or permitted to be located on any lot within the project shall be a detached single family dwelling of at least sixteen hundred (1600) square feet of living area on the ground level floor. Each dwelling shall have an attached two (2) car garage. Additional carports, other outdoor or partially enclosed parking facilities and outbuildings shall also be permitted. All structures are to be constructed in accordance with the zoning and building ordinances of the Town of Toquerville. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

(b) Building Location: All buildings shall be located on all lots so as not to be in violation of Toquerville town ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building, including eaves or steps, encroach upon any other lot. The placement of any building on a lot must be approved by the Architectural Control Committee.

(c) Driveways and Walkways: Driveways and walkways shall be constructed out of materials commonly used for such purposes as approved by the Architectural Control Committee. There shall be sufficient driveway parking of not less than two (2) vehicles per lot.

(d) Easements: Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. In addition to the easements shown upon the recorded plat, an easement for installation and maintenance of utilities is reserved around a fourteen (14) foot perimeter from the boundary line of each Lot as more fully set forth in Article VIII Section 2 of this Declaration. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change

the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(e) Yard Fences: Yard fences will be allowed in the front, side and rear yard areas. Yard fences shall be two, three or four rail polyethylene covered wood material or Poly Vinyl Chloride (PVC), and shall substantially conform in style and construction to the fences of the Project, and shall be approved by the Architectural Control Committee. No chain link, wire, or wood fences, except polyethylene covered wood material, will be permitted.

General rules of law and written agreements shall apply to yard walls and fences in relation to maintenance, repair, and liability for negligent acts and omissions.

(f) Temporary and Other Structures: No structure of a temporary nature; trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of said lots. It being the intention hereof that all dwellings and other buildings to be erected on said lots, or within the Project shall be new construction of good quality workmanship and materials.

(g) Landscaping: Within six (6) months after the completion of the construction of any home upon the property, the homeowner must have substantially completed the front and side yard landscaping part or portion of the property, including landscaping of slopes and terraces. Within one (1) year from the completion of construction of the residence upon a lot, the owner shall complete the remainder of the landscaping of the lot. Landscaping shall include, but not be limited to, the planting of lawn, grass, trees, or other appropriate ground cover or shrubbery. No poisonous or noxious plants or vegetation shall be allowed, including, but not limited to plants such as oleanders. The planting of trees, shrubs and grass are encouraged however, landscaping using a desert or arid motif is permitted, subject to compliance with the restrictions and conditions contained herein. All landscaping shall be maintained at a reasonable standard compatible with other homes in the Project. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. All landscaping must be approved by the Architectural Control Committee and shall be properly cared for to remain healthy and alive.

(h) Architectural Controls: No building shall be erected, placed, or altered on any lot until the construction plans and specifications and plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external

design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved.

(j) Construction Materials: In order to promote a harmonious community development and protect the character of the neighborhood, the Architectural Control Committee may determine construction material standards and guidelines applicable to the property including but not limited to the following:

1. Exterior Materials. Exterior construction materials, will be limited to stone, stone veneer, brick, brick veneer, stucco, metal siding, vinyl siding or other materials approved for use by the Architectural Control Committee. The following restrictions shall apply to all exterior construction materials: (1) stone or stone veneer shall not be used on more than 50% of the exposed front exterior surfaces; (2) metal or vinyl siding shall not be used on more than 50% of the exposed front exterior surface; (3) all exterior material shall be new material, with the exception of brick or brick veneer which may be constructed of used brick; (4) No exposed wood construction materials shall be allowed, with the exception of wood accents, soffits, fascia, and trim which shall be painted, varnished and/or stained and shall not constitute more than 10% of the exposed exterior surface of the structure; (5) the sides of any structure shall be constructed of the same materials and match architecturally the exposed front exterior surface of the structure; (6) structures constructed with more than 80% of the exterior surface comprising stucco or stucco-like material must be approved by the Architectural Control Committee, said approval shall be based on the appearance and style of the structure, reserving to the Architectural Control Committee the right to suggest modifications to enhance the appearance of the structure.

2. Roofing Material. Roofing material shall be limited to tile, dimensional asphalt shingles of a quality nature, or such materials of a quality nature approved for use by the Architectural Control Committee.

(k) Architectural Restrictions. The following architectural restrictions shall apply to all dwellings built on all lots: (1) the front exterior face of each dwelling shall be broken up with a variation of at least three feet; (2) no flat roofs are allowed, except that designs incorporating a "Southwest" design scheme may have flat roofs with parapet walls otherwise all roof surfaces shall have a minimum slope of 5/12. (3) all eaves shall be at least eighteen inches (18").

(l) Maintenance of Lot During Construction: Contractors or sub-contractors and owners/builders are required to clean

up the site daily to maintain a clean work site during construction or are required to cleanup daily.

(m) Lateral and Subjacent Support and Drainage: An owner's activities which effect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow or drainage channels obstruct or retard the flow of water through drainage channels.

(n) Dome Structures. No dome structures of any type are allowed.

Section 3. Damages. Any damage inflicted on existing improvements such as curbs, streets, concrete sidewalks, by the owner or their guests, assigned, agents or independent contractors of any particular lot must be repaired as soon as possible after such damage is discovered, and expense of such repair shall be borne by the owner. Damages not repaired by the owner shall be an assessment to the lot as provided in Article IV.

ARTICLE VII OPERATION AND MAINTENANCE

Section 1. Maintenance of Common Areas. The Common Areas shall be maintained by the Association so as not to detract from the appearance of the property and so as not to affect adversely the value or use of any Lot.

Section 2. Maintenance of Right of Way. The Declarant shall landscape the public right-of-way located between sidewalk and curb, if there is any such area. The Association shall maintain the landscaping in a good and orderly manner. The public right-of-way is not Common Area of the Project.

Section 3. Maintenance By Owner. Each owner shall be solely responsible for maintenance of his Lot and the exterior of his home. In the event any owner shall fail to perform this maintenance in a manner consistent with the terms of this Declaration, the Trustees shall have the right enter upon such Lot to have maintenance performed on the Lot and exterior of the home. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 4. Utilities. The Association shall not pay for the monthly cable TV service, sewer, and garbage pick-up for each Lot. Each lot owner shall pay for all utility services which are separately billed or metered to individual lots by the Town of Toquerville or other party furnishing such service.

Section 5. Indemnification by Declarant. The Declarant, by this instrument and recording of same, agrees to indemnify the Association against loss or damage arising or accruing on the

Common Areas or to the Common Area property as a result of the construction activities of the Declarant or his agents.

Section 6. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, or its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any Lot at reasonable hours.

Section 7. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association in relation to the Common Areas. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days written notice thereof. Any such contract and any other contract with a third person, wherein the third person is to furnish goods or services for any Common Area or the Association shall be limited to a duration of one (1) year; provided, however, that contracts may be renewable for successive one (1) year periods with the approval of the majority of the Board.

ARTICLE VIII EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the Town of Toquerville, Utah Power and Light, Ash Creek Special Services, cable television companies, Mountain Fuel Supply Company, telephone companies, and other governmental or quasi-governmental entities, their successors and assigns, a blanket easement upon, across, over and under all of the Common Area property for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, or repair of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements.

An easement is further granted to all police, fire protection,

ambulance, trash collection and all similar persons to enter upon Common Areas in the performance of their duties. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

There is hereby granted and conveyed to the Town of Toquerville, Utah Power and Light, Ash Creek Special Services, cable television companies, Mountain Fuel Supply Company, telephone companies, and other governmental or quasi-governmental entities, their successors and assigns, around a fourteen (14) foot perimeter from the boundary line of each Lot upon, across, over and under all of the fourteen (14) perimeter from the boundary line of each Lot for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, or repair of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. All easement area of each lot shall be maintained continuously by each lot owner.

Section 3. Easements for Ingress and Egress. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the home, yard and landscape area, or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Area established or hereafter established on the Property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional subdivisions.

**ARTICLE IX
INSURANCE**

SECTION 1. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR ANY LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN THE HOME.

Section 2. Assessments. Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed by Article IV.

Section 3. Required Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Multi-peril Coverage. A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.

(b) Broad-form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Area. Limits of the liability under such coverage shall not be less than \$ 1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

(c) Fidelity Coverage. A fidelity policy or policies to protect against dishonest acts on the part of a Trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to all first mortgagees

of Lots.

Section 4. Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) Approval of Policies. All policies shall be written by a reputable company approved by the Board of Trustees.

(b) Contribution. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees.

(c) Flood Insurance. In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage.

(d) Premiums Maintained in the Name of the Association as Trustee. Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the home owners.

(e) Review of Insurance Policy. The Board of Trustees shall periodically, and whenever demand is made by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions to any mortgagee or any Lot owner who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Trustees shall be available for inspection by the Owners.

(f) Rebuilding After Damage or Destruction. In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Trustees shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Trustees. The Board of Trustees shall advertise for bid bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Trustees shall levy a special assessment against all Owners in such proportions as the Board of Trustees deems fair and equitable in light of the damage sustained.

**ARTICLE X
ANNEXATION OF ADDITIONAL PROPERTIES**

Section 1. Annexation by Declarant. Declarant reserves the right at its sole discretion and without the consent of Class A members, to expand the Properties to include additional property more particularly described in Exhibit B attached hereto and incorporated herein for a period terminating December 31, 2007. In the event the Declarant, within the time period set forth in this Article, files other plat(s) creating additional subdivisions in the afore-described property under the name and style of "Cholla Creek," a Planned Unit Development, and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The terms, covenants and conditions contained herein run not only to, with and from the property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

Section 2. Limitations on Annexation. Developer's right to annex said land to the property shall be subject to the following limitations:

(a) The annexed land must be a part of the land described on Exhibit B and attached hereto.

(b) Any additional subdivision annexed hereto by the Declarant shall be comprised exclusively of lots for detached residential single-family dwellings. The Declarant shall have the sole discretion to develop the Common Area in said addition(s) and to include any facilities or amenities thereon that Declarant deems necessary.

(c) If additional subdivisions are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition(s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in "Cholla Creek", PHASE I or otherwise. The Common Area in any such additional subdivision(s) as set forth therein shall be deeded by the Declarant to the Association, prior to the conveyance of the first Lot on said plat, and the Association must accept the deed to said Common Area.

**ARTICLE XI
USE RESTRICTIONS**

Section 1. Residential Use. No owner shall occupy or use his lot, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests. No commercial activities of any kind whatsoever shall be conducted in any residence or on any portion of the lot.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain during the period of construction and sale of said Lots, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, and sales office.

Section 4. Livestock and Household Pets Permitted. Animals, livestock or poultry may be raised, bred, or kept on any Lot so long as the keeping thereof conforms with applicable governmental ordinances. The Board of Trustees may set reasonable rules and regulations including limiting the number of animals, livestock or poultry allowed to be kept on a Lot.

Section 5. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees.

Section 6. Motorized Vehicles in Common Areas. No motorized vehicles shall be allowed to operate within the creekside common area (except for maintenance vehicles) so as to preserve the ecological habitat.

Section 7. Alteration of Common Area. Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees.

Section 8. Leases. Any lease agreement between a home owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association, the Bylaws of said Association, and all rules enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents and rules shall be a default under the lease. Furthermore, all leases shall be in writing and a copy of each signed lease shall be left in the office of the Association by the homeowner.

Section 9. Recreational Vehicles. In no event shall any recreational vehicle, camper, trailer, tent trailer, or motor home be used for a permanent residence (occasional overnight accommodations by the lot owner's guests is permitted subject to rules and regulations as determined by the Board of Trustees) in and on the Common Areas of the project or on any Lot.

Section 10. Nuisances. No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Project.

Section 11. Violation Constitutes a Nuisance. Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated

by the Declarant or affected property owners and such remedy shall be deemed to be cumulative and not exclusive.

Section 12. Rooftop Appliances. No television, radio, satellite dishes, or other external antennas or rooftop appliance of any type or style shall be erected, placed, or maintained upon any of the property, or in front of any building constructed thereon without the prior approval of the Architectural Control Committee and said Committee shall have the right to remove or cause removal of the antennas erected, placed, or maintained without said prior approval.

Section 13. Signs. No billboard or sign of any character shall be erected, posted, painted or displayed upon or about any lot, except a lot owner can place a for sale sign not larger than two (2) feet by three (3) feet on his Lot. This section shall not apply to Declarant so long as Declarant owns one or more lots in the Project, including additional phases as may be annexed into the Project from time to time.

Section 14. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Water Supply. No individual water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department and the Architectural Control Committee.

Section 16. Safe Condition. Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

Section 17. Outside Lighting. Any light used to illuminate garage, patios, parking areas, driveways, walkways, or for any other purpose shall be so arranged to reflect light away from adjacent residences and away from the vision of passing motorists.

Section 18. Inoperable Motor Vehicles. No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, lot, part or portion of the property, except in an approved, enclosed garage.

Section 19. Animal Refuse. All manure, animal waste, feed, bedding materials and other similar items shall be kept in a manner to discourage odor, flies and vermin. Animal manure deposited upon the common areas shall be removed by the owner of the animal.

Section 20. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

**ARTICLE XIII
GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any Covenant, Conditions or Restriction included herein is inconsistent or in conflict with restrictions set forth in the subdivision building, zoning or other ordinances of the Town of Toquerville, the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the ordinances of the Town of Toquerville, owners shall be subject to the enforcement of the terms of this Declaration.

Section 2. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date the Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as

they may be amended from time to time, the provisions of this Declaration shall be controlling.

**ARTICLE XIII
AMENDMENT**

Section 1. Declarant's Right to Amend. Until all portions of "Cholla Creek" Phase I land are developed, or until the right to enlarge the project through the addition of tracts or subdivisions terminates, whichever event last occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and or the Plat as may be reasonably necessary or desirable: (i) to adjust the boundaries of the Lots; (ii) to more accurately express the intent of any provisions of this Declaration in the light of then existing circumstances or information; (iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Restrictive Covenants; (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project; or (v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

Section 2. Lot Owners Right to Amend. Subject to Section 1, this may be amended during the first twenty (20) year period by any instrument signed by not less than seventy percent (70%) of the lot owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the lot owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

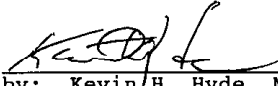
**ARTICLE XIV
INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE**

The address of the initial registered office of the Association shall be 382 South 200 West, 103-5, Hurricane, Utah 84737. The name of the registered agent at that address is Kevin F. Hyde.

IN WITNESS HEREOF, the undersigned, being the Declarant herein, has executed this document on the day and year first above written.

**CFH DEVELOPMENT COMPANY, L.C., a
Utah Limited Liability Company**


by: Cyril "Cid" Crandall, Member

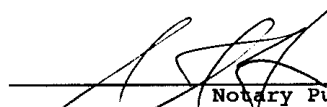

by: Kevin H. Hyde, Member

STATE OF UTAH },
 }ss.
County of Washington. }

On the 19 day of June 1996, before me Cyril "Cid" Crandall and Kevin H. Hyde, signers of the within and foregoing instrument, who being by me duly sworn, did say that they are the members of CFH DEVELOPMENT COMPANY, L.C., a Utah Limited Liability Company, and that said instrument was signed in behalf of said Utah Limited Liability Company in their authorized capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of June, 1996.





Notary Public
My Commission Expires: 2-25-98
Residing at: Hurricane, Utah

Exhibit "A"

Beginning at a point North 0°18'39" West along the Section Line, 754.03 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, said point being in the thread of stream of LaVerkin Creek; thence along the thread of said creek, thru the following courses North 32°11'01" East 51.05 feet; North 16°11'43" East 195.85 feet; North 10°57'04" East 441.68 feet; North 18°09'11" East 296.60 feet; thence departing the thread of said creek and running North 89°13'22" West 263.31 feet to a point on the East boundary line of said Section 11; thence North 89°13'22" West 480.09 feet; thence South 49°00'00" West 577.53 feet; thence South 26°25'37" East 560.59 feet; thence South 66°50'45" West 325.04 feet; thence North 26°25'37" West 542.09 feet; thence South 63°35'02" West 200.00 feet; thence South 66°32'43" West 350.40 feet; thence South 31°42'21" East 438.04 feet; thence South 3°47'59" East 270.99 feet; thence South 16°58'41" West 99.02 feet; thence South 58°36'52" West 114.99 feet; thence North 33°20'12" West 8.50 feet; thence South 60°51'00" West 27.93 feet; thence South 87°22'00" West 29.04 feet; thence North 77°14'30" West 41.45 feet; thence South 80°02'00" West 26.47 feet; thence South 58°19'00" West 107.08 feet; thence South 52°47'00" West 16.50 feet; thence South 32°41'30" West 125.00 feet; thence South 0°02'15" West 86.19 feet; to a point on the South boundary line of said Section 11; thence South 89°37'21" West along the Section line, 162.87 feet to a point on a 869.00 foot radius curve with radius line bearing South 85°46'21" West, said curve being on the Easterly right-of-way-line of Highway U-17; thence Southerly, to the right, along the arc of said curve and right-of-way line, 139.07 feet, thru a central angle of 9°10'09"; thence South 4°56'30" West along the said right-of-way line 433.50 feet to the beginning of a 1050.00 foot radius curve; thence Southwesterly, to the right, along the arc of said curve and right-of-way line 387.29 feet; thru a central angle of 21°08'00"; thence South 26°04'30" West along the said right-of-way line, 273.90 feet to the beginning of a 587.20 foot radius curve; thence Southwesterly, to the left, along the arc of said curve and right-of-way line 113.73 feet, thru a central angle of 11°05'49"; thence departing said right-of-way line and running thence South 89°40'02" East 217.91 feet; thence South 0°19'57" West 301.15 feet to a point on the thread of stream of LaVerkin Creek; thence following the thread of stream thru the following courses: South 77°28'35" East 62.48 feet; North 88°36'16" East 91.79 feet; North 65°58'31" East 70.20 feet; North 48°14'48" East 106.58 feet; North 32°22'51" East 243.60 feet; North 39°07'23" East 265.19 feet; North 51°00'19" East 165.59 feet; North 71°33'51" East 153.66 feet; North 50°03'23" East 47.94 feet; North 22°46'40" East 222.96 feet; North 13°09'41" East 109.18 feet; North 52°42'00" West 237.57 feet; North 45°25'16" West 42.80 feet; North 22°28'29" West 70.14 feet; North 2°23'16" West 210.05 feet; North 14°52'55" East 162.80 feet; North 24°31'52" East 86.51 feet; North 29°50'43" East 137.34 feet; North 41°50'45" East 85.50 feet; North 54°30'58" East 95.58 feet; North 63°53'32" East 178.77 feet; North 72°55'39" East 190.19 feet; North 66°49'44" East 330.39 feet; North 62°23'02" East 144.87 feet; North 57°00'00" East 14.57 feet; North 34°00'00" East 230.17 feet; to a point on the East line of Section 11; thence South 0°18'39" East, along the Section line, 85.55 feet to the point of beginning.

Minus the following described parcel: Beginning at the Southeast Corner of Lot 31 Cholla Creek PUD Phase 1, said point being North 63°42'21" West 924.88 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence North 26°25'37" West 268.47 feet; thence North 66°50'45" East 325.04 feet; thence South 26°25'37" East 268.47 feet; thence South 66°50'45" West 325.04 feet to the point of beginning.

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Exhibit "B"

Parcel (1):

All of Lot 1 of JAMES JACKSON'S SURVEY, of the Southeast Quarter of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, as shown on the Official Map of said lands on file in the Office of the County Recorder of Washington County, State of Utah.

LESS and EXCEPTING THEREFROM that portion described as follows:

Beginning at the Northeast Corner of said Lot 1, and running thence South 4 rods; thence South 34° West 14 rods; thence South 57° West 14 rods; thence South 71°30' West 14 rods; thence North 4 rods; thence North 71°30' East 14 rods; thence North 57° East 14 rods; thence North 34° East 14 rods to the point of beginning. (T-106)

Parcel (2):

All of Lot 2, in JAMES JACKSON'S SURVEY, of the Southeast Quarter of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, as shown on the Official Map of said lands on file in the Office of the County Recorder of Washington County, State of Utah.

Less and excepting therefrom any portion lying within the following described tract of land:

Beginning at a point North 44°36'51" West 755.08 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence South 66°50'45" West 325.04 feet; thence North 26°25'37" West 1031.21 feet; thence South 82°31'11" East 191.18 feet; thence South 59°40'57" East 79.54 feet; thence North 73°31'43" East 60.52 feet; thence North 57°31'27" East 30.60 feet; thence North 34°39'36" East 36.78 feet; thence South 26°25'37" East 887.15 feet to place of beginning. Basis of bearing is North 89°37'21" East along the South line of Section 11, in accordance with the Area Reference Plat of said Section. (BRUGGEMAN property as conveyed in Book 300, at Pages 61-65 of Official Records)

Parcel (3):

All of Lot 3, in JAMES JACKSON'S SURVEY, of the Southeast Quarter of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, as shown on the Official Map of said lands on file in the Office of the County Recorder of Washington County, State of Utah.

LESS AND EXCEPTING THEREFROM:

Beginning at a point North 44°36'51" West 755.08 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence South 66°50'45" West 325.04 feet; thence North 26°25'37" West 1031.21 feet; thence South 82°31'11" East 191.18 feet; thence South 59°40'57" East 79.54 feet; thence North 73°31'43" East 60.52 feet; thence North 57°31'27" East 30.60 feet; thence North 34°39'36" East 36.78 feet; thence South 26°25'37" East 887.15 feet to place of beginning. Basis of bearing is North 89°37'21" East along the South line of Section 11, in accordance with the Area Reference Plat of said Section. (BRUGGEMAN property as conveyed in Book 300, at Pages 61-65 of Official Records)

ALSO LESS AND EXCEPTING therefrom any portion lying North of the BRUGGEMAN Property identified above.

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ALSO LESS AND EXCEPTING therefrom the Steve and Cindy Gilbert Land in the Northwest Portion of said Lot 3 as conveyed in Book 646, at page 339 of Official Records

Parcel (4):

All of Lot 4, in JAMES JACKSON'S SURVEY, of the Southeast Quarter of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, as shown on the Official Map of said lands on file in the Office of the County Recorder of Washington County, State of Utah.

Excepting therefrom any portion lying within the following described tract of land:

Beginning at a point East 935.24 feet along the Section line and North 86.19 feet from the South 1/4 Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence North 38°46' West 229.93 feet; thence North 37°33' West 7.57 feet; thence North 72°05'30" East 380.40 feet; thence South 33°01'10" East 143.67 feet; thence South 60°51' West 27.93 feet; thence South 87°22' West 29.04 feet; thence North 77°14'30" West 41.45 feet; thence South 80°02' West 26.47 feet; thence South 58°19' West 107.08 feet; thence South 52°47' West 16.50 feet; thence South 32°41'30" West 125.00 feet to the point of beginning.

Also excepting therefrom any portion lying within the bounds of the Terry Reynolds and Joyce Reynolds (T-115-A) property.

Parcel (5):

The North 1/2 of the Northeast 1/4 of Section 14, Township 41 South, Range 13 West, Salt Lake Base and Meridian, lying East of State Highway U-17.

Parcel (6):

Beginning at a point 1320 feet South and 1950 feet West from the Northeast Corner of Section 14, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence South 514 feet; thence South 39°14" East 996 feet; thence North 1285 feet; thence West 630 feet to the point of beginning

Parcel (7):

Beginning at a point described as being South 1320 feet and West 900 feet from the Northeast Corner of Section 14, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence South 36°25' West 300 feet; thence North 86°36' West 242.5 feet; thence North 227 feet; thence East 421 feet to the point of beginning.

Parcel (8):

The Southwest 1/4 of the Southwest 1/4 of Section 12, Township 41 South, Range 13 West, Salt Lake Base and Meridian.

and

Beginning at the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section 12, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence South 89°13'22" East 453.40 feet along the 1/16 Section Line; thence North 0°18'39" West 375.0 feet; thence North 89°13'22" West 453.40 feet; thence South 0°18'39" East 375.00 feet along the Section line to the point of beginning.

Parcel (9):

All of the North 1/2 of the Northwest 1/4 of Section 13, Township 41 South, Range 13 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING from Parcels 1 to 9 above, all that property identified in Exhibit "A", and described as:

Beginning at a point North 0°18'39" West along the Section Line, 754.03 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, said point being in the thread of stream of LaVerkin Creek; thence along the thread of said creek, thru the following courses North 32°11'01" East 51.05 feet; North 16°11'43" East 195.85 feet; North 10°57'04" East 441.68 feet; North 18°09'11" East 296.60 feet; thence departing the thread of said creek and running North 89°13'22" West 263.31 feet to a point on the East boundary line of said Section 11; thence North 89°13'22" West 480.09 feet; thence South 49°00'00" West 577.53 feet; thence South 26°25'37" East 560.59 feet; thence South 66°50'45" West 325.04 feet; thence North 26°25'37" West 542.09 feet; thence South 63°35'02" West 200.00 feet; thence South 66°32'43" West 350.40 feet; thence South 31°42'21" East 438.04 feet; thence South 3°47'59" East 270.99 feet; thence South 16°58'41" West 99.02 feet; thence South 58°36'52" West 114.99 feet; thence North 33°20'12" West 8.50 feet; thence South 60°51'00" West 27.93 feet; thence South 87°22'00" West 29.04 feet; thence North 77°14'30" West 41.45 feet; thence South 80°02'00" West 26.47 feet; thence South 58°19'00" West 107.08 feet; thence South 52°47'00" West 16.50 feet; thence South 32°41'30" West 125.00 feet; thence South 0°02'15" West 86.19 feet; to a point on the South boundary line of said Section 11; thence South 89°37'21" West along the Section line, 162.87 feet to a point on a 869.00 foot radius curve with radius line bearing South 85°46'21" West, said curve being on the Easterly right-of-way-line of Highway U-17; thence Southerly, to the right, along the arc of said curve and right-of-way line, 139.07 feet, thru a central angle of 9°10'09"; thence South 4°56'30" West along the said right-of-way line 433.50 feet to the beginning of a 1050.00 foot radius curve; thence Southwesterly, to the right, along the arc of said curve and right-of-way 387.29 feet; thru a central angle of 21°08'00"; thence South 26°04'30" West along the said right-of-way line, 273.90 feet to the beginning of a 587.20 foot radius curve; thence Southwesterly, to the left, along the arc of said curve and right-of-way line 113.73 feet, thru a central angle of 11°05'49"; thence departing said right-of-way line and running thence South 89°40'02" East 217.91 feet; thence South 0°19'57" West 301.15 feet to a point on the thread of stream of LaVerkin Creek; thence following the thread of stream thru the following courses: South 77°28'35" East 62.48 feet; North 88°36'16" East 91.79 feet; North 65°58'31" East 70.20 feet; North 48°14'48" East 106.58 feet; North 32°22'51" East 243.60 feet; North 39°07'23" East 265.19 feet; North 51°00'19" East 165.59 feet; North 71°33'51" East 153.66 feet; North 50°03'23" East 47.94 feet; North 22°46'40" East 222.96 feet; North 13°09'41" East 109.18 feet; North 52°42'00" West 237.57 feet; North 45°25'16" West 42.80 feet; North 22°28'29" West 70.14 feet; North 2°23'16" West 210.05 feet; North 14°52'55" East 162.80 feet; North 24°31'52" East 86.51 feet; North 29°50'43" East 137.34 feet; North 41°50'45" East 85.50 feet; North 54°30'58" East 95.58 feet; North 63°53'32" East 178.77 feet; North 72°55'39" East 190.19 feet; North 66°49'44" East 330.39 feet; North 62°23'02" East 144.87 feet; North 57°00'00" East 14.57 feet; North 34°00'00" East 230.17 feet; to a point on the East line of Section 11; thence South 0°18'39" East, along the Section line, 85.55 feet to the point of beginning.

Minus the following described parcel: Beginning at the Southeast Corner of Lot 31 Cholla Creek PUD Phase 1, said point being North 63°42'21" West 924.88 feet from the Southeast Corner of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence North 26°25'37" West 268.47 feet; thence North 66°50'45" East 325.04 feet; thence South 26°25'37" East 268.47 feet; thence South 66°50'45" West 325.04 feet to the point of beginning.

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