



RECORDING REQUESTED BY  
AND, WHEN RECORDED, MAIL TO:

NNP-Creekstone, LLC  
c/o Newland Communities  
2839 West Kennewick Avenue PMB #393  
Kennewick, Washington 99336

4386

**FRONTIER TITLE CO.**

**BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CREEKSTONE PHASE 10/12**

**Grantor: ADAIR HOMES, INC.**

**Grantee: NNP-CREEKSTONE, LLC**

**Legal Description (abbreviated):**

Lot 4, Block 37, Creekstone Phase 10/12

**Full Legal Description:** Set forth on attached Exhibit A.

**Assessor's Tax Parcel No(s):**

1-0989-213-0037-004

## BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

### CREEKSTONE PHASE 10/12

THIS AGREEMENT AS TO BUILDER'S COVENANTS, CONDITIONS AND RESTRICTIONS FOR PHASE 10/12 ("Builder's CC&Rs") is made this 15<sup>th</sup> day of December, 2009 by NNP-CREEKSTONE, LLC, a Delaware limited liability company, duly authorized to transact business in the State of Washington ("Seller"), and ADAIR HOMES, INC. an Oregon corporation, ("Builder").

#### RECITALS

A. Builder entered into that certain Lot Purchase Agreement dated December 15, 2009 ("Purchase Agreement"), with Seller for the purchase of one (1) lot (the "Lots" or, singular, a "Lot") in Creekstone Phase 10/12, in Benton County, Washington, which property is referred to herein as "**Phase 10/12.**", the legal description of which is set forth in Exhibit A attached hereto and by this reference incorporated herein.

B. Phase 10/12 are subject to that certain Declaration of Covenants, Conditions, and Restrictions for Creekstone, recorded February 7, 2001, under Auditor's File No. 2001-003088, Benton County, Washington, as amended (the "Declaration"). Among other things, the Declaration imposes upon Builder requirements to obtain approvals from the New Construction Committee in connection with Builder's development of and construction on the Lots, requirements to comply with Seller's development standards and guidelines (and Builder hereby acknowledges receipt of a copy of such development standards and guidelines) and other requirements as more particularly set forth in the Declaration.

C. The Purchase Agreement also imposes upon Builder requirements and obligations in connection with the development of and construction on the Lots.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants of the parties set forth herein, Seller and Builder agree as follows:

#### AGREEMENTS

1. **Builder's Obligations.** In connection with Builder's development of the Lots and Builder's construction of residences and improvements on or under the Lots related thereto, Builder shall comply with all applicable terms, conditions, provisions, agreements, requirements and obligations of the Declaration, Seller's development standards and guidelines and the Purchase Agreement. This includes, without limitation:

- (a) securing all governmental approvals and other approvals and permits in connection with Builder's development and construction;
  - (b) obtaining approval by the New Construction Committee of all final plans and specifications for all construction of any improvements on or adjacent to a Lot prior to the closing of the sale of that Lot from Seller to Builder, and following closing, obtaining approval of the New Construction Committee of any revisions or modifications of the approved final plans and specifications prior to commencement of construction on that Lot;
  - (c) compliance with model home and merchandising requirements;
  - (d) payment of the fee for marketing and homeowner's dues at the close of escrow upon the resale of a Lot to a home buyer, and compliance with Seller's marketing program and marketing requirements;
  - (e) compliance with provisions as to grading, erosion control and maintenance of the Lots;
  - (f) compliance with construction and installation requirements, including pre-wiring specifications;
  - (g) compliance with requirements as to the use of Seller's project names;
  - (h) conveyance of easements when required;
  - (i) compliance with federal and state land sales acts, laws and regulations;
- and
- (j) compliance with restrictions on resale of Lots, other than to home buyers.

2. **Release.** Upon the resale of a Lot subject to these Builder's CC&Rs to a home buyer, if Builder is not then in default under these Builder's CC&Rs with respect to the Lot being sold, Seller shall execute and deliver to Builder, or to the closing escrow for such resale, a release in recordable form, releasing the subject Lot from the lien, agreements, requirements, and obligations of these Builder's CC&Rs. The release of such Lot from these Builder's CC&Rs shall constitute a partial release only and shall not affect the other Lots subject to these Builder's CC&Rs, which shall remain subject thereto. Lots released from these Builder's CC&Rs shall remain subject to the Declaration. The terms of the Declaration shall control over the terms of these Builder's CC&Rs, and a release from these Builder's CC&Rs shall not constitute a release from or satisfaction of any of the terms of the Declaration, even with respect to similar provisions in the Declaration and these Builder's CC&Rs. In the event of a resale of a Lot by Builder to a home buyer where Seller has not released the Lot from these

Builder's CC&Rs because of noncompliance with a term or terms thereof, Seller shall release the Lot from these Builder's CC&Rs in the manner above provided when such noncompliance has been cured and Seller has been provided with evidence of such cure.

**3. General and Miscellaneous Provisions.**

(a) **Time Is of the Essence.** Time is expressly made of the essence of each provision of these Builder's CC&Rs.

(b) **Notices.** Any notice required or permitted under these Builder's CC&Rs shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed as follows:

To Seller: NNP-Creekstone, LLC  
2839 West Kennewick Avenue PMB #393  
Kennewick, Washington 99336  
Attention: Lori Henriksen

To Builder: ADAIR HOMES, INC.  
4601 NE 77<sup>th</sup> Ave., Ste. 299  
Vancouver, WA 98662  
Attention: Byron E. Van Kley

(c) **Attorney Fees.** In the event any controversy or claim arises under these Builder's CC&Rs, the prevailing party shall be entitled to its reasonable costs, disbursements and attorney fees, together with all expenses that it may reasonably incur in taking such action, including, but not limited to, costs incurred in searching records, expert witness and consulting fees, discovery depositions, whether or not introduced into evidence in the trial, hearing or further proceeding and travel expenses in any arbitration, trial or other proceeding, including any proceeding brought to enforce an award to judgment and any and all appeals taken therefrom.

(d) **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause. Without limiting the generality of the foregoing provision if, notwithstanding noncompliance with a term or terms of these Builder's CC&Rs, a Lot is released therefrom, Seller need not release any other Lot or Lots from these Builder's CC&Rs if there is then noncompliance with the same or similar term or terms.

(e) **Governing Law.** These Builder's CC&Rs shall be construed in accordance with and governed by the laws of the State of Washington. The parties agree to venue in Benton County, State of Washington.

(f) **Severability.** If any portion of these Builder's CC&Rs shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(g) **Counterparts.** These Builder's CC&Rs may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

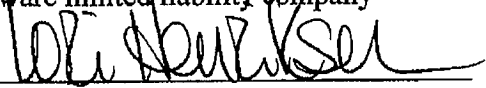
(h) **Number, Gender and Captions.** In construing these Builder CC&Rs, it is understood that if the context so requires the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply generally to one or more individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Builder's CC&Rs.

(i) **Binding Effect.** The covenants, conditions and terms of these Builder's CC&Rs shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties have executed these Builder's CC&Rs as of the date first written above.

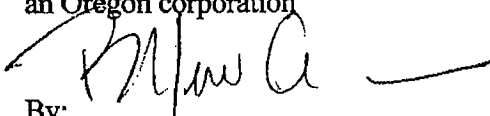
**SELLER:**

NNP-CREEKSTONE, LLC,  
a Delaware limited liability company

By:   
Lori Henriksen, Assistant Vice President

**BUILDER:**

ADAIR HOMES, INC.  
an Oregon corporation

By:   
Byron E. Van Kley, President

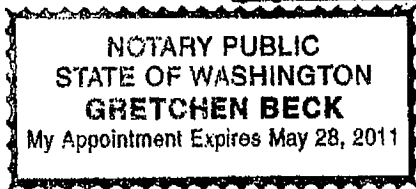
STATE OF WASHINGTON

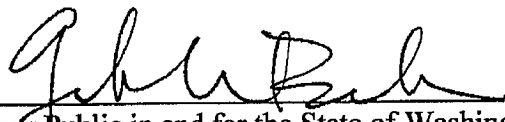
ss.

County of Benton

I certify that I know or have satisfactory evidence that Lori Henriksen is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument and acknowledged it as Assistant Vice President of NNP-Creekstone, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 21, 2009.



  
Notary Public in and for the State of Washington  
Residing at: Kennewick  
My appointment expires: 05-28-2011

STATE OF WASHINGTON

ss.

County of Benton

I certify that I know or have satisfactory evidence Byron E. an Kley is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as President of Adair Homes, Inc. an Oregon corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 17, 2009.



Shelly A Toews  
Notary Public in and for the State of Washington  
Residing at: Vancouver, WA  
My appointment expires: Sept. 19, 2013

**EXHIBIT A**

Lot 4, Block 37, Creekstone Phase 10/12, according to the Plat thereof recorded in Volume 15 of  
Plats, Page 324, records of Benton County, Washington.

**Legal Description of Lots**

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