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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CREEKSIDE FIFTH FILING
Longmont, Boulder County, Colorado

12-1

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CREEKSIDE FIFTH FILING
CITY OF LONGMONT, BOULDER COUNTY, COLORADO

1. **DECLARANT.** The declarant in this "Declaration of Covenants, Conditions and Restrictions" is CREEKSIDE III LIMITED LIABILITY COMPANY, hereinafter referred to as "Declarant".
2. **RECITALS.** Declarant is the Owner of property (the "Property") in Longmont, Boulder County, Colorado more particularly described as follows:

Creekside Fifth Filing according to the Plat recorded as Plan File R 39-2-28 in the office of the County Clerk and Recorder of Boulder County, Colorado, consisting of the following:

<u>BLOCK</u>	<u>LOTS</u>
1	1 through 8
2	1 through 7

Declarant desires and intends to sell or transfer Lots in the property described above and to impose upon said Lots mutually beneficial covenants, conditions and restrictions under a general plan of improvement and development to enhance the value, desirability, attractiveness and salability of such Lots and for the benefit of all the Lots. Declarant may, in the future, desire to extend this Declaration to other property adjacent to or near the Property by addendum hereto.

Therefore, the Declarant hereby declares that all of the Lots included in the Property, and all property subsequently made subject to this Declaration by addendum hereto, shall be held, sold, conveyed, used, improved, occupied and resided upon in conformity with and subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of and which shall run with, all the Property, and be binding on and inure to the benefit of all parties having any right, title or interest in any of the Property, or any part thereof, their heirs, successors and assigns.

3. **DEFINITIONS.**
- 3.1 "Declarant" shall mean and refer to the entity referred to in paragraph 1.
- 3.2 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.



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3.3 "Property" and "Properties" shall mean and refer to all of Creekside Fifth Filing, according to the recorded plats thereof and any additional land which may be subjected to this Declaration under the provisions of paragraph 4 below. 125

3.4 "Lot" shall mean and refer to any plot of land identified as such and shown upon a recorded subdivision plat of the Properties (as defined in paragraph 3.3), with the express exception of any plot of land identified as an "outlot".

3.5 "Outlot" shall mean and refer to any plot of land identified as an "outlot" on the recorded subdivision plat.

3.6 "Common Area" shall mean and refer to those areas of land, designated on a recorded subdivision plat of the properties as common area, open space, outlot, or similar designation, intended to be owned by or leased by the homeowners association for the benefit of and/or devoted to the common use and enjoyment of the Owners of the Lots.

3.7 "Committee" shall mean and refer to the Architectural Control Committee, Creekside Fifth Filing, more particularly described in paragraph 6 below.

3.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Creekside.

3.9 "Design Guidelines" shall mean and refer to the Design Guidelines attached as Exhibit A, or as amended pursuant to paragraph 13.

3.10 "Homeowners' Association" and/or "Association" shall mean and refer to the Creekside I Homeowners' Association.

4. ADDITIONAL PROPERTY.

4.1 **Additions by Declarant.** The Declarant, its successors and assigns, hereby reserve the right, in its sole discretion, to extend the operation and effect of this Declaration to other property adjacent to or near the original Property. Any extension authorized under this paragraph 4.1 shall be made by recording in the office of the Clerk and Recorder of Boulder County, Colorado, an addendum to this Declaration, which need be executed only by the Declarant and the Owner of such additional land if Declarant is not the Owner thereof. Any addition authorized by this paragraph 4.1 shall not require the approval of the Homeowners' Association.

4.2 **Additions by Other Landowners.** Other landowners who desire to subject their land to the operation of this Declaration may do so after first obtaining the written approval of the Homeowners' Association. The Association shall approve of the proposed addition at a regular or special meeting of the members of the Association at which a quorum is present, by a majority of the total votes cast. In the event the Homeowners' Association approves of the proposed addition, the Association and the



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landowner shall execute an addendum to this Declaration which shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado. 12-16

4.3 **Addendum to the Declaration.** Any addendum to this Declaration authorized under paragraph 4.1 or paragraph 4.2 above shall describe the additional land and shall state that such land is subject to this Declaration. Any authorized supplement to this Declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character, if any, of the additional property, provided they are not inconsistent with this Declaration.

5. **HOMEOWNERS' ASSOCIATION.** The property in Creekside Fifth Filing shall be governed by the currently existing homeowner's association, Creekside I Homeowner's Association. The lots shall be subject to this Declaration of Covenants, Conditions and Restrictions as administered by that Association and shall have separate Design Guidelines and a distinct and separate Architectural Control Committee to administer them. If the Homeowner's Association does not accept this Property as an addition to the Association, the Owners shall immediately form a separate Homeowner's Association substantially similar to Creekside I Homeowner's Association to serve as the Association for the Properties.

5.1 **Membership.** Each Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

5.2 **Classes of Voting Membership and Voting Rights** The Association shall have two classes of voting membership:

a. **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 owned. If more than one person or legal entity holds an interest in any Lot, the vote for such Lot shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several Owners may determine, but in no event shall more than one vote be cast with respect to any Lot.

b. **Class B.** The Class B member shall be the Declarant, as defined in Paragraph 3.1. The Class B member shall be entitled to four votes for each Lot owned by it. The Class B membership shall cease and be converted to Class A membership, at such time as the Class B member voluntarily converts its Class B membership to Class A membership in the Association.

6. **ARCHITECTURAL CONTROL**

6.1 **Architectural Control Committee.** There is hereby established a separate and distinct Architectural Control Committee (the "Committee") for Creekside Fifth Filing composed of three persons. All of the members of the Committee shall be appointed by Declarant so long as the Declarant retains its Class B membership in the Association.



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Upon termination of the Declarant's Class B membership, the members of the Committee shall be appointed by the Board of Directors of the Association, provided, however, that at least two of the members shall be lot owners in Creekside Fifth Filing. As long as this Declaration remains in full force and effect, the Committee shall be constituted and shall perform the duties imposed on it hereby. The decision of a majority of the Committee members shall be the decision of the Committee. The Committee may designate a representative to act on its behalf and may employ consultants to assist in the performance of its functions. Committee members shall be entitled to compensation for services performed pursuant to this Declaration. The Committee shall have the right to impose a reasonable fee for the committees review of plans and specifications submitted to it for approval in accordance with the provisions of this Declaration.

6.2 **Design Guidelines.** No dwelling or other improvements shall be constructed, erected, placed, maintained or permitted on any Lot or on the Common Area, nor shall any construction or excavation be commenced unless and until plans and specifications with respect thereto have been submitted to and approved in writing by the Architectural Control Committee in accordance with the Design Guidelines set forth in Exhibit A attached hereto and incorporated herein by reference. The Design Guidelines shall govern the review and approval process and shall apply to each and every Lot subject to this Declaration.

6.3 **Liability and Enforcement.** Neither the Committee nor the Declarant, nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the Committee for approval, or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and/or specifications. Every Owner or other person who submits plans to the Committee agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Committee, its members, representatives or consultants, or the Declarant to recover any such damages. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any building codes and it shall be the responsibility of the Owner or the person submitting plans to the Committee to insure compliance therewith. Until termination of its Class B membership in the Association, the Declarant, in its own name and on behalf of the Committee, shall have the right to enforce the provisions of this paragraph 6. Thereafter, the Association, in its own name and on behalf of the Committee shall have the right to enforce the provisions of this paragraph 6.

6.4 **Maintenance of Fence and Sign Easement Property.**

a. **Owners Obligations.** Owners whose property is subject to an easement for a Subdivision Sign and/or Perimeter Fence agree to install landscaping in accordance with an approved plan pursuant to paragraph 6.2 and to provide sprinkler or drip irrigation on both the Easement Property and between such property and public rights of way or publicly owned property. Such Owners



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further agree to maintain the Easement Property located within the Perimeter Fence in accordance with these Covenants and Design Guidelines.

b. **Homeowners' Association Obligations.** The Association shall maintain, repair, replace, and reconstruct the Perimeter Fence and Neighborhood Signs. The Association shall also maintain Easement Property located outside the Perimeter Fence in accordance with these Covenants and Design Guidelines.

7. **ASSESSMENTS.**

7.1 **Covenant for Assessments.** The Declarant and each Owner of any Lot, by acceptance of a deed therefore, hereby covenants and agrees to pay the assessments imposed by the Board of Directors of the Association in accordance with the terms of this Declaration. The annual assessment may be divided into 12 equal monthly payments, and assessed to all members accordingly as deemed necessary by the Homeowner's Association.

7.2 **Purpose and Use of Annual Assessment.** The assessments and charges levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents of the property and in particular for the improvement, operation and maintenance of the Common Area and for the conduct of the Association's business and fulfillment of the Association's rights and obligations. The annual assessment made by the Association shall be based on the aggregate cash requirement of the Association as determined by the Board of Directors. The purpose of the annual assessment is to provide for the payment of all expenses incurred by the Association. This sum may include, among other things, the following: expenses of management; insurance premiums, including fire insurance with extended coverage, vandalism and malicious mischief insurance with endorsement attached issued in the amount of the maximum replacement value of all of the property owned by the Association or for which it is responsible, casualty and public liability insurance; construction of improvements or other facilities; landscaping and ground care expenses; common lighting; repairs and renovations; wages; utility charges; legal and accounting fees; expenses and liabilities incurred by the Board of Directors under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund; the cost of improvements authorized by the Board of Directors; as well as other costs and expenses relating to the property or other facilities owned by, leased by or under the control of the Association. The omission or failure of the Board to fix the assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the assessments when they are made. The annual assessment shall be fixed at a uniform rate for all Lots except those Lots owned by the Association, which shall be exempt from assessment, and except those Lots leased by the Association, the assessment of which shall be governed by the terms of the Lease. The Board of Directors of the Association shall prepare and deliver or mail to each member an itemized statement showing the receipts and disbursements of the Association for the previous calendar year and an itemized budget of the estimated cash requirements and projected disbursement of the Association for the



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following calendar year. The Board of Directors shall notify each member of the amount and due date of the annual assessment. The annual assessment shall be prorated if the ownership of a Lot commences on a day other than the first day of an assessment.

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7.3 Special Assessments. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, from time to time, a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of any capital improvements located on any Common Area, including fixtures and personal property related thereto, or to provide for costs incurred by the association by virtue of unforeseen emergencies. Special assessments may also be assessed against specific lots to recover costs incurred by the Association in curing an Owner's violation of these Covenants.

7.4 Lien for Nonpayment of Assessments. All sums assessed but unpaid for the expenses chargeable to any Lot, including interest thereon as fixed by the Board of Directors of the Association (but not to exceed 18 percent per annum) shall constitute a lien on such Lot superior to all other liens and encumbrances except:

- a. Tax and special assessment liens in favor of any governmental, quasi-governmental or statutorily authorized assessing authority; and
- b. All sums unpaid on a first mortgage or first Deed of Trust of record, including additional advances made thereon prior to attachment of the assessment lien. The sale or transfer of any Lot pursuant to a Deed of Trust foreclosure or any proceeding in lieu thereof shall not relieve the Owner from liability for any assessments due prior thereto or thereafter becoming due during the period of foreclosure.
- c. To evidence such lien, the Board of Directors of the Association may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. The notice of lien shall be signed by the Treasurer of the Association or by one of the members of the Board of Directors and may be recorded in the office of the Clerk and Recorder of the County of Boulder, State of Colorado. A lien for unpaid assessments shall attach on the date of default in payment of the assessment, and may be enforced by foreclosure on the defaulting Owner's Lot by the Association in a like manner as a mortgage or a Deed of Trust on real property upon the recording of a notice or claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorneys' fees. The Association shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

7.5 Personal Liability of Member. The amount of any annual or special assessment assessed against each Lot, together with the costs and expenses of collection, including attorneys' fees, shall be a personal debt of the Owner or Member arising at the



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time the assessment is made. No Owner or Member may exempt himself from liability for an assessment by abandonment of his Lot, non-use of any Common Area or by any other act other than by lease of his Lot to the Association, in which case the terms of the lease relating to assessment shall govern liability for payment. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by the successor. The Association may sue to recover a money judgment for unpaid assessments without foreclosing or waiving the lien securing the assessment obligation.

7.6 **Payment by Lienholder.** Any person or entity holding a lien on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon payment such person or entity shall have a lien on Lot of the same rank as the lien of his encumbrance for the amount paid.

7.7 **Date of Commencement of Assessments.** The assessments provided for herein shall commence when assessments are imposed by the Board of Directors of the Association. The Board of Directors of the Association shall fix the date of commencement and the amount of the annual assessment against each Lot for each assessment period at least one month in advance of the due date for payment thereof. At the time of assessment, the Board of Directors shall prepare a roster of the Lots and the assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. 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 have been paid.

8. **DURATION OF RESTRICTIONS.** The covenants, conditions and restrictions contained in this Declaration are covenants running with the land and shall remain in full force and effect for twenty-five (25) years from the date hereof, at which time they shall automatically extend for successive periods of ten years each, unless, prior to the expiration of the then current term, a written instrument is executed by the then Owners of seventy-five per cent (75%) of the Lots stating that this Declaration shall expire at the end of the then current term.

9. **BINDING EFFECT.** Each Owner of any Lot, by acceptance of a Deed conveying any of the Lots, shall accept title thereto upon and subject to each and all of the restrictions, conditions, covenants and agreements herein contained, and by acceptance, shall for himself, his heirs, personal representative, successors and assigns, covenant, agree and consent to these Covenants and agrees to keep, observe, comply with and perform said restrictions, conditions, covenants and agreements. These Covenants are intended and imposed for the direct, mutual and reciprocal benefit of each and all of said Lots and the Owners thereof, and to create mutual and equitable servitude upon each of said Lots in favor of each other Lot, and reciprocal rights and obligations and privity of contract and estate between the Grantees of said Lots, and their respective heirs, successors and assigns.

10. **WAIVER.** Any variance, waiver or release of these conditions and restrictions granted by the Committee, or any acquiescence or failure of the Committee to enforce any violation of the conditions and restrictions herein, shall not be deemed to be a waiver of any of the conditions



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and restrictions in any other instance. The Committee may, by its signed written instrument, waive, release or vary any provision of the within protective covenants as they pertain to any part or all of the Lots encumbered, which waiver, release or variance shall be effective as to all parties otherwise entitled to enforce the within protective covenants. No member of the Committee shall have any liability whatsoever to any Owner or other party aggrieved or injured on account of the grant of such release, waiver or variance. In return for such waiver, release or variance, the Committee may impose upon the Owner and the Lot involved such additional or altered covenants as the Committee deems proper and appropriate in the circumstances. Each Owner agrees, by accepting title or any interest in any Lot, that Declarant, its employees or agents, and each member of the Committee, shall be immune from suit or liability in accordance with the foregoing. 12.11

11. **SEVERABILITY.** In the event that any one or more of the provisions, conditions, restrictions, limitations and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions, limitations and covenants as herein set forth shall continue unimpaired and in full force and effect.

12. **COMPLIANCE WITH PROVISIONS OF DECLARATION AND RULES OF ASSOCIATION - ENFORCEMENT.** Each Owner and/or Member shall comply strictly with the provisions of this Declaration and the provisions of the Articles of Incorporation and Bylaws of the Association and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure so to comply shall be grounds for an action against the noncomplying Owner or Member to recover sums due and for damages or injunctive relief or both. The Action shall be maintainable by the Board of Directors in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner. The noncomplying Owner or Member shall pay the reasonable attorneys of the Association or of the aggrieved Owner. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

13. **AMENDMENT.** This Declaration may be amended by written amendment approved by the Association executed by its President and attested to by its secretary. The Design Guidelines may be amended with the two-thirds approval of the Architectural Control Committee. Any amendment shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

14. **NUMBER, GENDER AND CAPITALIZATION.** Whenever used herein, unless the context indicates otherwise, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. Words defined in paragraph 3 shall be interpreted as defined, whether capitalized or not, unless the context indicates a different meaning.



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IN WITNESS WHEREOF, the undersigned Declarant has caused this document to be executed by its duly authorized manager this 29th day of August, 1997.

DECLARANT:

By *Wallace H. Grant*
Wallace H. Grant, Manager
515 Kimbark Street
Longmont, Colorado 80501
(303) 776-9900
776-6105 (FAX)

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 29th day of August, 1997, by Wallace H. Grant as Manager of Creekside III Limited Liability Company.

Witness my hand and official seal.

My commission expires: 12/6/2000

Beverly Patterson
Notary Public



My Commission Expires 12/6/2000