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ADA COUNTY RECORDER J. DAVID NAVARRO  
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DEPUTY Bonnie Oberbiller  
RECORDED - REQUEST OF  
Pioneer

AMOUNT 129.00 43



**AMENDED  
AND  
RESTATED MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
IRONHORSE SUBDIVISION**

**FEBRUARY 15, 2005**

**AMENDED**  
**AND**  
**RESTATED**  
**MASTER DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**IRONHORSE SUBDIVISION**

**FEBRUARY 15, 2005**

**ARTICLE I.**

**RECITALS**

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

**Lots 2 through and including 20 of Block 1, IRONHORSE SUBDIVISION, according to the official plat thereof filed Book 91 of Plats at Pages 10651 through and including 10655, records of Ada County, Idaho.**

**WHEREAS**, it is the intent of the Grantor that any reference to "Subdivision" in this Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easements (hereafter "Amended and Restated Master Declaration") shall include only the above described Lots within Ironhorse Subdivision and that Lots 1, 21, 22 and 23 of Block 1, as shown on the Plat (hereafter defined), are not subject to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth herein:

**WHEREAS**, the Master Declaration of Covenants, Conditions, Restrictions and Easements for Ironhorse Subdivision, dated September 3, 2004, was recorded September 9, 2004, as Instrument No. 104114801, records of Ada County, Idaho (hereafter "Original Master Declaration"), which Original Master Declaration has been terminated by the Grantor and the owners of Lots 1, 21, 22 and 23 of Block 1 of Ironhorse Subdivision by that certain Termination of Master Declaration of Covenants, Conditions, Restrictions and Easement for Ironhorse Subdivision dated February 15, 2005, recorded in the records of Ada County, Idaho (hereafter "Termination");

**WHEREAS**, it is the intent of the Grantor that this Amended and Restated Master Declaration shall supersede and replace the Original Master Declaration and from and after the recording of the Termination and the recording of this Amended and Restated Master Declaration in the official records of Ada County, Idaho, the Original Master Declaration shall be of no further force or effect.

**WHEREAS**, the Grantor desires to subject the above described Lots in the Subdivision to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i) insure the enhancement and preservation of property values, (ii) provide for the proper



design, development, improvement and use of the Subdivision by the Grantor and all other persons or entities who may subsequently acquire an interest in the Subdivision and (iii) create a residential development of the highest quality;

**WHEREAS**, Lots 1, 21, 22 and 23 of Block 1 of Ironhorse Subdivision (hereafter referred to collectively as the "Excluded Lots") are not owned by the Grantor and are expressly excluded from this Amended and Restated Master Declaration and shall not be subject to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes contained herein; and

**WHEREAS**, in order to achieve the objectives and desires of the Grantor, the Grantor will control the management and government of the Subdivision and the Association of Owners to be created until such time as the Owners take over the management functions through the Association upon substantial completion of the development process.

## **ARTICLE II.**

### **TERMINATION OF ORIGINAL MASTER DECLARATION**

As provided in the Termination of even date herewith, the Grantor and the owners of the Excluded Lots (Lots 1, 21, 22 and 23 of Block 1) have terminated the Original Master Declaration, said termination to be effective upon the recording of the Termination and this Amended and Restated Master Declaration in the official records of Ada County, Idaho. From and after the effective date of said termination, the Lots 2 through and including 20 of Block 1 of the Subdivision shall be subject to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes (hereafter collectively "Covenants and Restrictions") set forth in this Amended and Restated Master Declaration, as the same exist from time-to-time and the Original Master Declaration shall be of no further force or effect.

## **ARTICLE III.**

### **DECLARATION**

The Grantor hereby declares that the Subdivision and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), but expressly not including the Excluded Lots (Lots 1, 21, 22 and 23 of Block 1), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following Covenants and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Subdivision and/or the Lots therein (not including the Excluded Lots), and to enhance the value, desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Subdivision or any Lot therein (not including the Excluded Lots); shall inure to the benefit of every Lot and any interest therein; and shall inure to the benefit of and be binding upon the Grantor and each Owner, and each successor in interest of each, and may be enforced by the Grantor, any Owner, or by the Owner's Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Amended and Restated Master Declaration shall be construed or enforced to prevent or limit the Grantor's right to complete development of the Subdivision in accordance with the plan therefor as the same exists or may be modified from time-to-time by the Grantor nor prevent normal construction activities during the construction of Improvements (hereafter defined) upon any Lot. No development or construction activities shall be deemed to constitute



a nuisance or violation of this Amended and Restated Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Amended and Restated Master Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Amended and Restated Master Declaration.

#### ARTICLE IV.

##### DEFINITIONS

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

**ACC:** The Architectural Control Committee for the Subdivision.

**Annexation:** The process by which additional tracts or parcels of land not initially subject to this Amended and Restated Master Declaration are brought within the coverage hereof and made subject to the covenants, conditions, restrictions and easements of this Amended and Restated Master Declaration.

**Architectural Guidelines:** Such design and construction guidelines, if any, promulgated by the Grantor and/or the ACC as authorized herein.

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

**Association:** Ironhorse Subdivision Owners Association, Inc., an Idaho non-profit corporation.

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

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

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

**Common Area Lot or Common Areas:** Lot 11 of Block 1 of the Subdivision which shall be improved by the Grantor as a Private Road (hereafter defined) and any other property within or adjacent to the Subdivision in which the Association owns an interest or controls, including any easement herein granted to the Grantor and/or the Association, or reserved on the official plat of the Subdivision, or which the Association is required to repair and maintain, and which is held, controlled, repaired and maintained for the betterment of the Lots within the Subdivision.



**Community Sewer System.** The sewer system to be constructed/installed by the Grantor to provide sewer disposal for the Lots within the Subdivision.

**Development:** The project to be undertaken by the Grantor to legally subdivide and improve the Subdivision, including landscaping, amenities, utility services and other improvements (hereafter defined) thereon.

**Grantor:** The undersigned owner of Lots 1 through and including 20 of Block 1, Ironhorse Subdivision.

**Ironhorse Subdivision Owners Association, Inc.:** The Idaho non-profit corporation organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Subdivision.

**Improvements:** All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, privacy facilities, drainage facilities, pressurized irrigation facilities, sewer system, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

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

**Limited Assessment:** An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

**Lot:** A portion of the Subdivision which is a legally described tract or parcel of land or which is designated as a Lot on any recorded subdivision plat relating to the Subdivision, excluding Lots 21, 22 and 23 of Block 1 of the Subdivision.

**Amended and Restated Master Declaration:** This instrument as it may be amended from time-to-time.

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

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

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

**Owner:** A person or persons or other legal entity or entities, including the Grantor, holding

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

**Plat:** The subdivision plat of Ironhorse Subdivision, recorded as Instrument No. 105007098, records of Ada County, Idaho, and filed in Book 91 of Plats at Pages 10651 through and including 10655, records of Ada County, Idaho, as the same may be amended by a duly recorded amendment(s) thereto.

**Private Road:** The Private Road located on Lot 11 of Block 1 of the Subdivision, identified as "S. Old Farm Lane," on the recorded Plat of the Subdivision.

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

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

**Subdivision:** Lots 2 through and including 20 of Block 1, IRONHORSE SUBDIVISION, according to the official plat thereof filed in Book 91 of Plats at Pages 10651 through 10655, records of Ada County, Idaho.

## ARTICLE V.

### PURPOSE

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

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of the Lots within the Subdivision and the Improvements thereon.
- (b) The prevention of the erection on a Lot within the Subdivision of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of high quality and attractive Improvements appropriately located within the Subdivision to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from Lot 11 of Block 1 of the Subdivision (Private Road) and adequate free spaces between Improvements.



- (e) The integration of development of the different Lots by setting common general standards consistent with the Architectural Guidelines existing from time-to-time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

## ARTICLE VI.

### PERMITTED USES AND PERFORMANCE STANDARDS

**SECTION 6.01. Use.** Except for Lot 11 of Block 1 of the Subdivision, which is the Private Road, Lots shall be used only for single-family residential purposes and such uses as are customarily incidental thereto and Common Areas. As used herein and elsewhere in this Amended and Restated Master Declaration, "residential" shall mean the use of the Improvements on a Lot for living accommodations by not more than two (2) unrelated persons, excluding guests of the principal Occupant(s), which guests may reside therein on a temporary basis. Notwithstanding the provisions of §67-6530 et. seq., Idaho Code, as used in this Amended and Restated Master Declaration, "residential" is not intended, nor shall the same be construed, to include the use of Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant, which operation is expressly prohibited on any Lot within the Subdivision.

**SECTION 6.02. Buildings.** Except for Lot 11 of Block 1 of the Subdivision (Private Road), no Lot shall be improved except with one (1) single-family residential dwelling and such accessory buildings and structures as are approved by the ACC.

**SECTION 6.03. Approval of Use and Plans.** No Improvements shall be built, constructed, erected, placed or materially altered within the Subdivision unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article XII, below.

**SECTION 6.04. Prohibited Buildings/Uses.** No trailer or other vehicle, tent, shack, garage, accessory building or out building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Subdivision by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

**SECTION 6.05. Set-Backs.** No Building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to a Lot line than is permitted by the ordinances of the County of Ada, Idaho, or other governmental entity having jurisdiction of the Subdivision; provided, however, the ACC shall have the right to stagger the front setbacks of the Lots in order to create a more pleasing appearance and to minimize the negative visual appearance of a uniform building line.

**SECTION 6.06. Antennae.** No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.



**SECTION 6.07. Easements.** There is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Subdivision, the following easements:

- (a) An easement for ingress and egress for the benefit of Lot 21 of Block 1 (an Excluded Lot) of the Subdivision on Lots 16 and 17 of Block 1 of the Subdivision, as shown on the recorded Plat of the Subdivision.
- (b) An easement for an underground sanitary sewer line for the benefit of Lot 22 of Block 1 (an Excluded Lot) of the Subdivision on Lots 16, 17 and 21 of Block 1 of the Subdivision, as shown on the recorded Plat of the Subdivision.
- (c) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat of the Subdivision.
- (d) An easement for access by the Grantor and the Association, and their agents and contractors, to the pump house as the same is located on Lot 1 of Block 1 of the Subdivision, including any equipment or appurtenances used in connection therewith, as may be constructed or installed by the Grantor or the Association for irrigation purposes.
- (e) For the purpose of permitting the Grantor or the Association, their agents and contractors, to maintain, repair and/or reconstruct the Irrigation System and/or the Community Sewer System within the Subdivision, and any other facilities or equipment located within or outside of the Subdivision for the delivery of irrigation water to or provide sewerage disposal for the Lots within the Subdivision.
- (f) Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot within the Subdivision, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.
- (g) Any additional easements as shown and designated on the recorded Plat of the Subdivision.

The easement areas (excluding any equipment or appurtenances owned by the Grantor, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

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



therein.

**SECTION 6.08. Lighting.** Exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot(s) and shall be in accordance with the Architectural Guidelines.

**SECTION 6.09. Animals.** No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that domesticated dogs, cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot. Each Owner shall be responsible for any damage caused by such Owner's animal(s). No kennel or other area intended to restrain or enclose an animal(s) must be approved by the ACC and, if approved, must be located on the Lot in a location which will minimize the possible nuisance that such may have on the Occupants of the adjacent Lot(s).

**SECTION 6.10. Sewer System.** Sewerage disposal for all Lots shall be by the Community Sewer System. Any Non-Salt watersoft system installed on a Lot must be reverse osmosis, catalytic, or a type that uses no salt. Septic tanks and/or sewer cesspools shall be prohibited.

**SECTION 6.11. Grading and Drainage.** A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction is initiated. Water on a Lot shall be contained and disposed of on such Lot and shall not be allowed to drain or flow upon, across or under adjoining Lots or the Private Road adjacent to such Lot, unless an express written easement for such purpose exists. There shall be no interference with the drainage pattern over any portion of the Subdivision, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC. For the purposes hereof, "drainage pattern" is defined as the system of drainage, whether natural or otherwise, which is shown on any plans approved by the ACC. The Owner of any Lot within the Subdivision in which grading or other work has been performed pursuant to a grading plan approved by ACC, shall maintain and repair all graded surfaces, drainage structures, means or devices which are not the responsibility of the Association or any governmental entity, it being expressly understood and agreed by each Owner of a Lot, by acceptance of a deed to such Lot, that the Owner of each Lot, not Ada County Highway District (hereafter "ACHD") nor the Association, shall be responsible for the maintenance, repair or replacement of the berm, if any, which is located on the Lot adjacent to the Private Road, the purpose of such berm being to prevent the drainage of surface water from such Lot onto the Private Road within the Subdivision.

Each Owner who purchases a Lot directly from the Grantor (hereafter "Initial Owner"), by the acceptance of the deed to the Lot from the Grantor, acknowledges that the Grantor has obtained a Level 1 Nutrient Pathogen Study from Braun Consulting, dated April 1, 2003 (hereafter "Soil Analysis Report") and made such Soil Analysis Report available to the Initial Owner prior to the closing of the purchase of the Lot by the Initial Owner from the Grantor. In summary, the Soil Analysis Report indicates that the soils within the Subdivision contain concentrations of clay which may result in poor vertical drainage and the failure to compensate for this condition may result in surface water ponding on the Lot or drainage toward, instead of away from, structures on the Lot. Each Initial Owner acknowledges that certain steps should be taken in the construction of a residential dwelling on the Lot to mitigate the effects of the inferior draining soils within the Subdivision, including, but not limited to, the drainage of water away from structures on the Lot. Each Initial Owner agrees to give notice to its successor-in-interest in the ownership of the Lot of the Soil Analysis Report and the specific steps taken by the Initial Owner in the construction of the residential dwelling to mitigate the inferior draining soils on the Lot.



After the Initial Construction on a Lot, an Owner shall not change or alter any grading on a Lot or construct or alter any berms or swales on a Lot, including the berm on the Lot, if any, located adjacent to the Private Road abutting such Lot, which will affect or change the drainage on a Lot or any other Lot within the Subdivision, without the prior written approval of the ACC.

**SECTION 6.12. Commercial Use Prohibited.** No Lot shall be used at any time for commercial or business activity, provided, however, that the Grantor or persons authorized by the Grantor may use a Lot(s) for development and sales activities relating to the Subdivision, model homes or real estate sales. The rental by an Owner of a Lot and the Improvements thereon for residential purposes shall not be a use in violation of this Section. The use of a Lot for a shelter home, as the same is defined in §67-6530 et. seq., Idaho Code, whether or not operated for profit, shall, for the purposes of this Amended and Restated Master Declaration, be a commercial or business use. A home office which does not require customer, client or patron parking or any exterior signage shall not be considered to be a commercial or business activity within the prohibition contained in this Section.

**SECTION 6.13. Maintenance.** The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Amended and Restated Master Declaration.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area adjacent to the Private Road within the Subdivision or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Amended and Restated Master Declaration.



- (g) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any Building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in Article XI of this Amended and Restated Master Declaration.

**SECTION 6.14. Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot within the Subdivision and no odor shall be permitted to arise therefrom so as to render any Lot within the Subdivision unsanitary, unsightly, offensive or detrimental to any other Lot therein or in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon or from any Lot so as to be offensive or detrimental to any other Lot within the Subdivision or in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no external speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot within the Subdivision.

**SECTION 6.15. Oil and Mineral Rights.** Subject to any prior grant or reservation thereof, there is hereby reserved to the Grantor, together with the right of the Grantor to grant and transfer the same, the following: (i) all oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatever name known, and the rights in connection therewith; (ii) geothermal steam and all products derived from any of the foregoing that may be within or under the land comprising the Subdivision; (iii) the perpetual right of drilling, mining, exploring and operating therefore and scoring in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from land other than land within the Subdivision, oil and gas wells, tunnels and shafts into, through or across the subsurface of land within the Subdivision and to bottom such whipstock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper fifty feet (50') of the subsurface of the land within the Subdivision.

**SECTION 6.16. Mining and Drilling.** No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Grantor or the Association may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

**SECTION 6.17. Boats, Campers and Other Equipment.** Trailers, mobile homes, trucks larger than standard-size pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles (hereafter "Vehicles and Equipment"), when not in actual use, shall be kept at all times in an enclosed structure on the Lot. Except for a temporary period not to exceed twenty-four (24)



hours, at no time shall any such Vehicles or Equipment be parked or stored on a Lot in full public view or on a public or private right-of-way within the Subdivision. No operative automobile (which, as used herein shall include a standard or smaller pickup) shall be parked or stored for a period in excess of seventy-two (72) consecutive hours on any portion of a Lot between the front of a Building and the abutting Private Road within the Subdivision. No inoperative automobile shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of three (3) off-street parking spaces for automobiles shall be provided on each Lot. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles. No other use of a garage which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed shall be permitted. The Owner shall provide sufficient garage space or other enclosed parking approved by the ACC for all automobiles used by the Occupants of a Lot, which automobiles shall be kept within the garage, and the parking thereof in the driveway on the Lot or on the Private Road within the Subdivision, other than for temporary purposes (as determined by the ACC), is prohibited.

**SECTION 6.18. Garage Doors.** Garage doors shall be closed except when open for a temporary purpose.

**SECTION 6.19. Exterior Materials and Colors.** After completion of the Initial Construction and in the event of the reconstruction, remodeling, repainting or refinishing of a Building within the Subdivision, in whole or in part, exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance.

**SECTION 6.20. Roofs.** A minimum 6/12 roof pitch shall be required. No flat or gravel roofs shall be permitted. Roof covering material shall be black Architectural 30 or equivalent, unless the ACC expressly approves in writing a different color or material.

**SECTION 6.21. Vehicles.** The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC rules, which may prohibit or limit the use thereof within the Subdivision, provide parking regulations and other rules regulating the same.

**SECTION 6.22. Exterior Energy Devices.** No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

**SECTION 6.23. Mailboxes.** No free-standing mailbox shall be constructed or installed on any Lot, it being the requirement of the US Postmaster at the date of this Amended and Restated Declaration that all mailboxes must be clustered. The US Postmaster and the ACC shall have the right to approve mailbox locations and design.

**SECTION 6.24. Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in the Subdivision shall be permitted, provided the same is approved by the ACC prior to installation.



**SECTION 6.25. Subdividing.** No Lot within the Subdivision may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior approval of Ada County, Idaho or, if the Subdivision has been annexed, by the City of Eagle, Idaho, and the written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

**SECTION 6.26. Fences.** No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The ACC shall have the right to adopt uniform design standards for all fences constructed/installed within the Subdivision.

All fences and walls shall be subject to the following restrictions:

- (a) All fences and walls on a Lot shall not exceed six (6) feet in height (unless a lower height is required by the ACC).
- (b) No fence or wall on a Lot shall be constructed or installed in the required set-back area adjacent to the Private Road within the Subdivision.
- (c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Amended and Restated Master Declaration or shown on the recorded subdivision plat of the Subdivision.

**SECTION 6.27. Landscaping.** The following provisions shall govern the landscaping of Lots within the Subdivision:

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XII, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. Landscaping of a Lot shall be in accordance with the approved plan. The type, number, size and location of trees and shrubs required in the initial landscaping of a Lot shall as determined by the ACC in its approval of the Landscape Plan submitted by the Owner to the ACC pursuant to Section 12.08, below; and
- (b) All landscaping within the front yard of the Lot must be installed within thirty (30) days after the date of occupancy of the Building on the Lot, and all landscaping on the remainder of the Lot must be installed within ninety (90) days after the date of occupancy of the Building on the Lot, with an extension(s) allowed for weather related delays.



**SECTION 6.28. Minimum Improvements.** No Building and related improvements intended for use as a single-family residence shall be erected, altered, placed or committed to remain on any Lot within the Subdivision which contains less than the minimum square feet of living area on the ground (first) floor as provided in the Architectural Guidelines, and each such single-family residence shall have, as a minimum, a fully enclosed garage for the inside storage of the number of vehicles as provided in the Architectural Guidelines. Square footage of living area shall be based on fully enclosed interior living space, exclusive of porches, patios and garage.

**SECTION 6.29. Irrigation Water.** The Grantor has or will construct within the Subdivision a pressurized irrigation system (hereafter "Irrigation System") to provide water to each Lot for the irrigation of the landscaping and vegetation on each Lot, which Irrigation System will be stubbed onto each Lot. After the construction/installation of the extension of the Irrigation System on a Lot, and notwithstanding any provision in this Amended and Restated Master Declaration to the contrary, neither the Grantor nor the Association shall have any obligation to maintain, repair or replace any portion thereof which is extended on a Lot beyond the connection/shut-off valve located on the Lot, such obligation to maintain, repair or replace the same being that of the Owner of the Lot on which it is extended. Each Lot Owner shall be required to install an anti-backflow device to the extension of the Irrigation System onto such Owner's Lot beyond the connection/shut-off valve. The Association shall have the obligation to maintain, repair or replace the portions of the Irrigation System which constitute the "main" distribution lines to and including the connection/shut-off valves located on each Lot within the Subdivision, and the pump house to be constructed/installed by the Grantor and the pumping and delivery equipment and system which will be located outside the open space and the Common Areas within the Subdivision. The Association shall adopt rules and regulations concerning the operation of the Irrigation System ("Irrigation Rules"), including, but not limited to, the allocation of water to each Lot, the day(s) and time(s) of delivery and/or diversion of irrigation water to each Lot, the penalties for violation of the Irrigation Rules, which may include the termination of delivery to a Lot following a violation, and the temporary interruption or rationing of irrigation water to be delivered to the Lots. Unless otherwise approved by the Grantor, the Irrigation Rules shall provide that Lots may be irrigated at a given time every other day. The Grantor shall install an electric timer controlled valve that will allow (i) the Lots located adjacent to the west boundary of Lot 11 of Block 1 (Private Road) and (ii) Lot 11 of Block 1 and the Lots located adjacent to the east boundary of Lot 11 (Private Road) to be provided with irrigation water on alternate days. The Irrigation Rules shall be binding upon each Owner and Occupant. Each Owner, by the acceptance of a deed to a Lot within the Subdivision, acknowledges that neither the Grantor nor the Association shall be responsible for any interruption or rationing of the delivery of irrigation water to such Owner's Lot if such interruption or rationing results from a cause or condition outside the control of the Grantor and/or the Association, including, but not limited to, an insufficient amount of irrigation water being delivered to the Subdivision or the temporary failure of the equipment or facilities of the Irrigation System.

**SECTION 6.30. Adoption of Architectural Guidelines.** The Grantor, or in the event of the Grantor's failure to do so, the ACC, shall have the power, but not the obligation, to promulgate Architectural Guidelines relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Subdivision deemed necessary or desirable by the Grantor, or the ACC, as the case may be, to carry out the purposes of this Amended and Restated Master Declaration. If adopted, the Architectural Guidelines shall be consistent with the provisions of this Amended and Restated Master Declaration. Notwithstanding the foregoing, so long as the Grantor owns a Lot within the Subdivision, any amendments to the Architectural Guidelines, if the same are adopted, recommended by the ACC shall be first approved by the Grantor.



**SECTION 6.31. Delegation of Use.** Any Owner may delegate or assign such Owner's rights in any Lot and in any rights under this Amended and Restated Master Declaration whether by easement or otherwise to members of his family, his tenants or his contract purchasers who reside on the Lot to which the Owner has title; provided, however, that such delegation or assignment shall not relieve the Owner from any obligations hereunder and such person to whom rights are delegated or assigned shall be, in all respects, subject to the prohibitions, limitations and obligations contained in this Amended and Restated Master Declaration.

**SECTION 6.32. Exemption of Grantor.** Nothing herein contained shall limit the right of the Grantor to subdivide or re-subdivide any Lot or portion of the Subdivision or to grant licenses, reservations, rights-of-way or easements with respect to the Private Road within the Subdivision, to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Subdivision owned or controlled by the Grantor, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Grantor deems advisable in the course of Development of the Subdivision. This Amended and Restated Master Declaration shall not limit the right of the Grantor at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time-to-time be reasonably necessary. The Grantor need not seek or obtain ACC approval of any Improvements constructed or placed within the Subdivision by the Grantor in connection with the Development of the Subdivision, but this exemption shall not apply to a Building(s) constructed by the Grantor on a Lot owned by the Grantor.

## ARTICLE VII.

### IRONHORSE SUBDIVISION OWNERS ASSOCIATION, INC.

**SECTION 7.01. Organization of Association.** Ironhorse Subdivision Owners Association, Inc. shall be organized by the Grantor as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws and this Amended and Restated Master Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Amended and Restated Master Declaration.

**SECTION 7.02. Classes of Membership.** The Association shall have two (2) classes of membership:

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

**CLASS B.** Class B Members shall be the Grantor, and the Grantor's successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Grantor has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be considered to be a Class A Member with respect to each Lot owned. The Class B Members shall be entitled to one (1) vote for each Lot owned. The Class B membership and the Class B voting rights shall cease and be converted to Class A membership on the happening of the earlier of the following events: (i) when the Grantor (or its successors in title to whom the Grantor has granted the Class B voting rights, as above provided) no longer owns a Lot within the Subdivision; or (ii) January 1, 2010.

A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

**SECTION 7.03. Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time-to-time.

**SECTION 7.04. Powers of Association.** The Association shall have all powers of a non-profit



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

- (a) **Assessments.** The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (b) **Right of Enforcement.** The power and authority from time-to-time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws or this Declaration, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) **Assessment of Penalty(s).** The Association, acting through the Board of Directors, shall have the right to impose a monetary penalty, not to exceed the sum of \$50.00 per day, or such other amount as may be determined from time-to-time by the Board of Directors, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown in the records of the Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of Directors. Such hearing shall be conducted in good faith and in a fair and reasonable manner. A monetary penalty so imposed on an Owner shall be enforceable as a Limited Assessment if such is not paid within the time deemed reasonable by the Board of Directors. The delay or failure by the Association to impose a monetary penalty on an Owner pursuant hereto shall not be deemed to be a waiver of the right of the Association to enforce the restrictions, conditions and covenants of this Declaration against said Owner with respect to such a violation(s) or to impose a monetary penalty with respect to such or any other violation(s).
- (d) **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.
- (e) **Liability of Board Members and Officers.** Neither any member of the Board of Directors nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board of Directors, its officer, a manager or any other representative or employee of the Association,

provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

- (f) **Association Rules.** The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Areas and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association rules as they may from time-to-time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.
- (g) **Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (h) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
  - (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
  - (ii) Community Sewer System, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
  - (iii) Any similar public or quasi-public improvements or facilities.
- (i) **Fiscal Year.** The Board of Directors shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.



**SECTION 7.05. Duties of Association.** In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) **Operation and Maintenance of Private Road.** The Association shall be responsible for maintaining Lot 11 of Block 1 of the Subdivision (Private Road). Such maintenance shall include, but not be limited to, the repairing, patching, sealing, replacing and caring for Lot 11 of Block 1 (Private Road) and the Improvements located thereon, including the sweeping and cleaning thereof, and, when required, snow removal. As used in this Section, "Private Road" shall include the roadway surface, curbs, gutters and sidewalks, if any, located on Lot 11 of Block 1 of the Subdivision, as shown on the Plat, and any appurtenant Improvements located thereon or therein. Notwithstanding the foregoing, snow removal from the sidewalks, if any, located on the Lots adjacent to the Private Road shall not be the responsibility of the Association but shall be the responsibility of and shall be timely performed by the Owner of the Lot on which the sidewalk is located with the snow so removed from the sidewalk to be retained on such Owner's Lot.
- (b) **Operation and Maintenance of Landscape Areas.** Perform, or provide for the performance of, the operation, maintenance and management of the Landscape Areas owned by the Grantor, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Grantor of the Association, and the maintenance, management, repair or replacement all other property owned or controlled by the Association. See section 9.03 for description of landscape areas to be maintained by the association.
- (c) **Taxes and Assessments.** Pay all real and personal property taxes and assessments levied against the Common Areas owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (d) **Utilities.** Acquire, provide and/or pay for water, electrical and other necessary services for the Common Areas owned or controlled by the Association.
- (e) **Maintenance of Drainage Swales.** Perform, or provide for the performance of, the maintenance of the drainage swales which are adjacent to or within the Private Road within the Subdivision.

- (f) **Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect, as elected by the Board of Directors, the following policies of insurance:
- (i) Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all Improvements, equipment, fixtures and other property located within the Common Areas owned or controlled by the Association.
  - (ii) Comprehensive public liability insurance insuring the Association, the Board of Directors, the officers of the Association, the Grantor and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas owned or controlled by the Association. The limits of liability of such coverage shall be as determined by the Board of Directors.
  - (iii) Full coverage directors and officers liability insurance in an amount determined by the Board of Directors.
  - (iv) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board of Directors shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
  - (v) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
  - (vi) Insurance premiums for the above insurance coverage elected by the Board of Directors to be obtained shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- (g) **Signs.** Maintain, repair and replace all permanent entry and special identification signs for the Subdivision located in or outside of the Subdivision.
- (h) **Irrigation System.** Maintain, repair or replace all or any portion of the Irrigation System constructed/installed by the Grantor or the Association within the Subdivision, including pressurized irrigation pump and electrical panels, wiring, conduit located on Lot 21, open space, along with buried mainline from pump to the subdivision, excluding those portions thereof which are extended beyond the shut-off valve onto the Lots, the obligation to maintain such extended portion(s) to be that of the Owner of the Lot on which extension(s) are located.



- (i) **Community Sewer System.** Maintain, repair or replace all or any portion of the Community Sewer System within the Subdivision. This includes the sewer plant located on Lot 3, and on Lot 21, the mechanical building on Lot 21, the sewer effluent pond, pumps, electrical panels, underground piping, and Land Application area located on Lot 21.
- (j) **Rule Making.** Make, establish, promulgate, amend and repeal Association rules.
- (k) **Architectural Control Committee.** Subject to the provisions of Section 12.02, below, appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Amended and Restated Master Declaration.
- (l) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

**SECTION 7.06. Budgets and Financial Statements.** Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

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

The failure of the Association to distribute the budget or the annual balance sheet and/or the annual operating statement within the times above provided shall not relieve or release any Owner from the obligation to pay, when due, all regular, special and limited assessments due and payable to the Association.

**SECTION 7.07. Administration Fees - Costs.** The Association shall pay to the Grantor, so long as the Grantor manages the Association, all actual out-of-pocket costs paid or incurred by the Grantor in the management and administration of the affairs of the Association plus an administrative fee equal to six percent (6.0%) of the total income received by the Association, which administrative fee shall be compensation to the Grantor for the services provided to the Association.

**SECTION 7.08. Effective Date.** The provisions of this Article VII shall become operative upon the creation by the Grantor of the Association and the conveyance to said Association of fee simple title to the Common Area Lot within the Subdivision. Until the creation and organization of the Association, the Grantor shall have the right to exercise all of the powers of the Association set forth in this Amended and Restated Master Declaration.

**SECTION 7.09. ACHD Not Liable.** It is acknowledged and agreed that neither Ada County Highway District ("ACHD") nor any other governmental entity having jurisdiction and control of the Subdivision shall have any obligation or responsibility to maintain, repair or replace all or any portion of



the Improvements located on Lot 11 of Block 1 of the Subdivision (Private Road), the Irrigation System, the Community Sewer System or any other Common Area(s) within the Subdivision. Any purported amendment to this Section to impose liability upon ACHD or any other governmental entity with respect to Lot 11 of Block 1 of the Subdivision (Private Road), the Irrigation System, the Community Sewer System or any other Common Area within the Subdivision shall be of no force or effect unless ACHD or such other governmental entity shall expressly consent thereto in writing.

## ARTICLE VIII.

### ASSOCIATION PROPERTIES

**SECTION 8.01. Use.** Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties, subject to the following:

- (a) **Articles, Etc.** The provisions of the Articles and By-Laws of the Association, this Amended and Restated Master Declaration and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association.
- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Areas within the Subdivision.
- (d) **Mortgage or Conveyance of Common Areas.** Except as provided in subsection (c), above, no portion of the Common Areas shall be mortgaged or conveyed by the Association without the prior approval of at least two-thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 9.10, below, shall apply.

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

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



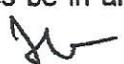
shall be undertaken.

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

## ARTICLE IX.

### MAINTENANCE OBLIGATIONS OF ASSOCIATION

**SECTION 9.01. Ownership of Lot 11 of Block 1 and Irrigation and Community Sewer Systems.** At a date not later than the date that a Lot within the Subdivision is improved with a residential dwelling unit and occupied, the Grantor shall convey Lot 11 of Block 1 (Private Road) to the Association and transfer to the Association title to any Improvement, equipment, property or system relating to the Irrigation System and the Community Sewer System located within the Subdivision, including the primary electrical system which powers the pressurized irrigation pump which is part of the Irrigation System.

**SECTION 9.02. Duty to Maintain Irrigation and Community Sewer Systems.** The Association shall be responsible for all repairs, replacements, maintenance and operation costs of the Irrigation System facilities. In addition, the Association shall also be responsible for all repairs, replacements, maintenance and operation costs of the sewage system facilities to meet the State of Idaho, DEQ standards. Those portions of the Irrigation System which are extended beyond the shut-off valve onto the Lots, which repairs, replacements and maintenance shall be promptly performed when necessary to the end that the Irrigation System and the Community Sewer System will at all reasonable times be in an operable condition. See exhibit "B" for location of system components. ~~END OF SECTION 9.02~~ 

**SECTION 9.03. Duty to Maintain Landscape and Landscape Buffer Easement.** The Association shall be responsible for all repairs, replacements and maintenance of the easement(s) for irrigation facilities, and the landscaping and sidewalk (should a sidewalk exist) located on the most southerly forty feet (40') of the Subdivision, including the Excluded Lots, adjacent to W. Columbia Road, as shown on the recorded Plat of the Subdivision, in addition to, all landscaped berms, located on the excluded lots, including foliage, trees, shrubs and groundcover at the entrance to Old Farm Lane, on the west side, and wrapping around the south boundry of Lot 1, and the berms located on the east side of the entrance to Old Farm Lane, on Lot 21, wrapping around and curving eastward along Columbia Road six hundred (600) feet is to be maintained and cared for, including pruning, replacement of shrubs, trees, groundcover and weeding by the Association.

**SECTION 9.04. Liability for Damage.** In the event that any maintenance, repair or replacement of all or any portion of the any Improvements located on Lot 11 of Block 1 of the Subdivision, the Irrigation System, the Community Sewer System, a Common Area or the landscape buffer easement described in Section 9.03, above, is performed by the Association as a result of the willful or negligent act of an Owner, including an Owner of an Excluded Lot, or such Owner's family, guests or invitees, the cost of



such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in this Amended and Restated Master Declaration, or if the responsible Owner owns an Excluded Lot, the Association shall have the right to pursue all legal remedies to collect such costs from such Owner.

**SECTION 9.05. Cost of Maintenance, Repairs and Replacement.** The cost of the maintenance, repairs and replacements of the Improvements on Lot 11 of Block 1 of the Subdivision (Private Road), the Irrigation System and the Community Sewer System within the Subdivision and the landscape buffer easement, and the continuing operational expenses in connection therewith, including taxes, shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within the Subdivision which are served thereby. Such costs and expenses (hereafter "cost and expenses") shall be apportioned among the Lots within the Subdivision served thereby on an equal basis. In the event the Association does not have adequate funds to pay the cost and expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, on an equal basis, as a Special Assessment.

The decision as to what costs and expenses are required with respect to the foregoing and the timing of the payment thereof shall rest solely with the Board.

**SECTION 9.06. Easement for Maintenance.** There is hereby reserved to the Association, its contractors and agents, an easement to enter upon the Lots within the Subdivision for the purpose of accomplishing all maintenance, repair and replacement rights and duties set forth in this Article.

**SECTION 9.07. Reserve for Maintenance, Repair and Replacement.** The Association shall have the right to establish a reserve account for the payment of the costs and expenses as set forth herein with regard to the maintenance, repair and replacement of the Improvements on Lot 11 of Block 1 (Private Road), the Common Areas, the Irrigation System, the Community Sewer system and the landscape buffer easement, and for the purpose of funding the same, the Board shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment so determined for the purpose of funding the maintenance, repair and replacement reserve account shall be determined by the Board. The Board shall have the right to place all funds collected for the maintenance, repair and replacement reserve account in an interest-bearing account in an appropriate financial institution.

## **ARTICLE X.**

### **ASSESSMENTS**

**SECTION 10.01. Covenant to Pay Assessments.** Each Owner hereby, and by acceptance of a deed to a Lot within the Subdivision, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Areas or by abandonment of such Owner's Lot.



**SECTION 10.02. Regular Assessments.** Regular Assessments shall be made by the Association at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance, repair, replacement and operation of the Improvements, equipment and facilities on Lot 11 of Block 1 of the Subdivision (Private Road) and other Common Areas, including all easement areas, owned or controlled by the Association, the Irrigation System, the Community Sewer System, and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, the maintenance, repair and replacement of the Improvements, equipment and facilities, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

**SECTION 10.03. Special Assessments.** In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements on Lot 11 of Block 1 (Private Road) or other facility located thereon, the Irrigation System, the Community Sewer System, and other Common Areas, including all easement areas owned or controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Amended and Restated Master Declaration.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

At the closing of the sale of each Lot by the Grantor, a special assessment of \$300.00 shall be collected from the purchaser of the Lot as payment for the organizational, set-up and administrative costs of the Association.

**SECTION 10.04. Limited Assessments.** In addition to Regular and Special Assessments, Owners of the Lots within the Subdivision shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Areas or any other portion of the Subdivision, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.



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

**SECTION 10.05. Commencement of Regular Assessments.** Regular Assessments of the Association against each Lot shall commence the earlier of the following: (i) six (6) months following the closing of the first (1st) sale of a Lot to an Owner, or (ii) the occupancy of the first (1st) Building constructed on a Lot. Provided, however, that any Lot owned by the Grantor which is undeveloped with a residential dwelling shall be assessed a Regular Assessment not exceeding ten percent (10%) of the amount assessed against Lots owned by other Owners. If the Grantor pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Grantor, such excess amounts so paid shall constitute a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Grantor within the Subdivision; provided that unless such excess amounts so paid by the Grantor are paid pursuant to a written agreement with the Association to the contrary, the Grantor shall not be entitled to reimbursement in cash of any such Assessment credit nor shall such credit inure to an Owner purchasing a Lot from the Grantor, unless such person is the successor to substantially all of the interest of the Grantor in the Subdivision. Nothing herein contained shall obligate the Grantor to pay any Assessment with respect to a Lot so long as the Grantor owns fifty percent (50%) or more of the Lots within the Subdivision.

**SECTION 10.06. Uniform Rate of Assessment.** Except as expressly provided to the contrary in this Amended and Restated Master Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

**SECTION 10.07. Assessment Due Date.** The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

**SECTION 10.08. Interest and Penalties.** Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time-to-time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of,



any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

**SECTION 10.09. Estoppel Certificate.** The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Amended and Restated Master Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

**SECTION 10.10. Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 10.03, above, or a Limited Assessment described in Section 10.04, above, shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of Owners or of proxies entitled to cast sixty percent (60%) of the total votes of each class of Members of the Association subject to the levy of such Special or Limited Assessment shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of Owners or of proxies entitled to cast twenty-five percent (25%) of the total votes of each class of Members shall constitute a quorum. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 10.04, above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

## **ARTICLE XI.**

### **ENFORCEMENT OF ASSESSMENTS**

**SECTION 11.01. Right to Enforce.** The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot in the Subdivision hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Amended and Restated Master Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

**SECTION 11.02. Creation of Assessment Liens.** There is hereby created a continuing claim of lien with power of sale on each Lot in the Subdivision to secure payment of any and all Assessments levied against the Lots in the Subdivision pursuant to this Amended and Restated Master Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Amended and Restated Master Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or



first Deed of Trust, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Amended and Restated Master Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

**SECTION 11.03. Notice Required.** Notwithstanding anything to the contrary contained in this Amended and Restated Master Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

**SECTION 11.04. Enforcement.** Upon the failure of an Owner to pay an Assessment in accordance with its terms, and following the expiration of the cure period after delivery of the written notice required by Section 11.03, above, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

**SECTION 11.05. Reporting.** The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 11.03, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

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



In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$50.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 11.02, above. The charge for such notification shall be subject to change by the Board.

**SECTION 11.06. Term of Assessment.** Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Amended and Restated Master Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

**SECTION 11.07. Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Amended and Restated Master Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

## **ARTICLE XII.**

### **ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 12.01. Members of the Committee.** The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he/she has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

**SECTION 12.02. Appointment.** So long as the Grantor owns any Lot within the Subdivision, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board of the Association.

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

**SECTION 12.03. Compensation.** The members of the ACC shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder, said compensation to be determined by the Board.

**SECTION 12.04. Non-Liability.** Neither the ACC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof, seeking monetary damages or any other remedy at law or equity resulting from any loss, damage or injury, including, but not limited to, the same that may result from or relate to the type(s) or



nature of the soil(s) located below the surface of any Lot.

**SECTION 12.05. Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.

**SECTION 12.06. Basis of Approval.** Approval by the ACC shall be based, among other things, on the Architectural Guidelines, the adequacy of the Lot dimensions; conformity and harmony of external design with neighboring Improvements, the effect of location and use of Improvements on neighboring Lots; operations and uses; relations to topography, grade, finished ground elevation and landscaping of the Lot being improved to that of neighboring Lots; proper facing of the main elevation with respect to nearby streets; the relation of floor elevations to flood elevations as defined by government entities; and the conformity of the plans and specifications to the purpose and general plan and intent of this Amended and Restated Master Declaration.

**SECTION 12.07. Variances.** The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Amended and Restated Master Declaration, the Architectural Guidelines, or any prior approval when, in the sole discretion of the ACC, circumstances such as, but not limited to, topography, natural obstructions, aesthetics or environmental considerations or economic or developmental hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

If a variance is granted as provided herein, no violation of this Amended and Restated Master Declaration, Architectural Guidelines or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Amended and Restated Master Declaration or the Architectural Guidelines for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

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

**SECTION 12.08. Application.** To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Subdivision, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, two (2) full and complete copies of the following materials (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements.
- (b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior



specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.

- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.

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

The ACC shall have the right to require an Owner submitting an application for approval of plans and specifications to pay a fee at the time the application is submitted, the amount of such fee to be based upon the reasonable and actual expenses of the ACC in reviewing and processing the application. The ACC shall not be obligated to commence the review and processing of an application until such fee, if required, is paid.

**SECTION 12.09. Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a first class residential development.

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

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

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

**SECTION 12.10. Inspection and Complaints.** The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Amended and Restated Master Declaration or the Architectural Guidelines or the approved plans and specifications.

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

Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a



notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

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

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

**SECTION 12.11. Hearing.** An Owner submitting an application under Section 12.08, above, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 12.13, below.

**SECTION 12.12. Appeal.** Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 12.11, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

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

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



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

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

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

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 12.13, below.

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

**SECTION 12.13. Enforcement.** The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Subdivision, the continuation of which violates the provisions of this Amended and Restated Master Declaration, the Architectural Guidelines or the approved plans and specifications.

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

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

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



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

**SECTION 12.14. Additional Damages.** In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article XI, above.

**SECTION 12.16. Non-Exclusive Remedy.** The right of the Association to levy a Limited Assessment as described in Sections 12.13 and 12.14, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

**SECTION 12.16. Private Rights.** The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

## **ARTICLE XIII.**

### **ANNEXATION**

**SECTION 13.01. Annexation.** Additional property may be annexed to the Subdivision and brought within the provisions of this Amended and Restated Master Declaration by the Grantor, at any time, without the approval of any Owner or the Association. As such annexed property is developed, the Grantor shall record an amendment to this Amended and Restated Master Declaration with respect thereto which shall annex such property to the Subdivision and which may supplement this Amended and Restated Master Declaration with additional or different Covenants and Restrictions applicable to the annexed property, as the Grantor may deem appropriate, and may delete or modify as to such annexed property such covenants or restrictions as are contained herein which the Grantor deems not appropriate for the annexed property, so long as the quality of development is not materially adversely affected. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all rights, privileges and obligations as all other members.

**SECTION 13.02. De-Annexation.** The Grantor shall have the right to delete all or a portion of the Subdivision from the coverage of this Amended and Restated Master Declaration and the jurisdiction of the Association, so long as the Grantor is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Amended and Restated Master Declaration is recorded in the office of the Ada County Recorder.



## ARTICLE XIV.

### PROTECTION OF MORTGAGEES

**SECTION 14.01. Purpose.** Notwithstanding any and all provisions of this Amended and Restated Master Declaration to the contrary, to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") to participate in the financing of the purchase of Lots within the Subdivision, the provisions of this Article are added thereto. To the extent the following Sections of this Article conflict with any other provisions of this Amended and Restated Master Declaration, this Article shall control.

**SECTION 14.02. Restrictions on Amendments.** No amendment of this Amended and Restated Master Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Amended and Restated Master Declaration, as amended.

**SECTION 14.03. Mortgagee Defined.** For the purposes of this Article only, a "Mortgagee" shall refer only to FHLMC, GNMA, FNMA, FHA and VA, as described in Section 14.01, above.

**SECTION 14.04. Right to Notice.** Each Mortgagee, upon filing a written request for notification with the Board in accordance with Section 11.05, above, shall be given written notice by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Amended and Restated Master Declaration, the Articles or the By-Laws of the Association (hereafter collectively referred to as "Project Documents"), which default is not cured within thirty (30) days after the Association has notice of such default.

**SECTION 14.05. Exemption From Prior Assessments.** Each Mortgagee which comes into possession of a Lot by virtue of foreclosure or otherwise shall take title to such Lot free from any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation thereof to all Lots, including the mortgaged Lot.

**SECTION 14.06. Changes Requiring Unanimous Approval.** Without the prior unanimous approval of all Mortgagees of Lots within the Subdivision, neither the Association nor the Owners shall:

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



**SECTION 14.07. Restrictions on Other Changes.** Without the prior written approval of at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots within the Subdivision, neither the Association nor the Owners shall:

- (a) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design of the exterior appearance of Improvements on Lots within the Subdivision, the exterior maintenance of said Improvements, or the maintenance and upkeep of landscaping within the Subdivision.
- (b) Fail to maintain fire and extended coverage insurance on insurable Improvements within the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (c) Use hazard insurance proceeds for losses occurring within the Common Areas for any purpose other than the repair, replacement or reconstruction thereof.
- (d) Abandon or terminate the covenants, conditions, restrictions and easements of this Amended and Restated Master Declaration.
- (e) Make any material amendment to this Amended and Restated Master Declaration or to the Articles or By-Laws of the Association.

**SECTION 14.08. Right to Inspect Books, Etc.** Mortgagees, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financing reports and other financial data; (iii) receive written notice of all meetings of Owners; and (iv) designate in writing a representative to attend all such meetings.

**SECTION 14.09. Notification of Damage.** Upon the Board receiving notice of any damage to a Common Area or any Lot wherein the cost of repair, replacement or reconstruction exceeds Ten Thousand Dollars (\$10,000.00) or notice of any condemnation or eminent domain proceedings or other similar involuntary acquisition of any portion of the Subdivision, the Board shall give to each Mortgagee which has filed with the Board a written request for notice, prompt written notice of said damage or condemnation.

**SECTION 14.10. Right to Pay Charges.** Mortgagees may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Areas and may pay any overdue premiums on hazard insurance policies covering said Common Areas and said Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

**SECTION 14.11. Fidelity Bond Required.** The Board shall secure and caused to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association.

**SECTION 14.12. Lessee's Obligations.** Any agreement for the leasing or rental of a Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject to the provisions of the Project Documents. All such agreements shall be in writing and shall



provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the leasing or rental agreement.

**SECTION 14.13. Liability for Taxes.** All taxes levied and assessed on the Common Areas must be assessable against those Common Areas only and the Association shall be solely responsible for the payment thereof.

**SECTION 14.14. Waiver of Liability and Subrogation.** Any provision in this Amended and Restated Master Declaration which requires Owners to indemnify the Association, the Board or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

**SECTION 14.15. FNMA and GNMA Insurance Requirements.** Notwithstanding any other provisions contained in this Amended and Restated Master Declaration, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FNMA and GNMA, so long as either is a Mortgagee or Owner of a Lot within the Subdivision, except to the extent such coverage is not available or has been waived in writing by FNMA or GNMA.

**SECTION 14.16. Additional Contracts.** In addition to the foregoing provisions of this Article, the Board may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, FHA, VA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots within Improvements thereon. Each Owner hereby agrees that it will benefit the Association and each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots, if such agencies approve the Subdivision as a qualifying subdivision under applicable policies, rules and regulations as adopted from time-to-time.

**SECTION 14.17. Consent to Release of Information by Mortgagee.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot and each Owner of a Lot encumbered by such a Mortgage hereby consent thereto.

**SECTION 14.18. Restricted Application.** It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA, GNMA, FHA or VA purchases, grantees or insures a Mortgage on a Lot within the Subdivision and then only to the extent the same are required by said purchaser, guarantor or insurer. In the event the standards and guidelines of FHLMC, FNMA, GNMA, FHA or VA do not require, as a condition of approval of the Subdivision as a qualifying subdivision, the inclusion of one or more of the provisions of this Article, said non-required provisions shall be of no further force or effect.



## **ARTICLE XV.**

### **MISCELLANEOUS**

**SECTION 15.01. Term.** This Amended and Restated Master Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2035, unless amended as hereafter provided. After December 31, 2035, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4) of the Lots covered by this Amended and Restated Master Declaration and such written instrument is recorded with the Ada County Recorder.

**SECTION 15.02. Amendment.** This Amended and Restated Master Declaration may be amended as follows:

- (a) **By Grantor.** Until title to a Lot within the Subdivision is conveyed by the Grantor to an Owner, this Amended and Restated Master Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination.
- (b) **By Owners.** Except as otherwise expressly provided this Amended and Restated Master Declaration, the provisions of this Amended and Restated Master Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by a majority of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or a majority of the Class A Members, as the case may be. Such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 14.02 shall require the vote of a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by seventy-five percent (75%) of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or seventy-five percent (75%) of the Class A Members, as the case may be. Such amendment to this Section shall be in the form of an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment to this Section has been approved as provided herein, and shall be effective upon its recordation with the Ada County Recorder.

**SECTION 15.03. Annexation By Municipality.** Unless the Subdivision has been previously annexed into the corporate limits of the City of Eagle, Idaho, the recordation of this Amended and Restated Master Declaration by the Grantor shall be deemed and construed as a request by the Grantor for the annexation of the property covered by said Plat into the corporate limits of the City of Eagle, Idaho. Such request shall be binding on all subsequent Owners of the Lots within the Subdivision.



**SECTION 15.04. Books and Records.** All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

**SECTION 15.05. Non-Waiver.** The failure of the Grantor, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Amended and Restated Master Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

**SECTION 15.06. Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Amended and Restated Master Declaration and agrees to be bound by the same.

**SECTION 15.07. Indemnification of Board Members, Officers and ACC.** Each member of the Board, each officer of the Association and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board, an officer of the Association or a member of the ACC, or any settlement thereof, whether or not said person is a member of the Board, an officer or a member of the ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board, the officer(s) or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the initial period of operation of the Association or prior thereto during the period the Grantor is exercising the powers of the Association.

**SECTION 15.08. Notices.** Any notice permitted or required to be delivered as provided in this Amended and Restated Master Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid, properly addressed.

**SECTION 15.09. Interpretation.** the provisions of this Amended and Restated Master Declaration shall be liberally construed to effectuate the purposes set forth in Article V, above, and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**SECTION 15.10. Severability.** Notwithstanding the provisions of the preceding Section, each of



the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**SECTION 15.11. Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Grantor.

**SECTION 15.12. Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

**SECTION 15.13. Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the covenants, easements and restrictions contained in this Amended and Restated Master Declaration, the Grantor and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Amended and Restated Master Declaration or provided by law.

**SECTION 15.14. Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Amended and Restated Master Declaration shall entitle any Owner to terminate this Amended and Restated Master Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Amended and Restated Master Declaration. Any breach of this Amended and Restated Master Declaration shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Amended and Restated Master Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**SECTION 15.16. Attorney's Fees.** In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Amended and Restated Master Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding the prevailing party's reasonable costs and attorney's fees, including the same with respect to an appeal.

**SECTION 15.17. Force Majeure.** The period of time provided in this Amended and Restated Master Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

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

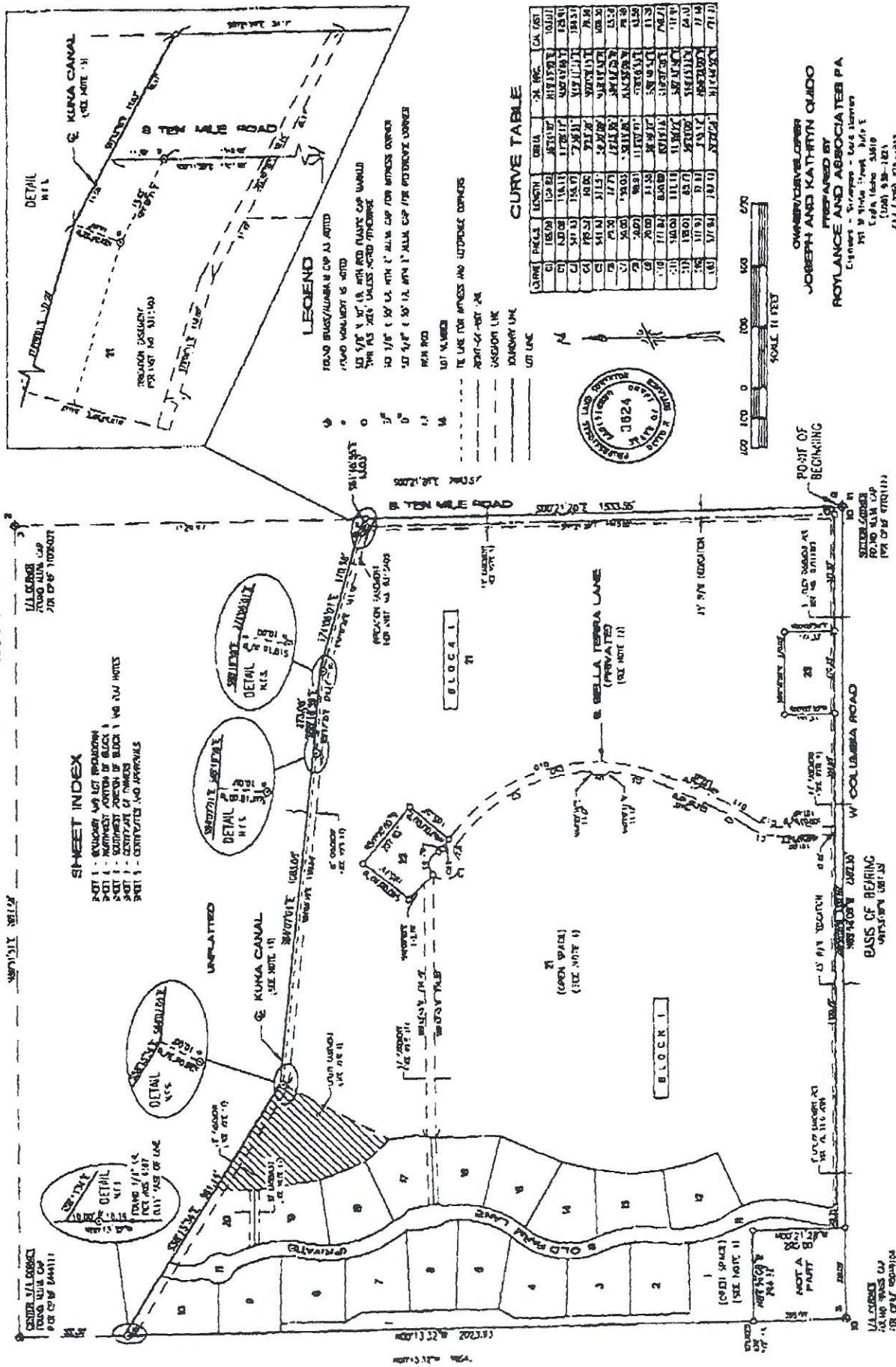
**IRONHORSE ESTATES, LLC, an Idaho Limited  
Liability Company**



# FLAT SHOWING IRONHORSE SUBDIVISION

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 3,  
TOWNSHIP 2 NORTH, RANGE 1 WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO

2004





LOCATED IN THE SOUTHEAST 1/4 OF SECTION 3,

TOWNSHIP 2 NORTH, RANGE 1 WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO

2004

LINE	FEET	LENGTH	DATA	DATE	CAUSE
C1	185.00	113.17	17.50	10/10/17	
C2	187.00	113.17	17.50	10/10/17	
C3	189.00	113.17	17.50	10/10/17	
C4	191.00	113.17	17.50	10/10/17	
C5	193.00	113.17	17.50	10/10/17	
C6	195.00	113.17	17.50	10/10/17	
C7	197.00	113.17	17.50	10/10/17	
C8	199.00	113.17	17.50	10/10/17	
C9	201.00	113.17	17.50	10/10/17	
C10	203.00	113.17	17.50	10/10/17	
C11	205.00	113.17	17.50	10/10/17	
C12	207.00	113.17	17.50	10/10/17	
C13	209.00	113.17	17.50	10/10/17	
C14	211.00	113.17	17.50	10/10/17	
C15	213.00	113.17	17.50	10/10/17	
C16	215.00	113.17	17.50	10/10/17	
C17	217.00	113.17	17.50	10/10/17	
C18	219.00	113.17	17.50	10/10/17	
C19	221.00	113.17	17.50	10/10/17	
C20	223.00	113.17	17.50	10/10/17	
C21	225.00	113.17	17.50	10/10/17	
C22	227.00	113.17	17.50	10/10/17	
C23	229.00	113.17	17.50	10/10/17	
C24	231.00	113.17	17.50	10/10/17	
C25	233.00	113.17	17.50	10/10/17	
C26	235.00	113.17	17.50	10/10/17	
C27	237.00	113.17	17.50	10/10/17	
C28	239.00	113.17	17.50	10/10/17	
C29	241.00	113.17	17.50	10/10/17	
C30	243.00	113.17	17.50	10/10/17	
C31	245.00	113.17	17.50	10/10/17	
C32	247.00	113.17	17.50	10/10/17	
C33	249.00	113.17	17.50	10/10/17	
C34	251.00	113.17	17.50	10/10/17	
C35	253.00	113.17	17.50	10/10/17	
C36	255.00	113.17	17.50	10/10/17	
C37	257.00	113.17	17.50	10/10/17	
C38	259.00	113.17	17.50	10/10/17	
C39	261.00	113.17	17.50	10/10/17	
C40	263.00	113.17	17.50	10/10/17	
C41	265.00	113.17	17.50	10/10/17	
C42	267.00	113.17	17.50	10/10/17	
C43	269.00	113.17	17.50	10/10/17	
C44	271.00	113.17	17.50	10/10/17	
C45	273.00	113.17	17.50	10/10/17	
C46	275.00	113.17	17.50	10/10/17	
C47	277.00	113.17	17.50	10/10/17	
C48	279.00	113.17	17.50	10/10/17	
C49	281.00	113.17	17.50	10/10/17	
C50	283.00	113.17	17.50	10/10/17	
C51	285.00	113.17	17.50	10/10/17	
C52	287.00	113.17	17.50	10/10/17	
C53	289.00	113.17	17.50	10/10/17	
C54	291.00	113.17	17.50	10/10/17	
C55	293.00	113.17	17.50	10/10/17	
C56	295.00	113.17	17.50	10/10/17	
C57	297.00	113.17	17.50	10/10/17	
C58	299.00	113.17	17.50	10/10/17	
C59	301.00	113.17	17.50	10/10/17	
C60	303.00	113.17	17.50	10/10/17	
C61	305.00	113.17	17.50	10/10/17	
C62	307.00	113.17	17.50	10/10/17	
C63	309.00	113.17	17.50	10/10/17	
C64	311.00	113.17	17.50	10/10/17	
C65	313.00	113.17	17.50	10/10/17	
C66	315.00	113.17	17.50	10/10/17	
C67	317.00	113.17	17.50	10/10/17	
C68	319.00	113.17	17.50	10/10/17	
C69	321.00	113.17	17.50	10/10/17	
C70	323.00	113.17	17.50	10/10/17	
C71	325.00	113.17	17.50	10/10/17	
C72	327.00	113.17	17.50	10/10/17	
C73	329.00	113.17	17.50	10/10/17	
C74	331.00	113.17	17.50	10/10/17	
C75	333.00	113.17	17.50	10/10/17	
C76	335.00	113.17	17.50	10/10/17	
C77	337.00	113.17	17.50	10/10/17	
C78	339.00	113.17	17.50	10/10/17	
C79	341.00	113.17	17.50	10/10/17	
C80	343.00	113.17	17.50	10/10/17	
C81	345.00	113.17	17.50	10/10/17	
C82	347.00	113.17	17.50	10/10/17	
C83	349.00	113.17	17.50	10/10/17	
C84	351.00	113.17	17.50	10/10/17	
C85	353.00	113.17	17.50	10/10/17	
C86	355.00	113.17	17.50	10/10/17	
C87	357.00	113.17	17.50	10/10/17	
C88	359.00	113.17	17.50	10/10/17	
C89	361.00	113.17	17.50	10/10/17	
C90	363.00	113.17	17.50	10/10/17	
C91	365.00	113.17	17.50	10/10/17	
C92	367.00	113.17	17.50	10/10/17	
C93	369.00	113.17	17.50	10/10/17	
C94	371.00	113.17	17.50	10/10/17	
C95	373.00	113.17	17.50	10/10/17	
C96	375.00	113.17	17.50	10/10/17	
C97	377.00	113.17	17.50	10/10/17	
C98	379.00	113.17	17.50	10/10/17	
C99	381.00	113.17	17.50	10/10/17	
C100	383.00	113.17	17.50	10/10/17	

OWNER/DEVELOPER  
JOSEPH AND KATHY CLUDIO  
PREPARED BY  
ROYLANCE AND ASSOCIATES PA

30 K-00  
ONLINE

**RESEARCH REPORT**

[illegible]



By Kathryn N Guido  
KATHRYN N. GUIDO, Member

STATE OF IDAHO )  
                          ) ss:  
County of Ada )

Joseph J. Guido  
Joseph J. Guido, Member

On this 25 day of February, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared KATHRYN N. GUIDO, known or identified to me to be a Member of IRONHORSE ESTATES, LLC, an Idaho Limited Liability Company, and the Member who subscribed said Limited Liability Company name to the foregoing instrument and acknowledged to me that she executed the same in said Limited Liability Company name.

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



(SEAL)

Susan J Merritt  
Notary Public for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission Expires: \_\_\_\_\_

RESIDING AT: CALDWELL, ID  
MY COMMISSION EXPIRES 05-05-05