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Customer/Company Name: Merrill & Merrill
Customer Attn:
Customer Street: 109 N Arthur
Customer City, State, Zip: Pocatello, ID 83204

Customer Reference No.: Accomodation-2221

Property Address:
Legal Description:
Property Owner: Trail Creek Estates Homeowners Association

<u>Item Description</u>	<u>Amount</u>
Reconveyance	
Recording Fee	\$184.00
E-file Fee	\$4.75
Fed-Ex	
Courtesy Signing	

Total: \$188.75

Invoice Requested by: Sundi Archibald
Date: 8/23/2022

Please remit payment to:
Pioneer Title Company of Bannock County
8151 W. Rifleman
Boise, ID 83704

Instrument # 22214046
Bannock County, Pocatello, Idaho
08/23/2022 03:29:10 PM No. of Pages: 59
Recorded for: PIONEER TITLE POCATELLO
Jason C. Dixon Fee: \$184.00
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SECOND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION

ELECTRONICALLY RECORDED
DO NOT REMOVE THE
COUNTY STAMPED FIRST PAGE
AS IT IS NOW INCORPORATED AS PART
OF THE ORIGINAL DOCUMENT

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SECOND RESTATED DECLARATION OF COVENANTS,
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TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION
ASSOCIATION TABLE OF CONTENTS

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (the "Declaration") is made as of this 12th day of July, 2022 by McCormick Ranch, LLC an Idaho Corporation ("Declarant")

RECITALS

A. Declarant is the Owner of certain real property in the County of Bannock, Idaho, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "Initial Property"), and is or may in the future be the Owner of other real property, more particularly described in Exhibit B attached hereto and by this reference incorporated herein (the "Annexable Area"), which may from time to time be annexed to the Initial Property, pursuant to this Declaration.

B. Consistent with Declarant's intent to establish a community accommodating residential and associated land uses, including open space, and to develop and convey all or a portion of the properties in the Project, pursuant to a general plan for maintenance, care, use and management of the Project, Declarant has deemed it desirable to establish certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, upon the Project, all of the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and enhancing the quality of life within the Project. All property within the Project shall be held and conveyed subject to such covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens, and charges.

C. In furtherance of its desire for efficient management and preservation of the values and amenities in the Project, Declarant has deemed it desirable to create a corporation to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements for its Members; administering and enforcing the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges; collecting and disbursing the assessments and charges hereinafter created; and performing such other acts as shall generally benefit the Project.

D. Trail Creek Homeowners Association, an Idaho nonprofit corporation, is incorporated under the laws of the State of Idaho for the purpose of exercising the powers and functions stated above.

E. The primary components of the Common Elements, the expense of maintaining, which is to be shared by the Owners, are the parcels designated as "Common Elements" on the Plat and included in the Initial Property.

Now, THEREFORE, in consideration of the foregoing recitals, the provisions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that all property in the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Project, in furtherance of a general plan for the protection; maintenance, subdivision, improvement, sale and lease of the Project, or any portion thereof. The protective covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Project and shall be binding upon all Persons having any right, title or interest in the Project, or any part thereof, their heirs, successive Owners and assigns; shall inure to the benefit of every portion of the Project and any interest therein; and shall inure to the benefit of and be binding upon Declarant and its successor Owner and each Owner and his or her respective successors-in-interest; and may be enforced by any Owner, or by the Association.

ARTICLE I

DEFINITIONS

Unless otherwise expressly provided, when used in this Declaration, the words and phrases set forth in Exhibit C attached hereto and by this reference incorporated herein shall have the meanings specified therein.

ARTICLE II.

DEVELOPMENT OF THE PROJECT; ANNEXATION

2.1 PHASES OF DEVELOPMENT

Declarant hereby declares that the Phases of Development in the Initial Property are specified in Exhibit A.

2.2 MAXIMUM NUMBER OF LOTS. The Initial Property and Annexable Area will contain approximately ___ Lots, provided that the total number of Lots in the Project shall not exceed ___. Pursuant to Section 9.2(b) of this Declaration, Declarant reserves the right to purchase additional property and to add such Lots to the Annexable Area described in the final map.

2.3 A description of the boundaries of each Lot, including identifying number, is shown on the Final Map(s).

2.4 ANNEXATION OF ANNEXABLE AREA

(a) *Annexation.* Subject to Section 2.4(b), Declarant, unilaterally and in its sole discretion may, from time to time and at any time as long as Declarant owns any portion of the Project or Annexable Area, but shall in no way be required to, add all or any portion or portions of the Annexable Area to the Project covered by this Declaration. Annexation shall be accomplished by the Recording of a Notice of Annexation with respect to the Annexed Territory in the form attached hereto as Exhibit D and incorporated herein by this reference. Upon the Recording of a Notice of Annexation covering any portion of the Annexable Area, the covenants, conditions, restrictions and other matters contained in this Declaration shall apply to the Annexed Territory in the same manner as if such Annexed Territory were originally covered by this Declaration and constituted an original portion of the Project Nothing in this Declaration shall be deemed to be a representation by Declarant that all or any particular portion of the Annexable Area shall be annexed to the Project or be made subject to this Declaration.

(b) *Notice of Annexation.* The Notice of Annexation referred to in Section 2.4(a) of this Article shall contain: (i) the written and acknowledged consent of Declarant, for so long as Declarant shall own any property in the Project or the Annexable Area; (ii) a reference to this Declaration which shall state the date, county, and book and page of its Recordation, along with its instrument number or any other relevant Recording data; (iii) a statement that the provisions of this Declaration as set forth herein shall apply to the Annexed Territory; (iv) a legally sufficient legal description of the Annexed Territory; and (v) a designation by Declarant of Phase(s) of Development within the Annexed Territory. Each Notice of Annexation shall be signed by Declarant and by all other Persons owning a fee interest in the property being annexed. If required pursuant to Section 12.13, the approval of the FHA or VA shall be a condition to annexation hereunder.

ARTICLE III.

COMMON ELEMENTS.

PERMITTED USES AND RESTRICTIONS

3.1 COMMON ELEMENTS

The Common Elements shall be subject to the following:

(a) The right of Declarant to designate additional Common Elements.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Elements; provided that any rules and regulations must (i) be reasonably related to the purpose for which they are adopted; (ii) be sufficiently explicit in their prohibition, direction or limitation to inform a Member, or any Person deriving such rights from any Member, of any action or omission required for compliance; (iii) not be adopted to evade any obligation of the Association under this Declaration, the Articles and Bylaws or applicable law; (iv) be consistent with this Declaration, the Articles and Bylaws and must not arbitrarily restrict conduct or require the construction of any capital Improvement by a Member that is not required by this Declaration, the Articles and Bylaws and (v) be uniformly enforced under the same or similar circumstances against all Members, and Persons deriving such rights from any Member. Any rule or regulation that is not uniformly enforced against all Members may not be enforced against any Member. The Association shall furnish a written copy of each such rule or regulation and any amendments to each rule or regulation to all Members, but failure to furnish such copy shall not be deemed to invalidate such rules or regulations to any extent.

(c) The right of the Association to (i) convey the Common Elements, subject to the provisions of Sections 12.3 and 12.13 and subject to any approval of Members required by the Act, (ii) borrow money for the purpose of improving the Common Elements, and (iii) subject to the provisions of Sections 12.3 and 12.13 and subject to any approval of Members required by the Act, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(d) The right of the Association to suspend the voting rights and other rights of any Member, and the Persons deriving such rights from any Member, (i) for any period during which any assessment against such Member's Lot remains unpaid and delinquent; (ii) for a period not to exceed 60 days for any violation of the Restrictions, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; provided that any suspension of the rights of a Member, or a Person deriving such rights from any Member to use the Common Elements, may not prohibit such Member or Person from using any particular or pedestrian ingress or egress to go to or from the Member's Lot, including any area used for parking. Any suspension of voting rights shall be made only after Notice and Hearing as provided in the Bylaws.

(e) Subject to the provisions of Sections 12.3 and 12.13, the right of the Association to transfer a license or other interest in all or any portion of the Common Elements to any public agency, authority, utility or any other Person for such purposes and subject to such conditions as may be agreed to by the Association. No such transfer shall be effective unless any approval required by the Act is obtained. A certificate signifying any such approval shall be executed by two officers of the Association and Recorded. Recordation of such certificate shall constitute *prima facie* evidence that such approval has been given.

(f) The right, but not the obligation, of Declarant or, subject to approval of any Capital Improvement Assessments necessary to pay the cost of the same pursuant to Section 6.8, the Association, to construct new or additional Improvements on the Common Elements at any time and from time to time for the Improvement and enhancement thereof and for the benefit of the Association. Declarant shall convey or transfer such Improvements to the Association and the Association shall be obligated to accept title to, care for, and maintain the same.

(g) The right of Declarant (and its agents, employees, prospective customers, guests, invitees, licensees and representatives) to the non-exclusive use of the Common Elements and the facilities thereon, without charge, for sales, display, signs, sales office, access, ingress, egress, exhibits and other purposes deemed useful by Declarant. and its representatives in advertising and promoting the Project, so long as Declarant owns any property in the Project or Annexable Area. Such use shall not unreasonably interfere with the rights of enjoyment of the Members as provided herein.

(h) The right of the Association to maintain, replace, redesign, refurbish, reconstruct or repair any Improvement, trees or other vegetation on Common Elements and to plant trees, shrubs, ground cover and other vegetation thereon, and the right of the Association to close or limit the use of such Common Elements, or portions thereof, while maintaining and repairing the same.

(i) The right of the Association to regulate the use of the Common Elements and to prohibit access to the Common Elements, or portions thereof

(j) The rights of Declarant specified in Section 9.2(g) and (h).

3.2 RIGHTS OF DECLARANT INCIDENT TO CONSTRUCTION

A license is reserved by and granted to Declarant for access, ingress, and egress over, in, upon, under, and across the Common Elements, including, but not limited to, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and development of the Project; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner to or of that Owner's Lot. The license created pursuant to this Section 3.2 shall exist so long as Declarant shall own any portion of the Project or the Annexable Area.

3.3 WAIVER OF USE.

No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, or release the Lot owned by such Owner from the liens and charges thereof, by abandonment of that Owner's Lot.

3.4 CONVEYANCE OF COMMON ELEMENTS TO ASSOCIATION

(a) Declarant shall have the right, but not the obligation, from time to time to convey or cause to be conveyed to the Association as Common Elements all or any portion of the property located in the Project or the Annexable Area. All such conveyances of

Common Elements shall be free and clear of all monetary encumbrances and liens, but otherwise "As-Is" and subject to all other rights, reservations, interests, obligations, easements, covenants, restrictions and conditions then of record and those reserved, authorized or otherwise provided for in this Declaration. All such Common Elements shall be accepted by the Association upon transfer and thereafter, subject to Section 9.2(h) hereof, shall be maintained by the Association at Association expense for the benefit of the Owners.

(b) If the Project is developed in Phases and the Declarant is constructing Common Elements that will be added to the Association's Common Elements after the date upon which the Owners, other than Declarant, may elect a majority of the members of the Board of Directors, Declarant who is constructing such additional Common Elements is responsible for: (a) paying all expenses related to the additional Common Elements which are incurred before the conveyance of the additional Common Elements to the Association; and (b) except as otherwise provided in Idaho Code, delivering to the Association Declarant's share of the amount specified in the study of the reserves completed pursuant to paragraph (c) below.

(c) Before conveying the additional Common Elements to the Association, the Declarant who constructed the additional Common Elements may, in the Declarant's sole discretion, deliver to the Association a study of the reserves for the additional Common Elements.

3.5 VIOLATION OF RESTRICTIONS

If any Member or such Member's Family, guests, licensees, lessees, or invitees violates the Restrictions, the Board of Directors may, in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner for each violation. The Board of Directors may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess as a Special Assessment against an Owner for failure of a resident of, or visitor to, such Owner's Lot to comply with any provision of the Restrictions. No fine or penalty may be levied against a Member, or any Person deriving such rights from any Member, unless (i) the Person alleged to have violated the rule or regulation has received notice of the alleged violation and has been given the opportunity to request a Hearing on the alleged violation, and (ii) at least 30 days before the alleged violation, the Person alleged to have violated the rule or regulation was given written Notice of such rule or regulation or of any amendment thereto. The amount of such fines or penalties must be commensurate with the severity of the violation. Such fines or penalties may only be assessed by the Board of Directors after Notice and Hearing.

If a fine or penalty is imposed and the violation is not cured within 14 days or such longer period as may be established by the Board of Directors, the violation shall be deemed a continuing violation. Thereafter the Board of Directors may impose an additional fine or penalty for the violation for each seven-day period or portion thereof that the violation is not cured. Any additional fine or penalty may be imposed without Notice and Hearing.

ARTICLE IV.

COMMUNITY ASSOCIATION

4.1 ORGANIZATION

The Association shall be organized as a non-profit corporation under the Idaho Code no later than the date the first Lot is conveyed to a Person other than Declarant. The Association shall have the duties; powers and rights prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or the Bylaws, then such provision shall be construed, to the extent possible, consistent with the provisions of this Declaration.

4.2 BOARD OF DIRECTORS AND OFFICERS

(a) The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of Directors shall be composed of at least three and no more than five directors (each a "Director"). The initial Board of Directors consists of three Directors, all of whom have been appointed by Declarant.

(b) Subject to Sections 4.2(c) and (d), Declarant (or Persons designated by Declarant) shall solely be entitled to appoint and remove the officers of the Association and members of the Board of Directors until the earlier of ("Control Termination Date"): (i) 60 days after conveyance of 75% of the Approved Units to Owners other than Declarant; (ii) five years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) five years after any right to annex the Annexable Area was last exercised, Declarant may voluntarily surrender the right to appoint and remove all or a portion of the officers of the Association and all or a portion of the members of the Board of Directors before the Control Termination Date, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Unless and until Declarant conveys by written deed, ownership to each and every unit of the Property there shall be no duty to create an Association, and all authority, decisions, assessments, restrictions and powers reserved to the Association herein shall be held, maintained and administered solely by Declarant. All restrictions, limitations and conditions described herein shall be in full force and effect regardless of whether Declarant has conveyed by written deed, the ownership to each unit of the Property. Upon the conveyance by the Declarant of all units, or at some other time as determined by Declarant in Declarant's sole discretion, the Trail Creek Homeowner's Association shall be created pursuant to Idaho Code 53-701 et seq., or the then existing Uniform Unincorporated Nonprofit Association Act as adopted by the State of Idaho.

(a) Not later than the Control Termination Date, the Owners shall elect a Board of Directors of at least three members, at least a majority of whom must be Owners. The Board of Directors shall elect the officers. The officers and members of the Board of Directors shall take office upon election. Within 30 days after the Control Termination Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant.

(b) The Owners, by a 2/3 vote of all Persons present and entitled to vote at any meeting of the Owners at which a Quorum is present, may remove any members of the Board of Directors with or without cause, other than a member appointed by Declarant.

(c) Any individual Owner, an officer, employee, agent or director of a corporate Owner, a member, manager, employee or agent of a limited liability company Owner, a trustee or designated Beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot, or any officer, employee, agent, designated appointee, member or Manager of Declarant may be an officer or member of the Board of Directors. In all events where the Person serving or offering to serve as an officer or member of the Board of Directors is not a Record Owner, such Person shall file proof of authority in the records of the Association.

(d) Subject to this Section 4.2, the number, term, election, and qualifications of the Board of Directors shall be fixed in the Articles and/or Bylaws. The Association; through the Board of Directors, except to the extent specifically provided otherwise herein or by the Articles, Bylaws or applicable law, shall have (i) the power, authority and right of enforcement

of all the Restrictions, (ii) the power, authority and right and be responsible for the proper and efficient management and operation of the Common Elements, including those powers and duties specifically listed in Article V hereof and elsewhere in this Declaration, and (iii) the power, authority and right in all instances to act on behalf of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, Manager, agent or employee without a vote of the Members, except as otherwise specifically provided in the Articles, Bylaws or this Declaration:

4.2 MEMBERSHIP RIGHTS

Members of the Association shall be (a) Declarant (irrespective of whether Declarant is the Owner of a Lot), for so long as Declarant shall own any property in the Project or the Annexable Area, and (b) each Owner (including Declarant) of one or more Lots. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership in the Association, which Membership shall be appurtenant to the Lot. Such Membership shall automatically pass with fee simple title to the Lot. Ownership of a Lot shall be the sole qualification for Membership. Declarant shall hold a separate Membership for each Lot owned by Declarant. Except for Declarant's Membership, Membership shall not be assigned, transferred, pledged, or alienated in any way separate and apart from the transfer of fee simple title to a Lot. In the event the Project is terminated as a common-interest community, Members shall be all Owners of former Lots entitled to distributions of proceeds under the Act, or their heirs, successors, or assigns. Transfer of Declarant's Membership shall be evidenced by a Recorded assignment thereof. Any attempt to make a prohibited Membership transfer shall be void and will not be reflected on the books of the Association. If any Owner fails or refuses to transfer the Membership registered in the Owner's name to the purchaser of such Owner's Lot upon transfer of fee title thereto, the Board of Directors shall, nonetheless, have the right to record the transfer upon the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be added to the Common Assessment chargeable to such new Owner) to reimburse the Association for the administrative costs of transferring, on the records of the Association, the Memberships to the new Owners.

4.3 VOTING RIGHTS

(a) *Vote Distribution*

(i) All voting rights shall be subject to the Restrictions. No votes allocated to a Lot owned by the Association may be cast.

(ii) When more than one Person holds an interest or interests in any Lot for which a vote may be cast ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. If only one of several co-owners is present at a meeting of the Association, that co-owner is entitled to cast the vote allocated to that Lot. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a *unit*. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as mutually agreed upon by the majority of the co-owners of the Lot. Unless the Person presiding over the Members' meeting receives a written objection from a non-voting co-owner at the meeting and before the time the votes of all Members on each subject are counted, it shall be conclusively presumed that the voting co-owner is acting with the consent of the other co-owners and the vote on such subject shall be final. No vote shall be cast for any Lot where the majority of the co-owners; present in person or by proxy, owning the majority interests in such Lot cannot agree to said vote or other action. All co-owners shall be jointly and severally responsible for all of the obligations imposed

upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors, and assigns.

(iii) Any Mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

(b) *Proxies.* Except as otherwise provided herein, votes allocated to a Lot may be cast pursuant to a proxy executed by the Owner thereof. An Owner may give his proxy only to a member of his immediate family, a tenant of the Owner who resides in the Project, or another Owner who resides in the Project. If a Lot is owned by co-owners, each co-owner may vote or register protest to the casting of votes by the other co-owners through an executed proxy. An Owner may revoke a proxy given pursuant to this Section 4.4(c) only by actual notice of revocation to the Person presiding over a meeting of the Association, which notice shall be given before the time the votes of all Members on such subject are counted. Before a vote may be cast pursuant to proxy: (i) the proxy must be dated; (ii) the proxy must not purport to be revocable without notice; (iii) the proxy must not purport to be revocable without notice; (iv) the proxy must designate the meeting for which it is executed; (v) the proxy must designate each specific item on the agenda of the meeting for which the Owner has executed the proxy, except that the Owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the Owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the Owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the Owner were present but not voting on that particular item. The holder of a proxy may not cast a vote on behalf of the Owner who executed the proxy in a manner that is contrary to the proxy. A proxy is void if the proxy or the holder of the proxy violates any of the foregoing. The duration of a proxy may be for a period not to exceed 3 years, unless further limited by the granting Owner. A vote may not be cast pursuant to a proxy for the election of a member of the Board of Directors.

ARTICLE V.

POWERS AND DUTIES OF THE ASSOCIATION

The Association shall have all of the powers of an Idaho nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions and applicable law. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association may act through its Board of Directors and shall specifically have:

(a) *Assessments.* The power and duty to levy assessments against the Owners of Lots in which assessments have commenced, and to enforce payment of such assessments in accordance with the provisions of Article VI hereof.

(b) *Repair, Maintenance and Replacement of Common Elements.* The power and duty to paint, plant, maintain, repair and replace in a neat and attractive condition and in accordance with standards adopted therefore by the Architectural Review Committee, all Common Elements and all Improvements thereon, and to obtain and pay for utilities, gardening and other necessary services for the Common Elements.

(c) *Taxes.* The power and, except to the extent Declarant shall be required to pay such taxes by the Act, the duty to pay all taxes and assessments levied upon the Common Elements, if any, and all other taxes and assessments payable by the Association.

(d) *Utility Service.* The power and duty to obtain, for the benefit of the Common Elements, all commonly metered water, gas, and electric services.

(e) *Licenses.* Subject to any applicable requirements of the Act, the power but not the duty to grant and convey to any Person, licenses in the Common Elements for public or quasi-public Improvements or facilities. This Section 5.1(e) shall not be construed to limit the right or power of the Association under Section 3.1(e).

(f) *Manager.* The power and duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association and shall have the power but not the duty to delegate its powers to committees, officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of two years, auto renewed in successive two-year terms, subject to cancellation by the Association for cause at any time upon not more than 30 days written notice, and without cause (and without penalty to or the payment of a termination fee by the Association) at any time at least 60 days written notice prior to the end of the then current term, which termination shall take effect upon expiration of that term. Manager shall be the exclusive agent to rent, lease, or not owner occupy any Residence within the Project. The management agreement shall include a provision that all owners who desire to rent, lease, or not owner occupy their property will be required to contract with Manager for their services. Owners' management contracts shall be written with matching terms to the Association with discounted rates based on the volume of the exclusive portfolio as a whole.

(g) *Rights of Entry and Enforcement.* The power but not the duty, after Notice and Hearing, to enter upon any Lot, without being liable to any Owner except for damage caused by the Association's entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot if for any reason whatsoever the Owner thereof fails to maintain and repair any such area as required by the Restrictions. The cost of any such maintenance and repair which is the responsibility of the Owner shall be assessed against such Owner as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Residence without the prior consent of the Owner thereof. Any damage caused by an entry upon any Lot shall be repaired by the entering party, except in an emergency when such entry was believed to be reasonably necessary to protect persons or property. Subject to Section 12.7, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all the provisions of the Restrictions. The Association shall be entitled to recover from any Owner, as a Special Assessment, all costs of enforcement of the Restrictions against such Owner, including without limitation attorneys' fees, whether or not an action is brought by the Association to enforce the Restrictions. If an action is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the court.

(h) *Other Services.* The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration.

(i) *Employees, Agents and Consultants.* The power, but not the duty, if deemed appropriate by the Board of Directors, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in

connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(j) *Construction on Common Elements.* The power but not the duty, by action of the Board of Directors, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance, repair, or replacement of existing Improvements).

(k) *Budget, Records and Accounting.* The power and the duty to keep, or cause to be kept, true and correct books and records of account in accordance with generally accepted accounting principles and the Act. The annual Budget for each fiscal year shall be prepared and distributed as set forth in Section 6.4.

(l) *Inspection of Books and Records.* The power and the duty to authorize the verification of Membership, books of account, records, and minutes of meetings of the Members and of the Board of Directors, and other papers of the Association, including but not limited to all contracts to which the Association is a party and all records filed with a court relating to a civil or criminal action to which the Association is a party by making them available for inspection, examination, photocopying and audit by any Member, or by the Member's duly appointed representative, at such Member's sole cost and expense, and at any reasonable time and for a purpose reasonably related to the Member's interest as a Member (but excluding any commercial or other purpose not related to the Member's interest as a Member), at the office of the Association or at such other place within the Project as the Board of Directors may prescribe.

The provisions of the paragraph above do not apply to the personnel records of the employees of the Association, except for those records relating to the owner of hours worked and the salaries and benefits of those employees; the records of the Association relating to another Member, except as set forth below; and a contract between the Association and an attorney.

The Board of Directors shall maintain a general record concerning each violation of the Association's governing documents, other than a violation involving a failure to pay an assessment for which the Board of Directors has imposed a fine, a construction penalty or other sanction. This general record must contain a general description of the nature of the violation and the type of sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty. This general record must be maintained in an organized and convenient filing system or data system that allows a Member to search and review the general records concerning violations of the governing documents.

The books, records and other papers of the Association must be maintained for at least 7 years. This requirement does not apply to the minutes of meetings of the Board of Directors or the Association.

The Board of Directors shall not require a Member to pay an amount in excess of \$25 per hour to review any books, records, contracts, or other papers of the Association.

ARTICLE VI.

FUNDS AND ASSESSMENTS

6.1 PERSONAL OBLIGATION AND LIEN FOR ASSESSMENTS

Each Owner of a Lot subject to assessment hereby covenants and agrees, by acceptance of a deed or other conveyance of any property within the Project, to pay to the Association (a) Common Assessments for Common Expenses, (b) Capital Improvement Assessments, and (c)

Special Assessments, which assessments shall be established and collected as hereinafter provided. All assessments, together with interest thereon at a rate established by the Board of Directors, but not more than 18% per annum, late charges, costs, lien fees and reasonable attorneys' fees for the collection or enforcement thereof and the enforcement of the Restrictions, shall be a charge on and continuing lien upon the Lot against which such assessment is made, which lien, except as provided herein, shall run with such Lot. All assessments also shall be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for assessments shall not pass to the successors-in-title of any Owner unless expressly assumed by such successors.

6.2 PURPOSE OF ASSESSMENTS

All amounts received as Common Assessments *must* be used and disbursed solely for purposes authorized by this Declaration and to the common benefit of all Owners.

6.3 COMMON ASSESSMENTS

(a) A sum sufficient to pay Common Expenses and to establish reserves shall be assessed at least annually as Common Assessments against the Owners of Lots within the Association consistent with the Budget. The Board of Directors shall establish the number of Common Assessments for each Assessment Year concurrent with the preparation of the Budget pursuant to Section 6.4.

(b) Common Assessments shall be assessed against each Owner in accordance with the number of Assessment Units attributable to such Owner. The Owner of each Single-Family Residential Lot shall be charged with one Assessment Unit for each such Lot. With respect to any Lots owned by Declarant which have not been subdivided into parcels which are intended to be conveyed to home buyers, Declarant shall be charged with one Assessment Unit for each of the maximum number of Single-Family Residential Lots which are permitted on such Lot until such time as the Lot has been so subdivided. Each Owner's proportionate share of the Common Assessments shall be a fraction, the numerator of which shall be the number of Assessment Units charged to such Owner and the denominator of which shall be the total number of Assessment Units charged to all Lots in the Project which are subject to assessment.

(c) All installments of Common Assessments shall be collected in advance on an annual basis by the Board of Directors, on such due dates as the Board of Directors shall determine from time to time in its sole and absolute discretion. At the end of any Assessment Year of the Association, the Board of Directors may determine that excess funds remaining in the operating fund, over and above the amounts used for the operation of the Project and appropriate reserves, may be retained by the Association for use in reducing the following year's Common Assessment.

6.4 BUDGET AND ACCOUNTS.

(a) Not less than 30 nor more than 60 days before the beginning of each Assessment Year, the Board of Directors shall prepare and distribute to each Member a copy of the Budget of the estimated Common Expenses to be incurred during the coming Assessment Year. Budget must include: (1) the budget for the daily operation of the Association. This budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve account of the Association; and (2) the budget to maintain an adequate reserve for the repair, replacement and restoration of the major components, Common Elements. This budget must include, without limitation: (i) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements; (ii) as of the end of the Assessment Year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside to repair,

replace or restore the major components of the Common Elements; (iii) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component of the Common Elements or to provide adequate reserves for that purpose; and (iv) a general statement describing the procedures used for the estimation and accumulation of cash reserves set forth in (ii). The Budget also shall contain a statement disclosing any "in-kind" contributions by Declarant and any subsidies by the Declarant. In lieu of distributing copies of the complete Budgets of the Association, the Board may distribute to each Member a summary of those Budgets, accompanied by a written notice that the Budgets are available for review at the business office of the Association or other suitable location and that copies of the Budgets will be provided upon request.

(b) Upon a vote of a simple majority or more of the Board of a proposed Budget presented to them by Manager, a proposed Budget shall become effective. Within 30 days after approval by the Board of Directors of the annual Budget, the Board shall provide a summary of the Budget, as approved, and the amount of the approved Common Assessments to all Owners. The Board of Directors shall set a date for a meeting of the Owners to present the approved Budget not less than 14 nor more than 30 days after mailing of the summary. If the proposed Budget is rejected by the Board, the Budget last ratified by the Board must be continued until such time as the Board approves a subsequent Budget proposed by the Board of Directors or the Manager.

(c) The Board of Directors shall (i) cause to be conducted at least once every 5 years a study of the reserves required to repair, replace and restore the major components of the Common Elements; (ii) review the results of that study at least annually to determine if those reserves are sufficient; and (iii) make any adjustments it deems necessary to maintain the required reserves (the "Reserves Study"). The Reserves Study must be conducted by a Person qualified in training and experience to conduct such a study, including a member of the Board or property Manager of the Association who is so qualified. The Reserves Study must include; (1) a summary of an inspection of the major components of the Common Elements the Association is obligated to repair, replace and restore; (2) identification of the major components of the Common Elements that the Association is obligated to repair, replace and restore which have a remaining useful life of less than 30 years; (3) an estimate of the cost of repair, replacement, and restoration of each major component of the Common Elements identified in (2) above; (4) an estimate of the cost of repair, replacement and restoration of each major component of the Common Elements identified in (2) above during and at the end of its useful life; and (5) an estimate of the total annual assessment that may be required to cover the cost of repairing, replacing or restoring the major components identified pursuant to (2) above, after subtracting the reserves of the Association as of the date of the Reserves Study.

(d) The results of the Reserves Study must be submitted to the Commission for Common Interest Communities not later than 45 days after the date that the Board of Directors adopts the Reserves Study.

(e) Money in the reserve account of the Association for the repair, replacement or restoration of major components of the Common Elements may not be withdrawn without the signatures of at least two members of the Board of Directors or the signatures of at least one member of the Board and one officer who is not a member of the Board.

(f) The Board of Directors shall maintain and make reasonably available for inspection, examination, review, photocopying and audit by any Member at the Association's business office, or some other suitable location, the financial statement of the Association, the budgets required to be prepared as set forth above, and the Reserves Study.

6.5 DATE OF COMMENCEMENT OF COMMON ASSESSMENTS Common

Assessments on all Lots shall commence on the later of (a) the first day of the month following the month in which such Lot shall be made subject to this Declaration, or (b) the month in which the Board of Directors first levies Common Assessments pursuant to this Declaration. The Common Assessments for the then current Assessment Year for each Lot shall be pro-rated based on the owner of months in such Assessment Year remaining from the date of commencement of such assessments to the end of such Assessment Year.

6.6 CAPITALIZATION OF ASSOCIATION

Provided Common Assessments have commenced, upon acquisition of a fee title of Record to a Lot from Declarant, the Owner of such Lot shall make a contribution to the capital of the Association in an amount equal to two months of the purchaser's monthly assessment fees for common expense, which amount equates to approximately 17% of the then applicable annual Common Assessment for such Lot. Such capital contribution shall be (a) deposited by the Owner into the purchase and sale escrow and disbursed therefrom to the Association, and (b) in addition to, and not in lieu of, annual Common Assessments.

6.7 CAPITAL IMPROVEMENT ASSESSMENTS

The Board of Directors, with the vote of the majority of votes cast at a meeting of the Members at which a Quorum shall be present, may levy in any fiscal year a Capital Improvement Assessment, for the purpose of defraying, in whole or in part, the cost of any construction of a new Capital Improvement or material alteration of an existing Capital Improvement upon the Common Elements, including fixtures and personal property related thereto. All Members shall be given at least 21 days prior written notice of the meeting at which a Capital Improvement Assessment is to be considered. All Capital Improvement Assessments must be fixed at a uniform rate for all Lots in the same proportion as Common Assessments are levied, and they may be collected in the manner and frequency as determined from time to time by the Board of Directors. To cover costs incurred in bringing the Lot into compliance with or to enforce the Restrictions, and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

6.8 SPECIAL ASSESSMENTS

The Board of Directors may assess a Special Assessment against a particular Owner and the Owner's Lot for all or any of the following:

- (a) To cover costs incurred in bringing the Lot into compliance with or to enforce the Restrictions, and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests;
- (b) To pay late charges and interest for late payment of any assessment;
- (c) Subject to the limitations in Section 3.5, to pay reasonable charges assessed by the Board of Directors against an Owner as a fine or penalty for non-compliance with the Restrictions; provided, however, that such fines or penalties may only be assessed after Notice and Hearing;
- (d) To pay or cover all costs for any maintenance, repairs, or replacements to or within the Common Elements arising from or caused by the willful or negligent act or omission of any Owner or their Family, guests, agents, contractors, employees, licenses or invitees;
- (e) To pay or cover any other cost or amount that may be assessed as a Special Assessment under any other provisions of this Declaration; and

(f) All costs and expenses, including attorneys' fees, incurred in connection with Sections 6.8 (a), (b), (c), (d) and (e), whether or not an action or proceeding to enforce the Restrictions has been commenced.

6.9 EXEMPT PROPERTY

The following property subject to this Declaration shall be exempt from all assessments:

(a) Those portions of the Project dedicated to and accepted by, the United States, the State of Idaho, Bannock County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for as long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) All Common Elements.

6.10 REMEDIES OF THE ASSOCIATION

Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or other amount due to the Association hereunder not paid within 30 days after the due date shall bear interest from the due date of such installment at the rate established by the Board of Directors, not to exceed 18% per annum, as well as a late charge, as determined by the Board of Directors, to compensate the Association for bookkeeping, billing, administrative costs and any other appropriate charges. No such interest or late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within 30 days after it is due, the Association may foreclose or otherwise enforce the lien against such Owner's Lot in accordance herewith and with applicable law and/or exercise any other remedies against the Owner or such Owner's Lot as may be available hereunder or at law or equity. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot. All interest, late charges and all other costs and expenses incurred in enforcing the Restrictions, including attorneys' fees, shall be payable as a Special Assessment by the Owner against whom enforcement is sought. No action shall be brought to enforce any assessment lien herein unless notice shall be given in accordance with applicable law. The Association or other Person conducting the sale shall also mail a copy of such notice (a) not more than ten days after the notice is Recorded, by first-class mail to any Mortgagee who has notified the Association in writing at least 30 days before the Recordation of the notice of the existence of the Mortgage, (b) to a purchaser of the Lot, if the Owner has notified the Association in writing at least 30 days before Recordation of such notice that the Lot is subject of a contract of sale, and (c) not more than ten days after the notice is Recorded, by first class mail to all others required to be given notice by applicable law. The Association, through its authorized agents, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage or convey the same. While a Lot is owned by the Association following foreclosure (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged in addition to its usual assessment, its pro rata share of the assessment that would have been charged such foreclosed Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The Association may not foreclose a lien by sale for the assessment of any fines or penalties imposed in accordance with Section 3.05 unless the violation for which the fine is assessed is of a type that threatens the health and welfare of the Project.

6.11 CURING OF DEFAULT

Upon the timely curing of any default for which a notice was Recorded by the Association, the officers thereof shall Record an appropriate release of lien, upon payment by the

defaulting Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of processing, preparing and Recording such release.

6.12 CUMULATIVE REMEDIES

The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including, without limitation, a suit to recover a money judgment for unpaid assessments and/or the taking of a deed in lieu of foreclosure.

6.13 STATEMENT OF UNPAID ASSESSMENTS

The Association upon written request and upon payment of a reasonable fee therefore shall furnish to an Owner or Mortgagee a statement setting forth the amount of unpaid assessments, which statement shall be in Recordable form. Such statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner.

6.14 MORTGAGEE PROTECTION

Notwithstanding any other provisions hereof, except for the Priority Lien described in Section 6.15, no lien created under this Article VI, nor the enforcement of any provision of this Declaration shall defeat or render invalid, the rights of the Beneficiary under any Recorded First Mortgage encumbering a Single Family Residential Lot, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Single Family Residential Lot by a judicial foreclosure, other foreclosure, or exercise of power of sale, such Single Family Residential Lot shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of the prior Owner's personal obligation for the payment of such unpaid assessments.

6.15 PRIORITY OF ASSESSMENT LIEN

The Association has a lien on a Lot for any assessment levied against the Owner from the time the assessment or fine becomes due. Recording of this Declaration constitutes Record notice and perfection of the lien. The assessment lien shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances Recorded before the Recordation of this Declaration, except for the Priority Lien, a First Security Interest on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. The assessment lien is also prior to all First Security Interests on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent to the extent of Common Assessments based on the Budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of action to enforce the lien ("Priority Lien"). The above provisions of this Section 6.15 shall not affect the priority of mechanic's or materialman's liens or the priority of liens for other assessments by the Association. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full number of assessments becomes due. The sale or transfer of any Lot shall not affect or extinguish an assessment lien, except for sale or transfer pursuant to judicial or non-judicial foreclosure of a First Mortgage, which shall, except for the Priority Lien, extinguish the lien for all assessments coming due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Lot obtains title pursuant to a judicial or non-judicial foreclosure or "deed in lieu thereof," the Person who obtains title

and such Person's successors and assigns shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all Lots, including the Lot belonging to such Person and such Person's successors and assigns.

6.16 DECLARANT'S OBLIGATION FOR COMMON EXPENSES AND ASSESSMENTS

Until the Association commences Common Assessments as provided in Section 6.5, the Declarant shall pay all Common Expenses. After Common Assessments commence, the Declarant shall be entitled to credit against and deduct from any assessments payable by Declarant the reasonable value of "in-kind" contributions to the Association, including, without limitation, materials and management, accounting, administrative, maintenance of the Common Elements and other services. After Common Assessments commence, Declarant shall be entitled, but shall not be obligated, from time to time to pay all or any portion of the Common Expenses as a subsidy, which at Declarant's election, may be treated as a loan or an advance against future assessments payable by Declarant. The amount of any such subsidy shall be disclosed in the Budget.

ARTICLE VII.

ARCHITECTURAL REVIEW COMMITTEE

7.1 ORGANIZATION, POWER OF APPOINTMENT AND REMOVAL OF MEMBERS

An Architectural Review Committee ("ARC") shall be organized and shall consist of three members. None of the members shall be required to be an architect or to meet any other qualifications for membership. Unless the members of the ARC have resigned or been removed, their term of office shall be for a period of one year, or until the appointment of their respective successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed. The right to appoint and remove all members of the ARC, at any time, shall be and is hereby vested solely in Declarant, for so long as Declarant owns any property in the Project or Annexable Area. When Declarant no longer owns any property in the Project or Annexable Area, the Board of Directors shall have the power to appoint, remove and/or replace such members. Unless and until such members are appointed by the Board of Directors, the Board of Directors shall function as the ARC. The Board of Directors may but need not appoint members to serve on the ARC. Any member of the ARC may at any time resign from the ARC by giving written notice thereof to the other members. Vacancies on the ARC, however caused, shall be filled by Declarant, for so long as Declarant owns any property in the Project or Annexable Area and thereafter by majority vote of the Owners. A vacancy or vacancies on the ARC shall be deemed to exist in the case of death, resignation, or removal of any member

7.2 DUTIES

It shall be the duty of the ARC to consider and act upon any proposals or plans submitted to it pursuant to the terms hereof, to adopt ARC Rules and to carry out all other duties imposed upon it by this Declaration. Any decision of the ARC may be reviewed and overruled by the Board of Directors. The Board of Directors may, at its discretion, review any action of the ARC, and if it deems necessary, overrule, or reverse the ARC's action. At a minimum, all plans must include specifications for 1,200 square feet of livable space on the ground floor of any proposed Residence.

7.3 MEETINGS AND COMPENSATION

The ARC shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two members, at a meeting or otherwise, shall constitute the act of the ARC. The ARC shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the ARC shall not be entitled to compensation for their services.

7.4 ARC RULES

(a) The ARC may, from time to time and in its sole and absolute discretion, adopt, amend, and repeal, by written consent, rules, and regulations, to be known as "ARC Rules". The ARC Rules shall interpret and implement this Declaration by setting forth the standards and procedures for ARC review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features which are recommended for use within the Project.

(b) As part of the ARC Rules, as a condition to the approval of an Owner's request, the ARC may adopt a schedule that the Association requires an Owner to adhere to for: (a) the completion of the design of a Unit or the design of an Improvement to a Unit; (b) the commencement of the construction of a Unit or the construction of an Improvement to a Unit; (c) the completion of the construction of a Unit or the construction of an Improvement; or (d) the issuance of a permit which is necessary for the occupancy of a Unit or for the use of an Improvement to the Unit.

The Association may impose and enforce a construction penalty against an Owner who fails to adhere to the schedule required by the ARC so long as the maximum amount of the construction penalty and the required schedule are set forth in either this Declaration, another document related to the Project that is recorded before the date on which the Owner acquired title to the Unit; or a contract between the Owner and the Association; and the Owner receives notice of the alleged violation which informs the Owner that he has a right to a hearing on the alleged violation. For the purposes of any provision of Idaho Code, the above-referenced construction penalty is not a fine.

(c) Under no circumstances may the Association or the ARC: 1) unreasonably restrict, prohibit or otherwise impede the lawful rights of an Owner to have reasonable access to his Unit; 2) unreasonably restrict, prohibit or withhold approval for an Owner to add to a Unit: (i) improvements such as ramps, railings or elevators that are necessary to improve access to the Unit for any Owner or occupant who has a disability; (ii) additional locks to improve the security of a Unit; or (iii) shutters to improve the security of the Unit or to aid in reducing the costs of energy for the Unit.

(d) Neither the ARC nor the Association, with regard to approving or disapproving any alteration or improvement made to any Unit, shall act in violation of any state or federal law.

(e) Any improvement or alteration made pursuant to subsection (c) above that is visible from any other portion of the Project must be installed, constructed or added in accordance with the procedures set forth in the ARC Rules and must be selected and designed to the maximum extent practicable to be compatible with the style of the Project

7.5 WAIVER

The approval by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the ARC under this Declaration, shall not constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

7.6 LIABILITY

Neither the ARC nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Project, or (d) the execution and Recording of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of an ARC member, such member has acted in good faith on the basis of such information as may be possessed by such member. Without in any way limiting the generality of any of the foregoing provisions of this Section 7.6, the ARC, or any member thereof, may; but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ARC.

7.7 TIME FOR APPROVAL

In the event the ARC fails to approve or disapprove any matter requiring its review under this Declaration or the ARC Rules within 45 days after all relevant plans, drawings, specifications and other materials requested by the ARC in connection therewith have been submitted to it, approval will not be required.

ARTICLE VIII.

DAMAGE, DESTRUCTION, OR CONDEMNATION OF COMMON ELEMENTS

Damage to, and destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner:

8.1 DAMAGE BY MEMBER

To the extent permitted by law, each Member shall be liable to the Association and the Association may, after Notice and Hearing, assess a Special Assessment, for any damage to Common Elements not fully reimbursed to the Association by insurance; provided, the damage is sustained as a result of the negligence, willful misconduct or unauthorized or improper use, installation or maintenance of any Improvement by the Member, the Member's Family, guests, - tenants or invitees, or any other Persons deriving their right to the use and enjoyment of the Common Elements from the Member, or such Member's respective Family and guests.

8.2 REPAIR OR REPLACEMENT OF DAMAGES OR DESTROYED PORTION OF THE PROJECT

(a) Any portion of Project which the Association is required to insure, and which is damaged or destroyed shall be repaired or replaced promptly by the Association unless:

(i) The Project is terminated as a common interest community (as defined in the Act);

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(iii) The approval not to rebuild is obtained within 90 days after the loss from 80% of the Owners.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

(b) If the entire Project is not repaired or replaced, (i) the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, (ii) the proceeds attributable to Residences that

are not rebuilt must be distributed to Owners of those Residences, and (iii) the remainder of the proceeds must be distributed in proportion to the liabilities of all Lots for Common Expenses.

8.3 CONDEMNATION

If at any time, all or any portion of Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

ARTICLE IX.

INTEREST, SPECIAL RIGHTS AND EXEMPTION OF DECLARANT

9.1 INTEREST OF DECLARANT

Declarant has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, the covenants, conditions, Restrictions, reservations, and other matters contained in this Declaration along with any amendments thereto. Consequently, until the later of such time as Declarant no longer owns any real property in the Project or the Annexable Area, the following actions, before being undertaken by the Members or by the Association, shall first be approved in writing by Declarant:

- (a) Any amendment of this Declaration;
- (b) The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Common Elements;
- (c) Any significant reduction of Association maintenance or other services;
- (d) Any termination or change of a Manager.

9.2 SPECIAL RIGHTS OF DECLARANT

Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner (except Declarant), or the Association or other Person shall do anything to interfere with, the right of Declarant to exercise any Developmental Rights or to develop all or any portion of the Project, including, without limitation the right to subdivide or re subdivide any portion of the Project or the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project for so long as any property in the Project or in the Annexable Area is owned by Declarant.

(b) Declarant shall, in its sole discretion, have the right to purchase additional property and to add such Lots to the Annexable Area described in Exhibit B of the Declaration, thereby causing the additional Lots to be governed by the Declaration and the Owners of such Lots to be included in the Association.

(c) This Declaration shall in no way limit the right of Declarant to (i) grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others as may from time to time be reasonably necessary to the proper development and disposal of Lots; (ii) use all or any portion of the Common Elements or Lots owned by Declarant for sales facilities, model homes, offices, signs, special promotions, marketing, advertising and for such other use as is, in Declarant's sole

discretion, necessary, appropriate, convenient or incidental to the development, construction, sale or management of the Project or any part thereof; and (iii) access the Common Elements for the purpose of making Improvements therein or in the Project or Annexable Area..

(d) Declarant need not seek or obtain Architectural Review Committee approval of any Improvement constructed or placed in any part of the Project by Declarant.

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) Notwithstanding any other provision of this Declaration, the prior approval of Declarant, as developer of the Project, will be required before any amendment to this Article IX shall be effective.

(g) Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article IX. Declarant and its prospective purchasers of Lots shall be entitled to the nonexclusive use of the Common Elements without further cost for access, ingress, egress, use or enjoyment, in order to show the Project to its prospective purchasers, to dispose of the Lots, and to develop and sell Lots in any Phase of Development.

(h) Declarant shall, at its option, have the right to maintain and improve the Common Elements in accordance with the standards set forth herein. Declarant may assign the right and obligation to maintain the Common Elements to the Association and the Association shall assume the right and obligation to maintain the Common Elements by mutual execution of an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit E and by this reference incorporated herein ("Assignment and Assumption Agreement").

(i) The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration; provided, however, that Declarant shall be provided with such notices and other documents without making written request therefor.

(j) The rights and reservations of Declarant referred to in this Section 9.2 shall terminate on the earlier of (i) the date Declarant shall no longer own any property in the Project or the Annexable Area or (ii) with respect to Declarant's rights and reservations, the date Declarant shall voluntarily terminate in writing its rights hereunder (which termination shall be effective only as to the specific rights so terminated).

ARTICLE X.

INSURANCE

10.1 DUTY TO OBTAIN INSURANCE; TYPES

Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Board of Directors shall cause to be obtained and maintained (a) adequate blanket public liability insurance (including medical payments), *with* such limits as the Board of Directors in its discretion considers prudent covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and (b) to the extent the Common Elements are insurable, fire and casualty insurance with extended coverage, insuring against all risks of direct physical loss commonly insured against, without deduction for depreciation, in an amount not less than 80% (or such higher percentage as FNMA, VA, FHA, FHLMC or GNMA may require) of the actual cash value of the Common Element Improvements at

the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from fire and casualty policies. However, the Board of Directors shall not be required to obtain such casualty insurance if there are no material Improvements constructed on the Common Elements. If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Such insurance shall, to the extent reasonably available, provide that each Owner is an insured Person under such policy with respect to liability arising out of such Owner's interest in the Common Elements or Membership in the Association. The Board of Directors may purchase such other insurance as it shall deem necessary or appropriate, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks shall customarily or reasonably be covered with respect to projects similar in construction, location, and use. Fidelity bond coverage shall be obtained to cover such persons and in such amounts as the Board of Directors shall require. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FHA, VA, FBLMC, FNMA, GNMA or any similar entity, so long as any of them is an Owner of a Lot or holder or insurer of a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the FHA, VA, FBLMC, FNMA, GNMA or such other similar entity, as applicable. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request.

10.2 WAIVER OF CLAIMS AGAINST ASSOCIATION

As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such Persons, except as may be provided elsewhere in this Declaration.

10.3 NOTICE OF EXPIRATION REQUIREMENT

If available, all of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not expire or be canceled, terminated, or materially modified without 30 days prior written notice to the Board of Directors, Declarant, Owners and those holders or insurers of First Mortgages who have filed a written request with the carrier for such notice, and every other Person in interest who requires such notice of the insurer.

10.4 INSURANCE PREMIUMS

The cost of fidelity bonds and insurance premiums for any insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense.

10.5 TRUSTEE FOR POLICIES

The Association, acting through its Board of Directors, is hereby appointed, and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under the policies provided for in Section 10.1 shall be paid to the Board of Directors as trustee and not to any Mortgagee. The

Board of Directors shall hold any proceeds in trust for the Association, Owners and Mortgagee as their interests may appear. The Board of Directors shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Subject to the provisions of Article VIII, insurance proceeds shall first be used by the Association for the repair or replacement of the property for which the insurance was carried and the Association, Owners and Mortgagee shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated as a common interest community, as defined in the Act. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board of Directors, including a trustee or any successor to such trustee, with whom the Association may enter into an insurance trust agreement, who shall have such authority as is delegated by the Board of Directors to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

10.6 ACTIONS FOR TRUSTEE

Except as otherwise specifically provided in this Declaration, the Board of Directors, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a claim and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

10.7 ANNUAL INSURANCE REVIEW

The Board of Directors shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount and type of the insurance to be carried pursuant to Section 10.1 and, to the extent and at the times deemed necessary by the Board of Directors, shall obtain an evaluation or appraisal of the insured property.

10.8 REQUIRED WAIVER

All policies of insurance shall provide, to the extent reasonably available, for waiver of the following rights to the extent that the respective insurers would have the rights without such waivers: (a) subrogation of claims against the Owners, the Owner's Family and tenants of the Owners; (b) any defense or limitation of coverage based upon co-insurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity, other adverse effect or defense as a result of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of the insurer to repair, rebuild, or replace, and, if the Improvement is not repaired, rebuilt, or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (f) notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Lot; (g) any right to require any assignment of any Mortgage to the insurer; and (h) any right to void the policy or condition recovery under the policy due to an act or omission by any Owner unless such Owner was acting within the scope of the Owner's authority on behalf of the Association.

10.9 OWNER'S INSURANCE

The Association shall have no obligation to maintain any insurance other than the insurance required to be maintained by the Association pursuant to Section 10.1. By accepting title to such Owner's Lot, each Owner (other than Declarant) covenants and agrees to maintain property insurance for the full replacement cost of all insurable Improvements on such Owner's Lot, with a reasonable deductible thereon, and liability insurance covering all risks to Persons or property on such Owner's Lot. All insurance other than the insurance required to be maintained by the Association hereunder shall be the responsibility of the Owner of the property or interest to be insured. To the extent reasonably available, policies maintained by the Association shall provide that if at any time of a loss under such policies, there is other insurance in the name of an Owner covering the same risk covered by such policy, the Association's policy provides primary insurance. Each Owner further covenants and agrees that in the event of damage to or destruction of Improvements on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Review Committee. Alternatively, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

10.10 INSURANCE RATES

Nothing shall be done or kept in the Project which will increase the rate of insurance on any Lot, or other portion of the Project without the approval of the Board of Directors, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any Lot, or other portion of the Project or which would be in violation of any law.

ARTICLE XI.

GENERAL RESTRICTIONS AND EASEMENTS

Subject to and except for the exemptions and special rights of Declarant as set forth herein and without limiting any other provision of this Declaration, all real property within the Project shall be held, used and enjoyed subject to the following easements, limitations and Restrictions:

11.1 SINGLE FAMILY RESIDENTIAL USE

Except for the Common Elements, all of the Project shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade, or other non-residential use shall be conducted on any of the Project. Nothing herein shall be deemed to prevent the leasing of a Lot from time to time by the Owner thereof subject to all of the provisions of this Declaration. No structure whatsoever, other than one private Single-Family Residence, together with a private garage, whether attached or "casita"-style detached (as constructed by Declarant) shall be erected, placed, or permitted to remain on any Single-Family Residential Lot. Lots owned by Declarant may be used as model homes for sales and construction offices for the purpose of enabling Declarant to sell Lots, until such time as all of the Lots owned by Declarant have been sold to public purchasers.

11.2 UTILITY SERVICE

No lines, wires, or other devices for the transmission of electric current or power, including, without limitation, telephone, shall be erected placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved

by the ARC. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ARC.

11.3 IMPROVEMENTS AND ALTERATIONS

No Improvements, alterations, repairs, painting, excavation or other work which in any way alters the exterior appearance of any Lot or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed or transferred by Declarant to a public purchaser shall be made or done without the prior approval of the ARC, except as otherwise expressly provided in this Declaration. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the ARC. Pursuant to its rule making power, the ARC shall establish a procedure for the preparation, submission, and determination of applications for any such alteration or Improvement. The ARC shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARC. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARC. All decisions of the ARC shall be final, and no Owner or other parties shall have recourse against the ARC or any of its members, for or with respect to any decisions made in good faith. Notwithstanding anything contained in the Restrictions and unless otherwise permitted by applicable law, there shall be no covenant, restriction or condition that prohibits or unreasonably restricts any Owner from using a system for obtaining solar energy. "Unreasonably restricting the use of a system for obtaining solar energy" shall mean placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and comparable efficiency and performance.

11.4 OVERHANGS

No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or to otherwise encroach upon any other Lot.

11.5 UTILITY EASEMENTS

There is hereby created a blanket easement upon, across and under the Project for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines or systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Project and subject to Section 11.2, to affix and maintain wires, circuits, and conduits in the Project. Notwithstanding anything to the contrary contained in this Section 11.5, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Project except as initially developed and approved by Declarant or thereafter approved by the ARC. This easement shall in no way affect any other Recorded easements on the Project. This easement shall be limited to Improvements as originally constructed.

11.6 NUISANCES

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any Lot. The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. The discharge of firearms, including without limitation, "B-B" guns and pellet guns, is prohibited. On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. All basketball hoops, bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on Lots so as to be visible from adjacent property when not in use. Barbeques are not to be visible from common area line-of-sight. Reflective window coverings are prohibited. Blinds and drapes shall be subject to regulation of the Association and ARC. No blankets or cardboard may be displayed in any window that is visible from the street or adjacent Lots.

11.7 DISEASES AND INSECTS

No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

11.8 PARTY WALLS AND FENCE

The rights and duties of Owners with respect to party walls or party fences, which are constructed as part of initial construction, shall be as follows:

(a) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment by the other Owner.

(b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, or any of its agents or guests or members of its Family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Owner or Owners.

(c) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, its agents, guests or Family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the ARC, the decision of which shall be binding.

(f) Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter its Lot for the purpose of repairing or maintaining a party

wall or party fence or for the purpose of performing installation, alterations or repairs to the property of such adjoining Owners, provided that requests for entry are at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section 11.8(f) shall not be deemed guilty of trespass by reason of such entry.

(g) Surfaces of party walls or party fences on property which are generally accessible or viewable from only the adjoining property may be planted against, painted, maintained, and used by the adjoining Owners. If such surfaces are viewable from public streets, the color scheme shall not be changed without the prior written consent of the ARC.

(h) In the event that any of the Project perimeter fencing on a Lot is damaged or destroyed, it shall be the obligation of the Owner of such Lot to rebuild and/or repair such perimeter fence so that the exterior surface will match in material and color the surface of the perimeter fence of the Project. The right to and obligation for contribution for costs among Owners shall run with the land.

11.9 DRAINAGE EASEMENT

There is hereby created a blanket easement for drainage of ground water on, over and across the Project. No Owner shall obstruct, divert, alter, or interfere in any way with the drainage of water upon, across or over any portion of the Project. Each Owner shall, at its own expense, maintain the drainage ways and channels on his Lot in proper condition free from obstruction.

11.10 EASEMENT FOR SUBSEQUENT CONSTRUCTION

There is hereby created an easement running in favor of Declarant and its agents, employees, or independent contractors, to enter upon any portion of the Project for the purpose of constructing or installing Improvements.

11.11 DECLARANT'S EXEMPTION

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of Improvements or signs necessary or convenient to the development or sale of Lots.

11.12 ANTENNAS

Antennas located within the Project shall be limited and restricted as set forth in the ARC Rules

11.13 VARIANCES

The ARC shall have the authority to grant variances from the Restrictions in this Article XI as is reasonably necessary for the health, safety, and welfare of the Owners.

11.14 MAINTENANCE

Each Owner shall, at such Owner's expense, keep his Lot and its landscaping, Improvements and appurtenances in good, clean, attractive, and sanitary order and condition, except for any Common Elements which are to be maintained by Declarant and/or the Association pursuant hereto.

11.15 DISPLAY OF FLAG

Notwithstanding any provision of the Articles, Bylaws or this Declaration to the contrary, and except as otherwise provided in this section, an Owner is entitled to display the flag of the United States in a manner consistent with the Federal Flag Code from or on: (a) a flagpole

or staff which is located on exterior property within the boundaries of the Unit or which is attached to an exterior Limited Common Element that forms a part of the boundaries of the Unit; or (b) a window, ledge, sill, railing, patio, terrace or balcony of the Unit or an exterior Limited Common Element that forms a part of the boundaries of the Unit, whether or not the flag is displayed from a flagpole or staff.

The Association may adopt rules that prohibit the display of the flag of the United States in a manner inconsistent with the Federal Flag Code. The Association also may adopt rules that prohibit the display of the flag of the United States if the flag exceeds 4 feet in its vertical dimension or 6 feet in its horizontal dimension. For the purposes of this provision, the horizontal dimension of the flag is the dimension that is parallel with the horizontal stripes of the flag, regardless of the position in which the flag is displayed. The Association may establish a maximum number of flags of the United States that may be displayed from, on or around the exterior of a Unit. The maximum number may be one. The Association may adopt rules that prohibit the display of the flag of the United States from a flagpole or staff that exceeds 25 feet in height. The Association also may adopt rules that prohibit the display of the flag of the United States in a manner that poses a real and substantial danger to health or safety.

As used in this section, "Federal Flag Code" means the rules and customs pertaining to the display and use of the flag of the United States which are codified in 4 U.S.C. sections 5 through 10 inclusive, as altered, modified, or repealed by the President of the United States pursuant to 4 U.S.C. section 10, and any additional rules pertaining to the display and use of the flag of the United States which are prescribed by the President pursuant to 4 U.S.C. section 10.

As used in this section, "flag of the United States" does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component or material. As used in this section, a "flag of the United States" must be made of cloth, fabric, or paper.

11.16 PARKING AND VEHICULAR RESTRICTIONS

Owners shall use their garage for primary parking purposes. To the extent that parking for a second licensed, registered, and operable standard vehicle and to the extent that the driveway is at least twenty (20) feet in length or more, the vehicle may be parked on the Owner's driveway. For the purposes of this section, "operable standard vehicle" shall mean any passenger car, motorcycle, or truck of up to three quarter (3/4) tons used for everyday transportation, subject to the approval of the Board of Directors. No Owner shall park, store, or keep within the Project any inoperable, unlicensed, or unregistered vehicle, or any commercial vehicle, unless such inoperable, unlicensed, unregistered, or commercial vehicle is stored in Owner's garage. For the purposes of the foregoing, a "commercial vehicle" shall include any vehicle with a sign displayed on any part of the vehicle; any vehicle upon which a rack is mounted, or a ladder, tools or other materials are visible; any vehicle used as a dump truck, cement mixer truck, oil or gas truck or delivery truck; any vehicle with body type normally employed as a commercial vehicle, whether or not a sign is displayed thereon; any truck greater than one ton capacity; any van other than one used solely as a family passenger vehicle. A commercial vehicle may be defined as such without regard to whether such vehicle has a commercial license plate.

Garage doors shall not be kept open. On-street parking shall be restricted to those areas where the street is 37 feet or more in width.

No Owner shall park, store or keep on his Lot any recreational vehicle, including, but not limited to, any camper, motor home, bus, trailer, boat, and any vehicle deemed by

the Board of Directors to be a recreational vehicle ("Recreational Vehicle"). The definition of Recreational Vehicle excludes trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday transportation purposes, subject to the approval of the Board of Directors. There is no recreational vehicle parking area in the Project.

The foregoing notwithstanding, no Owner shall park, store, or keep anywhere within the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors. The Board of Directors shall have the power to enforce all parking and vehicle use restrictions applicable to the Project, including but not limited to removing vehicles which violate the provisions of this section and levying fines as may be appropriate.

No Owner shall repair his vehicle anywhere, at any time, within the Project, except inside Owner's garage, with the garage door closed at all times.

11.17 PETS AND ANIMALS

Each and every Owner shall keep all pets and animals inside Owner's Unit unless such pet or animal is on a leash and supervised by Owner at all times. Owners may not keep any animal for any farm or commercial purpose within the Unit or the Project at any time. Owner shall not permit any pet or animal to urinate or defecate anywhere within the Project. Each and every Owner shall control noise caused by all pets and animals residing with Owner.

11.18 EXTERIOR IMPROVEMENTS

Owner must submit plans and specifications and obtain prior written approval from the ARC for the installation of any exterior Improvement, including but not limited to swimming pools, spas and patio covers. Amongst other requirements, Owner shall cause adjacent and impacted neighbors to be notified of such submission to ARC and submit a "Home Improvement Form", which includes an "Impacted Neighbor Notification Form" to the ARC before the installation of any exterior Improvement. ARC may impose such conditions as it deems necessary and appropriate to assure that the construction of any such exterior Improvement shall not adversely impact the Project or neighboring and adjacent Owners.

ARTICLE XII.

MISCELLANEOUS

12.1 TERM

The provisions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, successors and assigns, for a term of 50 years from the date of Recordation of this Declaration, after which time such provisions shall be automatically extended for successive periods of ten years unless a declaration of termination meeting the requirements of an amendment to this Declaration as set forth in Section 12.2 of this Article has been Recorded.

12.2 AMENDMENTS

(a) *By Declarant.* Prior to the transfer of all Lots to Owners other than Declarant the provisions of this Declaration may be amended or terminated unilaterally by Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination.

(b) *By Members.* After the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration, with the written consent of Declarant so long as Declarant owns any property in the Project or the Annexable Area, may be amended by the Recordation of a certificate, signed and acknowledged by the Declarant (if Declarant's consent is required) and