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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 Apr 07 12:32 pm FEE 151.00 BY SS
RECORDED FOR PAYSON CITY

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS AND BY-LAWS
FOR
THE MAPLES AT BROOKSIDE

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

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in *Payson*, County of *Utah*, State of *Utah*, which is more particularly described as:

COMMENCING AT A POINT WHICH IS SOUTH 1366.91' AND EAST 536.96' FROM THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S 89°43'15" E 369.79', THENCE S 89°43'21" E 163.72', THENCE S 0°39'39" E 13.01', THENCE ALONG AN ARC TO THE LEFT 24.95' R-16.00' Δ-89°20'21" C-S45°19'49"E 22.50' THENCE EAST 98.88', THENCE N 0°11'42" E 157.91', THENCE N 0°33'44" E 178.57', THENCE S 89°42'39" E 747.24', THENCE S 15°23'41" W 430.36', THENCE ALONG AN ARC TO THE LEFT 173.34' R-2041.00' Δ-4°51'58" C-S12°57'42"W 173.29' THENCE S 10°31'43" W 456.27', THENCE N 67°46'04" W 100.60', THENCE S 79°12'25" W 10.02', THENCE WEST 165.79', THENCE NORTH 350.00', THENCE WEST 157.00', THENCE NORTH 23.00', THENCE WEST 101.23', THENCE SOUTH 15.00', THENCE WEST 163.23', THENCE NORTH 22.00', THENCE WEST 367.24', THENCE N 18°17'42" W 331.68', TO THE POINT OF BEGINNING. LESS AND ACCEPTING LOT #29

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

SINGLE FAMILY UNITS
ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to *The Maples at Brookside*, its successors and assigns.

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

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

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

COMMENCING AT A POINT WHICH IS SOUTH 1366.91' AND EAST 536.96' FROM THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S 89°43'15" E 369.79', THENCE S 89°43'21" E 163.72', THENCE S 0°39'39" E 13.01', THENCE ALONG AN ARC TO THE LEFT 24.95' R-16.00' Δ-89°20'21" C-S45°19'49"E 22.50' THENCE EAST 98.88', THENCE N 0°11'42" E 157.91', THENCE N 0°33'44" E 178.57', THENCE S 89°42'39" E 747.24', THENCE S 15°23'41" W 430.36', THENCE ALONG AN ARC TO THE LEFT 173.34' R-2041.00' Δ-4°51'58" C-S12°57'42"W 173.29' THENCE S 10°31'43" W 456.27', THENCE N 67°46'04" W 100.60', THENCE S 79°12'25" W 10.02', THENCE WEST 165.79', THENCE NORTH 350.00', THENCE WEST 157.00', THENCE NORTH 23.00', THENCE WEST 101.23', THENCE SOUTH 15.00', THENCE WEST 163.23', THENCE NORTH 22.00', THENCE WEST 367.24', THENCE N 18°17'42" W 331.68', TO THE POINT OF BEGINNING. LESS AND ACCEPTING LOTS 1 THROUGH 65 AND THE DEDICATED CITY STREET RIGHT-OF-WAYS OF THE MAPLES AT BROOKSIDE SUBDIVISION LOCATED WITHIN THE CITY OF PAYSON, STATE OF UTAH.

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

Section 6. "Single Family Unit" shall mean and refer to any single family unit structure built upon any Lot which is shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Townhouse Unit" shall mean and refer to any multi-unit building unit shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

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

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and Townhouse Unit, subject to the following provisions:

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

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

Section 3. Owners' Responsibilities Within the Common Area.

- (a) Any Owner may not damage, remove or modify any Common Area or improvements thereon. Any such action by an Owner or his assigned delegate shall be corrected by the Owner responsible for such actions at Owners expense and to the agreement and satisfaction of the Association.
- (b) Persons under the age of 18 are not permitted in Common Areas after 10:00 PM unless accompanied by an Owner.
- (c) Littering, garbage and other waste left in Common Areas is prohibited.
- (d) Motorcycle or other motorized vehicle riding on any landscaped area or children's play area is prohibited.
- (e) Owners personal property left in Common Areas is prohibited.
- (f) Owners or tenants shall not permit any activity which would result in cancellation of insurance on structure or contents thereof or which would be in violation of any public law, ordinance or regulation.
- (g) Repair, maintenance, or construction on personal property or vehicles is prohibited in common areas.
- (h) It is understood that within the Common Areas of the Association, there is a bike trail and creek that have been designed for the benefit, enjoyment and recreation of the Association and the general public; pursuant to UCA 57-14-1 to 57-14-7.

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

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

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

- (a) Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area and amenities insured against loss or damage by fire for the full insurance replacement cost thereof. The Association may obtain additional insurance against such other hazards and casualties as the Association may deem desirable, and may also insure any other property, whether real or personal, which is owned by the Association, against loss or damage by fire and such other hazards as may be deemed desirable, with the Association as the owner and beneficiary of such insurance. Insurance coverage shall be written in the name of the Association, with the proceeds to be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for this insurance carried by the Association are expenses that shall be paid by the General Common Assessments made by the Association.
- (b) Casualty Insurance on Townhouse Units. The Association shall keep adequate blanket casualty and fire insurance on all Townhouse Units. This insurance will be for the full replacement value, without deduction for depreciation or coinsurance. Insurance premiums for this blanket insurance coverage, and any future insurance premiums, will be paid by the Association from the Townhouse Unit Assessments. This Townhouse Unit insurance coverage shall be written in the name of the Association, and the proceeds thereof shall be payable to the Association as Trustee for the Townhouse residents.
- (c) Replacement or Repair of Common Area Property. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot and/or Townhouse Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. This Reconstruction

Assessment is in addition to any other General Common Assessments made against such Lot and/or Townhouse Owners.

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

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

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

- (c) All pets must be registered and inoculated as required by law.
- (d) All pets must be leashed when outside the any unit. Pets running loose shall be turned over to an animal control agency.

ARTICLE III

PROPERTY COVENANTS, CONDITIONS AND RESTRICTIONS FOR SINGLE FAMILY UNITS

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

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

- (a) No building shall be located on any Lot nearer than 20 feet to the front line, or nearer than 20 feet to any side street line, except for Lots 46 through 65. For Lots 46 through 65, no building shall be located nearer than 12 feet to the front line, or nearer than 12 feet to any side line.
- (b) The minimum side yard for any Living Unit is 7 feet. The total width of the two required side yards shall not be less than 14 feet except for Lots 46 through 49. For Lots 46 through 49 the minimum side yard will not be less than 5 feet. No Living Unit shall be located on any Lot nearer than 20 feet to the rear of a Lot line. Secondary structures may be located within 3 feet of a rear or side Lot line, but no secondary structures shall be closer than 3 feet of an adjoining Lot.
- (c) Eaves, roof projection, roof overhang and steps shall not be considered as a part of a Living Unit when positioning building upon any Lot.

Section 3. Signs. Except for signs displayed by any builder or developer during the development and sale of Lots and the construction of Living Units thereon, no signs shall be erected or maintained on any Lot, except:

- (a) Such signs as may be required by legal proceedings.
- (b) "For Sale" or "For Rent" signs for temporary and reasonable purposes.

- (c) Such signs as used in conjunction with the sale, completion and entrance of the Properties.
- (d) Such signs as deemed necessary for warnings and caution as pertaining to the safety of the public.

Section 4. Machinery and Equipment. No machinery or equipment of any kind shall be placed, stored, used, operated or maintained in, on or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

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

- (a) In the event an owner of any Single Family Unit shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 6. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lot.

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

Section 8. Ground Water and Soil Erosion. If the Lot Owner chooses to design his home with a basement, he is encouraged to obtain a Soils Engineer's study and follow recommendations therein.

Declarant shall not be responsible for water-proofing, removing ground water, or any liability incurred by Owner or others as a result of ground water. It is the responsibility of each Owner to have runoff water draining away from, and not onto adjacent Lots. Each Owner shall be responsible to perform his site work in such a manner as to minimize erosion and runoff.

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

Section 10. Building Structures and Accessories Every Living Unit exclusive of garages, shall have a minimum finished area above the grade level of the Lot of One Thousand One Hundred (1100) square feet for a single-level residence and One Thousand Four Hundred (1400) square feet for a two-story, of which Eight Hundred (800) square feet must be on the main floor.

- (a) Building Height. No building shall be erected to a height in excess of thirty-five (35) feet above the finished street grade. No Living Unit shall be erected to a height less than one (1) full story above the finished street grade. The Architectural Control Committee shall have the power to further limit the number of levels and stories and the height of structures in its sole and absolute discretion.
- (b) Garages. A garage must be erected for each Living Unit and must be fully enclosed to accommodate a minimum of two (2) cars, but not more than (3) cars. Carports are not permitted.
- (c) Exterior Building Materials. Brick, stone, or stucco are required to cover the entire exterior of the home. No vinyl or aluminum siding shall be permitted, except for soffit and fascia. Color combinations should blend well as to enhance the overall look of the home. Extreme color combinations and designs are not permitted.

- (d) Roofs. Roofing materials will consist of 25 year architectural shingles or better. Roof pitch shall not be less than 6/12 over the main portion of the structure.
- (e) Home Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings, shall be constructed of materials consistent with the colors, textures and materials approved for the Living Unit, and shall be integral to the architecture of the Living Unit.
- (1) Mailboxes. Mailboxes will be located in centralized locations in accordance with the U.S. Postmaster requirements.
 - (2) Solar Equipment. If solar panels are used, they are to be integrated into the roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be hidden from view.
 - (3) Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be copper or colored to match adjacent roofing material.
 - (4) Fences and Walls. Individual Lot fences, which are located within the minimum setback lines of the street, shall be of white vinyl, brick, stone, wrought iron or combinations of such materials. Wooden or chain link fences are not permitted. Fences are not to exceed 36 inches in the front yard, and not to exceed six (6) feet in the back and side yard.
 - (5) Antennas. All antennas are restricted to the attic or interior of the Living Unit. Satellite dishes shall be allowed, provided they are screened from view when ever possible.
 - (6) Pools, Spas, Fountains, Gamecourts. Pools, spas, fountains and gamecourts shall be located to avoid impacting adjacent Lots or Living Units with light or sound. No game court shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring Living Units. No unsightly structures shall be constructed or permitted.
- (d) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view. Air conditioning units and swamp coolers are not permitted on roofs or through windows.

(e) Landscaping Guidelines and Requirements. For each Living Unit, all landscaping, including grass, trees, and shrubs, must be completed within twelve (12) months following completion or occupancy. Front yard landscaping must be in place within six (6) months following completion or occupancy. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot. Each Lot Owner will commence construction of a home within twelve (12) months of Lot purchase or the Owner shall be required to provide landscaping for said Lot within twelve (12) months of purchase.

(1) It is encouraged that landscaping include wooded cluster of trees and shrubs.

A minimum of six (6) trees per lot are required with at least half being planted in the front yard. The remaining landscaping shall be groomed grass and other landscaping materials and plant life. A maple tree is required in the front of each Living Unit and can be counted as one of the 6 trees required.

(2) The Developer retains the right to plant one maple tree in a specified location within the front yard of each Lot. After planting, maintenance of the tree is the Owners responsibility. If the tree dies or needs removal, a like tree of at least a 2" caliper (diameter) will be planted.

(3) Each Lot must have a functional automated watering system.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot or Townhouse Unit 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 or Townhouse Unit which is subject to assessment.

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

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

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

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

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

- (a) **General Common Area and Amenities Assessments:** Common expenses and equal assessments for all property of the Association which benefit and use is available to all Property residence without prejudice such as, but not limited to, open spaces along

1400 South, Entrance signs, Toddler Play Areas, Bike Trail, Creek, Neighborhood Park and RV Parking.

- (b) **Single Family Unit Assessments:** Common expenses and equal assessments for any areas and property of the Association which benefit and use is exclusive to all Single Family Unit residences without prejudice, which at present we (the Declarant) know of none.
- (c) **Townhouse Unit Assessments:** Common expenses and equal assessments for all areas and property of the Association which benefit and use is exclusive to all Townhouse Unit residences without prejudice such as , but not limited to, Townhouse Structure and Building, Landscaping, Driveway and Parking Area, Lamp Posts and Sidewalks immediately surrounding and between any Townhouse Units.

Section 4. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot or Townhouse Unit to an Owner, the maximum monthly assessment shall be twelve dollars (\$ 12.00) per Single Family Lot for General Common Area Assessments. The maximum monthly assessment for each Townhouse Unit shall be twelve dollars (\$ 12.00) for General Common Area Assessments plus fifty-five dollars (\$53.00) for the Townhouse Unit Assessment.

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

Total Townhouse Unit Assessment: \$65.00 per month

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

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures

and personal property related thereto, provided that any such assessment shall have the assent of (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

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

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

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot and Townhouse Unit on the first day of the month following the conveyance of deed to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Townhouse Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

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

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the

rate of 8 percent per annum. The Association may bring an action at law against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Townhouse Unit.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Townhouse Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Townhouse Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Townhouse Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

COVENANT VIOLATION ASSESSMENT

Section 1. Violation Assessment. Procedures and specifications used by the Association for fines and assessments levied upon individuals in violation of Association Covenants, Conditions and Restrictions shall be established by the Board of Directors.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII
GENERAL PROVISIONS

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

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

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

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

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

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

TOWNHOUSE UNIT
ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to *The Maples at Brookside*, its successors and assigns.

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

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

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

COMMENCING AT A POINT WHICH IS SOUTH 1366.91' AND EAST 536.96' FROM THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S 89°43'15" E 369.79', THENCE S 89°43'21" E 163.72', THENCE S 0°39'39" E 13.01', THENCE ALONG AN ARC TO THE LEFT 24.95' R-16.00' Δ-89°20'21" C-S45°19'49"E 22.50' THENCE EAST 98.88', THENCE N 0°11'42" E 157.91', THENCE N 0°33'44" E 178.57', THENCE S 89°42'39" E 747.24', THENCE S 15°23'41" W 430.36', THENCE ALONG AN ARC TO THE LEFT 173.34' R-2041.00' Δ-4°51'58" C-S12°57'42"W 173.29' THENCE S 10°31'43" W 456.27', THENCE N 67°46'04" W 100.60', THENCE S 79°12'25" W 10.02', THENCE WEST 165.79', THENCE NORTH 350.00', THENCE WEST 157.00', THENCE NORTH 23.00', THENCE WEST 101.23', THENCE SOUTH 15.00', THENCE WEST 163.23', THENCE NORTH 22.00', THENCE WEST 367.24', THENCE N 18°17'42" W 331.68', TO THE POINT OF BEGINNING. LESS AND ACCEPTING LOTS 1 THROUGH 65 AND THE DEDICATED CITY STREET RIGHT-OF-WAYS OF THE MAPLES AT BROOKSIDE SUBDIVISION LOCATED WITHIN THE CITY OF PAYSON, STATE OF UTAH.

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

Section 6. "Single Family Unit" shall mean and refer to any single family unit structure built upon any Lot which is shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Townhouse Unit" shall mean and refer to any multi-unit building unit shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

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

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and Townhouse Unit, subject to the following provisions:

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

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

Section 3. Owners' Responsibilities Within the Common Area.

- (a) Any Owner may not damage, remove or modify any Common Area or improvements thereon. Any such action by an Owner or his assigned delegate shall be corrected by the Owner responsible for such actions at Owners expense and to the agreement and satisfaction of the Association.
- (b) Persons under the age of 18 are not permitted in Common Areas after 10:00 PM unless accompanied by an Owner.
- (c) Littering, garbage and other waste left in Common Areas is prohibited.
- (d) Motorcycle or other motorized vehicle riding on any landscaped area or children's play area is prohibited.
- (e) Owners personal property left in Common Areas is prohibited.
- (f) Owners or tenants shall not permit any activity which would result in cancellation of insurance on structure or contents thereof or which would be in violation of any public law, ordinance or regulation.
- (g) Repair, maintenance, or construction on personal property or vehicles is prohibited in common areas.
- (h) It is understood that within the Common Areas of the Association, there is a bike trail and creek that have been designed for the benefit, enjoyment and recreation of the Association and the general public; pursuant to UCA 57-14-1 to 57-14-7.

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

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

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

- (a) Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area and amenities insured against loss or damage by fire for the full insurance replacement cost thereof. The Association may obtain additional insurance against such other hazards and casualties as the Association may deem desirable, and may also insure any other property, whether real or personal, which is owned by the Association, against loss or damage by fire and such other hazards as may be deemed desirable, with the Association as the owner and beneficiary of such insurance. Insurance coverage shall be written in the name of the Association, with the proceeds to be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for this insurance carried by the Association are expenses that shall be paid by the General Common Assessments made by the Association.
- (b) Casualty Insurance on Townhouse Units. The Association shall keep adequate blanket casualty and fire insurance on all Townhouse Units. This insurance will be for the full replacement value, without deduction for depreciation or coinsurance. Insurance premiums for this blanket insurance coverage, and any future insurance premiums, will be paid by the Association from the Townhouse Unit Assessments. This Townhouse Unit insurance coverage shall be written in the name of the Association, and the proceeds thereof shall be payable to the Association as Trustee for the Townhouse residents.
- (c) Replacement or Repair of Common Area Property. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot and/or Townhouse Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. This Reconstruction

Assessment is in addition to any other General Common Assessments made against such Lot and/or Townhouse Owners.

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

Section 6. Pets. No animals, livestock or poultry (hereinafter collectively called "pets") of any kind shall be raised, bred or kept on Common Area or in any Townhouse Unit, except small orderly dogs, cats or other common domestic or household pet. These pets are not to exceed three total pets per unit, and may be kept in the residences subject to these Rules and Regulations provided that no such pets shall be kept, bred or maintained for commercial purposes. The Board shall have the absolute right and power to prohibit or place any condition on any particular pet from being kept within the Properties should the Board feel in its sole discretion that the keeping of that pet violates the letter or intent of this Declaration.

- (a) A pet otherwise permitted may be maintained in the Association so long as it is not a nuisance to the community. Actions which will constitute a nuisance include, but are not limited to, any annoying or unreasonable howling, crying, barking, scratching, screeching, running at large, attacking, chasing or worrying any person or animal, or any unsanitary or offensive practice.
- (b) No pet may be kept that poses, threatens to pose, or in the reasonable judgment of the Board, may pose or create any unreasonable risk of harm to the community, or any pet which is dangerous or known to have dangerous propensities.

- (c) Pet owners are strictly liable and fully responsible for all personal injuries and/or property damage caused by their pets. The Association is not liable for personal injuries and/or property damage caused by members' pets or animals. Pet owners are responsible for their pet's droppings within the Association and Common Areas.
- (d) All pets must be registered and inoculated as required by law.
- (e) All pets must be leashed when outside the living units. Pets running loose shall be turned over to an animal control agency. Assessment is in addition to any other General Common Assessments made against

ARTICLE III

PROPERTY COVENANTS, CONDITIONS, RESTRICTIONS EXCLUSIVE TO TOWNHOMES

Section 1. Exterior Maintenance and Building Structure.

- (a) The Association shall provide exterior maintenance upon each Townhouse Unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. In the event that the need for maintenance or repair of a Townhouse Unit or the improvements thereon is caused through the willful or negligent acts of an Owner or through the willful or negligent acts of the family, guests, invitees or Lessee of the Owner of the Townhouse Unit needing such repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such a Townhouse Unit is subject.
- (b) Owners are responsible for cleaning and maintenance of air conditioning units, all glass surfaces, windows and window screens. Any repair and maintenance work must be as original, or approved in advance, by the Board of Directors.
- (c) Any additional improvements which modify or change the exterior and are not part of the original design of the building is prohibited. This would include shades, reflective window coatings, or business signs, awnings, window guards, arials, name plates, special painting, etc.
- (d) Attics designed for storage and use by residents and their guests is permitted where the design and access to the attic permits. Storage of items should be within

designated attic storage areas. Storage of hazardous, flammable or any other material that compromises the safety of any residents in the building or that may cause loss of insurance of structure is prohibited.

- (e) Attics not designed for storage and use by residents and their guests is prohibited. Attic spaces have been carefully designed for fire protection and engineered to carry limited loads. Entering attic spaces or storing of materials that compromises the safety of all residents in the building is prohibited.
- (f) Porches cannot be used as storage areas.
- (g) For purposes of maintenance and repair, agents of the Association and any contractor or workman duly authorized by the Association, may enter any unit, patio or garage at any prearranged reasonable hour of the day provided that a notice has been given for such entry. In cases of an emergency, agents of the Association may enter any Townhouse Unit without consent to resolve the immediate situation.
- (h) Articles deemed illegal or hazardous by the Board of Directors such as oils, fluids, explosives, which pose a threat to life, limb, or property are prohibited from being stored on the Properties.
- (i) Absentee unit Owners are responsible for Association compliance and payment of violation assessments of their tenants.
- (j) Garage/Yard sales are prohibited unless organized for and available to the entire complex and approved by the Board of Directors.

Section 2. Party Walls.

- (a) Each wall which is built as a part of the original construction of the Townhouse Units upon the Properties and placed on the dividing line between Townhouse Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall,

they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- (d) Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (f) Residents are to locate audio sound equipment on walls other than party walls to eliminate excessive noise to other Owners and residents. After 10:00 p.m., any resident or Association agent may report to local authorities any excessive noise and be subject to any assessment deemed necessary by the local authorities or Association agent.
- (g) In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 3. Landscaping.

- (a) No planting or landscape changes are allowed outside of a unit's courtyard area.
- (b) Climbing on Property fences and gates is prohibited. Hanging of articles from perimeter fences, courtyard fences or from the exterior of a Townhouse Unit is prohibited.

Section 4. Signs Except for signs displayed by any builder or developer during the development and sale of Townhouse Lots and the construction of Townhouse Units thereon, no signs shall be erected or maintained on any Townhouse Unit, except:

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

- (d) Such signs as deemed necessary for warnings and caution as pertaining to the safety of the public.

Section 5. Parking

- (a) Owners are required to ensure that their guests park in guest parking areas. Only one vehicle or motorcycle is permitted per designated parking space.
- (b) Parking of recreational vehicles (boats, trailers, motor-homes, etc.) shall be parked in Townhouse Unit garages or in designated RV storage areas. Such spaces will be available on a first-come, first-serve basis and may require a monthly use fee as deemed necessary by the Board of Directors.
- (c) Vehicles not in operation for over one week and parked in garage access or guest parking will be towed at vehicle owners expense.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot or Townhouse Unit 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 or Townhouse Unit which is subject to assessment.

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

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

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

ARTICLE V
COVENANT FOR MAINTANCE ASSESSMENTS

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

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

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

- (a) **General Common Area and Amenities Assessments:** Common expenses and equal assessments for all property of the Association which benefit and use is available to all Property residence without prejudice such as, but not limited to, open spaces along 1400 South, Entrance signs, Toddler Play Areas, Bike Trail, Creek, Neighborhood Park and RV Parking.
- (b) **Single Family Unit Assessments:** Common expenses and equal assessments for any areas and property of the Association which benefit and use is exclusive to all Single

Family Unit residences without prejudice, which at present we (the Declarant) know of none.

- (c) **Townhouse Unit Assessments:** Common expenses and equal assessments for all areas and property of the Association which benefit and use is exclusive to all Townhouse Unit residences without prejudice such as , but not limited to, Townhouse Structure and Building, Landscaping, Driveway and Parking Area, Lamp Posts and Sidewalks immediately surrounding and between any Townhouse Units.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Townhouse Unit to an Owner, the maximum monthly assessment shall be twelve dollars (\$ 12.00) per Single Family Lot for General Common Area Assessments. The maximum monthly assessment for each Townhouse Unit shall be twelve dollars (\$ 12.00) for General Common Area Assessments plus fifty-three dollars (\$53.00) for the Townhouse Unit Assessment.

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

Total Townhouse Unit Assessment: \$65.00 per month.

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

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

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

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

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

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot and Townhouse Unit on the first day of the month following the conveyance of deed to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Townhouse Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

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

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

Section 10. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Townhouse Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Townhouse Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Townhouse Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

COVENANT VIOLATION ASSESSMENT

Section 1. Violation Assessment. Procedures and specifications used by the Association for fines and assessments levied upon individuals in violation of Association Covenants, Conditions and Restrictions shall be established by the Board of Directors.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Any Owners complaints of rule infractions

must be made in writing to the Association Board of Directors. Any consent or approval given under these rules shall be revocable at any time. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

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

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

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

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

BY-LAWS
OF
"THE MAPLES AT BROOKSIDE."
ASSOCIATION

ARTICLE I

NAME AND LOCATION. The name of the association is *The Maples at Brookside*, hereinafter referred to as the "Association". The principal office of the association shall be located at 593 N. Canyon View Dr., but meetings of members and directors may be held at such places within the State of Utah, County of Utah, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 1. "Association" shall mean and refer to *The Maples at Brookside*, its successors and assigns.

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

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

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

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

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

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

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

ARTICLE III
MEETING OF MEMBERS

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

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

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

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

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

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERMS OF OFFICE

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

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

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

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

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting for the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Elections. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

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

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

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

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right of use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for the infraction of published rules and regulations;

- (c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, or independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
 - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, upon demand by any person, a receipt certificate for any assessments that have been paid;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Area to be maintained.

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

ARTICLE VIII

OFFICERS AND THEIR DUTIES

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

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

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

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

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

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

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

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

President

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

Vice-President

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

Secretary

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

Treasurer

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

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X
BOOKS AND RECORDS

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

ARTICLE XI
ASSESSMENTS

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

ARTICLE XII
AMENDMENTS

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

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

ARTICLE XIII
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of recordation.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand
this 31 day of March, 19 99.

Maples at Brookside, Inc.
Declarant

By: Drew A. Kriser - President

Timothy L. Kriser

Matthew J. Kriser

State of Utah

: ss.

County of Utah

On the 31st day of March, 19 99, personally appeared before me Timothy L. Kriser, Drew A. Kriser and Matthew A. Kriser, members of Maples of Brookside, Inc., who duly acknowledge to me that they executed the above document on behalf of said company.



Kathy N. Sessions
Notary Public