

WHEN RECORDED RETURN TO:
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Ent 856308 bk 1287 Pg 847
Date 11-Mar-2004 9:52AM Fee \$52.00
Michael Bleed, Reg. - Filed By MG
Cache County, UT
For PROVIDENCE CITY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HIDDEN CREEK TOWNHOMES PLANNED UNIT DEVELOPMENT**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HIDDEN CREEK TOWNHOMES PLANNED UNIT DEVELOPMENT is made and executed by B.J. Christensen Inc., P.O. Box 674, Logan, Utah 84323 (hereinafter referred to as the "Declarant").

RECITALS

- A. This Declaration of COVENANTS, CONDITIONS AND RESTRICTIONS affects that certain real property located in the City of Providence, County of Cache, State of Utah described with particularity in Article II set forth below (the "Tract").
- B. Declarant is the owner of the Tract.
- C. The Property is an area of unique natural beauty, featuring distinctive terrain;
- D. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.
- E. Declarant has constructed, or is in the process of constructing, a residential planned unit development upon the Tract.
- F. All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith, and the approved construction plans at the office of the Public Works Director for Providence City.
- G. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the planned unit development.
- H. The Declarant desires that the planned unit development, be known as "HIDDEN CREEK TOWNHOMES."
- I. The main street in the planned unit development shall be dedicated to Providence City.
- J. The Declarant desires that the Tract shall be subject to the COVENANTS, CONDITIONS AND RESTRICTIONS herein recited.
- K. The Declarant desires, by filing this Declaration of COVENANTS, CONDITIONS AND RESTRICTIONS, to submit the HIDDEN CREEK TOWNHOMES PLANNED UNIT DEVELOPMENT and all improvements now or hereafter constructed thereon to the terms, covenants, conditions and restrictions set forth below, which shall constitute equitable servitudes and shall run with the land.

AGREEMENT

NOW, THEREFORE, the Declarant does hereby establish the nature of the use and enjoyment of all Lots in the planned unit development and does hereby declare that the conveyances of said Lots shall be made subject to the following conditions, restrictions, stipulations, and provisions:

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Accessory Building shall mean and refer to any structure which is not the primary structure, containing at least 120 square feet, and requires a building permit, and shall not include any shed, shack or other out-building for which a building permit is not required.
2. Assessment shall mean and refer the allocation of Common Expenses among the Owners or maintenance charge which each Lot Owner, by virtue of his acceptance of a deed or other document of conveyance thereto, is obligated to pay.
3. Association shall mean and refer to the association of all of the Owners taken as, or acting as, a group in accordance with this Declaration.
4. Board of Trustees shall mean and refer to those Owners elected or appointed to (a) administer the Declaration, (b) manage the Common Elements, and (c) operate the Association.
5. Business and Trade are terms which shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this subsection.
6. Common Elements shall mean and refer to all common features and elements in the Community, including by way of illustration but not limitation the Landscape Easement, Entry Monument, power pedestal, and other common improvements of a less significant nature.
7. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair, or replacement of the Common Elements; (c) Expenses agreed upon as common expenses by the Association; and (d) Expenses declared common expenses by the Project Documents.
8. Community shall mean and refer to the HIDDEN CREEK TOWNHOMES PLANNED UNIT DEVELOPMENT.
9. Declaration shall mean and refer to this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDDEN CREEK TOWNHOMES PLANNED UNIT DEVELOPMENT.
10. Entry Monument shall mean and refer to the entry monument at the entrance to HIDDEN CREEK TOWNHOMES

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11. Final Plat shall mean and refer to the Final Plat or maps of this planned unit development on file with the Cache County Recorder. The Map will show the location of the Lots, Landscape Easement, Entry Monument, other Common Elements, and all other items required to be on it.

12. Lot shall mean and refer to a portion of the Property, other than the Common Elements, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats or Surveys filed with this Declaration. Where the context indicates or requires, the term Lot includes any structure constructed or located on the Lot.

13. Majority shall mean and refer to those eligible persons or votes of Owners or other groups as the context may indicate totaling more than fifty (50.0%) percent of the total eligible number.

14. Map shall mean and refer to the Final Plat.

15. Member shall mean and refer to each Owner who, by virtue of his acceptance of a deed or other document of conveyance to a Lot, is a member of the Association, unless the context clearly requires otherwise.

16. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Cache County, Utah) of a fee or an undivided fee interest in a Lot. The term Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

17. Project shall mean and refer to HIDDEN CREEK TOWNHOMES .

18. Project Documents shall mean and refer jointly and severally to this Declaration, By-Laws, Final Plat, approved construction plans, Rules and Regulations, and Articles of Incorporation as they may be adopted and/or modified by the Association from time to time.

19. Property shall mean and refer to the Land, real estate, or real property which is submitted to this Declaration.

21. A. Private Street or Streets shall mean and refer to the roads within HIDDEN CREEK TOWNHOMES P.U.D., which will not be dedicated to Providence City.

B. Public Street or streets shall mean and refer to the roads outside of the Project, which will be dedicated to Providence City.

22. Survey Map shall mean and refer to the Final Plat.

23. Tract shall mean and refer to the real property subject to the COVENANTS, CONDITIONS AND RESTRICTIONS of this Declaration.

ARTICLE II. SUBMISSION

The Land described with particularity below is hereby made subject to these COVENANTS, CONDITIONS AND RESTRICTIONS, conditions and restrictions: See Exhibit "A," attached hereto and incorporated herein by this reference;

SUBJECT TO the described easements and rights of way;

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property; and

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every Common Elements improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Elements improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ALL OF THE FOREGOING IS ALSO SUBJECT TO:

An easement for utilities and drainage, including but not limited to telephone and gas for the installation, and the easement shall exist for the Association, Providence City, or other person or entity responsible for maintenance of said utilities respectively.

There is hereby created a blanket easement upon, across, over and under the Property for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of the Common Elements or any structure thereon. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right, power and authority to grant such easement on said property without conflicting with the terms hereof.

ARTICLE III. AREA OF APPLICATION AND EXPANSION OF PROJECT

1. **Initial Lots.** This Declaration shall apply to all of the Property and to any other real estate annexed in the manner set forth below. There are intended twenty-two (22) Lots in Phase I of the Project, numbers 1-22.
2. **Area of Application.** This Declaration shall apply to all of the Property.
3. **Right to Expand Application.** Without any other additional approval required, the Developer shall have the exclusive, unilateral, unconditional, and irrevocable right to (a) amend the Declaration and Bylaws, (b) convert the use of a lot or lots to accommodate a pocket park, swimming pool and/or other recreational amenities; and (c) expand the application of this Declaration to other real property by written amendment to this Declaration duly

recorded, provided, however, that all applicable laws shall be followed and no change shall be made which would cause the Property, Final Plat or any part of the Project or Addition to be noncompliant with any applicable laws, rules, regulations, etc.

ARTICLE IV. RESIDENTIAL AREA COVENANTS

1. Land Use and Building Type. This is a residential planned unit development and all Lots must be used exclusively for residential purposes, which includes both the architecture and appearance of the buildings and the nature of their use. The Lots shall be individually owned. The Common Area shall be owned by and is hereby granted to the Association. All building plans and specifications must be approved by the Declarant in writing. There will be six 3-plex buildings and one 4-plex building. Each Dwelling will have at least three bedrooms and a one car garage. The access ways and driving lanes not dedicated to the City within the project will be private.

2. Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Declarant as to the 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 front building setback line unless similarly approved.

3. Voting. Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(1) One Vote. Each Lot shall have one (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased May, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

b) Class B. Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which is hereinafter referred to as the "Event" or "Events"):

(1) Lots Sold. Four (4) months after seventy five percent (75%) of the Units (constructed upon the Lots) have been sold; or

(2) Three Years. Three (3) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

4. Prohibited Activities. No noxious or offensive activity shall be carried on in, on or about any Lot. Nothing shall be done or omitted on a Lot or the Common Elements which may be or may become an annoyance or nuisance to the neighborhood. The following acts or activities shall be deemed to constitute a nuisance:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Elements, including the Landscape Easement;

b. The storage of any item, property or thing that will cause any Lot or the Common Elements to appear to be in an unsightly, unclean, unhealthy, or untidy condition or that will be noxious to the senses;

c. The storage of any substance, toxin, hazardous waste, pollutant, thing or material in, on or about any Lot or the Common Elements that do or are likely to emit any foul, unpleasant or noxious odors, or that do or are likely to cause any unreasonable amount of noise or other condition that does or is likely to disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, or their guests or invitees, particularly if the local law enforcement agencies must be called to restore order; and

e. The maintenance of any plants, animals, devices or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the neighborhood by other residents, their guests, visitors or invitees.

f. The drying of clothes or storage of any articles which are unsightly (in the sole opinion of the Declarant and the Association) will be permitted unless in enclosed areas designed for such purposes.

5. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-buildings shall be used on any lot at any time as a residence either temporarily or permanently. No Mobile Homes, pre-fabricated homes, or homes built off the Property are permitted.

6. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than 2' x 2' square feet advertising the property [For Sale] or [For Rent,] except signs used by the Declarant to advertise the property during the construction and sales period may be as large as deemed appropriate by the Declarant.

7. Pets, Animals, Livestock and Poultry. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, owners may be required to pay a pet deposit to the Board of Trustees, obtain a certificate of registration from the Association, and abide by all local ordinances and pet rules and regulations adopted from time to time. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately

cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (F) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Element area must be in a cage or on a leash and under the control of a responsible person.

8. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse, garbage or other waste, which shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of rubbish, trash, refuse, garbage, waste, litter, weeds and other similar items by the Owner. The units will be provided with an individual waste receptacle to be picked up by independent waste removal company as contracted with the association, residents will be responsible for all bills incurred as part of the association.

9. Unsightly Materials and Objects. No unsightly materials, items, objects or things which impair the aesthetics or value or use or utility of the Project are to be stored on any Lot in view of the general public.

10. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

11. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

12. Slope and Drainage Control. The Association shall maintain, repair and replace the drainage system under the dedicated road. 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 or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The owner of the lot, except for those improvements for which the Association or utility company is responsible, shall maintain the slope control areas of each lot and all improvements in them continuously. No Accessory Building, shed or other structure may be constructed or installed so as to impair in any way the natural drainage flow or swells established by Declarant, nor within 10' of the rear or side Lot lines.

13. Fencing. No fence or other similar structure shall be erected in any required front yard of a dwelling to a height in excess of three and one-half (3.5') feet; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six (6') feet. On corner lots, no fence or other similar structure shall be erected in any yard bordering a street or front yard of an adjoining lot to a height in excess of three and one-half (3.5') feet.

14. Parking and Storage. All motor vehicles driven on or transported into the Project shall be subject to the following restrictions:

a. No damaged (in excess of \$1,000.00) or inoperative motor vehicle or transportation device of any kind shall be placed or remain on any Lot or adjacent street for more than forty-eight (48) hours.

b. No recreational, oversized, or commercial type vehicles and no tractor-trailer trucks shall be parked on the front yard setback of any Lot, or within the side yard building setback on the street side of a corner Lot, or on the residential street except while loading or unloading (no more than forty-eight (48) hours or more than one (1) time during any seven (7) day period), or engaged in transportation.

c. No pads used for the storage of vehicles or other materials either temporarily or permanently shall be constructed or installed, nor shall any trailers, mobile homes, trucks over three (3) quarter ton capacity, boats and watercraft, campers not on a truck bed, motor homes, buses, tractors, commercial, oversized or recreational vehicles, or maintenance and commercial equipment of any kind be parked or stored in the Project unless it is behind the front yard setback and without the side yard building setback on the street side of a corner Lot, and in an enclosed area screened from street and public view (so as not to be visible to the public or other Owners), and in a manner so as not to impair the view or line of sight of another Lot.

d. Sufficient side yard gate access should be planned and provided for in the design of the home, to permit ingress, egress and storage of trailers, oversized, or recreational type vehicles on the side and rear yards.

e. No motor vehicle or any other transportation device of any kind may be parked or stationed in a fire lane or in a red zone, in an unsafe or dangerous manner, or so as to obstruct or block access to any Lot, driveway, street, or other transportation device.

f. No Owner or resident may repair, change the oil or other fluids of, or restore any motor vehicle of any kind in, on or about any Lot or Common Elements, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

g. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited.

h. Facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

i. Open yard space shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface from this time henceforth and forever.

j. Any violations of Providence City ordinances are expressly prohibited.

15. Pools, Spas, Game Courts and Batting Cages. Pools, spas, game courts and batting cages shall be located so as to avoid unreasonably impacting adjacent properties with balls, light or sound. Pool heaters and pumps must be screened from view from the street.

16. Unsightly Work, Hobbies or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

17. Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all

guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

18. Energy Conservation Equipment. Subject to the requirements of U.C.A., [17-27-901, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on a Lot without the prior written consent of the Declarant and/or Association.

19. Business Use. No commercial trade or business may be conducted in or from a Lot or Dwelling Unit unless: (a) the business activity conforms to all home occupation, zoning requirements governing the Project or applicable within Providence City; (b) the business activity has been approved in writing by the Board of Trustees and Providence City if required. The business activity may not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Management Committee. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

20. Accessory Buildings. There will be no Accessory buildings allowed on or within the Project, unless approved by the City of Providence, the Association, and the Declarant.

21. Insurance. Nothing shall be done or kept in, on or about any Lot or the Common Elements which may result in the cancellation of or increase the premium (over what the Association would have paid but for such activity) for the insurance on the Property.

22. Laws. Nothing shall be done or kept in, on or about any Lot or the Common Elements, or any part thereof, which would be a violation of any statute, rule, law, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

23. Damage or Waste. No damage to or waste of the Common Elements shall be committed by any Owner, his family members, friends, guests, visitors or invitees. Each Owner shall indemnify and hold the Association, Board of Trustees, and other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or his family members, guests, visitors or invitees; provided, however, that any invitee, guest or visitor of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

24. Maintenance. The Lots and Common Elements, including without limitation the Landscaping Easement and Entry Monument, shall be maintained in a usable, clean, functional, aesthetic, attractive and good condition.

25. Landscaping and Irrigation. The Association is responsible for the landscaping and maintenance of the landscaping, both common and private (front yards) in the Project. All landscaping shall be planted with plant materials as approved by Providence City in the Final Landscape Plan. The Association is responsible for the landscaping and maintenance of the common elements including without limitation the landscaping easement and entry monument and all additional open space within the Project. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by the Declarant and in accordance with community standards as determined by the Association.

Specific guidelines and restrictions on landscaping may be established by the Board of Trustees. All landscaping shall be maintained in an aesthetic, tasteful, clean, safe, sanitary, neat and orderly fashion. Any weeds or diseased or dead lawn, trees, groundcover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes neatly trimmed. Aesthetic considerations are important and all landscaping shall be tasteful so as not to adversely affect the value or use of the Project.

A sprinkler system shall be installed in the common and private areas by the Declarant and the sprinkler system in both areas shall be maintained by the Association. The sprinkler system shall be installed as approved by the City in a size in accordance with the adopted plumbing code, with each system serviced by a separate meter and containing an approved backflow prevention assembly designed for sprinkler systems. Each backflow protection unit shall be registered with the City and have a certified test submitted to the City annually prior to the start of the irrigation season.

26. Maintenance of all Water Works. The Association shall be responsible for the maintenance of all waterworks within the Project, excluding the fire line which shall be the sole responsibility of the City. The water works to be maintained beginning at the service side of the meter through to the shutoff valve in each unit. The water works shall at all times be maintained in working order and shall be kept clean of debris, clogs and other materials that may cause a malfunction of the lines. The Association shall maintain a maintenance fund account at all times to assure proper maintenance and repair.

The Association shall be responsible for maintenance of the sewer lines within the Project. The sewer line shall be maintained including clearing, repair and control of fall out from the Project in accordance with Providence City Code.

27. Fire Line System. The City shall be provided a right of way access to fire hydrants for flushing and repairs, which will be completed by the Providence City Public Works. Any repair of fire hydrants not in the public right of way shall be billed to the Association and the Association shall be responsible to pay the costs for such service. The Association shall ensure that the fire hydrants are not used by the Association or any other individual for any purpose.

28. Billing. Each unit in the Project shall be assessed a base rate for water service, and sewer service as established by the current City rate schedule. The Association will receive the billing for each unit and shall be responsible for payment. Any other structure in the Project will also be billed to the Association and the Association shall be responsible for payment. All overage charges and pre treatment fees will be billed to the Association and the Association shall be responsible for payment. In addition to basic water service, all fees for the sprinkler systems will be billed to the Association and payment shall be the responsibility of the Association.

29. Maintenance of streets, parking lots, sidewalks, playgrounds and other common elements. The Association shall be responsible for maintenance of all private Common Elements including and private streets, private parking lots, all sidewalks, internal playgrounds and play structures and any other private common element. These elements shall be maintained to the standard of the community but in all cases in a useable, aesthetically pleasing and uniform manner. The Association shall create a maintenance schedule providing a timeline for the necessary maintenance that shall occur on a daily, weekly, monthly and annual basis as necessary. Further, the Association shall be responsible to acquire by contract the expertise to ensure that maintenance is completed in an appropriate manner.

30. Default in Fulfillment of Landscaping Obligation or Unauthorized Structure. If any Owner refuses to remove an unauthorized structure from his Lot or fails to fulfill his landscaping obligations, and fails to cure the default within thirty (30) days after written notice, the Board of Trustees shall have the right, but not the duty, without further notice or warning to remove the unauthorized structure and/or perform the maintenance, without being guilty of a trespass, and the cost thereof shall constitute the Individual Assessment of that Owner.

31. Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business except as permitted by county codes for a residential area and then it should be stored out of the general view.

32. Subdivision of Lots. No Owner shall at any time be permitted to subdivide or attempt to subdivide his Lot.

ARTICLE V. ARCHITECTURAL CONTROL COMMITTEE

1. Membership. The Architectural Control Committee (the "ACC") shall consist of the Declarant, so long as it shall own any of the Lots in the planned unit development. Thereafter the Board of Trustees or its designees shall constitute the ACC. No member of the ACC shall be entitled to any compensation for services provided. Out of pocket costs may be reimbursed.

2. Procedure. The ACC's approval or disapproval as required in these covenants shall be in writing. In the event the ACC, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, the request shall be deemed to have been approved and the related covenants shall be deemed to have been fully complied with.

ARTICLE VI. RIGHT OF ENTRY

1. Right of Entry. Wherever sanitary sewer connections, water connections, electricity, gas, telephone or drainage facilities are installed within the subject property, the owners of any Lot or Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below. Any premises so entered shall be restored by those entering to as near its original condition as is reasonably possible. Nothing in this section can be construed to grant any new easement without the express written authorization of the Owner.

2. Right of Way / Right of Entry for the City. The City shall be provided a Right of Way to access fire hydrants for flushing and repairs to any hydrant that is not specifically located in the public right of way. In addition, the City shall have access to all easements set forth on the Final Plat or as required by City Ordinance.

ARTICLE VII. OWNERSHIP, OPERATION AND MANAGEMENT

1. Ownership - Association of Owners. The Owners shall comprise the Association. The Association is created for the maintenance of the Common Elements and enforcement of these COVENANTS, CONDITIONS AND RESTRICTIONS. Membership in the association is appurtenant to and runs with each Lot. All Common Expenses shall be shared and allocated equally among the Lots and Owners. Each Lot shall be considered to hold one (1) share for all purposes.

2. Maintenance Costs. The cost of maintenance of the Common Elements shall be shared equally between all Owners as set forth above.

3. By-laws of Property Owners Association. The procedure for the administration and management of the Association and the subject property shall be governed by the following By-Laws attached hereto as Exhibit "B" and incorporated herein by this reference.

4. Payment of Common Expenses. In addition, each Owner hereby agrees to pay to the Board of Trustees promptly his portion of all Common Expenses, including but not limited to the cost of maintaining, repairing and replacing the entryway, street lights, sewer, culinary water, irrigation water, storm retention areas, the operation of all machinery and equipment related thereto, the cost of the power

and electricity to operate the street lights, and all other related expenses, debts, obligations, and liabilities incurred by the Association hereunder.

a. Purpose of Assessments. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners.

b. Budget. Before the Annual Meeting of the Association each year, the Board of Trustees shall prepare a budget which shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1. The budget shall be based upon advance estimates of cash requirements by the Board of Trustees to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, which estimates shall include but are not limited to expenses of management, grounds maintenance and repair of the entry way and the street lights, premiums for all insurance which the Board of Trustees is required or permitted to maintain, wages for employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by said Association for the benefit of the Owners under and by reason of this Declaration.

c. Approval of Budget and Assessments. The proposed budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a Majority of the Members of the Association. Notwithstanding the foregoing, however, if the Membership disapproves the proposed budget and Assessments or the Board of Trustees fails for any reason to establish the budget and Common Elements Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the budget and the Common Elements Assessments in effect for the then current year shall continue for the succeeding year.

d. Method of Payment. The Board of Trustees has the sole authority and discretion to determine how and when the Assessments are to be paid.

e. Equitable Changes. If the aggregate of all payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board of Trustees may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days prior written notice of any proposed change before it becomes effective.

5. Personal Obligation of Owner. Owners are jointly and severally liable to pay all Assessments and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust, who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

6. Declarant's Rights. Declarant is not obligated to pay for any Common Expenses on any Lots it may own until the following events have occurred: (a) a home has been constructed on the Lot, (b) a permanent certificate of occupancy has been issued, and (c) the home has been sold or rented.

7. Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be otherwise entitled under Utah law, and to that extent the Owner, by accepting a deed to the Lot or as a party to any other type of conveyance, waives his right to claim the priority thereof.

8. Individual Assessments. In addition, individual assessments may be levied by the Board of Trustees against a Lot and its Owner to pay or reimburse the Association for: (a) fines (after notice and hearing) levied and costs incurred in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Elements for which the Owner is responsible; (c) any other

charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents; and (d) attorneys fees, interest, and other charges relating thereto as provided in this Declaration.

9. Lien. If any Unit Owner fails or refuses to make any payment of his portion of the Common Expenses when due, in whole or in part, that amount constitutes a lien on the interest of the Owner in the property, and upon the recording of a notice of lien upon the Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

10. Late Fees and Default Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty Five and No/100th Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of One and 1/2 percent (1.5%) per month shall accrue on the outstanding balance of all delinquent accounts.

11. Remedies. If any Assessments remain unpaid, the Board of Trustees, may elect to institute a lawsuit to obtain a judgment or foreclose the lien, or both.

12. Duty to Pay Independent. The duty to pay Assessments is independent of the duty of the Association to maintain the Common Elements.

13. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Trustees. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's Assessments, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Board of Trustees in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Association may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same. If the Board of Trustees elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot or otherwise accepting conveyance of an interest in the Property, hereby irrevocably appoints the attorney of the Association (provided he is a member of the Utah State Bar) as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

14. Indemnity. The Association and each Owner, by acceptance of a deed to a Lot or other document of conveyance, agrees to and shall indemnify every officer of the Association and Member of the Board of Trustees against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then said Board of Directors) to which he may be a party by reason of being or having been an officer of the Association or Member of the said Board. The officers and Members of Board of Trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers of the Association and Members of said Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of said Association (except to the extent that such officers or Members of said Board may also be Members of said Association), and said Association shall indemnify and forever hold each such officer and Member of the said Board of Trustees free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of

any other rights to which any officer or Member of the said Board, or former officer or Member of the said Board, may be entitled.

ARTICLE VIII. INSURANCE

1. Insurance. The Association shall purchase and maintain adequate property insurance, public liability insurance, directors and officers insurance, and a fidelity bond.
2. Deductible. The deductible on a claim made against the property insurance policy of the Association shall be paid for by the party responsible for the loss covered by the claim. If multiple parties are responsible then each shall pay his proportionate share and if no party or parties are clearly responsible, then the deductible shall be paid by said Association.
3. Individual Insurance. Each Owner and Resident shall purchase and maintain adequate liability and property insurance on his Lot, Dwelling Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association.
4. Priority of Coverage. In the event of duplicate coverage of a claim or loss, the Owner's insurance shall be primary and the insurance of the Association shall be secondary.

ARTICLE IX. DURATION, MANAGEMENT, ENFORCEMENT AND AMENDMENT

1. Duration of Restrictions. These covenants are to run with the Land and shall be binding upon all Owners and all persons claiming any right, title or interest in or to the Property by, through or under them perpetually.
2. Management. The Association shall be managed by a professional manager or a professional management company, and may not be self-managed without the prior written unanimous consent of all Owners.
3. Enforcement. An Owner or the Board of Trustees, shall be entitled to prosecute any proceeding, at law or equity, against any person, firm, entity, partnership, limited liability company, corporation or party violating, attempting or threatening to violate any of the terms, covenants, conditions and restrictions contained herein or interfere with the administration of the Project, and shall be entitled to recover from the defaulting party all reasonable attorney's fees and costs incurred thereby, regardless of whether a lawsuit is filed. Failure by the Board of Trustees or any Owner to enforce any of said covenants or restrictions shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE X. MISCELLANEOUS

1. Agent for Service of Process. The initial agent to receive service of process is Jason Christensen of P.O. Box 674, Logan, Utah 84323, which is also the initial office of the registered agent. After transition, the President of an Association is the person to receive service of process and the office of the registered agent is the street address of the President of the Association.
2. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall only continue until twenty-one (21) years after the death of all lives in being on the date this instrument is recorded, at which time they shall automatically terminate or be terminated.
3. Binding Effect of Covenants. All Owners shall, at all times, obey all such rules, covenants, conditions and restrictions, and see that the same are faithfully observed by those persons over whom they have or exercise control and supervision. It is understood and agreed that such rules,

covenants, conditions and restrictions shall run with the land, and shall inure to the benefit of and be binding upon all Owners and their heirs, successors and assigns.

4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the above provisions which shall remain in full force and effect.

5. Effective Date. This Declaration of COVENANTS, CONDITIONS AND RESTRICTIONS shall become effective the date it is recorded in the Office of the County Recorder of Cache County, Utah.

9 IN WITNESS WHEREOF, the undersigned have executed these covenants and restrictions the day of March 2004.

B.J. CHRISTENSEN INC.

By: [Signature]
Title: Jason Christensen, President

STATE OF UTAH)
)ss:
COUNTY OF CACHE)

On the 9 day of March, 2004, personally appeared before me Jason Christensen, who by me being duly sworn, did say that he is the President of the B.J. CHRISTENSEN INC., a Utah Corporation, and that the within and foregoing instrument was signed in behalf of said company by authority of its Articles of Organization or a resolution of its Members, and said Jason Christensen, duly acknowledged to me that said Company executed the same.

[Signature]
NOTARY PUBLIC
Residing At: Cache Co.
Commission Expires: Aug. 25, 2004

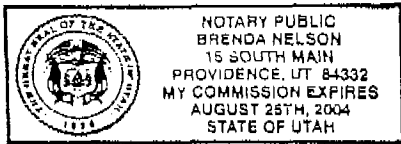


EXHIBIT "A"

The Land described in the foregoing document is located in CACHE COUNTY, UTAH and is described more particularly as follows: BEGINNING AT THE SOUTHWEST CORNER OF LOT 16, BAER MEADOWS SUBDIVISION, AS RECORDED IN CACHE COUNTY RECORDER OFFICE, SAID POINT LYING N89°33'55"W 2.18' FROM A FOUND SURVEY MARKER AND LYING N89°33'55"W 51.61' B.R. FROM NORTHWEST CORNER OF LOT 11 MEADOW BROOK SUBDIVISION AND RUNNING THENCE 89°46'36"W 412.21' SAID POINT LYING S89°46'36"E (S89°33'55"E B.R.) 48.88' FROM SOUTHWEST CORNER OF LOT 12 BAER MEADOWS SUBDIVISION; THENCE S00°16'40"E 332.85' (S00°15'45"E 334.27' B.R.) TO A FOUND SURVEY MARKER OF THE NORTH LINE OF SPRING CREEK MEADOWS SUBDIVISION PHASE 2 AS RECORDED; THENCE ALONG SAID NORTH LINE OF SPRING CREEK MEADOWS SUBDIVISION S89°38'20"E 520.38' TO A FOUND SURVEY MARKER LYING S89°38'20"E 25.18' FROM THE SOUTHWEST CORNER OF LOT 12 OF MEADOW BROOK ESTATES; THENCE N17°04'47"W 144.48' (141.10' B.R.); THENCE N89°31'57"W 19.93' (9.89' B.R.); THENCE N00°28'03"E 60.00'; THENCE N89°31'57"W 9.07'; THENCE N15°55'01"W 141.60' (S17°04'47"E 141.60' B.R.) TO THE POINT BEGINNING, CONTAINING 3.55 ACRES, MORE OR LESS.

EXHIBIT "B"
BY-LAWS

The administration of HIDDEN CREEK TOWNHOMES (the "property") and the HIDDEN CREEK TOWNHOMES HOMEOWNERS ASSOCIATION, INC. (the "Association") shall be governed by these Bylaws.

1. Application of Bylaws.

All present and future unit owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the Declaration, these Bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that the provisions of the Declaration and these Bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Board of Trustees.

a). The administration of the property on behalf of the Association shall be conducted by a Board of Trustees of three (3) to nine (9) natural individuals.

b). Until all of the Lots in the planned unit development have been sold, the Declarant shall appoint all of the members of the Board of Trustees. At each annual meeting of the Association thereafter, the unit owners shall elect the members of the Board of Trustees for the forthcoming year. At least thirty (30) days prior to any annual meeting of the Association, the Board of Trustees shall elect from the unit owners a nominating committee of not less than three (3) members (none of whom shall be members of the then Board of Trustees) who shall recommend to owners present at the annual meeting one nominee for each position on the Board of Trustees to be filled at that particular annual meeting. Nominations for positions on the Board of Trustees may also be made by petition filed with the secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more unit owners and signed by the nominee named therein indicating his willingness to serve as a member of the Board of Trustees, if elected. Members of the Board of Trustees shall be required to be unit owners, and must be natural individuals and residents of the State of Utah.

c). Members of the Board of Trustees shall serve for a term of two (2) years. The terms of no more than three (3) members will end each year. The members of the Board of Trustees shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Board of Trustees who fails to attend three (3) consecutive Board of Trustees meetings or fails to attend at least 25% of the Board of Trustees meetings held during any calendar year shall forfeit his membership on the Board of Trustees.

d). Any member of the Board of Trustees may resign at any time by giving written notice to the president of the Association, or the remaining Board of Trustees members. Any member of the Board of Trustees may be removed from membership on the Board of Trustees by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Board of Trustees due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any.

e). The members of the Board of Trustees shall receive no compensation for their services unless expressly approved by a majority of the Association; provided, however, that any member of the Board of Trustees may be employed by the Association in another capacity and receive compensation for such employment.

f). The Board of Trustees, for the benefit of the property and the Association, shall manage the business, property and affairs of the property and the Association and enforce the provisions of the Declaration, these Bylaws, the house rules and the administrative rules and regulations governing the property. The Board of Trustees shall have the powers, duties and responsibilities with respect to the property as contained in the act, the Declaration and these Bylaws.

g). The meetings of the Board of Trustees shall be held at such places within the State of Utah as the Board of Trustees shall determine. A majority of the members of the Board of Trustees shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board of Trustees. The Board of Trustees shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the Board of Trustees immediately following the annual meeting of the Association.

h). Special meetings of the Board of Trustees may be called by the president or by any two (2) Board of Trustees members.

i). Regular meetings of the Board of Trustees may be held without call or notice. The person or persons calling a special meeting of the Board of Trustees shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called; if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

j). Any member of the Board of Trustees may, at any time, waive notice of any meeting of the Board of Trustees in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Trustees at a meeting shall constitute a waiver of notice of such meeting except if a Board of Trustees member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board of Trustees are present at any meeting of the Board of Trustees, no notice shall be required and any business may be transacted at such meeting.

k). The fiscal year shall be determined by the Board of Trustees.

l). Because service on the Board of Trustees is voluntary and in the interest of being sensitive to time and commitments, it is proposed that the Committee may hold meetings via telephone, so long as all members have no difficulty hearing each other. Members of the Board of Trustees or any subcommittee designated by the Board of Trustees may participate in a meeting of the Board of Trustees or subcommittee by means of conference telephone or other similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant hereto shall constitute presence in person at such meeting.

m). All Board of Trustees meetings shall be open to all voting members, but attendees other than members of the Board of Trustees may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

n). Any action to be taken at the meeting of the Board of Trustees or any action that be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Board of Trustees. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Board of Trustees have been obtained.

o). The Board of Trustees, with approval of a majority of a quorum, adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened