

NOTES

1. UNLESS OTHERWISE SPECIFIED, THERE SHALL BE A PERMANENT EASEMENT FOR PUBLIC UTILITIES, DRAINAGE, EASES, AND EGRESS AND ACCESS TO ADJACENT LOTS. THIS EASEMENT SHALL NOT PRECLUDE THE CONSTRUCTION OF HARD-SURFACED DRIVEWAYS AND WALKWAYS TO EACH LOT.
2. UNLESS OTHERWISE SPECIFIED, OR DIMENSIONED, THERE SHALL BE A FIVE (5) FOOT PROPERTY DRAINAGE, PUBLIC UTILITY AND IRRIGATION EASEMENT ADJACENT TO ALL LOT LINES INSIDE THIS SUBDIVISION WHICH DO NOT FRONT A PUBLIC STREET.
3. ANY RE-SUBDIVISION OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF THE RE-SUBDIVISION.
4. AGRICULTURAL WATER HAS BEEN PROVIDED FROM THE BOISE VALLEY IRRIGATION DISTRICT. IN COMPLIANCE WITH DRAIN CODE 21-200(3), LOTS WITHIN THE SUBDIVISION WILL BE ENTITLED TO IRRIGATION WATER RIGHTS, AND WILL BE ELIGIBLE FOR ASSASSINATIONS FROM THE BOISE VALLEY IRRIGATION DISTRICT.
5. UNLESS OTHERWISE SPECIFIED, THE SUBDIVISION SHALL BE IN ACCORDANCE WITH THE BOISE CITY ZONING ORDINANCE. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE.
6. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE. THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN COMPLIANCE WITH THE BOISE CITY ZONING ORDINANCE.
7. LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 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2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158,



**FIRST AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR DAVENPORT VILLAGE SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION ("First Amendment") is made effective as of March 28 2008, by the owners of residential lots in Davenport Village Subdivision as set forth in the signature page attached hereto ("Declarant" or "Grantor").

ARTICLE I: RECITALS

1.1 Declarant entered into and recorded that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Davenport Village Subdivision, Instrument No. 105121276 of the Ada County Recorder's Office ("Declaration").

1.2 This First Amendment is made and entered into pursuant to the authority granted in Section 13.02 of the Declaration.

1.3 The Declaration is hereby amended in the following particulars.

ARTICLE II: AMENDMENT

Notwithstanding anything contained in the Declaration or this First Amendment to the contrary, the Property or Subdivision as defined in the Declaration is more particularly described as follows:

Lots 1 through and including 15 and 17 through and including 24, Block 1, DAVENPORT VILLAGE SUBDIVISION, according to the official plat thereof filed in Book 91 of Plats at Pages 10846 through and including 10848, records of Ada County, Idaho.

Specifically excluding Lot 16, Block 1, DAVENPORT VILLAGE SUBDIVISION, according to the official plat thereof filed in Book 91 of Plats at Pages 10846 through and including 10848, records of Ada County, Idaho.

IN WITNESS WHEREOF, the Declarant has executed this Declaration effective as of the date first set forth above.

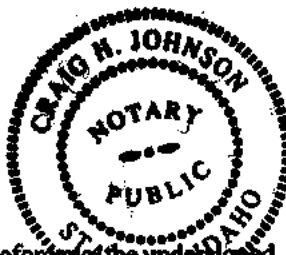


DAVENPORT VILLAGE OWNERS ASSOCIATION, INC.
By: Stanley Knight
Its: President

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR DAVENPORT VILLAGE SUBDIVISION -

Kathy Tassano
 DAVENPORT VILLAGE OWNERS ASSOCIATION, INC.
 By: Kathy Tassano
 Its: Secretary

STATE OF Idaho)
) ss
 County of Valley)



On this 29th day of April, 2008, before me the undersigned, a Notary Public in and for said State, personally appeared Kathy Tassano, proved to be, by sufficient evidence Secretary of DAVENPORT VILLAGE OWNERS ASSOCIATION, INC., that signed the foregoing document as Secretary of the corporation, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Craig H. Johnson
 Notary Public for Idaho
 Residing at: McCall
 My commission expires: 4/3/2010

STATE OF _____)
) ss
 County of _____)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, proved to be, by sufficient evidence _____ of DAVENPORT VILLAGE OWNERS ASSOCIATION, INC., that signed the foregoing document as _____ of the corporation, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

 Notary Public for Idaho
 Residing at: _____
 My commission expires: _____

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
 RESTRICTIONS AND EASEMENTS FOR DAVENPORT VILLAGE SUBDIVISION -

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of NAPA

On MARCH 28, 2008 before me, PAMELA L. DANIEL, Notary Public,
(Here insert name and title of the officer)

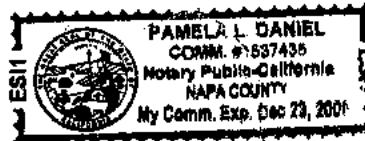
personally appeared STANLEY KNIGHT

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Pamela L. Daniel
(Signature of Notary Public)

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.

DESCRIPTION OF THE ATTACHED DOCUMENT

FIRST AMENDMENT TO
(Title or description of attached document)

DECLARATION
(Title or description of attached document continued)

Number of Pages 1 Document Date 3/28/08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

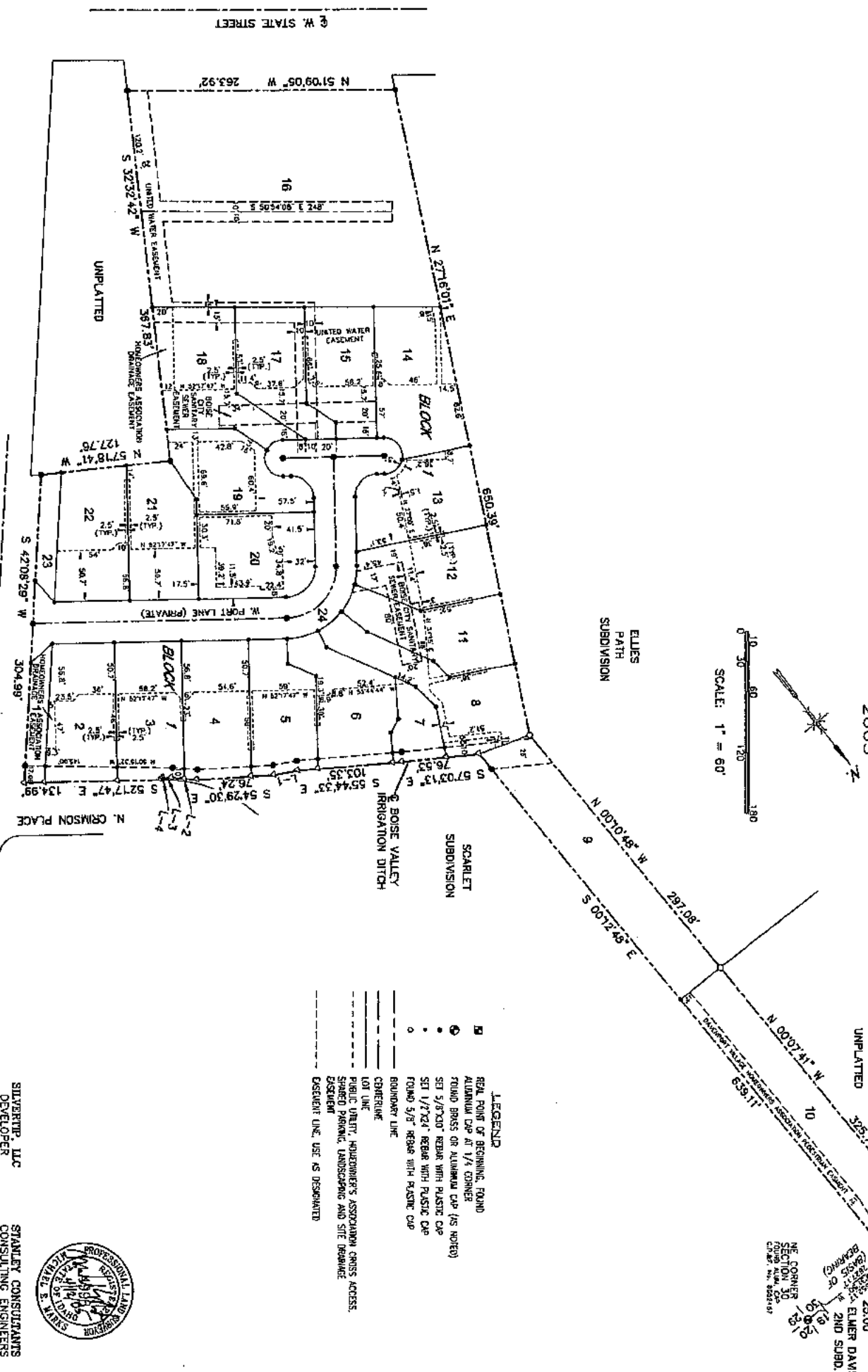
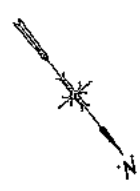
- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

BK 91 Pg 10847

PLAT OF DAVENPORT VILLAGE SUBDIVISION

A PORTION OF THE NORTH 1/2 OF SECTION 30
T4N., R2E., B1M.
BOISE, ADA COUNTY, IDAHO

2005



- LEGEND**
- REAL POINT OF BEGINNING, FOUND
 - ALUMINUM CAP AT 1/4 CORNER
 - FOUND BRASS OR ALUMINUM CAP (AS NOTED)
 - SET 3/8" x 30" REBAR WITH PLASTIC CAP
 - SET 1/2" x 24" REBAR WITH PLASTIC CAP
 - FOUND 5/8" REBAR WITH PLASTIC CAP
 - BOUNDARY LINE
 - CONCRETE
 - LOT LINE
 - PUBLIC UTILITY, HOUSING ASSOCIATION CROSS ACCESS, SPARED PARKING, LANDSCAPING AND SITE DRAINAGE DESIGN
 - EASEMENT LINE, USE AS DESIGNATED



SILVERTOP, LLC
DEVELOPER
STAR, IDAHO

STANLEY CONSULTANTS
CONSULTING ENGINEERS
MERIDIAN, IDAHO

SHEET 2 OF 3
DRAWING NO. 144728

DAVENPORT VILLAGE SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS, THAT SAYER, LLC, AN OHIO LIMITED LIABILITY COMPANY, DOES HEREBY CERTIFY THAT IT IS THE OWNER OF THE REAL PROPERTY AS DESCRIBED BELOW AND IT IS ITS INTENTION TO INCLUDE SAID REAL PROPERTY IN THIS SUBDIVISION PLAT. THE OWNER ALSO HEREBY CERTIFIES THAT THIS PLAT COMPLETES WITH OHIO CODE 50-1234 (3); ALL LOTS IN THIS SUBDIVISION WILL RECEIVE DOMESTIC WATER FROM AN EXISTING WATER SYSTEM AND UNITED WATER OHIO, INC. HAS AGREED IN WRITING TO SERVE THE LOTS IN THIS SUBDIVISION.

A PARCEL OF LAND LOCATED IN THE N 1/2 OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE BOISE MERIDIAN, BOISE, ADA COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NE 1/4 (NORTH 1/4 CORNER) OF SECTION 30, T. 4 N., R. 2 E., B.M., THE REAL POINT OF BEGINNING OF THIS SUBDIVISION, THENCE S 87°03'13" E 639.11 FEET TO A POINT; THENCE S 87°03'13" E 76.53 FEET TO A POINT; THENCE S 87°03'13" E 103.35 FEET TO A POINT; THENCE S 87°03'13" E 23.78 FEET TO A POINT; THENCE S 87°03'13" E 76.24 FEET TO A POINT; THENCE S 48°53'18" E 26.01 FEET TO A POINT; THENCE S 57°53'11" E 9.13 FEET TO A POINT; THENCE N 87°58'35" E 23.89 FEET TO A POINT; THENCE S 87°58'35" E 13.89 FEET TO A POINT; LEAVING THE BOUNDARY OF SCAVELL SUBDIVISION; THENCE S 42°08'39" W 30.459 FEET TO A POINT; THENCE S 57°18'41" W 127.76 FEET TO A POINT; THENCE S 32°32'42" W 167.63 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF STATE STREET; THENCE N 57°09'05" W 28.392 FEET ALONG SAID RIGHT OF WAY TO A POINT; THENCE N 27°18'01" E 650.38 FEET TO A POINT; THENCE N 87°03'13" E 76.53 FEET TO A POINT; LEAVING THE BOUNDARY OF ELICKS PLAIN SUBDIVISION; THENCE N 87°03'13" E 103.35 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF SAID SECTION 30; THENCE S 87°58'35" E 28.00 FEET TO THE REAL POINT OF BEGINNING OF THIS SUBDIVISION, CONTAINING 6.33 ACRES, MORE OR LESS.

THE PRIVATE ROAD AND THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND FOR ANY OTHER USES AS DESIGNATED HEREON, AND NO PERMANENT STRUCTURES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS THIS 10th DAY OF January, 2005

SAYER, LLC
Raymond E. Robnett
RAYMOND E. ROBBETT, MEMBER

ACKNOWLEDGMENT

STATE OF IDAHO)
COUNTY OF ADA)
SS.)
ON THIS 10th DAY OF January, 2005, BEFORE ME, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

Michael E. Marks
MICHAEL E. MARKS, P.L.S. NO. 4998
PROFESSIONAL LAND SURVEYOR
MY COMMISSION EXPIRES: 7/22/08



HEALTH CERTIFICATE

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPTER 13 HAVE BEEN SATISFIED BASED ON THE STATE OF IDAHO, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) APPROVAL OF THE DESIGN PLANS AND SPECIFICATIONS, AND THE CONSTRUCTION OF THE SEWER FACILITIES. THE DEVELOPER HAS AGREED TO MAINTAIN THE SEWER FACILITIES IN ACCORDANCE WITH THE DEQ REQUIREMENTS. NO DRINKING WATER OR SEWER/SEPTIC FACILITIES WERE CONSTRUCTED, BUILDING CONSTRUCTION CAN BE ALLOWED WITH APPROPRIATE BUILDING PERMITS IF DRINKING WATER OR SEWER FACILITIES HAVE SINCE BEEN CONSTRUCTED OR IF THE DEVELOPER IS CONSTRUCTING SEWER FACILITIES. IF THE DEVELOPER FAILS TO CONSTRUCT SEWER FACILITIES, THE OTHER LOTS IN THIS SECTION 30, ADA CODE, BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL, AND NO CONSTRUCTION OF ANY BUILDING OR SHEDS REQUIRING DRINKING WATER OR SEWER/SEPTIC FACILITIES SHALL BE ALLOWED.

Michael E. Marks
MICHAEL E. MARKS, P.L.S. NO. 4998
PROFESSIONAL LAND SURVEYOR
MY COMMISSION EXPIRES: 7/22/08



APPROVAL OF CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF BOISE, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT.

John E. Tuma
JOHN E. TUMA, CITY ENGINEER

CERTIFICATE OF COUNTY SURVEYOR

I, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

John E. Tuma
JOHN E. TUMA, COUNTY SURVEYOR



CERTIFICATE OF SURVEY

I, MICHAEL E. MARKS, P.L.S. DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT AS DESCRIBED IN THE CERTIFICATE OF OWNERS AND THE ATTACHED PLAT, WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATE REPRESENTS THE POINTS PLATTED HEREON IN CONFORMITY WITH THE STATE OF IDAHO CODES RELATING TO PLATS, SURVEYS AND THE CORNER REPERCUSSION AND PLAIN ACT, IDAHO CODE 50-100 THROUGH 50-107.

MICHAEL E. MARKS, P.L.S. NO. 4998



ACCEPTANCE OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 22nd DAY OF January, 2005.



John E. Tuma
JOHN E. TUMA, CHAIRMAN
ADA COUNTY HIGHWAY DISTRICT

APPROVAL OF CITY COUNCIL

I, *Annelle P. Jernigan*, CITY CLERK IN AND FOR THE CITY OF BOISE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 21st DAY OF January, 2005, THIS PLAT WAS DULY ACCEPTED AND APPROVED.

Annelle P. Jernigan
ANNELLE P. JERNIGAN, CITY CLERK, BOISE, IDAHO

CERTIFICATE OF COUNTY TREASURER

I, *Linda Fischer*, COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF IDAHO CODE 50-1206, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS PROPOSED SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

Linda Fischer
LINDA FISCHER, COUNTY TREASURER

COUNTY RECORDERS CERTIFICATE

INSTRUMENT NO. 105048162
STATE OF IDAHO)
COUNTY OF ADA)
SS.)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF Silver City AT 3:27 MINUTES PAST 11 O'CLOCK AM, THIS 20th DAY OF April, 2005. IN MY OFFICE AND WAS DULY RECORDED IN BOOK 91 OF PLATS AT PAGES 10896 THRU 10898

David Alexander
DAVID ALEXANDER, DEPUTY
EX-OFFICIO RECORDER

L400026143 NB1

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DAVENPORT VILLAGE SUBDIVISION

March 15, 2005

ARTICLE I.

RECITALS

WHEREAS, the undersigned (hereafter "Grantor") is the owner of certain land in Boise, Ada County, Idaho, more particularly described as follows (hereafter "Property" or "Subdivision"):

Lots 1 through and including 24, Block 1, DAVENPORT VILLAGE SUBDIVISION, according to the official plat thereof filed in Book 91 of Plats at Pages 10846 through and including 10848, records of Ada County, Idaho.

WHEREAS, the Grantor desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Grantor and all other persons or entities who may subsequently acquire an interest in the Property and (iii) create a multi-family residential development of high quality;

WHEREAS, the Property will be developed as a planned-unit development of multi-family four-plex residential dwelling units with pursuant to a common architectural theme, with a private road and common areas, and a non-profit owners association will be created by the Grantor to provide maintenance of the private road, common areas and the landscaping on the lots and to govern the Property; and

WHEREAS, in order to achieve the objectives and desires of the Grantor, the Grantor will control the management and government of the Property and the non-profit owners association to be created for the Property until such time as the owners of the lots take over the management functions upon substantial completion of the development process.

ARTICLE II.

DECLARATION

The Grantor hereby declares that the Property and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), is and shall be held, sold,

conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Property and any interest therein; and shall inure to the benefit of and be binding upon the Grantor and each Owner, and each successor in interest of each, and may be enforced by the Grantor and any Owner, or by the Owner's Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor's right to complete development of the Property and the construction of the multi-family residential dwelling units therein in accordance with the plan therefor as the same exists or may be modified from time-to-time by the Grantor nor prevent normal construction activities during the construction of improvements upon any Lot in the Property. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time and shall not be violative of the ordinances of Boise City, Idaho, applicable to the Property. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

In the event of a conflict between the provisions of this Declaration and the requirements of the ordinances of Boise City, Idaho, applicable to the Property, the more restrictive shall control.

ARTICLE III.

DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for the Property.

ACC Rules/ACC Standards: Such rules or standards as may be promulgated by the Grantor and/or the ACC as authorized by Section 5.27, below.

Assessment: A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.

Association: Davenport Village Owners Association, Inc., an Idaho non-profit corporation.

Board: The duly elected and qualified Board of Directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

Common Area(s): All real property, or interest therein, located within or outside of the boundaries of the Property in which the Association owns an interest or controls or which the Association is obligated to maintain, and which is owned, held, controlled or maintained for the betterment of the Owners and Occupants of the Property, and includes, without limitation, stormwater and/or drainage facilities, common landscaped areas, the Private Road (hereafter defined) and other common areas, and shall include Lots 1, 7, 9, 10 and 23, Block 1 of the Subdivision which are the Common Area Lots within the Property. The Common Area(s) is sometimes referred to herein as "Association Properties."

Davenport Village Owners Association, Inc. The Idaho non-profit corporation organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Property.

Declaration: This instrument as it may be amended from time-to-time.

Development: The project to be undertaken by the Grantor resulting in the improvement of the Property, including landscaping, amenities, construction of roadways, utility services and other improvements.

Grantor: The undersigned owner of the land comprising the Property, including a successor of the undersigned Grantor, which successor succeeds to the ownership of all of the Grantor's interest in the whole of the Property.

Improvements: All structures, facilities or systems, and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, Parking Areas (hereafter defined), sidewalks, walkways, mailboxes, walls, fences, screens, landscaping, poles, signs, lighting, stormwater and/or drainage facilities, and fixtures of any kind whatsoever. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent Improvements on a Lot by the Grantor or the first construction of permanent Improvements on a Lot following the sale of that Lot by the Grantor to an Owner, and intended for multi-family residential occupancy.

Limited Assessment: An Assessment levied by the Association upon one (1) or more Lots, but not upon all Lots within the Property, for the

purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Property or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Member: Any person(s) who is an Owner of a Lot within the Property.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in the Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot within the Property.

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot with the Property owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any residential dwelling unit in a Building on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including the Grantor, holding fee simple title to a Lot within the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Parking Areas. Those areas located on some of the Lots within the Property, including some of the Common Area Lots, which shall be improved and marked for the parking of vehicles by the Owners and Occupants.

Plat: A final subdivision plat covering any portion of the Property, as recorded in the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Pressurized Irrigation System: The pressurized irrigation system constructed by the Grantor within the Subdivision to provide water to each Lot for the irrigation of the landscaping on each Lot.

Private Road: The private road located on Lot 24, Block 1, Davenport Village Subdivision, identified as "Port Place" on the Plat.

Property: The whole of the Property described in Article I, above.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Subdivision: The whole of the Property described above (also sometimes referred to herein as "Property").

ARTICLE IV.

PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- (b) The prevention of the erection within the Property of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas within the Property and adequate free spaces between Improvements.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time-to-time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes.

ARTICLE V.

PERMITTED USES AND PERFORMANCE STANDARDS

SECTION 5.01. Use. Lots shall be used only for multi-family residential purposes and such uses as are customarily incidental thereto and Common Area. As used herein and elsewhere in this Declaration, "residential" shall mean the use of a multi-family residential dwelling unit located in a Building on a Lot for living accommodations by not more than two (2) unrelated persons, excluding guests of the principal Occupant(s), which guests may reside therein on a temporary basis. Notwithstanding the provisions of §67-6530 et. seq., Idaho Code, as used in this Declaration, "residential" is not intended, nor shall the same be construed, to include the use of a residential dwelling unit located in a Building on a Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.

SECTION 5.02. Buildings. No Lot shall be improved except with one (1) Building containing four (4) residential dwelling units. The vehicle parking for each Building, except for a Lot(s) within the Property improved with a garage(s), shall be provided in the Parking Areas within the Property. If approved by the Board of the Association, some or all of the Parking Areas within the Property may be covered with a roof and related improvements, the design and appearance of which shall be approved by the ACC and, if such covering is approved and installed, the cost of which shall be assessed as a Special Assessment against those Lots whose Owners are benefitted thereby, as determined in the sole discretion of the Board.

SECTION 5.03. Approval of Use and Plans. No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article XI, below.

SECTION 5.04. Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack, accessory building or out building shall be used as a temporary or permanent residence within the Property. No noxious or offensive activities shall be conducted in any residential dwelling unit located in a Building on a Lot or on any Lot nor shall anything be done therein or thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other residential dwelling units in the same Building or the residential dwelling units located on other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. Burglar alarms must be internal to a residential dwelling unit, and shall not emit noise or light outside of such residential dwelling unit for a period longer than ten (10) minutes following the trigger of such alarm. No split-entry Buildings or Buildings having more than two (2) stories shall be allowed.

SECTION 5.05. Set-Backs. No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to a Lot line than is permitted by the ordinances of Boise City, Idaho, applicable to the Property.

SECTION 5.06. Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

SECTION 5.07. Easements. There is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:

- (a) **Public Utilities.** For the installation and maintenance of public utility and drainage facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat for any portion of the Property.
- (b) **Landscaping.** For the purpose of permitting the Grantor or the Association, their contractors and agents, to enter onto those portions of Lots to maintain, replace and restore the landscaping on the Lot.
- (c) **Access to Private Road and Common Area(s).** For the purpose of permitting the Grantor or the Association, their contractors and agents, to enter onto those portions of Lots to maintain, replace and restore the Private Road or other Common Areas within the Property.
- (d) **Pressurized Irrigation System.** For the purpose of permitting the Grantor or the Association, their contractors and agents, to maintain, repair and/or reconstruct the Pressurized Irrigation System within the Subdivision, and any other facilities or equipment located within or outside of the Subdivision for the delivery of irrigation water to Lots within the Subdivision.
- (e) **Encroachment.** Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.
- (f) **Maintenance and Repair.** For the purpose of permitting the Association, its contractors and agents, to enter upon the Lots within the Subdivision and, if required, within the Buildings, for the purpose of performing all maintenance, repair and replacement rights and duties set forth in this Declaration; provided, that entry upon a Lot or within a Building shall be at reasonable times and intervals with a minimum of inconvenience to the Occupants of the Building(s).
- (g) **Plat.** Any additional easements, if any, as shown and designated on a recorded Plat for any portion of the Property.

The easement areas (excluding any equipment or appurtenances owned by the Grantor, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated, unless such maintenance is to be provided by the Association as provided in this Declaration. Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary. Whenever utility house connections are installed within the Property, which connections serve more than one (1) Lot, the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections that service such Owner's Lot.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

SECTION 5.08. Lighting. If required by the ACC, each Owner shall install, and maintain in a operative condition such exterior lighting as shall be provided in the ACC Rules/ACC Standards.

SECTION 5.09. Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Rules/ACC Standards. No gravel roofs shall be permitted.

SECTION 5.10. Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept in any residential dwelling unit located on any Lot, except that not more than two (2) domesticated dogs and/or cats, or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept in a residential dwelling unit located on a Lot, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to the Occupant's residential dwelling unit located on a Lot.

SECTION 5.11. Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Property.

SECTION 5.12. Grading and Drainage. A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction is initiated. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow onto Lot 24 of Block 1 (Private Road) but shall not be allowed to drain or flow upon, across or under adjoining Lots or Common Areas, unless an express written easement for such purpose exists. The Owner of a Lot which drains upon, across or under an adjoining Lot(s) or Common

Areas shall be liable for any damage caused thereby and shall promptly take all action and make all modifications necessary to correct such non-permitted drainage. There shall be no interference with the established drainage pattern over any portion of the Subdivision, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Subdivision is completed by the Grantor, or that drainage which is shown on any plans approved by the ACC, which may include drainage from a Common Area Lot over any Lot within the Subdivision. The Owner of any Lot within the Subdivision in which grading or other work has been performed pursuant to a grading plan approved by ACC, shall maintain and repair all graded surfaces, drainage structures, means or devices which are not the responsibility of the Association or any governmental entity, it being expressly understood and agreed by each Owner of a Lot, by acceptance of a deed to such Lot, that the Association, not a governmental entity, shall be responsible for the maintenance, repair or replacement of the storm drainage facilities located within the Subdivision, provided that Ada County Highway District ("ACHD") shall have the rights, but not the obligation, of inspection, maintenance, repair and replacement as described in Section 6.06(d), below.

To avoid the accumulation of water near and under the Building constructed on a Lot, no concrete landscape curbing shall be installed on a Lot within ten feet (10') of the perimeter of the Building constructed on a Lot.

Each Owner who purchases a Lot directly from the Grantor (hereafter "Initial Owner"), by the acceptance of the deed to the Lot from the Grantor, acknowledges that the Grantor has provided the Owner with copies of the Geotechnical Engineering Report of Davenport Village Subdivision dated August 3, 2004, prepared by Materials Testing & Inspection, Boise, Idaho (hereafter "Geotechnical Report") prior to the closing of the purchase of the Lot by the Initial Owner from the Grantor. In summary, the Geotechnical Report identifies the soils within the Subdivision as being silty sand and poorly graded sandy gravel and, based on observations in test pits within the Subdivision and background knowledge of the area, that it is probable that relatively shallow groundwater levels typically exist within the Subdivision throughout the year. Each Initial Owner acknowledges that certain steps should be taken in the construction of the Building(s) on the Lot to mitigate the effects of the migration of water into the basement or the crawl space of a Building(s) constructed on the Lots within the Subdivision, and that the Initial Grantor should give notice to his/its successor-in-interest in the ownership of the Lot of the Geotechnical Report and the specific steps taken by the Initial Owner in the construction of the Building(s) construction on the Lot to mitigate the migration into and accumulation of surface water under the Building(s) constructed on the Lot.

After the Initial Construction on a Lot, an Owner shall not change or alter any grading on a Lot, construct or alter any berms or swales on a Lot or perform any other act which will affect or change the drainage on a Lot or any other Lot within the Subdivision, without the prior written approval of the ACC.

SECTION 5.13. Commercial Use Prohibited. No residential dwelling unit located in a Building on a Lot shall be used at any time for commercial or business activity, provided, however, that the Grantor or persons authorized by the Grantor may use a Lot(s) for development and sales activities relating to the Property, model homes or real estate sales. The rental by an Owner of the residential dwelling units located in a

Building on a Lot for residential purposes shall not be a use in violation of this Section. The use of a Lot for a shelter home, as the same is defined in §67-6530 et. seq., Idaho Code, whether or not operated for profit, shall, for the purposes of this Declaration, be a commercial or business use.

SECTION 5.14. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise at all times maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Declaration.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot or adjacent to a Lot if under the control of the Owner, which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration. If such event or condition is not promptly corrected by the Owner, the Association shall have the right to correct the same pursuant to subsection (g), below.
- (g) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any

Building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof plus a penalty in an amount determined by the Board, not to exceed \$500.00. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article X of this Declaration.

SECTION 5.15. Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

SECTION 5.16. Boats, Campers and Other Vehicles. Trailers, mobile homes, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure or screened from public view and at no time shall any of said vehicles or equipment be parked or stored on the Private Road or Parking Areas within the Property. No operative vehicle shall be parked or stored for a period in excess of seventy-two (72) consecutive hours on any portion of a Lot between the front of a Building and the abutting Private Road or in the Parking Areas. No inoperative vehicle shall be parked or stored, except for a temporary period not to exceed seventy-two (72) consecutive hours, on a Lot or unless wholly within an enclosed structure. The primary purpose of the Parking Areas within the Subdivision is for the parking of automobiles and other vehicles (hereafter "automobiles"). No other use of the Parking Areas which prohibits or limits the use of the Parking Areas for the parking or storage of the number of automobiles for which it is designed shall be permitted. The parking of automobiles on the Lot or in the Parking Areas within the Subdivision, other than for temporary purposes (as determined by the ACC), is prohibited. The provisions of this Section 5.16 relating to restrictions and limitations on parking shall be subject to the ACC Rules/ACC Standards which may set forth additional or different restrictions and limitations and, if so, the ACC Rules/ACC Standards shall be controlling.

SECTION 5.17. Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Rules/ACC Standards.

SECTION 5.18. Vehicles. The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC Rules/ACC Standards, which may prohibit or limit the use thereof within the Property, provide parking regulations and other rules regulating the same, which, as provided in Section 5.16, above, shall be controlling of the restrictions and limitations set forth in this Declaration.

SECTION 5.19. Exterior Energy Devices. No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

SECTION 5.20. Mailboxes. No free-standing mailbox shall be constructed or installed on any Lot, it being the requirement of the US Postmaster at the date of this Declaration that all mailboxes must be clustered. The US Postmaster and the ACC shall have the right to approve mailbox locations and design. Most Lots will not be permitted to have a mailbox located on the Lot but in the vicinity thereof, the location thereof to be determined by the ACC and/or the US Postmaster.

SECTION 5.21. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Rules/ACC Standards with respect to signs allowed within the Subdivision, which ACC Rules/ACC Standards, if adopted, shall regulate signs within the Subdivision and shall control over the specific provisions of this Section.

SECTION 5.22. Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one (1) person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.23. Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the ACC Rules/ACC Standards, it being the intent of the Grantor that all such privacy fencing shall present, to the extent reasonably practicable, a uniform appearance throughout the Property. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of Boise City, Idaho, applicable to the Property.

In addition to the requirements of the ACC Rules/ACC Standards applicable to fences, fencing, all fences and walls shall be subject to the following restrictions:

- (a) No fence or wall shall be permitted to be constructed or installed on the Common Area or any portion of a berm constructed by the

Grantor within the Property; provided, that if the Grantor constructs or installs a fence in a Common Area or on a berm, the ACC may allow fences on the adjacent Lot(s) to be attached thereto so long as such attachment does not (i) impede the maintenance, repair or replacement of the Common Area or berm, (ii) alter the visual theme established by the fence constructed or installed by the Grantor, and (iii) does not project above the top of the fence constructed or installed by the Grantor.

- (b) Fences and walls shall not extend closer to any street than twenty feet (20') nor project beyond the front setback of the principal Building on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of Boise City, Idaho, and the ACC. Notwithstanding the foregoing, on corner Lots no fence shall be located closer than the more restrictive of the following: (i) ten feet (10') from the back (inside edge) of the sidewalk on the side Lot line, or (ii) such distance from such sidewalk as shall be required by the applicable ordinances of Boise City, Idaho.
- (c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat of the Property.
- (e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Lots and streets, and shall not be allowed if the same constitute an undesirable, noxious or nuisance effect upon neighboring Lots.

SECTION 5.24. Pressurized Irrigation System. The Grantor has or will construct within the Subdivision a Pressurized Irrigation System to provide water to each Lot for the irrigation of the landscaping on each Lot, which Pressurized Irrigation System will be stubbed onto each Lot. After the construction/installation of the extension of the Pressurized Irrigation System on a Lot, the Association shall have the obligation to maintain, repair or replace the Pressurized Irrigation System, including any portion thereof which is extended on a Lot beyond the connection/shut-off valve located on the Lot, provided, that all costs paid or incurred by the Association for any maintenance, repair or replacement of the Pressurized Irrigation System which is required because of the negligence or intentional act of an Owner or Occupant of a Lot, or an agent or contractor of such Owner or Occupant, together with interest, related expenses, including attorneys' fees, shall be billed to the Owner of the Lot and, if not paid in full within ten (10) days, shall be assessed as a Limited Assessment as defined in Section 9.04, below, and collected as set forth in Article X of this Declaration.

The Association shall have the power to promulgate rules and regulations regarding the use and operation of the Pressurized Irrigation System, including, but not limited to, the days and times of delivery of water to each Lot or the temporary interruption or rationing of irrigation water to be delivered to the Lots, which rules and regulations shall be binding upon each Owner. Each Owner, by the acceptance of a deed to a Lot within the Subdivision, acknowledges that neither the Grantor nor the Association shall be responsible for any interruption or rationing of the delivery of irrigation water to such Owner's Lot if such interruption or rationing results from a cause or condition outside the control of the Grantor and/or the Association, including, but not limited to, an insufficient amount of irrigation water being delivered to the Subdivision or the temporary failure of the equipment or facilities of the Pressurized Irrigation System.

SECTION 5.25. Landscaping. The following provisions shall govern the landscaping of Lots within the Property:

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XI, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. The use of berms and sculptures planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan.
- (b) All required landscaping on a Lot shall be installed within sixty (60) days after substantial completion of the Building on the Lot, with a reasonable extension allowed for weather.
- (c) The ACC Rules/ACC Standards shall set forth the initial minimum landscaping required on each Lot.

SECTION 5.26. Solar Access Requirements. The following provisions are applicable to each Lot within the Property:

- (a) **Definitions.** For the purposes of this Section, the following definitions shall apply:

- (i) **Exempt Tree.** As used herein, "Exempt Tree" shall mean any Pre-existing Vegetation (hereafter defined), or any Solar Friendly Vegetation (hereafter defined).

- (ii) **Front Lot Line.** As used herein, "Front Lot Line" shall mean the line represented by the connection of the most distant corners of a Lot, including flag Lots, where said corners are in common with the boundary of the Private Road. For corner Lots, the Front Lot Line shall be as designated on a recorded Plat for the Property.

- (iii) **North Slope.** As used herein, "North Slope" shall mean the gradient, in percent slope, from the average finished grade of the Front Lot Line of a Shade Restricted Lot (hereafter defined), to the average finished grade of the Solar Lot Line (hereafter defined) of a Solar Lot (hereafter defined). The slope must be downward or decreasing in elevation from north to south.

(iv) **Restricted Vegetation.** As used herein, "Restricted Vegetation" shall mean a tree or other vegetation which is either evergreen, or if deciduous, tends to retain its leaves late in the fall and/or drop them late in the spring, or has a dense branching pattern which generally tends to block a high level of the sun's rays during the heating season.

(v) **Shade.** As used herein, "Shade" shall mean that portion of the shadow cast by the shade point of a structure of vegetation which exceeds the eleven and one-half foot (11.5') fence at the Solar Lot Line (hereafter defined) at solar noon, January 21.

(vi) **Shade Point.** As used herein, "Shade Point" shall mean that part of a structure, tree or other object, on Shade Restricted Lot (hereafter defined), which casts the longest shadow (the most northerly shadow) when the sun is due south on January 21st at an altitude of twenty-six degrees (26°) above the horizon, except a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.

(vii) **Shade Point Height.** As used herein, "Shade Point Height" shall mean the vertical distance or height measured from the average elevation at the Solar Lot Line (hereafter defined) to the Shade Point. If the Shade Point is located at the north end of a ridge line of a structure oriented within forty-five degrees (45°) of a geodetic north-south line, the Shade Point Height computed according to the preceding sentence may be reduced by three feet (3'). If a structure has a roof oriented within forty-five degrees (45°) of a geodetic east-west line with a pitch which is flatter than six feet (6') (vertical) in twelve feet (12') (horizontal), the Shade Point will be the cave of the roof. If such a roof has a pitch which is six feet (6') in twelve feet (12') or steeper, the Shade Point will be the peak of the roof.

(viii) **Shade Restricted Lot.** As used herein, "Shade Restricted Lot" shall mean any Lot within the Property that is southerly of and adjacent to a Solar Lot (hereafter defined).

(ix) **Solar Friendly Vegetation.** As used herein, "Solar Friendly Vegetation" shall mean a tree or other vegetation which is included on the Solar Friendly Vegetation list kept by the Public Works Department and the Community Planning and Development Departments of the City of Boise.

(x) **Solar Lot.** As used herein, "Solar Lot" shall mean a Lot within the Property which has the following characteristics: (a) The Front Lot Line is oriented within thirty degrees (30°) of a geodetic east-west bearing; (b) the Lot to the immediate south has a North Slope of ten degrees (10°) or less; and (c) is intended for the construction of an above ground inhabited structure.

(xi) **Solar Lot Line.** As used herein, "Solar Lot Line" shall mean the most southerly boundary of a Solar Lot, i.e., the line created by connecting the most distant southerly corners of a Solar Lot.

(xii) **Solar Setbacks.** As used herein, "Solar Setbacks" shall mean the minimum distance, measured perpendicular in a southerly direction, from the center of the Solar Lot Line to the Shade Point of a structure or to Restricted Vegetation based upon its height at maturity on a Share Restricted Lot. The following illustrates examples of Solar Setbacks for the given Shade Point Heights:

SOLAR SETBACKS REQUIRED
FOR GIVEN SHADE POINT HEIGHT

<u>Shade Point</u>	<u>Solar Setback</u>
10'	0'
15'	7'
20'	17'
25'	27'
30'	37'

(b) **Solar Access Covenants, Conditions and Restrictions.** The following covenants, conditions and restrictions shall be applicable within the Property:

(i) **Shade Restriction.** The following restriction shall apply to each Lot within the Property which is classified as a Shade Restricted Lot: Any structure or Restricted Vegetation cannot cast a shadow higher than an imaginary fence eleven and one-half feet (11.5') above the Solar Lot Line on Solar Noon of January 21st when the sun is at an angle of twenty-six degrees (26°) above the horizon. The height of the Shade Point of a structure on the Shade Restricted Lot is limited to nineteen feet (19') at the fifteen foot (15') rear yard zoning setback in order that the eleven and one-half foot (11.5') high "solar fence" at the north property line of the Shade Restricted Lot is not exceeded.

(ii) **Pre-Existing Vegetation.** Restricted Vegetation which existed on a Lot within the Property, when that Lot was platted, is exempt from the provisions of this Section. Any Lot which would be shaded beyond the allowed Shade limit by such vegetation shall not be classified as a Solar Lot.

(iii) **Slope Exemption.** Any Lot with an average finished grade slope along the north-south Lot dimension greater than ten percent (10%) shall be exempt from the provisions of this Section.

(iv) **Solar Setbacks.** Each separate structure and item of Restricted Vegetation shall have a Solar Setback dependent on and calculated by its Shade Point Height. All Shade Restricted Lots shall have the following Solar Setback: Solar Setback (in feet) = [Shade Point Height (in feet) - 11.5'] x 2.

(v) **Solar Friendly Vegetation.** Solar Friendly Vegetation is not restricted with respect to its location on a Lot.

(c) **Solar Access Rights, Duties and Responsibilities.** The Owner of a Solar Lot shall have the right to unobstructed solar access in accordance with the provisions of this Section. The Owner of a Lot shall not build, install or otherwise allow on a Lot a structure or a tree which is not classified as Solar Friendly Vegetation to cast more Shade at the Solar Lot Line than permitted in this Section.

(d) **Amendment.** Notwithstanding any provision in this Declaration to the contrary, no amendment to this Section shall be effective unless the same is first approved in writing by the City of Boise.

SECTION 5.27. Adoption of ACC Rules/ACC Standards. The Grantor, or in the event of the Grantor's failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the use and regulation of uses of the Common Areas, including the Parking Areas, and/or the planning, design, construction, alteration, modification, exterior appearance, removal or destruction of Improvements within the Property and/or deemed necessary or desirable by the Grantor, or the ACC, as the case may be, to carry out the purposes of this Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Declaration.

SECTION 5.28. Exemption of Grantor. Nothing herein contained shall limit the right of the Grantor to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Grantor, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Grantor deems advisable in the course of Development of the Property. This Declaration shall not limit the right of the Grantor at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time-to-time be reasonably necessary. The Grantor need not seek or obtain ACC approval of any Improvements constructed or placed within the Property by the Grantor in connection with the Development of the Property, but this exemption shall not apply to a Building(s) constructed by the Grantor on a Lot owned by the Grantor. The Grantor shall be entitled to the non-exclusive use, without charge, of any Common Area within the Property in connection with the marketing of the Lots therein. In addition, the Grantor shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas and the Lot(s) owned by the Grantor for such a period of time as is reasonably deemed by the Grantor to be necessary.

ARTICLE VI.

DAVENPORT VILLAGE OWNERS ASSOCIATION, INC.

SECTION 6.01. Organization of Association. Davenport Village Owners Association, Inc. shall be organized by the Grantor as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws and this Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall not be

dissolved nor shall the Association be relieved of the duties of the Association, as set forth in Section 6.06, below, without the prior written consent of Boise City, Idaho.

SECTION 6.02. Members. Each Owner (including the Grantor) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association and no Owner shall have more than one (1) membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 6.03. Classes of Membership. The Association shall have two (2) classes of membership:

CLASS A. Class A Members shall be all Owners of Lots within the Property, with the exception of the Grantor. The Class A Members shall be non-voting Members of the Association until such time as voting rights of the Class B Member(s) expire, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member(s).

CLASS B. Class B Members shall be the Grantor, and its successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Grantor has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be considered to be a Class A Member with respect to each Lot owned. The Class B Members shall be entitled to one (1) vote for each Lot owned. The Class B membership and the Class B voting rights shall cease and be converted to Class A membership on the happening of the earlier of the following events: (i) when the Grantor (or its successors in title to whom the Grantor has granted the Class B voting rights, as above provided) no longer owns a Lot within the Subdivision; or (ii) January 1, 2015.

SECTION 6.04. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time-to-time.

SECTION 6.05. Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only

to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

- (a) **Assessments.** The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (b) **Right of Enforcement.** The power and authority from time-to-time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) **Assessment of Penalty(s).** The Association, acting through the Board, shall have the right to impose a monetary penalty, not to exceed the sum of \$25.00 per day, unless a different amount is expressly provided in this Declaration, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown in the records of the Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of the Association or by a committee composed of not less than three (3) persons appointed by the Board. Such hearing shall be conducted in good faith and in a fair and reasonable manner. A monetary penalty so imposed on an Owner shall be enforceable as a Limited Assessment if such is not paid within the time deemed reasonable by the Board. The delay or failure by the Association to impose a monetary penalty on an Owner pursuant hereto shall not be deemed to be a waiver of the right of the Association to enforce the restrictions, conditions and covenants of this Declaration against said Owner with respect to such a violation(s) or to impose a monetary penalty with respect to such or any other violation(s).
- (d) **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.

- (e) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- (f) **Association Rules.** The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association rules as they may from time-to-time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.
- (g) **Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (h) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
- (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.

(iii) Any similar public or quasi-public improvements or facilities.

- (i) **Fiscal Year.** The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 6.06. Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) **Operation and Maintenance of Private Road and Common Area(s).** Perform, or provide for the performance of, the operation, maintenance and management of the Private Road, the Parking Areas, including those Parking Areas which are located on the Lots, and the covering, if any, located thereon, and the Common Areas and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, within or outside of the Subdivision, constructed/installed by the Grantor and/or an irrigation district for the delivery of irrigation water to the Lots, and the maintenance, management, repair or replacement all other property owned or controlled by the Association.
- (b) **Taxes and Assessments.** Pay all real and personal property taxes and assessments levied against the Private Road and/or the Common Area(s) owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (c) **Utilities.** Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- (d) **Maintenance of Storm Drainage Facilities.** Perform, or provide for the performance of, the maintenance of the storm drainage facilities which are within the Subdivision, including the repair and replacement of such storm drainage facilities if damaged or destroyed by casualty loss, which maintenance, repair and replacement of the storm drainage facilities shall be performed in accordance with the Maintenance & Operation Manual for Storm

Drain System dated August, 2004, prepared by Stanley Consultants Inc. If the Private Road within the Subdivision becomes a public right-of-way by dedication or otherwise, ACHD or the governmental entity having jurisdiction thereof shall have the right, but not the obligation, to (i) periodically inspect the storm drainage facilities located therein, (ii) perform such maintenance, repair and replacement as ACHD or such other governmental entity determines to be necessary to preserve the integrity of the said storm drainage facilities, and (iii) require from the Association prompt reimbursement of the costs and expenses paid or incurred by ACHD or such other governmental entity for such maintenance, repair and replacement of the storm drainage facilities. In the event the Association does not have adequate funds on hand to pay the cost and expenses so reimbursable to ACHD or other governmental entity, the Association shall be required to levy a uniform Special Assessment on each Lot in an amount sufficient to pay such deficiency.

- (e) **Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance specified in Article VII, below.
- (f) **Administration Fees - Costs.** Pay to the Grantor, so long as the Grantor manages the Association, all actual out-of-pocket costs paid or incurred by the Grantor in the management and administration of the affairs of the Association plus an administrative fee equal to six percent (6.0%) of the total income received by the Association, which administrative fee shall be compensation to the Grantor for the services provided to the Association.
- (g) **Identification Signs.** Maintain, repair and replace all permanent entry and special identification signs for the Property, whether the same be located within or without the boundaries of the Property.
- (h) **Pressurized Irrigation System.** Maintain, repair or replace all or any portion of the Pressurized Irrigation System constructed/installed by the Grantor or the Association within the Subdivision.
- (i) **Rule Making.** Make, establish, promulgate, amend and repeal Association rules.
- (j) **Architectural Control Committee.** Appoint and remove members of the ACC, all subject to the provisions of this Declaration, provided, that, so long as the Grantor owns a Lot within the Property, all members of the ACC shall be appointed and removed by the Grantor.
- (k) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

SECTION 6.07. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

- (a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

SECTION 6.08 Effective Date. The provisions of this Article VI shall become operative upon the creation by the Grantor of the Association and the conveyance to said Association of fee simple title to the Private Road and the Common Area Lots within the Subdivision. Until the creation and organization of the Association, the Grantor shall have the right to exercise all of the powers of the Association set forth in this Declaration.

SECTION 6.09. ACHD Not Liable. It is acknowledged and agreed that neither ACHD nor any other governmental entity having jurisdiction and control of the Subdivision shall have any obligation or responsibility to maintain, repair or replace all or any portion of the Private Road or Common Areas within the Subdivision, including the Pressurized Irrigation System for the Subdivision. Any purported amendment to this Section to impose liability upon ACHD or any other governmental entity for the drainage facilities and/or the Pressurized Irrigation System within the Subdivision shall be of no force or effect unless ACHD or such other governmental entity shall expressly consent thereto in writing.

ARTICLE VII.

INSURANCE

SECTION 7.01. Property Casualty Insurance. Each Owner shall have the obligation to purchase and keep in force a policy of property casualty insurance in an amount equal to the full replacement value (that is, one hundred percent (100%) of the then current replacement cost, exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Building located the Owner's Lot in the Subdivision, with an inflation guard endorsement and such other endorsements and coverage as may be reasonably required by the Association, a Mortgagee or the Federal National Mortgage Association. The maximum deductible shall be the amount of \$1,000.00 per loss or occurrence. Each Owner of a Lot or the Occupant(s) of the residential dwelling units located on the Lot, as agreed between the Owner and the Occupant(s), shall be responsible for the insurance of the personal property located on such Lot. The policy of property casualty insurance required to be purchased and kept in force by each Owner shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and other risks as are customarily covered in extended coverage property casualty and damage insurance policies for similar property.

Upon the written request of the Association, an Owner shall, within ten (10) days after the receipt of such request, provide the Association with a certificate evidencing that the property casualty insurance required to be purchased by the Owner, as provided herein, is in force and effect.

SECTION 7.02. Failure of Owner to Insure. In the event an Owner shall fail to purchase and keep in force the insurance required to be purchased by the Owner, as described in Section 7.01, above, the Association may, but shall not be required to, purchase and keep in force the same, in which event the Owner shall pay to the Association the full amount of the Association's expense with respect thereto, plus a penalty equal to \$250.00 for the Owner's failure to purchase and keep in force such insurance, said payment to be made within ten (10) days after demand for such payment by the Association.

SECTION 7.03. Flood Insurance. If the Subdivision is located in an area identified by any governmental entity having jurisdiction of the Subdivision as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or otherwise, and if the Association is able to do so, it shall purchase and maintain a master or blanket policy of flood insurance covering all Buildings within the Subdivision, said flood insurance policy(s) to be in such amount and to contain such terms and conditions as shall be determined by the Board of the Association, in its sole discretion. In the event the Association is unable to obtain such a master or blanket policy of flood insurance, the Board of the Association shall have the right to either (i) purchase and maintain individual flood insurance policies on each Lot improved with a Building, or (ii) require each Owner of a Lot improved with a Building to purchase and maintain an individual policy of flood insurance in such amount and containing such terms and provisions as shall be approved by the Board of the Association.

SECTION 7.04. Comprehensive Public Liability Insurance. The Association shall have the responsibility to purchase and keep in force a master or blanket policy of comprehensive public liability insurance (hereafter "Public Liability Policy") insuring the Association, the Board, officers, the Grantor and the individual Owners, and the agents and employees of each of the foregoing (hereafter collectively "Insureds"). The Public Liability Policy shall have bodily and personal injury limits of not less than (i) \$1,000,000.00 per person per occurrence, (ii) \$2,000,000.00 aggregate for premises and operations, (iii) \$1,000,000.00 aggregate for products and completed operations, (iv) \$50,000.00 for fire legal liability, and (v) medical payments of \$5,000.00 per person, and property loss or damage limits of not less than \$500,000.00, which limits shall be increased from time-to-time by the Board of Directors to amounts which are determined to be reasonable and typical for such coverage in the general area of the Subdivision. The Public Liability Policy shall protect the Insureds against any liability incident to the ownership and/or use of the Lots and any Common Area owned by the Association or easement areas under the control of the Association. The Public Liability Policy shall contain a provision that the an Insured shall nevertheless be entitled to recover under such policies for any loss occasioned by such Insured, or its partners, officers, employees or agents. The Public Liability Policy shall be written as a primary policy, not contributing with and not in excess of coverage which an Insured may carry.

SECTION 7.05. Other Insurance. In addition to the insurance policies purchased by the Association under Sections 7.01, 7.03 and 7.04, above, the Association shall have the right to purchase and maintain the following policies of insurance:

- (a) **Directors and Officers Liability Insurance.** If elected by the Board, full coverage directors and officers liability insurance in an amount determined by the Board.
- (b) **Mortgagee Required Insurance.** Such casualty, liability and other insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee or Owner of a Lot within the Property, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA or FHLMC, as applicable.
- (c) **Public Liability Insurance - Umbrella.** If elected by the Board, a public liability umbrella insurance policy providing protection of the Insureds named in Section 7.04, above, in such additional amount as the Board may determine.
- (d) **Other Insurance.** Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.

SECTION 7.06. Proceeds From Insurance. The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to the Association under any policies purchased and maintained by the Association, and the Association shall have full power to receive the Owners' interests in such proceeds and to deal therewith.

SECTION 7.07. Premiums - Allocation. Insurance premiums for the insurance coverage purchased by and maintained by the Association, except such insurance coverage as may be purchased by the Association pursuant to Section 7.02, above, shall be deemed a common expense to be included in the Regular Assessments or, if necessary, Special Assessments, levied by the Association.

The Association shall require the insurance company issuing any master or blanket insurance policy required under Section 7.03, above, to furnish a statement which apportions the total premium cost for such policies amount all Lots covered by the policies. The apportionment shall take into consideration differences in the nature, quality and characteristics of each Building and other improvements on each Lot which affects the total policy premium cost. The amount apportioned by the insurance company to each Lot as the insurance cost for the Improvements thereon shall be assessed as either

a Regular Assessment or a Special Assessment against the Lot and paid by the Owner thereof. In the event that the insurance company issuing said policy fails or refuses to furnish such a statement, the Board of the Association shall have the authority to apportion the total premium cost amount the Lots covered by the policy and such apportionment by the Board shall take into consideration the factors set forth above.

SECTION 7.08. Insurance Reserve Account. The Association shall have the right to establish a reserve account (hereafter "Insurance Reserve Account") for the payment of insurance premiums relating to the insurance policies purchased and maintained by the Association on the Common Areas within the Subdivision. For the purpose of funding the Insurance Reserve Account, the Board shall have the right to assess each Lot that is improved with a Building, a Regular Assessment or a Special Assessment which shall be certified to and collected by the Association as other Assessments. The amount of said Regular Assessments or Special Assessments determined for the purpose of funding the Insurance Reserve Account shall be determined by the Board of the Association. The right to assess each Lot to fund the Insurance Reserve Account shall include the right to make an initial Assessment in the amount of the first (1st) year's premium(s) for said insurance. The Board of the Association shall have the right to place all funds collected for the Insurance Reserve Account in an interest bearing account at a financial institution approved by the Board.

ARTICLE VIII.

ASSOCIATION PROPERTIES

SECTION 8.01. Use. Each Owner and Occupant(s) of a Lot, and the family, licensees, invitees of an Owner or Occupant who reside on the Lot, shall be entitled to use the Association properties, subject to the following:

- (a) **Articles, Etc.** The provisions of the Articles and By-Laws of the Association, this Declaration and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association.
- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision.
- (d) **Conveyance of Common Area.** Except as provided in subsection (c), above, no portion of the Common Area shall be conveyed by the Association unless the Board of Directors of the Association determines that such conveyance is in the best interests of the

Subdivision, which determination shall be made following a regular or special meeting of the Members of the Association at which meeting the proposed conveyance is presented by the Board of Directors and the Members have the opportunity to present testimony in support of or against such proposed conveyance.

- (e) **Mortgage of Common Area.** After the Class A Members become entitled to voting rights, no portion of the Common Area shall be mortgaged by the Association without the prior approval of at least two-thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 9.10, below, shall apply.

SECTION 8.02. Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of said Owner's family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article X, below.

SECTION 8.03. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, as the case may be, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 8.04. Condemnation. If at any time any part of a Common Area or other property owned by the Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE IX.

ASSESSMENTS

SECTION 9.01. Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent

Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of such Owner's Lot.

SECTION 9.02. Regular Assessments. Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance of the exterior of the Buildings, and the for maintenance of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping maintenance, maintenance of the exterior of Buildings, lighting, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s) for such purposes as deemed necessary and prudent by the Board.

SECTION 9.03. Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

At the closing of the sale of each Lot by the Grantor, a special assessment of \$300.00 shall be collected from the purchaser of the Lot as payment to the Association for the set-up costs and the maintenance of the Common Areas to be maintained by the Association. Upon the transfer of ownership of a Lot by an Owner to a third party, a transfer fee in the amount of \$250.00 shall be payable by the Owner to the Association, provided, that no transfer fee shall be payable if the Lot was purchased by a builder from the Grantor and within one (1) year thereafter sold and transferred to a third Party.

SECTION 9.04. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, which maintenance and repair is the responsibility of the Owner of said Lot, if such maintenance and

repair is necessary, in the opinion of the Board, to protect the Subdivision or the Building(s) within the Subdivision or the appearance of the Subdivision, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

- (b) **Correction of Violations.** In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Article X below.
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 9.05. Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence the date of the closing of the sale of said Lot by the Grantor to a third party and the conveyance of title to said third party. The Grantor shall not be obligated to pay any Regular Assessment on a Lot owned by the Grantor for so long as the Grantor owns the same. If the Grantor pays all or any portion of the expenses of the Association, such amounts so paid shall constitute a loan by the Grantor to the Association, which loan, without interest, shall be repaid by the Association to the Grantor from the funds of the Association which are available to make such repayment.

SECTION 9.06. Uniform Rate of Assessment. Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

SECTION 9.07. Assessment Due Date. The due dates for Regular, Special and Limited Assessments shall be the first (1st) day of each calendar month, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 9.08. Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time-to-time, or if none is so set, at an rate of one percent (1.0%) per month. Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

SECTION 9.09. Estoppel Certificate. The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

SECTION 9.10. Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 9.03, above, or a Limited Assessment described in Section 9.04, above, shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of Owners or of proxies entitled to cast sixty percent (60%) of the total votes of each class of Members of the Association subject to the levy of such Special or Limited Assessment shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of Owners or of proxies entitled to cast ten percent (10%) of the total votes of each class of Members shall constitute a quorum. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 9.04, above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

ARTICLE X.

ENFORCEMENT OF ASSESSMENTS

SECTION 10.01. Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific

performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

SECTION 10.02. Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Property pursuant to this Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

SECTION 10.03. Notice of Assessment. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Ada County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

SECTION 10.04. Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

SECTION 10.05. Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on

the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 10.06. Reporting. The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 10.05, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Ada County, Idaho, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$50.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 10.02, above. The charge for such notification shall be subject to change by the Board.

SECTION 10.07. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

SECTION 10.08. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

ARTICLE XI.

ARCHITECTURAL CONTROL COMMITTEE

SECTION 11.01. Members of the Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has

resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

SECTION 11.02. Appointment. So long as the Grantor owns any Lot or parcel within or adjacent to the Property, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

SECTION 11.03. Compensation. The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the plans and specifications described in Section 11.07, below.

SECTION 11.04. Non-Liability. Neither the ACC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities 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 an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

SECTION 11.05. Approval Required. No construction, alteration, modification, removal or destruction of any improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Property without the prior express written approval of the ACC.

SECTION 11.06. Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics, economic circumstances, or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

If a variance is granted as provided herein, no violation of this Declaration, ACC Rules/ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC

Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the ordinances of Boise City, Idaho, applicable to the Property.

SECTION 11.07. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, Parking Area(s) on the Lot and other pertinent information relating to the Improvements.
- (b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, Parking Areas and walkways.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

SECTION 11.08. Completion Security Deposit. The ACC shall have the right to require an Owner to deposit with the ACC, at the time of the submission of the application under Section 11.07, above, a completion security deposit (hereafter "Completion Deposit"), in the amount of \$1,000.00, or such other amount as shall be determined by the ACC. The Completion Deposit shall be held by the ACC as security for the timely completion by the Owner of the Improvements on the Lot as approved by the ACC, including, but not limited to the landscaping as provided in Section 5.25,

above, and upon such timely completion shall be returned to the Owner without interest. If the Owner fails to timely complete such Improvements, the ACC shall have the right to deduct from such Completion Deposit the amount of any penalties, off-sets and costs as set forth in this Declaration or the ACC Rules/ACC Standards, including any costs which may be paid or incurred by the Association or a third party to complete such Improvements. The Inspection Fee(s) payable by an Owner to the ACC under Section 11.17, below, may be deducted from the Completion Deposit, if any, held by the ACC.

SECTION 11.09. Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Property as a quality residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty-five (45) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

SECTION 11.10. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

SECTION 11.11. Hearing. An Owner submitting an application under Section 11.07, above, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 11.13, below.

SECTION 11.12. Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.10, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

At the hearing the Owner, Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 11.13, below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

SECTION 11.13. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and

the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article X, above.

SECTION 11.14. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article X, above.

SECTION 11.15. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 11.12 and 11.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 11.16. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

SECTION 11.17. Inspection Fee(s). The ACC shall have the right to charge an Owner an inspection fee (hereafter "Inspection Fee") not exceeding \$100.00 for each inspection of the Improvements constructed on a Lot if the initial inspection, which shall be performed by the ACC without cost to the Owner, reveals that the Improvements do not comply with the approved application or is deviating therefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications, and an additional inspection(s) is required to assure such compliance. Any collection of Inspection Fee(s) so charged by the ACC to an Owner shall be enforceable as provided in Section 11.13, above.

ARTICLE XII.

PROTECTION OF MORTGAGEES

SECTION 12.01. Purpose. Notwithstanding any and all provisions of this Declaration to the contrary, to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") to participate in the financing of the purchase of Lots within the Property, the provisions of this Article are added thereto. To the extent the

following Sections of this Article conflict with any other provisions of this Declaration, this Article shall control.

SECTION 12.02. Restrictions on Amendments. No amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Declaration, as amended.

SECTION 12.03. Mortgagee Defined. For the purposes of this Article only, a "Mortgagee" shall refer only to FHLMC, GNMA, FNMA, FHA and VA, as described in Section 12.01, above.

SECTION 12.04. Right to Notice. Each Mortgagee, upon filing a written request for notification with the Board in accordance with Section 13.08, below, shall be given written notice by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Declaration, the Articles or the By-Laws of the Association (hereafter collectively referred to as "Project Documents"), which default is not cured within thirty (30) days after the Association has notice of such default.

SECTION 12.05. Exemption From Prior Assessments. Each Mortgagee which comes into possession of a Lot by virtue of foreclosure or otherwise shall take title to such Lot free from any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation thereof to all Lots, including the mortgaged Lot.

SECTION 12.06. Changes Requiring Unanimous Approval. Without the prior unanimous approval of all Mortgagees of Lots within the Property, neither the Association nor the Owners shall:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area which is owned, directly or indirectly, by the Association, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this Section.
- (b) Change the ratio of Assessments or method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards.

SECTION 12.07. Restrictions on Other Changes. Without the prior written approval of at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots within the Property, neither the Association nor the Owners shall:

- (a) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural

design of the exterior appearance of Improvements on Lots within the Property, the exterior maintenance of said Improvements, or the maintenance and upkeep of landscaping within the Property.

- (b) Fail to maintain the property casualty insurance on the Buildings and/or the insurable Improvements within a Common Area, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (c) Use hazard insurance proceeds for losses occurring within the Common Area for any purpose other than the repair, replacement or reconstruction thereof.
- (d) Abandon or terminate the covenants, conditions, restrictions and easements of this Declaration.
- (e) Make any material amendment to this Declaration or to the Articles or By-Laws of the Association.

SECTION 12.08. Right to Inspect Books, Etc. Mortgagees, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financing reports and other financial data; (iii) receive written notice of all meetings of Owners; and (iv) designate in writing a representative to attend all such meetings.

SECTION 12.09. Notification of Damage. Upon the Board receiving notice of any damage to the Common Area or any Lot wherein the cost of repair, replacement or reconstruction exceeds Ten Thousand Dollars (\$10,000.00) or notice of any condemnation or eminent domain proceedings or other similar involuntary acquisition of any portion of the Property, the Board shall give to each Mortgagee which has filed with the Board a written request for notice, prompt written notice of said damage or condemnation.

SECTION 12.10. Right to Pay Charges. Mortgagees may pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on the property casualty insurance policy(s) to be purchased and maintained by the Association covering the Buildings and/or covering the Common Area, if any, and said Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

SECTION 12.11. Fidelity Bond Required. The Board shall secure and caused to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association.

SECTION 12.12. Lessee's Obligations. Any agreement for the leasing or rental of a Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject to the provisions of the Project Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the leasing or rental agreement.

SECTION 12.13. Liability for Taxes. All taxes levied and assessed on the Common Area, if any, must be assessable against those Common Area only and the Association shall be solely responsible for the payment thereof.

SECTION 12.14. Waiver of Liability and Subrogation. Any provision in this Declaration which requires Owners to indemnify the Association or the Board of the Association, or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

SECTION 12.15. Additional Contracts. In addition to the foregoing provisions of this Article, the Board may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, FHA, VA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots with improvements thereon. Each Owner hereby agrees that it will benefit the Association and each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots, if such agencies approve the Property as a qualifying subdivision under applicable policies, rules and regulations as adopted from time-to-time.

SECTION 12.16. Release of Information by Mortgagee. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot and the Owner of a Lot encumbered by such a Mortgage hereby consents thereto.

SECTION 12.17. Restricted Application. It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA, GNMA, FHA or VA purchases, grantees or insures a Mortgage on a Lot within the Property and then only to the extent the same are required by said purchaser, guarantor or insurer. In the event the standards and guidelines of FHLMC, FNMA, GNMA, FHA or VA do not require, as a condition of approval of the Property as a qualifying subdivision, the inclusion of one (1) or more of the provisions of this Article, said non-required provisions shall be of no further force or effect.

ARTICLE XIII.

MISCELLANEOUS

SECTION 13.01. Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Ada County Recorder.

SECTION 13.02. Amendment. This Declaration may be amended as follows:

- (a) **By Grantor.** Until title to a Lot within the Property is conveyed by the Grantor to an Owner, this Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination.
- (b) **By Owners.** Except as otherwise expressly provided this Declaration, the provisions of this Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by a majority of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or a majority of the Class A Members, as the case may be. Such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 13.02 shall require the vote of a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by seventy-five percent (75%) of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or seventy-five percent (75%) of the Class A Members, as the case may be. Such amendment to this Section shall be in the form of an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment to this Section has been approved as provided herein, and shall be effective upon its recordation with the Ada County Recorder.

SECTION 13.03. Sewer Covenants. The following covenants shall run with each Lot and any Common Area affected thereby and shall be binding upon each Owner of a Lot and all occupants of any Improvements constructed on a Lot:

- (a) No Lot may be used or occupied for any allowed use unless the same is connected to the public sewerage collection system constructed and installed within the Property.
- (b) All sewer hook-up fees charged by the municipality having jurisdiction and control over the Lot shall be paid by the Owner at the time of construction of the Improvements thereon and the connection thereof to the public sewerage collection system, said sewer hook-up fees to be paid at such time and in such amount as shall be required by the ordinances and regulations of the municipal entity having jurisdiction thereof.
- (c) A monthly sewerage charge shall be paid to the municipal entity having jurisdiction thereof, or its designee, after connection to the

public sewerage collection system in accordance with the ordinances and regulations of said municipal entity.

- (d) All sewer service lines connected to the sewerage collection system constructed and installed by the Grantor in the Property shall be constructed in accordance with all applicable codes and regulations and shall be inspected as required by the governmental entity having jurisdiction thereof to assure a minimum of infiltration from said service line into the sewerage collection system.
- (e) The Grantor shall provide access, satisfactory to the governmental entity having jurisdiction thereof, for sewer cleaning equipment to all sanitary sewer manholes located outside of the Private Road.
- (f) The Grantor and each Owner of a Lot hereby authorizes the governmental entity having jurisdiction thereof, or its designee, to bring any action it deems necessary or required for the collection of any fees or charges due said entity for sewer service connected or monthly sewer charges and/or to otherwise enforce any of the obligations respecting the connection to the public sewerage collection system or use thereof as provided in this Section.

SECTION 13.04. Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 13.05. Non-Waiver. The failure of the Grantor, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 13.06. Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

SECTION 13.07. Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the

performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the initial period of operation of the Association or prior thereto during the period the Grantor is exercising the powers of the Association.

SECTION 13.08. Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 13.09. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

SECTION 13.10. Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

SECTION 13.11. Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Grantor.

SECTION 13.12. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

SECTION 13.13. Injunctive Relief. In the event of any violation or threatened violation by any person of any of the covenants, easements and restrictions contained in this Declaration, the Grantor and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

SECTION 13.14. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Declaration shall be binding upon and

be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

SECTION 13.15. Attorney's Fees. In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding the prevailing party's reasonable costs and attorney's fees, including the same with respect to an appeal.

SECTION 13.16. Force Majeure. The period of time provided in this Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.


IN WITNESS WHEREOF the Grantor has executed this Declaration as of the day and year first above written.

GRANTOR:

DAVENPORT SUBDIVISION, L.L.C.

by **Red Cliff Development, Inc., Member**

By


CORY M. SWAIN, Member President

State of **Idaho**, County of **Ada**, ss.

On this **8th** day of **August** in the year of **2005**, before me, the undersigned, a Notary Public in and for said State, personally appeared **Cory Swain** known or identified to me to be the **President of Red Cliff Development, Inc.**, whose name is subscribed to the within instrument as the **Member of Davenport Subdivision, LLC** and acknowledged to me that he executed the same as such **Member**.



Notary Public

Residing at:

My Commission Expires:

Residing in Meridian, Idaho
My Commission expires: 11-12-2010

