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After recording, please return to:  
Vial Fotheringham LLP  
7000 SW Varns St.  
Portland, OR 97223

Washington County, Oregon 2010-029962  
04/20/2010 10:56:11 AM  
D-R/B Cnt=2 Stn=21 RECORDS1  
\$65.00 \$5.00 \$5.00 \$11.00 \$15.00 - Total = \$101.00



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I, Richard Hobernicht, Director of Assessment and  
Taxation and Ex-Officio County Clerk for Washington  
County, Oregon, do hereby certify that the within  
instrument of writing was received and recorded in the  
book of records of said county.

Richard Hobernicht, Director of Assessment and  
Taxation, Ex-Officio County Clerk



**RESTATED DECLARATION OF COVENANTS, CONDITIONS, &  
RESTRICTIONS**

A. Cross Creek is a community of owners initially established by Declaration of Covenants, Conditions & Restrictions recorded January 28, 1972 in Book 851, Page 503, Records of Washington County, Oregon (the "Initial Declaration"). By the declarations and subdivisions plats set forth below Cross Creek was expanded to include additional property.

**DECLARATIONS**

Declaration of Covenants, Conditions & Restrictions recorded November 28, 1972 in Book 851, Page 503, Records of Washington County, Oregon ("Initial Declaration") affecting:

CROSS CREEK recorded November 16, 1971 in Book 30, Page 34, Plat Records Washington County, Oregon

Declaration of Covenants, Conditions & Restrictions recorded December 27, 1972 in Book 903, Page 99, a re-recording of Initial Declaration ("Declaration No.2") affecting:

CROSS CREEK NO. 2 recorded December 7, 1972 in Book 32, Page 15, Plat Records Washington County, Oregon

Declaration of Covenants, Conditions & Restrictions recorded July 17, 1973 in Book 937, Page 814 (Declaration No.3) affecting:

CROSS CREEK NO. 3 recorded June 27, 1973 in Book 33, Page 9-A Plat Records Washington County, Oregon

Declaration of Covenants, Conditions & Restrictions recorded May 21, 1975 in Book 1024, Page 549 (Declaration No. 4 & 5) affecting:

CROSS CREEK NO. IV and V recorded May 21, 1975, Cross Creek, Plat 4, recorded in Book 34, Page 38

Affirmation of Declaration of Covenants, Conditions and Restrictions, recorded as document number 86012827, and dated March 20, 1986, affecting Cross Creek No. 6.

B. Cross Creek Homeowners Association, Inc. is the association of owners formed pursuant to the Initial Declaration and incorporated July 1, 1974 as a nonprofit corporation under Oregon law.

C. The method by which Cross Creek was expanded is confusing and cumbersome because complete declarations were recorded for Cross Creek No. 2 and Cross Creek No. 3 instead of recording a document providing for the annexation of the particular plat. Because the declarations are identical, the provisions of the declarations have been uniformly applied to all owners and all property at Cross Creek.

D. Cross Creek includes Cross Creek Village Condominium and Rosa Park Condominium. Each condominium is governed by an independent association as provided in the Oregon Condominium Act (ORS Chapter 100). Each unit owner is a member of both the condominium association and the Association.

E. The Association is currently governed by By-Laws of Cross Creek Homeowners Association Inc., which were not recorded in the Records of Washington County, Oregon (the "By-Laws").

F. As of January 1, 2002, Cross Creek is a Planned Community and subject to the provisions of the Oregon Planned Community Act (ORS 94.550 to 94.783) as provided in ORS 94.572.

G. The Association is hereby restating its Declarations and Amendments into this single document to avoid confusion between the documents and amendments. The Board has adopted a resolution authorizing this Restatement pursuant to ORS 94.590. Nothing in this Restated document is meant to alter the rights or obligations contained in the Declarations described in Recital A.

THIS DECLARATION, Made on the date hereinafter set forth by Glen R. Gordon, Ardythe A. Gordon, David Dimeo and Darlene Dimeo hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Washington County, Oregon which is more particularly known and described as: CROSS CREEK, No. 1-6.

WHEREAS, Declarant desires to subject said property to the conditions, restrictions and covenants for the benefit of said property and its present and subsequent owners as hereinafter specified, and

WHEREAS, the power to enforce certain of said conditions, restrictions and covenants to reside in the Cross Creek Homeowners Association, a non-profit Oregon corporation organized under the laws of the State of Oregon, hereinafter referred to as "Association."

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

#### ARTICLE I

Wherever used in this declaration, the following terms shall have the following meanings:

- (a) "Dwelling house" and "garage" shall include both the main portion of such structures and all projections therefrom but shall not include the eaves of such structures, nor uncovered front porches or steps.
- (b) "Lot" means one of the numbered parcels on the plats referred to in the description of the property covered hereby.
- (c) "Building site" means either a numbered lot as shown on said plats, or a parcel consisting of a portion of any lot or contiguous portions of any two or more contiguous lots; provided, however, that such parcel, if composed of a portion of a lot or portions of two or more contiguous lots, shall have a principal frontage of not less than sixty (60) feet, and an area of at least six thousand (6,000) square feet.
- (d) "Street" means any street, highway, or other thoroughfare as shown on said plats.
- (e) "Setback" means the minimum distance between the dwelling house or other structure referred to and a given street or line.
- (f) "Street frontage" means that portion of a lot or building site which borders on a street.

## ARTICLE II

- (a) Declarant, as owner of said property or of any other property in Washington County, Oregon, which may be hereafter platted as Cross Creek and which they or any of them may hereafter acquire, are, and all future owners of record of one or more building sites on said property or on any other property which may hereafter be platted as Cross Creek, or who, while holding a contract of the purchase from Declarant of any building site on said property or such other property which may hereafter be platted as Cross Creek, shall reside upon the building site described in such contract, shall become members of said Association. Such ownership or such holding of a contract of purchase and residence shall be the sole qualification for membership in said Association and certificates of membership shall be issued to the members of the Association accordingly. When such qualification shall cease as to any member, membership of such member shall lapse and the certificate therefore be void.
- (b) The voting power and the property rights and interests of each member of the Association shall be unequal, and are defined in the By-Laws of the Cross Creek Homeowners Association.

## ARTICLE III

- (a) No building site on said property shall be used for any purpose other than residential purposes unless otherwise shown on the official recorded plat.
- (b) No animals or fowls shall be raised, kept or permitted upon said property or any part thereof, excepting only domestic dogs or cats and excepting caged pet birds kept within the dwelling house, provided said dogs, cats and pet birds are not kept, bred or raised for commercial purposes or in unreasonable numbers.
- (c) Said property shall not, nor shall any part thereof, be used for the purpose of exploring for, taking therefrom, or producing therefrom gas, oil or other hydrocarbon substances.
- (d) No noxious or offensive activity shall be carried on upon said property or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as a high-class residential district.
- (e) It shall be the duty of the owner or occupant of any building site to maintain in property condition the area between the property line of said building site and the nearest curb or improved street, including public sidewalks within

said area, and no trucks, campers, trailers, boats shall be parked or permitted to remain in said area.

- (f) No property owner shall remove or significantly alter any tree in any street right-of-way, park or recreational area or planting reservation unless permission in writing is first granted by the Association.
- (g) No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage and other waste shall be kept 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.

#### ARTICLE IV

The designated common and recreational areas shall be reserved for the exclusive use of all owners of property within the sub-division and others as may be designated at a later date by the Board of Directors of the Cross Creek Homeowners Association. Ownership of common recreational areas, recreational facilities and public and community areas, services and facilities, including all improvements and developments to the same, shall be vested in the declarant, until such time as all indebtedness incurred in connection with the acquisition, ownership, construction or improvement of such areas and facilities has been paid and thereafter until such time as Declarant at its option shall transfer title to such areas and facilities.

#### ARTICLE V

- (a) No building may be erected or maintained on any building site except one single-family dwelling house not more than two stories in heights above the main floor level, designated for occupancy by not more than one family, together with a private garage, which garage shall conform generally in architectural design and exterior materials and finish to the dwelling house to which it is appurtenant. Unless approved in writing by the Association, no outhouse of any kind, tent, shed or trailer, or any other temporary dwelling, shall be erected or maintained on any building site or be used for living purposes, nor shall any garage be used for dwelling purposes. Further, trailer, camper or pickup coach, tent, boat or truck (except pickup) shall be parked, placed, erected, maintained or constructed on any building site for any purpose except the trailers, campers, pickup coaches, tents or boats which can be and are stored completely within full enclosed structures and are not used for living purposes will not be in violation of these restrictions, unless with prior written approval from the Association.
- (b) No building shall be in any manner occupied while in the course of original construction or until it complies with all requirements as to area and with all other conditions and restrictions applicable thereto. The construction of any

building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed. Every building, fence, wall or other structure placed on any part of said property shall be constructed with new material, unless the use of other than new material shall have received the written approval of the Association. No buildings constructed elsewhere shall be moved to or placed on said property except with the written approval of the Association.

#### **ARTICLE VI**

(a) No hedge, fence, hedge wall, boundary wall, retaining wall or similar structure shall be erected or maintained between any setback line of any building site and any street line serving as a boundary line for such building sites unless approval of the Declarants or the Homeowners Association as to material, form, size and color is first obtained. Planting reservations or protective screening areas are established as shown on the recorded plat. Planting, fences or walls shall be maintained throughout the entire length of such area by the owner or owners of the lots through which the planting reservations or protective screening area runs at their own expense to form an effective screen for the protection of the residential area. No building or structure except a screen fence, or wall or utilities or drainage facilities shall be placed or permitted except for the purposes of installation and maintenance of screening, utilities and drainage facilities.

(b) All outside television and radio aerials and antennas are absolutely prohibited.

#### **ARTICLE VII**

(a) No dwelling house, garage, fence, wall or other structures upon any portion of said property shall be erected or constructed, and no alterations which would materially alter the exterior appearance of any such structures shall be made unless a complete set of plans and specifications therefore, including the exterior color scheme, together with a block plan indicating the exact location on the building site, shall have been submitted to and approved in writing by the Homeowners Association, and a copy of such plans as finally approved deposited for permanent record with the Association. Said plans and specifications shall be submitted in writing for approval, over the signature of the owner of the building site or over the signature of his duly authorized agent, on a form satisfactory to the Association.

The approval of said plans and specifications may be withheld not only because of their noncompliance with any of the specific conditions,

covenants and restrictions contained in this Declaration, but also because of the dissatisfaction of the Association with any or all other matters or things which, in the judgment of the Association, would render the proposed structure inharmonious with the general plan of improvement of said property or with the structures erected on other building sites in the immediate vicinity of the building site upon which said structure is proposed to be erected. No provisions herein contained shall apply to improvements or structures within the common or recreational areas.

- (b) A dwelling house of one story in height above the main floor level shall have a minimum ground floor area of one thousand square feet and one and one-half story or two story dwelling house shall have a minimum ground floor area of nine hundred square feet (all exclusive of porches, patios, basements and garages).
- (c) Minimum front setback lines shall be 20 feet, except when a portion of house extends nearer to street than the garage, then the minimum setback shall be 15 feet.

All rear yard setback lines shall be a minimum of 25 feet.

There shall be no minimum interior lot side yard setback, except there shall be a minimum distance between houses of 10 feet.

Corner lots shall have minimum setbacks of 10 feet on the corner street side yard.

- (d) Any agent or officer of the Association may at any reasonable hour or hours, after reasonable notice, enter and inspect any of said property as to its maintenance or improvements to determine if there has been compliance with the provisions hereof; and the Association, and/or any agent, or officer thereof, shall not hereby be deemed guilty of any manner of trespass for such entry or inspection.

#### ARTICLE VIII

- (a) No sign or other advertising device of any character shall be erected on any one lot or building site or maintained upon any part of said property except one sign not larger than 18" x 24", advertising the property for sale or for rent; provided, however, that this provision shall not apply to the Declarant, or their assigns or successors, in the development of said property.
- (b) Declarants hereby reserve to themselves, their successors, heirs and assigns, the right to create perpetual easement under, over and across strips of land five feet

in width running along and interior to the side lines and rear lines of each building site owned by them respectively for the purpose of erecting, constructing, maintaining and operating sewers and drainage systems, and poles, pipes, wires, cables, buys, anchors and conduits for lighting, heating, power, telephone and any other method of conducting and performing any public or quasi-public utility service or function beneath, upon, or above the surface of the within said five foot strips of land, and Declarants reserve the right to cut and/or trim any tree or other growth or such five-foot strips which may interfere with or menace the construction, maintenance, or operation of said utilities. If said easements are not created by the time the Declarant has transferred ownership in all lots, then this reservation is terminated.

- (c) It is the intent of these restrictions that vacant land be maintained in a reasonably presentable condition, therefore, the Association shall have the right at all times to entry upon any lot or parcel of said property that is vacant and unplanted or untenanted by the owner thereof, to remove debris, weeds, or other waste material and to plant or replant, trim, cut back, remove, replace, cultivate, and/or maintain hedges, trees, shrubs, plants, or lawns and to charge the expense thereof to the said owner as an assessment to be collected in the manner provided in Article IX. Reasonable notice as used in this subsection shall mean mailing by certified mail to the last known address as shown on the books of the Association, ten days before entry to be made. This article does not apply to property owned by Declarant during development and marketing of this entire tract.

#### ARTICLE IX

- (a) All said property (excepting property now or hereafter occupied, dedicated or reserved for recreation, recreation facilities, parks, park like strips or areas, community facilities, streets, sidewalks, footways, water systems, sewage systems and other public services and community facilities and building sites during such time as they are not accessible from an improved public street) shall be subject to all annual charge or assessment as hereinafter specified; provided, however, that said charge or assessment as hereinafter specified, shall not apply to any building site upon the residence has been constructed thereon and said residence has been occupied as a dwelling, or said building site has been deeded to an owner who intends to occupy the same as a dwelling, whichever event first occurs.
- (b) Said annual charge or assessment, when imposed, shall be upon and against each building site subject thereto and the whole thereof; the amount thereof shall be determined annually by the Board of Directors but shall not exceed \$10 per month per building site unless a majority of



the members vote to increase the same either at the annual or special meeting called for that purpose.

- (c) The right to fix (subject to the limitations herein prescribed) collect and enforce the collection of such charges or assessments, including interest thereon, and expend the same, shall be vested in the association.
- (d) Each such annual charge or assessment shall be fixed in advance on or about the 1<sup>st</sup> day of July of each year, covering the ensuing twelve months ending the 30<sup>th</sup> day of June of the following year. Each such charge or assessment shall be due and payable on the 15<sup>th</sup> day of November in the year in which it is fixed, and if not then or therefore paid shall thereafter be delinquent and bear interest at the rate of six percent per annum. The Secretary of the Association shall file in the office of the County Recorder of Washington County, State of Oregon, within 120 days after delinquency, a statement of lien in the amount of any charges or assessments, together with interest as aforesaid, which have become delinquent with respect to any portion of said property and upon payment in full thereof shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessment with interest as aforesaid shall constitute a lien on the whole building site with respect to which it is fixed from the date the notice of delinquency thereof is filed in the office of the County Recorder of Washington County, State of Oregon, until the same is released as herein provided. Such lien may be enforced by the Association in the manner provided by law with respect to a lien on real property; and in the event of foreclosure of such lien the property owner shall be liable for the costs and disbursements, including reasonable attorney's fees of Declarant or of said Association, all of which costs, disbursements and fees shall be secured by such lien.
- (e) The purchase of portions of said property by the acceptance of deeds therefore, whether from Declarant or subsequent owners of said property, or by the signing of contracts or agreements to purchase the same, shall become personally obligated to pay such charges or assessments, including interest, upon portion or portions of said property purchased or agreed to be purchased by them, and shall thereby become subject to the right and power of the Association to institute proceedings for the collection of such charges, assessments and interest and the enforcement of the liens securing the same. Such rights and powers shall continue in the Association, and such obligations shall run with the land so that the successor owner of record of any portion of said property, and the holder or holders of contracts or agreements for the purchase thereof, shall in turn become liable for the payment of such charges or assessments together with interest on such as may have become

delinquent. Delinquent charges or assessments together with interest and the cost of collection shall be a continuing line on the property and shall bind such property in the hands of the then owner or contract purchase, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner or contract purchaser to pay such charges and assessments however shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them and approved by the Association.

Any sale or transfer of said property pursuant to the decree of foreclosure or any other proceeding in lieu of foreclosure shall not relieve such property from liability for any charges or assessments thereafter becoming due nor from the lien of any such subsequent charge or assessment.

- (f) The proceeds received from said charges or assessments shall be applied to the payment of any or all of the following:
  - (1) Expenses incident to the enforcement of the restrictions, conditions, covenants, charges and agreements contained in this Declaration and the collection of the charges or assessments provided for in this article.
  - (2) Real and personal property taxes and assessments levied by any branch of government.
  - (3) To acquire, build, operate and maintain parks, recreation areas, playgrounds, swimming pools, community halls, club houses including buildings, structures and personal property incident thereto.
  - (4) To acquire, build, operate and maintain streets, sidewalks, footways, water systems, sewage systems and other public services including buildings, structures and personal properties incident thereto.
- (g) In the event unusual circumstances, such as, natural and man-made disasters, necessitates extra ordinary expenditures for repairs, improvements or additions to the amenities as enumerated in (f) above, a special and additional energy, assessment not to exceed \$25 per building site may be charged upon an affirmative vote of 2/3 of the members of said Association, as cast either at the annual or special meeting called for that purpose. This provision is to be used only in emergency situations of community wide crisis.

#### ARTICLE X

- (a) In construing this Declaration or any part thereof, stipulations which are necessary to make this Declaration or any of its terms or provisions reasonable, are implied.

- (b) The determination by any court that any of the provisions of this declaration are unlawful or void shall not affect the validity of any of the other provisions hereof.
- (c) All of the conditions, restrictions and charges set forth in this Declaration are imposed upon said property for the direct benefit thereof and of the owners thereof as part of the general plan of development, improvement, building, occupation and maintenance hereby adopted therefore by Declaration; and such conditions, restrictions and charges shall run with the land and shall continue to be in full force and effect until extinguished, or modified as herein provided. Except as provided in ARTICLE IX (b) the conditions, restrictions and charges set forth in this declaration may be changed by a written agreement executed by the then record owners of seventy-five percent or more in area of said property then subject to the Declaration exclusive of streets, parks and open spaces said agreement to be placed of record in the Office of the County Recorder for Washington County, Oregon. The conditions, restrictions and charges, and any of them, may be changed, modified or extinguished at any time by an instrument executed by the Association acting by its President and Secretary under authority of a Resolution to that effect adopted by a majority of seventy-five percent or more of the votes cast in favor of such resolution at a meeting of the members of the Association called for that purpose upon such notices to said members as may be prescribed by the By-Laws of the Association. The conditions and restrictions and charges, or any of them, may not be changed, modified or extinguished by the Association so long as the Declarant owns any lot or lots or portions of lots in said subdivision unless the Declarant shall have first given its written approval to such change; and the charges and assessments may not be reduced below the amount sufficient to pay annual debt service charges including provisions for debt services reserves so long as the Association shall have outstanding indebtedness incurred in connection with the acquisition, ownership, development, improvement, operation and maintenance of the property, facilities and services enumerated in ARTICLE IX (f). Provided, further, that the Declarant reserves to themselves, their successors and assigns, the right and power so long as the ownership of the affected property or any of it shall be in the Declarant to change any of the requirements contained herein pertaining to setbacks and minimum principal frontage and minimum square foot area of building sites or any of them as to said property.

#### ARTICLE XI

- (a) In any legal or equitable proceedings by Declarant or the Association, or both, or the owner or owners of any portion of said property or their and each of their legal representatives, heirs, successors and assigns, for the

enforcement or to restrain a violation of this Declaration or any provision thereof, the losing party shall pay to the prevailing party such attorney's fees as the court may deem reasonable in such suit or action. However, nothing contained in this Declaration or in any form of deed which may be used by the Declarant or their successors, heirs or assigns, in selling said real property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any one or more of the provisions thereof.

#### **ARTICLE XII**

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant of its duly authorized agent, of structures or signs for the conduct of its business in connection with said property while the same or any part thereof, is owned by Declarant.

#### **ARTICLE XIII**

If upon the erection of the first improvement upon any of the residential lots which are subject to these restrictions, it is disclosed by survey that a minor violation or infringement of the setback lines has occurred, such violation or infringement may be waived by the written consent and waiver of the owners of the residential lots immediately adjoining on either side of the residential lot upon which the violation or infringement occurs and such waiver shall be binding upon all other owners of residential lots which are subject to these restrictions and shall nullify the provisions herein insofar as any right of suit or action occurs by reason of such violation so waived. Nothing herein contained shall prevent the prosecution or a suit for any violation of these restrictions. For the purpose of defining a "minor violation" as herein contained, such violation shall be not more than 2 feet beyond the setback lines as herein set forth. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to such structure.

#### **ARTICLE XIV**

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Declarant, the Association and the owner or owners of any portion of said property, and their and each of their legal representatives, successors, heirs and assigns, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors or assigns to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so.

Although Declarant is empowered to enforce any and all of the provisions contained within this Declaration, said Declarant is, by the terms of this agreement, in no way so

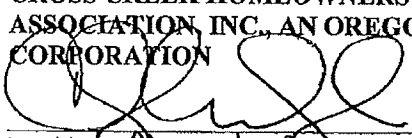
obligated and the failure of Declarant to enforce or cause to be enforced any of these provisions shall not be deemed or considered a breach of duty or contract by Declarant, nor give rise to any cause of action or suit for failure to so enforce any provisions herein.

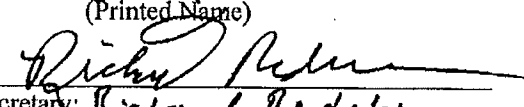
#### ARTICLE XV

Any or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of the Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarants or any of them herein.

IN WITNESS WHEREOF, the Association has executed this Declaration this 15<sup>th</sup> day of January, 2010, and hereby certifies that this document includes all existing Declarations and amendments thereto.

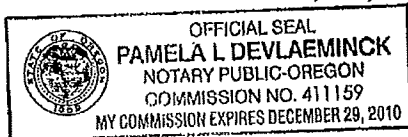
CROSS CREEK HOMEOWNERS  
ASSOCIATION, INC., AN OREGON  
CORPORATION

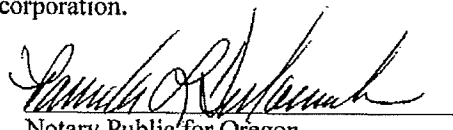
  
President: Cheryl Wrzesinski  
(Printed Name)

  
Secretary: Richard Redeker  
(Printed Name)

STATE OF OREGON )  
County of Washington )ss:

The foregoing instrument was acknowledged before me on this 15<sup>th</sup> day of January, 2010, by Cheryl Wrzesinski, President, and Richard Redeker, Secretary, of Cross Creek Homeowners Association, Inc., an Oregon corporation.



  
Notary Public for Oregon  
My Commission Expires: 12/29/2010