



MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VILLAGE OAK SUBDIVISION  
AND

36 OAK HOMEOWNERS ASSOCIATION

THIS DECLARATION is made effective as of the 11<sup>th</sup> day of March, 2015, by Village Oak Development Co., LLC, an Idaho limited liability company, and James M. Neill, an unmarried individual, residing at 208 E. 36<sup>th</sup> Street, Garden City, Idaho (hereinafter jointly "Grantor").

ARTICLE I

RECITALS

1.1 Property Covered. The property subject to this Master Declaration of Covenants, Conditions and Restrictions for Village Oak Subdivision ("Master Declaration") is the Property defined in Section 3.29 below, and further described in Exhibit "A" (the "Property").

1.2 Mixed Use Development. The Village Oak Subdivision is a subdivision in Garden City's Mixed Use zoning district, approved as a Planned Unit Development (PUD), and granted final plat approval by Garden City Council on October 27, 2014 (hereby incorporated herein by reference). The Property is located in a neighborhood of transitional use, along 36<sup>th</sup> Street, a major road that is also subject to possible change in that it may be extended as a through road, gaining traffic volume and more commercial character. The Property is near the Boise River, the Greenbelt and new public park, near the urban core of the metropolitan area. The purpose of Mixed Use PUD is to establish an appropriate blend of permitted uses, with most of the Property devoted to denser residential use, and the area along 36<sup>th</sup> Street capable of being residential or transitioning to live-work or commercial use, while still protecting the residential character of the rest of the Property. A framework of rules is intended to provide a background of understanding regarding the inter-relationship of the particular uses, to prevent conflicts between uses, and to provide an administrative mechanism for the homeowners association. The Village Oak Subdivision consists of two neighborhood areas ("Neighborhood Areas"), referred to herein as the Townhouses and Cottage Houses, each with its own type of residential unit, and other lots

fronting on 36<sup>th</sup> Street, which may be a single Neighborhood Area or as many as three Neighborhood Areas, and each of which building lots may be used for a broader range of residential, live-work and/or commercial uses, or may be further subdivided to create individual residential and commercial smaller lots, leaseholds or condominium units. The Village Oak Subdivision also includes common area to be owned by the owners of the lots in the subdivision, including private roads and landscaped open areas. A table of the lots and their respective permitted uses is set out below. This table is for convenience of reference only, and the permitted uses listed are subject to the more specific descriptions and restrictions set forth in this Declaration (as well as the conditions of approval of the PUD or other regulatory restrictions). Grantor may subject property in addition to that described on Exhibit A to the provisions hereof by annexing such parcel into the Property pursuant to a Supplemental Declaration. Grantor reserves all right to make changes at any time to any part of the Property remaining in Grantor's ownership, subject only to the approval of Garden City and other regulatory bodies, and this Declaration imposes no obligation on Grantor as to how the Property is to be developed unless and until the conveyance of the first lot in a particular Neighborhood Area of the Village Oak Subdivision, as shown in the table below.

Neighborhood Area - unit type	Number of units	Block and lot numbers	Summary of permitted uses	Utilized common area
Townhouses	12	Block 1, Lots 10-18 and 27-29	2 and/or 3 story residential townhouses, fronting on green common area with rear entry garages off private street, accessory dwelling unit permitted, front porch or patio on common area	Block 1, Lots 2 and 6 (private road and landscaped area)
Cottage Houses	6	Block 1, Lots 20-25	1 and/or 2 story residential cottage houses within green common area, architecture unifies the buildings in a theme, detached garages with pedestrian access by circulating paths	Block 1, Lots 2 and 19 (private road and landscaped area)
36 <sup>th</sup> street lots	Maximum permitted by law	Block 1, Lots 1, 3-5, 7-9 and 26	urban street frontage of residential plus optional commercial or live-work uses	Block 1, Lot 2 (private road)
master association common areas	NA	Block 1, Lots 2, 6 and 19, and easements	private road and landscaped areas, and access and utility easements	

1.3 Purpose of Master Declaration. The purpose of this Master Declaration of Covenants, Conditions and Restrictions (“Master Declaration”) is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively “Restrictions”) that will apply to the entire development and use of all portions of the Property. The Restrictions are designed to preserve the Property’s value, desirability and attractiveness, to ensure a well integrated, high-quality development in its residential, commercial and open space aspects, and to guarantee adequate maintenance of the Common Areas and the Improvements located thereon.

1.4 Supplemental Declarations of Covenants. Grantor reserves the right to develop the Property in stages or Neighborhood Areas, as more fully described in this Master Declaration. In order to facilitate the staged development contemplated herein, Grantor may record, at its option, Supplemental Declarations establishing particular Covenants, Conditions and Restrictions for specified portions of the Property, potentially including properties in addition to that described on Exhibit A.

## ARTICLE II

### DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance its value, desirability and attractiveness. The provisions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein, whether held or used for residential or commercial purposes or otherwise, and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest, or by the Master Association or any Local Association as hereinafter described.

Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit Grantor’s right to complete development of the Property and to construct improvements thereon pursuant to the Village Oak Subdivision Plat as the same may be modified at Grantor’s option hereunder, nor Grantor’s right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Grantor’s right to post signs incidental to construction, sales or leasing.

## ARTICLE III

## DEFINITIONS

3.1 “Annexed Tract” shall mean any parcel of real property that is annexed pursuant to the annexation procedure described herein and made subject to this Master Declaration by a particular Supplemental Declaration recorded by Grantor.

3.2 “Architectural Committee” shall mean the committee created by the Grantor or Association pursuant to Article XI hereof.

3.3 “Articles” shall mean the Articles of Incorporation of the Association.

3.4 “Assessments” shall mean those payments required of Owners, Master Association Members, or Local Association Members, including Regular, Special and Limited Assessments of any Association as further defined in this Master Declaration.

3.5 “Association” shall mean the Master Association and/or a Local Association, whichever is appropriate in the context.

3.6 “Association Rules” shall mean those rules and regulations promulgated by an Association governing conduct upon and use of the property under the jurisdiction or control of an Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of an Association.

3.7 “Beneficiary” shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.

3.8 “Board” shall mean the Board of Directors of an Association.

3.9 “Building Lot” shall mean a lot shown on the plat of the Village Oak Subdivision and/or by Supplemental Declaration, upon which residential or commercial Improvements may be constructed, but shall not include Common Area held by an Association. The term “Building Lot” shall include without limitation, townhouse and cottage single family residential lots, and, upon their subsequent creation pursuant to the Idaho Condominium Act, shall include any condominium unit on the Property. See also, Property Unit.

3.10 “By-Laws” shall mean the By-Laws of an Association.

3.11 “Common Area” shall mean those parcels of Village Oak Subdivision Common Area that are designated as private streets or drives, common open space, or common landscaped areas. Master Association Common Area shall consist of Block 1, Lots 2, 6 and 19, water rights,

and easements as defined elsewhere herein, to be conveyed to the Master Association by deed from Grantor.

3.12 “Declaration” shall mean this Master Declaration as it may be amended from time to time.

3.13 “Delegate” shall mean an individual who represents the Owners, including Grantor when appropriate, as a Delegate at meetings of the Master Association and who is empowered to vote on behalf of such Owners and their Local Association, or the Grantor pursuant to Articles V and VI below. A Delegate will be selected by the Owner or Owners within a particular Neighborhood Area by the process established for that Neighborhood Area herein. Where Grantor is the sole Owner of any particular Neighborhood Area, Owner shall be deemed the Delegate for purposes of casting the votes attributable to the Property Units in that Neighborhood Area. Where Grantor owns less than all portions of any Neighborhood Area, the Delegate to represent the Local Association for such Neighborhood Areas shall be selected by vote of the Owners therein, including Grantor, each casting the number of votes attributable to the number of Property Units he owns and the voting values assigned to those Property Units pursuant to this Master Declaration.

3.14 “Grantor” shall mean Village Oak Development Company, LLC, an Idaho limited liability company (“VODLLC”), or its successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by VODLLC or its successors.

3.15 “Improvement” shall mean any structure, facility or system, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, landscaping, signs, lights, electrical lines, pipes, pumps, ditches, waterways, swimming pools and other recreational facilities, and fixtures of any kind whatsoever.

3.16 “Institutional Holder” shall mean a mortgagee of a Property Unit which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state law, any corporation or insurance company, or any federal or state agency.

3.17 “Limited Assessment” shall mean a charge against a particular Owner and his Building Lot, directly attributable to the Owner, equal to the cost incurred by the Master Association, or Local Association, for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.

3.18 “Local Association” shall mean any not-for-profit Idaho corporation or unincorporated association, or the successors of any of them, organized and established pursuant

to the terms of this Declaration or a Supplemental Declaration by Grantor or by any Owner or group of Owners whose properties are located in a particular Neighborhood Area.

3.19 “Local Association Board” shall mean the duly elected and qualified Board of Directors of a Local Association.

3.20 “Local Common Area” shall mean all real property in which a Local Association holds an interest or for which a Local Association has responsibility and which is held and maintained for the mutual use and benefit of such Local Association and its members. Local Common Area may be established from time to time by Grantor on any portion of the Property by describing such an area on a recorded Plat, by granting or reserving it in a deed, or by designating it as such in this Master Declaration or in any Supplemental Declaration. There is no Local Common Area at present, but Local Common Area may be created in the 36<sup>th</sup> Street Lots by Supplemental Declaration.

3.21 “Master Association” shall mean the Idaho non-profit corporation, its successors and assigns, established by Grantor to exercise the powers and to carry out the duties set forth in this Master Declaration. Grantor shall have the power, in its discretion, to name the Master Association the “Village Oak Subdivision Master Association,” “36 Oak Homeowners Association” or any similar name which fairly reflects its purpose.

3.22 “Member” shall mean each person or entity holding a membership in the Master Association. Where specific reference or the context so indicates, it shall also mean persons or entities holding membership in a Local Association.

3.23 “Mortgagee” shall mean mortgage holders or beneficiaries under trust deeds.

3.24 “Neighborhood Area” shall mean a defined portion of the Property within which the contemplated development involves a common use or compatible uses, and which has been designated as a Neighborhood Area in this Declaration or by recorded Supplemental Declaration. Each Neighborhood Area shall contain one or more Building Lots, shall hold a specific number of Property Units and shall be managed to the extent permitted herein by a Local Association. Neighborhood Areas are as follows: (1) 36<sup>th</sup> Street Lots consisting of Lots 1, 3-5, 7-9 and 26; (2) Townhouses, consisting of Lots 10-18 and 27-29; (3) Cottage Houses, consisting of Lots 20-25.

3.25 “Owner” shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot or Property Unit which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

3.26 “Plat” shall mean the Village Oak Subdivision Plat, approved by Garden City as aforesaid and recorded at the Office of the County Recorder, Ada County, Idaho, Book \_\_\_\_,

page\_\_\_\_\_, incorporated herein by reference as Exhibit B, as the same may be amended by duly recorded amendments thereto.

3.27 “Property” shall mean the 2.1-acre (more or less) property described on Exhibit B, more fully described in the legal description attached hereto as Exhibit A and incorporated herein by this reference, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property, and any property which is brought within the definition hereof by Supplemental Declaration. The Property also shall include such additional property (“Annexed Tracts”) in addition to that described on Exhibit A, as may be annexed by means of a Supplemental Declaration as provided herein.

3.28 “Property Unit” shall mean the unit of property ownership which is established for the purposes of voting in an Association and for the purpose of levying Assessments. For each Building Lot, there shall be one (1) Property Unit. For those Building Lots (the 36<sup>th</sup> Street Lots) which may permissibly be further subdivided into smaller lots or condominiums, there shall be one (1) Property Unit until so subdivided, and then there shall be one (1) Property Unit for each smaller lot or residential condominium, and one (1) Property Unit for each one thousand (1000) net square feet of interior commercial space. Such additional Property Units shall be created and effective upon recording of the final plat containing them.

3.29 “Regular Assessment” shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Areas and all improvements and facilities located thereon, and the other costs of an Association which is to be levied against the Village Oak Subdivision property of and payable by each Owner to the Master Association, or Local Association, pursuant to the terms hereof or the terms of a Supplemental Declaration.

3.30 “Special Assessment” shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Master Association, or a Local Association, pursuant to the provisions of this Declaration or a Supplemental Declaration.

3.31 “Supplemental Declaration” shall mean any Supplemental Declaration including covenants, conditions and restrictions that the Grantor might adopt with respect to any portion of the Property.

3.32 “Village Oak Subdivision” or “Villageoak Subdivision” shall mean the Property.

3.33 “Village Oak Subdivision Common Area” shall mean all real property in which the Master Association owns an interest and which is held and maintained for the common use, enjoyment and benefit of the entire Village Oak Subdivision and each Owner therein. Village Oak Subdivision Common Area may be established from time to time by Grantor on any portion of the Property by describing it on a plat, by granting or reserving it in a deed or by designating it

pursuant to this Master Declaration or any Supplemental Declaration. Village Oak Subdivision Common Area is to be distinguished from Local Common Area, which may or may not allow entry and use by those Owners who are not Members of a Local Association.

## ARTICLE IV

### GENERAL AND SPECIFIC RESTRICTIONS

4.1 Permitted Uses. The Building Lots and Property Units and Common Area comprising the Property shall be used for the following permitted uses, and only for these uses, in each of the respective Neighborhood Areas.

#### 4.1.1 Townhouse Lots.

- A. Use. Principal use shall be single family residential. Accessory use shall include a guest, in-law or rental dwelling unit for occupancy by not more than two persons, not greater than 800 square feet in floor area. Accessory use shall include home office, but not more than one employee working at most twenty (20) hours per week, and no more than five (5) visits per week total of all the following: customers, deliveries, commercial invitees. Home office may be subject to additional rules and regulations established by the Board.
- B. Garages and vehicles. Each lot shall have a two-car garage, either in tandem or side-by-side configuration. Where buildings are affected by street radius on Lots 13 and 18, if permitted by Garden City building and zoning codes and PUD conditions, the garage may be a one-car garage, plus dedicated parking on the lot for an additional car.
- C. Form and Dimension. The residences on the lots may be constructed on the lot's property line in groups of three, namely Lots 10 through 12, 13 through 15, 16 through 18, and 27 through 29. Alternatively, the residences may be detached. If built as attached or zero lot line townhouses, they shall nevertheless be structurally independent, with two abutting walls, rather than a common wall, and only such roofing, flashing, siding or other exterior surface as necessary to make them enclosed and weather-tight. Building articulation shall identify the separation between the houses. Each lot shall have a porch and/or patio area creating a front entry and private outdoor space on that end of the structure towards the Lot 6 common open space. Each lot shall have a garage on that end of the structure towards the Lot 2 private road. The lots may have a use easement over the side yard of the adjacent lot. This shall be an option elected at time of design review and building permit, with an appropriate easement filed of record. See, provisions for use easements in Article XIII. All Townhouse Lots shall have a five (5) foot building setback from the private road, Lot 2. All Townhouse Lots shall take access to the private road for a driveway and garage only on the shorter side of these approximately rectangular lots (that is, not from the longer sides of Lots 13 and 18, and not through Lot 6



Common Area). Lots 15 and 16 shall each have a five (5) foot building setback from each other along their common property line. Except as so set back, any building may be built to the property line, and may make reasonable use of adjacent common area, Lot 6, for construction, repair, maintenance and reconstruction.

#### 4.1.2 Cottage Houses.

- A. Use. Lots 20 through 25 shall be used and designated as Cottage Houses. Principal use shall be single family residential. No accessory dwelling unit shall be permitted.
- B. Garages and vehicles. Each of Lots 21 through 25 shall have use of a detached common garage for one car, and shall have an additional designated parking space on the private road (Block 1, Lot 2). The garages shall be in a shared structure. The garages for Lots 23, 24 and 25 shall be situated on the area within Lot 19 abutting Lots 1 and 26 designated on the Plat as "Common Garage Area." The garages for Lots 21 and 22 shall be situated on the area within Lot 19 abutting Lot 20 designated on the Plat as "Common Garage Area." Lot 20 shall have an attached one or two-car garage on that lot, and shall have a single family residence along and/or above the garage. Access to the garages is and shall be guaranteed to the respective Lot Owners by easement hereby granted and conveyed pursuant to this Declaration. The garages may be subdivided as condominium units at the option and sole cost and expense of the Owners of the respective Lots 21 through 25, and conveyed for nominal consideration to the Lot Owner having use of each garage. All costs related to the use and occupancy, maintenance, repair and reconstruction of the garages shall be born by the Lot Owner to which such garage is allocated hereunder.
- C. Form and Dimension. Each lot shall be improved with a single family residence in a cottage style, with (1) architectural detailing that is well-crafted, scaled to the cottage's reduced size, and imaginative in capturing a cottage architectural feel; (2) a focal entry accented by door details, porch, trellis or other feature; (3) unique architecture within a harmonious theme for the Cottage Houses; and (4) incorporated landscape plantings to create a cozy setting and privacy, including Private Open Space. The Private Open Space shall be an area adjacent to each Cottage House Lot, and within the common open space, Lot 19, for the exclusive use of each Cottage House Lot, between 100 and 400 square feet, to be identified at the time of architectural review, to be improved with a patio or other hard surface, screened from the balance of Lot 19 by small scale plantings and trellis, arbor or other small landscape structures. In order to create separation and privacy and avoid conflict of use, the Private Open Space shall be situated along the following lot lines of the following Lots: Lot 20, southeast or southwest; Lots 21 through 25, all southwest. Correspondingly, Lots 21, 22 and 23, having a neighbor's Private Open Space along

their northeasterly line, shall design their house so that the northeasterly wall has reduced windows and the windows are set high or otherwise located not to look into the adjacent Private Open Space. Lots 22 through 25 shall locate their front entries to face into that portion of the common open space, Lot 19, they share in common. Lots 20 shall have a five (5) foot building setback from the Private Road, Lot 2. Lots 21 through 25 shall have a porch on the sides facing each other, than is, on the southeasterly sides of Lots 21, 22 and 23, and the northwesterly sides of Lots 24 and 25, which shall be at least six (6) feet in depth, and shall occupy not more than one half of the twenty-two (22) foot side of the house, with the cottage house itself set back behind the porch. Except as so set back, any building may be built to the property line, and may make reasonable use of adjacent common area, Lot 19, for construction, repair, maintenance and reconstruction. All costs related to the use and occupancy, maintenance, repair and reconstruction of the Private Open Space shall be born by the Lot Owner to which such space is allocated hereunder.

4.1.3 36<sup>th</sup> Street Frontage Lots. Uses permitted in the 36<sup>th</sup> Street Lots shall include residential condominiums, leaseholds or smaller lots, up to the maximum number permitted by the PUD (as presently approved or as modified upon application of the Grantor), office, retail, restaurant or other commercial uses, or live-work uses. No condominium, leasehold or smaller lot shall be created except in compliance with all applicable laws, including subdivision approval by Garden City, and upon filing of a Supplemental Declaration. Additional permitted use shall include a work space in any residential Property Unit created, subject to the provisions hereof, and subject to the approval of the Local Association, which shall have the power to regulate, and prohibit or permit, work by rules and regulations, and impose reasonable conditions on any permitted use. The Master Association shall not so regulate the nature of permitted work, but may enforce the provisions hereof relating to prohibited types of work. The work space may be located within the building and shall only have work entry and sign on the first floor towards the public street. Permitted work space uses include: bakery, barber or beauty shop, childcare, crafts such as woodworking, ceramics or metal work, office for architect, attorney, engineer, insurance or similar work, photographer's or artist's studio, retail such as bookstore or clothing or other specialty store or gift shop. Prohibited uses include auto body or repair (except as hobby), kennels, and sexually oriented business. No work shall be permitted which generates noise, fumes, vibration, dust or glare outside the building in which conducted. No work involving flammable or dangerous chemicals shall be permitted. Hours of operation shall be 8 o'clock a.m. to 6 o'clock p.m. Monday through Friday unless otherwise permitted by the Local Association. The work may include an employee, and reasonable traffic by customers, deliveries and other business invitees. Any use shall comply with applicable fire and other governmental regulations.

4.1.4 Common Area. In addition to the following use provisions, reasonable regulations consistent with the said provisions for the use of each respective Lot may be established from time to time by the Board of the Association or Local Association which owns the Lot or is charged with its maintenance and control.

A. Master Association, Common Open Space, Block 1, Lots 6 and 19. These Lots shall be owned by the Master Association and shall be used and maintained only as provided herein for green open space, meaning lawn and landscaping of grass, flowerbeds, shrubbery and trees, gravel, mulch or other pervious natural surface treatment, or xeriscape. The lots shall be improved and maintained with concrete or other surfaced walkways and benches, and may be improved additionally with trellis, gate, fencing and other similar features. Water features are permitted. Lots may be improved with additional features such as fountains, sculpture, benches or gazebos ancillary to its green open space use, comprising not more than one quarter of its area, and not including any use or structure inconsistent with its green open space use, such as, without limitation, parking areas or buildings. The balance shall be lawn and landscaping. Provided, the Grantor shall have the right, at his sole discretion, to grant rights of way and other easements for the purposes of driveways for vehicles and pedestrian use, for water, sewer and other utilities and usage from the private road, Lot 2, through Lot 19 to adjacent properties, upon such terms and consideration as Grantor may deem desirable.

B. Signs noting "Private Property," names and addresses or the like, may be constructed.

C. Master Association, Stormwater Retention Area. The Stormwater Retention Area on Lot 6, shall be used to perform its stormwater control function, and may be landscaped and used for outdoor recreation not inconsistent with its function. It may be maintained as existing inlets from Lot 2, subsurface tanks and infiltration bed, or reconstructed from time to time as the Board may determine desirable in a different form, fulfilling its same function.

D. Private Road, Block 1, Lot 2. This Lot shall be owned by the Master Association, and it shall be used and maintained only as a private road as shown on the Plat. Access shall be permitted, subject to reasonable regulation, to all lots for all purposes permitted herein, but not to any other lot or for any other purpose, except as follows: the Grantor shall have the right, at his sole discretion, to grant rights of way and other easements for the purposes of driveways for vehicles and pedestrian use, for water, sewer and other utilities and usage to and from 36<sup>th</sup> Street, along and under the private road, Lot 2, through Lot 19 to adjacent properties, upon such terms and consideration as Grantor may deem desirable. Additionally, utility or other easements shall exist as set forth on the Plat.

4.2 Structures and Dimensional Standards. The structures which shall or may be constructed, maintained and used on the Property shall comply with the following standards, in addition to any set forth elsewhere herein.

4.2.1 Use and Size of Structure. Restrictions on the use and size of structures to be placed on the Property, or the method of determining such restrictions, in addition to those contained herein, may be set forth in Supplemental Declarations.

4.2.2 Architectural Committee Review. No building, fence, sign or other structure or Improvement which will be visible above ground shall be built, erected, placed or materially altered on the Property unless and until the building plan specifications and plot plan have been reviewed in advance by the Architectural Committee (and, if required by other provisions hereof, by the Local Association) and the same have been approved in writing. The review and approval may concern, without limitation, topography, finish ground elevations, architectural symmetry, landscaping, drainage, color, material, design, physical or aesthetic impacts on Common Areas, artistic conformity to the terrain and the other improvements on the Property. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of buildings. This Master Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of buildings except to the extent incidentally necessitated by use and size restrictions.

4.2.3 Setbacks. No dwelling unit or other structure, exclusive of fences, utility services (such as pipes, conduit, pumps, meters, and transformers) and similar structures, shall be placed nearer to the Building Lot property lines than permitted by the Plat for the Neighborhood Area in which the Building Lot is located or by any applicable zoning restriction, conditional use permit, or planned unit development approval. The setback provisions and any setback line shown on the Plat are hereby incorporated herein by reference. The maximum building heights from street level are thirty-five (35) feet for Cottage Houses, forty-five (45) feet for Townhouses, and fifty-five (55) feet for 36<sup>th</sup> Street Lots.

4.3 Insurance Rates. Nothing shall be done or kept on any Building Lot or Property Unit which will increase the rate of insurance on, or cause the cancellation of insurance on, any other Building Lot or Property Unit, without the approval of the Owner of such other Building Lot or Property Unit, where such insurance is a policy owned by an Owner or the Association for standard fire and/or hazard protection of building and contents.

4.4 No Further Subdivision. No Building Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board of the Master Association; provided, however, that nothing in this section shall be deemed to prevent an Owner from, or require the approval of the Board for, transferring or selling any Building 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. Provided further, this section shall not apply to the creation of permitted condominium units, smaller lots

or leaseholds by the Grantor on the 36<sup>th</sup> Street Lots or exercise of Grantor's rights as otherwise provided herein.

4.5 Signs. No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee, except such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots, and except such signs of customary and reasonable dimensions as prescribed by the Architectural Committee as may be displayed on or from a Building Lot identifying the Owner or resident, the street address, or advertising the residence for sale or lease. Any customary "for sale" or "for lease" signs not more than three (3) feet by two (2) feet shall not require Architectural Committee approval. Temporary signs naming the contractor, the architect and the lending institution for a particular construction operation may be placed on the Property without approval of the Architectural Committee.

4.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property. No odor shall be permitted which would render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property Unit or to its occupants. No noise, vibration, glare, light or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other Property Unit or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), flashing lights or search lights, shall be located, used or placed on any such property without the prior written approval of the Board.

4.7 Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, 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 of the Local Association of which such Owner is a Member (or the Board of the Master Association if the Local Association fails to Act), upon thirty (30) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Local or Master Association as the case may be for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Article VII of this Declaration. The owner of the offending property shall be personally liable, and his property may be subject to a lien for all cost and expense incurred by the Association in taking such corrective acts, 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 added to the amounts payable by such Owners as Special Assessments.

4.8 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise which exists at the time the overall grading to any portion of the Property is completed by Grantor or that which is shown on the Plat or plans prepared in connection therewith, or any plans approved by the Architectural Committee, which may include drainage from Common Areas over any Building Lot or Lots in the Property.

4.9 Grading. The owner of any Lot(s) within the subdivision in which grading or other work has been performed pursuant to a grading plan approved in connection with development as shown on the Plat, or the Master or Local Association responsible for maintaining a Common Area on which such grading work has been performed, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of a public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited assessments provided in Article V herein, as may be applicable.

4.10 Water Supply Systems. Water for use on the Building Lots and Property Units shall be provided by Garden City or the appropriate succeeding public water supply system. Water for irrigation of landscaping may be provided by the Master Association, conditioned upon transfer from the Grantor of required water rights to existing irrigation ditches. All other water rights shall remain vested in Grantor, subject to Grantor's conveyance at its discretion. No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Building Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Board of the Master Association and all governmental authorities having jurisdiction.

4.11 No Hazardous Activities. No activities shall be conducted on the Property and no improvements constructed on any Property Unit or Common Area which are or might be unnecessarily or abnormally hazardous to any person or property.

4.12 Unsightly Articles. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in areas approved by the Architectural Committee. No equipment, containers, lumber, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any property except within an enclosed structure appropriately screened from view.

4.13 No Temporary Structures. No house trailer, mobile home, tent (other than for short term individual use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property or unless such temporary structure is necessary for a commercial purpose and is approved by the Architectural Committee.

4.14 No Unscreened Boats, Campers and other Vehicles. No boats, trailers, campers, and no dilapidated or unrepaired and unsightly automobiles, vehicles or similar equipment shall be placed upon any portion of the Property (including, without limitation, streets, parking areas and driveways) unless the same are enclosed by a structure concealing them from view in a manner approved by the Architectural Committee. Provided, boats, trailers or campers in use by an Owner may be parked in driveways or permitted on-street parking locations periodically, for not more than twenty-four (24) hours at a time.

4.15 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on his Building Lot to the Garden City sewer system and pay all charges assessed therefor.

4.16 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This paragraph shall not prohibit exploratory drilling or coring which is necessary to construct a building.

4.17 Exterior Equipment. No energy production devices, including but not limited to generators of any kind, and wind or solar energy devices, shall be constructed or maintained on any portion of the Property without the approval of the Architectural Committee. Air conditioners, heat pumps, generators, wind and solar energy devices, antennae, satellite dishes and similar outside equipment shall be shown in the plans approved by the Architectural Committee. This paragraph shall not apply to passive solar energy systems incorporated into the approved design of a residential or commercial building. Provided further, that energy production and conservation devices are to be encouraged and the Architectural Committee may not prohibit solar devices, groundwater-source heating or cooling, or other devices but may only require reasonable efforts to incorporate them in building design.

4.18 Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles, snowmobiles, aircraft and boats, shall be subject to all Association Rules, which may prohibit or limit the use thereof within Village Oak Subdivision. No on-street parking shall be permitted except where expressly designated for parking use. No motorized vehicle or device shall be permitted on any Common Area without the written approval of the Master Association Board unless such vehicle is engaged in an emergency procedure, or is engaged in permitted maintenance of the Common Area.

4.19 Animals/Pets. No animals, birds, insects or livestock shall be kept on the Property unless the presence of such animal does not constitute a nuisance. Household pets of an Owner shall be permitted only if they are kept on the Property Unit of the Owner, or on leash or other direct control when on a Common Area, and at no time do they unreasonably bother or constitute a nuisance to other Owners. Persistently barking dogs are prohibited. All dog and cat or other pet waste shall be picked up and properly disposed of by the Owner. The construction of dog runs or other pet enclosures shall be subject to Architectural Committee approval, shall be appropriately screened, and maintained in a sanitary condition.

4.20 Building and Landscaping. Within twelve (12) months after the later of conveyance of title to a Building Lot to a purchasing Owner, or approval of plans and specifications by the Architectural Committee, such Owner shall construct the improvement and install the landscaping provided for in the plans and specifications. The Owner shall thereafter maintain the improvement and landscaping in a neat and attractive condition, including all necessary gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation. The above twelve (12) month time may be extended by the Architectural Committee for good cause. This paragraph shall not affect or prevent the establishment of a different time period by Grantor in a contract for sale of any Building Lot or Property Unit. During the said twelve-month period, Owner shall control weeds, and maintain the property in a clean and safe condition free of debris or any hazardous condition. The Owner shall have responsibility for all storm water and erosion and sedimentation control measures required by law or regulation, before, during and after construction, and the same shall not be the responsibility of the Association nor Grantor except on those Lots owned by the Association or Grantor.

The Board may adopt rules regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such rules or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, or the Board of the Local Association of which such Owner is a Member, upon fifteen (15) days' prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Village Oak Subdivision Association or Local Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in Article VIII.

4.21 Owner Occupancy. The Owner of the Building Lot or Property Unit shall be required to occupy the Building Lot or Property Unit as Owner's primary residence, or a secondary residence, for all Building Lots or Property Units having residential as their primary use, namely Cottage House or Townhouses. That is, this provision shall not apply to 36<sup>th</sup> Street Lots or Common Area. No other person or persons shall occupy the Building Lot or Property Unit, neither as a tenant for as a gratuitous long-term guest, except for parents or adult children with or without the Owner in residence. The Board may allow reasonable and temporary



exemptions, upon application to the Board and the Board's approval in writing, and subject to such conditions as the Board may deem appropriate. Such exemptions may include, but are not limited to, ownership by a trust or estate, or rental when the Owner is out of the area in connection with a move or business transfer. Provided, at no time shall the total number of non-Owner occupancy exceed ten percent (10%) of the Building Lots or Property Units in any Neighborhood Area or Local Association. Permitted accuracy residential use is not subject to this section.

4.22 Exemption of Grantor. Nothing contained herein shall limit the right of Grantor to subdivide or resubdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easement with respect to Common Areas to utility companies, public agencies or others, or to complete excavation, grading and construction of improvements to and on any portion of the Property owned by Grantor, to alter the foregoing and its construction plans and designs, or to construct such additional improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property remains unsold and so long as such subdivision or construction does not materially detract from the quality of the Village Oak Subdivision at Grantor's reasonable discretion. Such right shall include, but shall not be limited to, erecting, constructing and any other thing or action reasonably necessary for the conduct of its business of completing the work as shown on the Village Oak Subdivision Plat and disposing of the Property by sale, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the property development and disposal of the Property. Grantor may use any structures owned by Grantor on the Property as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Grantor on any portion of the Property owned by Grantor. No fees or dues shall be payable hereunder, nor may any fee, dues, or cost of any kind be imposed on Grantor or any Lot of Grantor by the Association, any provision hereof to the contrary notwithstanding. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest to any portion of Grantor's interest in any portion of the Property, by an express written assignment recorded in the Office of the Ada County Recorder. If not so assigned, such exemption shall terminate as to any Building Lot upon conveyance by VODLLC of the Building Lot to a third party.

## ARTICLE V

### VILLAGE OAK SUBDIVISION ("MASTER") ASSOCIATION

5.1 Organization of Village Oak Subdivision Association. The Village Oak Subdivision Owners Association, Inc. ("Master Association") shall be organized by Grantor as an Idaho corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law

and set forth in the Articles, By-Laws and this Declaration. Neither the Articles nor the By-Laws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or with any Supplemental Declaration which Grantor may adopt pertaining to Village Oak Subdivision.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Master Association. Memberships in the Master Association shall be appurtenant to the Building Lot or Property Unit owned by such Owner. The memberships in the Master Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void.

5.3 Voting. Voting in the Master Association shall be carried out by Delegates who, acting on behalf of the Local Associations established for particular tracts or on behalf of Grantor, shall cast the votes attributable to the Property Units in their respective Neighborhood Areas or attributable to the portions of such Neighborhood Areas owned by Grantor. The number of votes any Delegate may cast on any issue is determined by the number of full Property Units existing in the Neighborhood Area which such Delegate represents or which Grantor owns. Any fractional Property Unit existing by virtue of ownership of a commercial unit shall be counted as a fraction of a vote.

5.3.1 Delegates. Delegates representing Local Associations, selected pursuant to Article VII, shall be entitled to cast one (1) vote for each Property Unit existing on the day of the vote and located within the Neighborhood Area for which such Delegates is the representative.

5.3.2 Only Delegates Vote. All voting power in the Master Association shall be exercised by Delegates, and no Member who is not a Delegate shall be entitled to vote. The Board shall recognize only one Delegate from each Local Association.

5.4 Board of Directors and Officers. The affairs of the Master Association shall be conducted and managed by a Board of Directors ("Board") 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. The initial Board of Directors of the Master Association shall be appointed by the incorporators or their successors and shall hold office until the first annual meeting, at which time a new Board of Directors shall be elected in accordance with the provisions set forth in the By-Laws.

5.5 Power and Duties of the Village Oak Subdivision Master Association.

5.5.1 Powers. The Master Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho

subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws, this Master Declaration and any Supplemental Declaration which Grantor might adopt pertaining to Village Oak Subdivision. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Master Association under Idaho law and under this Declaration, and any Supplemental Declaration, the Articles and By-Laws, and to do and perform any and all acts which may be necessary to, proper for or incidental to the property management and operation of the Common Areas and its other assets, including water rights when and if received from Grantor, and affairs and the performance of the other responsibilities herein assigned, including without limitation:

5.5.1.1 Assessments. The power to levy Assessments on any Owners or any portion of the property and to require and enforce payment of such Assessments, all in accordance with the provisions of this Declaration.

5.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the By-Laws, including the Master Association rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

5.5.1.3 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 contract with a Local Association for the maintenance, repair, replacement and operation of the Local Common Area. Neither the Master Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Master Association deems reasonable. The Association may establish rules and regulations governing the use of the Common Areas, including but not limited to the use of private streets, driveways, and paths, by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners of the particular Common Area or part thereof, and shall not be inconsistent with this Declaration, the Articles or By-Laws or any Supplemental Declaration Grantor may adopt pertaining to any portion of the Village Oak Subdivision. A copy of the Association rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area. Upon such mailing or delivery and posting, the Association Rules shall have the same force and effect as if they were set forth in and were a

part of this Master Declaration. In the event of any conflict between such rules and any other provisions of this Declaration, or any Supplemental Declaration, or the Articles or By-Laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Master Declaration, such Supplemental Declaration, the Articles or the By-Laws to the extent of any such inconsistency.

5.5.1.5 Emergency Powers. The power, exercised by the Master Association or by any person authorised by it, to enter upon any property (but not inside any building constructed thereon) 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 the Master Association is responsible. Such entry shall be made with reasonable notice when possible, and as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Master Association.

5.5.1.6 Licenses, Easements and Rights-of-Way. Upon two-thirds approval of the Board, the power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area and for the preservation of the health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes;

5.5.1.6.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes; and

5.5.1.6.3 Any similar public or quasi-public improvements or facilities.

5.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to it by the Master Declaration and/or the Articles, without limiting the generality thereof, the Master Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Master Association and to perform, without limitation, each of the following duties:

5.5.2.1 Operation and Maintenance of Common Areas. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Master

Association. The Board of Directors, on behalf of the Master Association, may contract with or delegate to a Local Association for the operation, management and maintenance of Local Common Areas.

5.2.2.2 Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area or against the Master Association and/or any other property owned by the Master Association. Such taxes and assessments may be contested or compromised by the Master Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes. In addition, the Master Association shall pay all other taxes, federal, state or local, including income or corporate taxes levied against the Master Association in the event that the Master Association is denied the status of a tax exempt corporation.

5.5.2.3 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area, and to manage for the benefit of Village Oak Subdivision all water rights and rights to receive water held by the Master Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

5.5.2.4 Insurance. Obtain, from reputable insurance companies authorized to do business in the state of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance:

5.5.2.4.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Village Oak Subdivision Common Area.

5.5.2.4.2 Comprehensive public liability insurance insuring the Board, the Master Association, the Grantor and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area. Limits of liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Hundred Thousand Dollars (\$100,000) per occurrence with respect to property damage.

5.5.2.4.3 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

5.5.2.4.4 Such other insurance including motor vehicle insurance and Workmen's Compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Master Association functions or to insure the Master Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Master Association funds or other property.

5.5.2.4.5 The Master Association shall be deemed 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.

5.5.2.4.6 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Master Association.

5.5.2.4.7 Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a mortgagee or Owner of a Building Lot within the project, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA or FHLMC, as applicable.

5.5.2.5 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable.

5.5.2.6 Architectural Committee. Appoint and remove members of the Architectural Committee, subject to the provisions of this Master Declaration.

5.5.2.7 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration or any Supplemental Declaration, as may be reasonably advisable or necessary to enforce any of the provisions thereof, or of the Articles or By-Laws.

**5.5.3 Limitations on Powers.** Any provision of this Declaration to the contrary notwithstanding, the following limitations on the power of the Master Association and its Board shall apply. The Master Association shall not engage in or enter into any business activity unrelated to the management and operation of the Common Area. The Master Association shall not invest in or expend Association funds in any business activity, stock, bond or other instrument or interest in such activity, except as reasonably necessary to the management and operation of the Common Area. All funds of the Association shall be held in a federally insured bank account. The Master Association shall incur no long-term indebtedness, none over twelve (12) months and none in excess of one year's Regular Assessments. Larger capital expenditures shall be made by accumulating reserves, or by Special Assessment, or by approval of at least eighty percent (80%) of Owners as an amendment to this Declaration. Longer term indebtedness than twelve (12) months shall also require an amendment to this Declaration.

**5.6 Personal Liability.** No member of the Master Association Board, or member of any committee of the Master Association, or any officer of the Master Association, or the Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Master Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Master Association, the Board, the manager, if any, or any other representative or employee of the Master Association, the Grantor or the Architectural Committee, or any other Committee, or any officer of the Master Association, or the Grantor, provided that such person, upon the basis of such information as may be possessed by him, has acted in good faith without willful or intentional misconduct.

**5.7 Budgets and Financial Statements.** Financial Statements for the Master Association shall be prepared regularly and copies shall be distributed to each Member of the Master Association and, upon request, to Mortgagees as follows:

**5.7.1** A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of each fiscal year.

**5.7.2** A balance sheet, as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Building Lot and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the lot number and the name of the person or entity assigned.

**5.7.3** Within thirty (30) days after the close of each fiscal year, the Master Association shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Master Association's fiscal year and annual operating statements reflecting the income and expenditures of the Master Association for its fiscal year. Copies of balance

sheet shall be distributed to each Member within ninety (90) days after the end of each fiscal year.

5.8 Meetings of Master Association. Each year the Master Association shall hold at least one meeting of all Delegates, according to the schedule for such meeting established by the By-Laws. Notice for all Master Association meetings shall be given by regular mail or telegram to all Delegates not less than ten (10) days nor more than thirty (30) days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board. The presence at any meeting in person of the Delegates representing Owners holding at least thirty percent (30%) of the total votes shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Delegate(s) present may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was called. A second meeting may be called as the result of such an adjournment, provided notice is given as provided above. At any such meeting properly called, the presence of any three Delegates shall constitute a quorum. Members who are not delegates may be present at such meetings, but shall not vote nor participate in the proceedings, but may speak with the permission the Board.

## ARTICLE VI

### LOCAL ASSOCIATIONS

6.1 Creation by Grantor. Grantor may create Local Associations as non-profit corporations under the provisions of the Idaho Code relating to general non-profit corporations, or Grantor may create such Associations as any unincorporated entity, as Grantor deems appropriate. Grantor may, in its discretion, create a Local Association by means of a Supplemental Declaration, or create such associations by means of separate instruments. The following groups of Building Lots shall each form a Local Association, and share the costs of and control of the respective local Common Areas.

6.1.1 Townhouses. The Townhouses, Block 1, Lots 10-18 and 27-29, shall be a Local Association with responsibility and control over the Local Common Area, Block 1, Lot 6, containing the green open space.

6.1.2 Cottage Houses. The Cottage Houses, Block 1, Lots 20-25 shall be a Local Association having responsibility and control over the Common Area, Block 1, Lot 19, containing the green open space. Provided, that portion of Lot 19 beginning at Lot 20 and the private road, Lot 2, and extending along the perimeter of the Village Oak Subdivision northeasterly, thence still along the said private road southeasterly to 36<sup>th</sup> Street, shall be under the joint responsibility and control of the Townhouses and Cottage Houses.



6.1.3. 36<sup>th</sup> Street Lots. The four 36<sup>th</sup> Street Lots, Block 1, Lots 1, 3-5, 7-9 and 26 shall initially be a single Local Association. Upon subdivision into residential, commercial or live-work condominium space or smaller lots, the said Lots may continue as a single Local Association or create additional Local Associations, to be provided by Supplemental Declaration.

6.1.4. Private Road, Lot 2. The Private Road, Lot 2, shall be under the responsibility and control of the Master Association. Costs and expenses of construction, maintenance, repair and reconstruction shall be allocated according to the Lot Owner causing the need for or benefiting from the same. In general, costs and expenses for those sections of the Private Road adjacent to the 36<sup>th</sup> Street Lots shall be shared equally between all Lots, and costs and expenses for sections further from 36<sup>th</sup> Street shall be shared equally by Townhouse and Cottage House Lot Owners. Provided, disproportionately greater use, wear and tear by the 36<sup>th</sup> Street Lots shall require a greater portion of the costs and expenses to be borne by such Lots.

6.2 Management, Powers and Duties. Each Local Association shall be managed in the same manner specified in the applicable Supplemental Declaration or other instrument and/or in the Articles and By-Laws of the Association, shall have the same powers, rights, obligations and duties and be subject to the same limitations and restrictions including levying Assessments, adopting rules and regulations, granting easements and licenses, managing property and water rights, paying expenses, taxes, assessments, utility charges, insurance premiums and preparing budgets and financial statements as are provided for herein for the Master Association except as modified herein or by a Supplemental Declaration. The Board members, officers, managers and Grantor also shall be free of personal liability as to the Local Association in the same manner as described herein with respect to the Master Association.

6.3. Members of Local Associations. Where a Local Association is created, the Members thereof shall be all the Owners of Building Lots, including Grantor while it remains an Owner, in the respective Neighborhood Areas designated in the Supplemental Declarations. Memberships may be transferred only as specified in Section 5.2 for the Master Association.

6.4 Voting in Local Associations. The number of votes each Member may cast on a single vote will be determined according to the number of Property Units existing on that portion of the Property the Member owns, in the same manner and amounts as votes are allocated to Delegates in Section 5.3. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Property Units on the Building Lot. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that he was acting with authority and consent of all other Owners of the Property Unit from which the

vote derived. The right to vote may not be severed from the ownership of the Building Lot, but an Owner may grant a revocable proxy or assign his right to vote, to a lessee or contract buyer, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the new Owner, subject to any separate assignment of the right to vote to a lessee or beneficiary as provided herein.

6.5 Annual Meetings of Local Association. There shall be an annual meeting of the Members of each Local Association at least ten (10) days but no more than sixty (60) days before every annual meeting of the Master Association. Such meeting shall be held on the Neighborhood Area which the Local Association covers, or at such other convenient location in or near the Property as may be designated in the notice of such meeting. Written notice of the time, place and purpose of each annual meeting shall be sent to each Member of the Local Association no fewer than ten (10) days and no more than thirty (30) days before the meeting as provided in the Local Associations By-Laws or Articles.

6.6 Special Meeting. A special meeting of the Local Association Members may be called by a majority of the Board at any reasonable time and place by written notice delivered to all other Members not less than ten (10) nor more than thirty (30) days before the date fixed for such special meeting, specifying the date, time and place thereof and the nature of the business to be conducted. Such notice shall be delivered in the manner specified in the Local Association's Articles and/or By-Laws.

6.7 Election of Delegates. At the first meeting of the Members in a Local Association and at each subsequent annual meeting, the Members shall elect the Delegate to represent them by a majority of all votes cast. Such Delegate shall continue to be a Delegate for one (1) year or until his successor is elected, whichever is later, unless such Delegate is removed by a vote or written consent of members representing a majority of the votes in such Local Association.

6.8 Delegate Voting. Each Delegate of a Local Association shall be a Delegate and shall be entitled to vote as provided in Section 5.3 and shall cast the votes which he represents in such manner as he may, in his sole discretion, deem appropriate unless he is directed by vote of the Local Association to cast the votes in a particular manner. When a Delegate is voting in his own discretion without instruction from the Members he represents, then such Delegate shall cast all of the votes which he represents as a unit and may not apportion some in favor of a given proposal and some in opposition.

6.9 Quorum and Officers of Meetings. The presence at any regular or special meeting, in person or by written proxy, of the Members entitled to vote at least thirty percent (30%) of the total votes within such Local Association shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Owners or Members present, either in person or by proxy, may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30)

days from the time the original meeting was called. At such second meeting a quorum shall constitute the number of members specified in the Local Association's Articles and By-Laws. The Members present at each meeting shall select a chairman to preside over the meeting and a secretary to transcribe minutes of the meeting.

6.10 Powers and Duties. Each such Local Association shall be managed by a Board of Directors and officers in the same manner as specified in Section 5.4 for the Village Oak Subdivision Association, shall have the same powers and duties with respect to its Members or the property owned, managed or maintained by it, including levying assessments, adopting rules and regulations, granting easements, licenses and rights-of-way, payment of expenses, taxes, assessments, utility charges, insurance premiums and the preparation and distribution of budgets and financial statements as are provided in Section 5.5 for the Village Oak Subdivision Association. Each such Local Association may certify to the Village Oak Subdivision Association the amount of such assessments and charges for collection. The Board member, committee, offices, managers and Grantor shall also be free of personal liability as to the Local Association in the same manner as described in Section 5.6 for the Village Oak Subdivision Association.

## ARTICLE VII

### RIGHTS TO COMMON AREA

7.1 Use of Village Oak Subdivision Common Area. Every Owner shall have a right and easement to use the Common Area, and to be assured that the Common Area shall be restricted to certain uses, which rights and easements shall be appurtenant to and shall pass with the title to every Building Lot, as follows:

- A. Every Owner shall have a right and easement, for themselves, their family members, guests and invitees, to use Lot 2, the private road, as reasonably necessary to gain access to and from the public road, now known as East 36<sup>th</sup> Street, along the southeasterly property line of Village Oak Subdivision, by motor vehicle, bicycle or other non-motor vehicle, and on foot. Provided, such right and easement shall be subject to regulation by the Board as to speed limit, vehicle type and other restrictions on the manner and time of day of such access; that access shall be only related to permitted uses of the Owner's respective Lot or Property Unit and not for through traffic or access to any other property; and that the right and easement is for access only, and does not include any right to stop, loiter, store material or park vehicles. Provided, the Owners of the Cottage Lots shall each have the right to park one vehicle along that portion of Lot 2 abutting the Cottage Lots, and the Owner of Lot 1 shall have the right to park two vehicles along that portion of Lot 2 abutting Lot 1, any

provision hereof to the contrary notwithstanding (additional parking rights may be separately allocated to specific Lots or Property Units by the Grantor).

- B. Every Owner shall have a right to the continued use of Lots 6 and 19 as open space, substantially comprised of lawn, trees and landscaping, and to enjoy the benefits of such continued use, including view, shade, cooling, reduced glare, buffer to noise and congestion, etc.; provided, however, that the right and easement of access into Lots 6 and 19 shall be restricted to the Owners of the Townhouse and Cottage House Lots and those Owners' family members, guests and invitees, that motorized use shall be prohibited, and that access shall be subject to regulation by the Local Associations of the Townhouses and Cottage Houses.

The foregoing rights and easements of the respective Owners in the Common Area shall be subject to the following provisions:

7.1.1 The right of the Association holding or controlling such Common Area to levy and increase Assessments;

7.1.2 The right of such Association to suspend the voting rights and rights to use of, or interest in, a Common Area by an owner for any period during which any Assessment or charge against his Building Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

7.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be permitted by the Articles and By-Laws and agreed to by the Members. No dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Delegates representing eighty percent (80%) of each class of Members has been duly executed and filed of record with the Ada County Recorder of Deeds.

7.2 Designation of Common Area. Grantor shall designate and reserve or convey Common Area, and Local Common Areas in the Master Declaration, Supplemental Declarations and/or recorded Plats, deeds or other instruments and/or as otherwise provided herein.

7.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the respective By-Laws and rules and regulations of the Master Association or any Local Association, as the case may be, his right of enjoyment to the Local Common Area, or the Village Oak Subdivision Common Area, to the members of his family, his tenants or contract purchasers who reside on such Owner's Building Lot, and accompanied guests of the foregoing.

7.4 Damages. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, his

resident tenant or contract purchaser or his family and guests, both minor and adult. In the case of joint ownership of a Building Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments.

## ARTICLE VIII

### ASSESSMENTS

8.1 Covenant to Pay Assessments. By acceptance of a deed to any property in Village Oak Subdivision, each Owner hereby covenants and agrees to pay when due all Assessments or charges made by the Master Association and/or a Local Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or any Supplemental Declaration or other applicable instrument.

8.1.1 Assessment Constitutes Lien. Such Assessments and charges 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 Building Lot or Property Unit against which such Assessment or charge is made.

8.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them but shall remain personal obligation regardless of whether he remains an Owner.

8.2 Regular Assessments. All Owners, including the Grantor, are obligated to pay Regular Assessments to the Treasurer of the Association on a schedule of payments established by the Board of the Association.

8.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all improvements located on such areas owned and/or managed and maintained by such Association, and an amount allocated to an adequate reserve fund to be used for replacement of those elements of the Common Areas or other property of the Association that must be replaced on a regular basis (collectively "Expenses").

**8.2.2 Computation of Regular Assessments.** The Association shall compute the amount of its Expenses on an annual basis by making advance estimates of the expected Expenses for the coming year. The Board can require, in its discretion or as provided in the Articles or By-Laws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Board shall compute the amount of Regular Assessments owed beginning the first day of the month in which the closing of the first sale of a Building Lot occurred in Village Oak Subdivision for the purpose of a Master Association's Regular Assessment and in the applicable Neighborhood Area for the purposes of a Local Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one year.

**8.2.3 Amounts Paid by Owners.** The Regular Assessment to be paid by any particular Owner, including Grantor, for any given fiscal year shall be computed as follows:

8.2.3.1 As to the Master Association's Regular Assessment, each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Property Units attributable to the Owner by the total number of Property Units in the Property.

8.2.3.2 As to any Local Association, each Owner who is also a Member of such Association, including Grantor while it is such an Owner, shall be assessed and shall pay an amount computed by multiplying such Association's total advance estimate of Expenses by the fraction produced by dividing the number of Property Units in the applicable Neighborhood Area attributable to such Owner by the total number of Property Units in such Neighborhood Area.

**8.3 Special Assessments.**

8.3.1 **Purpose and Procedure.** In the event that the Board of an Association shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of such Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area owned or managed by such Association, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty

percent (20%) of the budgeted gross Expenses of such Association for that calendar year, without the vote or written assent of the Owners representing a majority of the votes of the Members of such Association. The Board shall, in its discretion, determine the schedule according to which such Special Assessment will be paid.

8.3.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for such Association.

8.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, a Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or his Building Lot into compliance with the provisions of the governing instruments for Village Oak Subdivision.

8.5 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Property Unit for all Members of the Association obligated to pay such Assessments.

8.6 Assessment Period. Unless otherwise provided in the By-Laws of the Local Association, or the applicable Supplemental Declaration, the Assessment period shall be the calendar year. For the year in which the Initiation Date occurs, the first Assessment shall be prorated according to the number of months remaining in the calendar year and shall be payable in equal monthly installments.

8.7 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board of the Association making the Assessment. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association making the Assessment may bring an action against the delinquent Owner and may foreclose the lien against his Building Lot as more fully provided herein. Each Owner is personally liable for Assessments and no Owner may exempt himself from such liability by a waiver of the use or enjoyment of any of the Common Areas, or by lease or abandonment of his Building Lot.

8.8 Estoppel Certificate. The Master Association or any Local Association, upon at least 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 such Association a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such certificates may not extend to any default as to which the signer shall have had no actual knowledge.

8.9 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the By-Laws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, or for the purpose of instructing a Delegate as to his vote shall be sent to all Members of such Association not less than thirty (30) days nor more than sixty (60) days before the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of such Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

## ARTICLE IX

### ENFORCEMENT OF ASSESSMENTS; LIENS

9.1 Right to Enforce. Both the Master Association and each Local Association has the right to collect and enforce its Assessments pursuant to the provisions hereof or the provisions of any applicable Supplemental Declaration. Each Owner of a Building Lot upon becoming an Owner of such Building Lot shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration or any applicable Supplemental Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees in addition to any other relief or remedy obtained against such Owner. The Board of an Association or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or such Board may exercise the power of foreclosure and sale pursuant to Section 9.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

9.2 Assessment Liens.



9.2.1 Creation. There is hereby created a claim of lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Master Declaration or any Supplemental Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provision of this Master Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

9.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot against which the same have been assessed, and the name of the record owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

9.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

9.4 Required Notice. Notwithstanding anything contained in this Master Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot

described in such notice of delinquency and claim of lien, and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

9.5 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in Section 9.6 with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Master Declaration.

9.6 Rights of Mortgagees. Notwithstanding any other provision of this Master Declaration, no amendment of this Master Declaration shall operate to defeat the rights of the beneficiary under any deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Building Lot shall remain subject to this Master Declaration as amended.

## ARTICLE X

### INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

10.1 Member's Rights of Inspection. The membership register, books of account and minutes of meetings of the Board and committees of an Association shall be made available for inspection and copying by any Member of the Association or by his duly appointed representatives, at any reasonable time and for a purpose reasonably related to his interest as a Member at the office of the Association or at such other place as the Board of such Association shall prescribe.

10.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to:

10.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.

10.2.2 Hours and days of the week when such an inspection may be made.

10.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this Article.

10.3 Director's Rights of Inspection. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association of which he is a Director, and the physical properties owned or controlled by such Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

## ARTICLE XI

### ARCHITECTURAL COMMITTEE

11.1 Creation. Within thirty (30) days of the date on which the Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on Village Oak Subdivision's Architectural Committee ("Committee"). The Committee thereafter shall consist of three (3) members. Each member shall hold office until such time as he has resigned or has been removed, or his successor has been appointed, as provided herein. Members of the Committee may be removed by the person or entity appointing them at any time without cause.

11.2 Grantor's Right of Appointment. At any time prior to five (5) years after the date of this Master Declaration that Grantor is the Owner of at least ten percent (10%) of the aggregate Building Lots or one (1) of the Neighborhood Areas, Grantor shall have the exclusive right to appoint and remove all members of the Committee. At all other times, the Master Association Board shall have the right to appoint and remove all members of the Committee. If a vacancy on the Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Master Association, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.

11.3 Review of Proposed Construction. The Committee shall consider and act upon any and all proposals or plan and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Master Association, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Master Association Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Committee review and approval. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on either the Master Association or any Local Association.

11.3.1 Conditions on Approval. The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to an Association for the maintenance thereof, upon the agreement of the Applicant to reimburse an Association for the cost of maintenance, or upon all three, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

11.3.2 Committee Rules and Fees. The Committee also may issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed Two Hundred Fifty Dollars (\$250.00) per Property Unit, and shall be reasonably reduced in the case of townhouses with repeated designs, or in the case of the condominiums. Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

11.3.3 Detailed Plans. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

11.3.4 Committee Decisions. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within twenty (20) days after filing all materials required by the Committee. If the Committee shall fail to act within such twenty (20) day period, the Applicant may request appropriate action by the Board, and the Board may then, at its discretion, act upon the application in lieu of action by the Committee.

11.4 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 11.9. In the absence of such designation, the vote of any two (2) member of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

11.5 No Waiver of Future Approvals. The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to

constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter, whatever subsequently or additionally submitted for approval or consent.

11.6 Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder, provided that a member or a Committee representative who is an architect may be paid a fee approved by the Board of the Master Association.

11.7 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

11.7.1 Upon the completion of any work for which approved plans are required under this article, the Owner shall give written notice of completion to the Committee.

11.7.2 Within thirty (30) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same.

11.7.3 If upon the expiration of thirty (30) days from the date of such notification or any longer time the Committee determines to be reasonable, the Owner shall have failed to remedy such noncompliance, the Committee shall notify the Master Association Board in writing of such failure. Upon notice and hearing, as provided in the By-Laws, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling unless the Board specifies a longer time as reasonable. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Master Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Master Association, the Board shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

11.7.4 If for any reason the Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the written notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

11.8 Non-Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, shall be liable to any association, or to

any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the wilful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspect of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

11.9 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Committee, and shall become effective upon recordation in the Office of the County Recorder of Ada County. The recorded form shall be duly executed by appropriate officers of the Master Association to be effective as an amendment to this Declaration or any Supplemental Declaration. If such variances are granted, no violation of the Restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

11.10 Local Architectural Committee. The Grantor may, at its option, create a three member Local Architectural Committee for the property contained in any Neighborhood Area designated by a Supplemental Declaration. Upon its formation, all proposals, plans and specifications for Improvements within the Neighborhood Area requiring approval of the Architectural Committee described above must also be submitted to the Local Architectural Committee for its approval. Each provision of this Article shall apply to the Local Architectural Committee as if it were the Architectural Committee and to the Local Association as if it were the Master Association, except to the extent that such interpretation would be in conflict with the provisions of this Article.

## ARTICLE XII

## ANNEXATION OF ADDITIONAL PROPERTIES

12.1 By Grantor. Grantor intends to develop the Property shown in the Village Oak Subdivision Plat and may develop other adjacent properties, and may deem it desirable to annex some or all of such adjacent properties to the property covered by this Master Declaration. Annexed Tracts may be annexed to the Property and brought within the provisions of this Master Declaration as provided herein by Grantor, its successors or assigns, at any time, and from time to time, without the approval of any Owner or Association. The use and development of such Annexed Tracts shall conform to zoning limitations.

12.2 By Master Association. In addition to the provisions concerning annexation by Grantor specified in Section 12.1 above, Annexed Tracts may be created, subject to the same conditions, by the Master Association upon the approval by at least eighty percent (80%) of the Owners of the Master Association.

12.3 Rights and Obligations of Owners of Annexed Tracts. Subject to the provisions of Section 12.2, upon the recording of a Supplemental Declaration as to any Annexed Tract all provisions contained in this Master Declaration shall apply to the Annexed Tract in the same manner as if it were originally covered by this Declaration, subject to such modifications, changes and deletions as specifically provided in such Supplemental Declaration, such Annexed Tract shall be treated for all purposes as a Neighborhood Area as defined above. The Owners of the lots located in the Annexed Tracts shall become members of the Master Association and shall become liable for their appropriate share of Assessments. Title to the Common Areas of any Annexed Tract which are to be owned and managed by the Master Association, shall be free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record including those set forth in this Declaration or any Supplemental Declaration applicable to such Annexed Tracts.

12.4 Method of Annexation. The addition of an Annexed Tract to the Property authorized under Sections 12.1 and 12.2 shall be made by filing of record a Supplementary Declaration of Annexation including Covenants, Conditions and Restrictions, or other similar instrument with respect to the Annexed Tract, which shall be executed by Grantor or the owner thereof and which shall annex such property to the Property. Thereupon each Annexed Tract shall be a part of the Property, shall be subject to this Master Declaration and encompassed within the general plan and scheme of Restrictions contained herein as modified by such Supplemental Declaration, and shall be subject to the functions, powers and jurisdiction of the Master Association, any Local Association and Recreational Association established for the area encompassing such Annexed Tract. Such Supplemental Declaration of Annexation or other appropriate document may contain such additions, modifications or deletions of any Restrictions contained in this Master Declaration as may be deemed by Grantor or the owner thereof desirable to reflect the different character, if any, of the Annexed Tract, or as Grantor or such owner may deem appropriate in the development of the Annexed Tract. However, in no event

shall such Supplemental Declaration of Annexation revoke, modify or add to the Restrictions established by this Master Declaration as they pertain to the Property as of first filing of this Declaration, and the Owners. If any Annexed Tract is created, the Master Association, or the Local Association shall have the authority to levy assessments against the Owners located within such Tract, and the Master Association shall have the duty to maintain additional Village Oak Subdivision Common Area located within the Annexed Tract if so specified in any Supplemental Declaration. No annexation of property shall substantially increase Assessments payable by Owners.

12.5 Deannexation. Grantor may delete all or a portion of the Property described on Exhibit A, including previously Annexed Tracts, from the Property and from coverage of this Master Declaration and the jurisdiction of any Association, so long as Grantor is the Owner of all such Tracts and provided that a Supplemental Declaration of Deletion of Property is recorded in the Office of the Ada County Recorder in the same manner as a Supplemental Declaration of Annexation. Members other than Grantor as described above, shall not be entitled to de-annex all or any portion of a Tract except on the favorable vote of eighty percent (80%) of all members of the Master Association, which 80% super-majority shall be applicable separately to those Owners residing in the portion proposed to be de-annexed, and those not. Provided, notwithstanding any other provision of this Declaration, the Owner of Lots 1 and 26 shall have the right to de-annex Lots 1 and 26 by executing and recording a Supplemental Declaration of Deletion of Property, at any time, at that Owner's sole discretion. The recording shall be effective immediately and shall terminate the rights and responsibilities of Lots 1 and 26, and the Owner thereof, from the provisions of this Declaration, excepting only the following: the Owners of Lots 1 and 26 shall retain their respective rights and responsibilities as set forth herein (1) for the use of Lot 2 for access to and from 36<sup>th</sup> Street, (2) for the use of the common driveway easement across Lots 1 and 26, together with the Owners of the Cottage Lots, (3) for the use of Lot 2 for parking by the Owners of Lot 1, (4) for the use of all utilities and other reasonably necessary facilities, and (5) the full right and liberty to subdivide or change the use of their properties to other uses permitted by law under the existing PUD or subsequent law or regulation.

## ARTICLE XIII

### EASEMENTS

13.1 Easements of Encroachments. There shall be reciprocal appurtenant easements of encroachments as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to the good faith mistaken placement or settling or shifting of the improvements constructed, reconstructed or altered thereon in accordance with the terms of this Master Declaration. Easements of encroachment shall be valid so long as the encroachment may exist, and the rights and obligations of Owners shall not be



altered in any way because of 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 said Owner or Owners. In the event a structure on any Building Lot is particularly or totally destroyed, and then repaired or rebuilt, the Owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph.

13.2 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, Common Areas resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair of any improvement. Such easements may be used by Grantor, and by all Owners, their guests, tenants and Invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area.

13.3 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Master Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of any Association the right to grant additional easements and rights-of-way over the Property and/or a Neighborhood Area, as appropriate, to utility companies and public agencies as necessary or expedient for the Proper development of the Property until close of escrow for the sale of the last Building Lot in the Property from Grantor to a third party purchaser.

13.4 Rights and Duties Concerning Utility Easement. The rights and duties of the Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

13.4.1 Wherever utility connections to a residence are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

13.4.2 Whenever utility connections to a residence are installed within the Property, which connections serve more than one Building Lot, the Owner of each Building Lot

served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service his Building Lot.

13.4.3 Lot 26 and the Owner thereof shall have the right to construct, use, maintain, repair and replace an underground domestic water supply line from Lot 26 through the area of Lot 1 encumbered as a common driveway and through Lot 19 to the nearest public water meter along the private road.

13.5 Driveway Easements and Common Driveways. Whenever a driveway is installed by Grantor or Grantor's agent within the Property which in whole or in part lies upon a Building Lot owned by an Owner other than the Owner of the Building Lot served, or installed to serve more than one Building Lot, the Owner of each Building Lot served or to be served by such driveway shall be entitled to full use and enjoyment of such other Building Lot as required to service his Building Lot or to repair, replace or maintain such driveway. In the easement area, the following shall apply:

- A. The easement may be used by the Owners, in common, to gain access by motor vehicle, on foot, bicycle and other reasonable means, from the street, alley or way serving the Building Lot to the garage of the Building Lot (and any reasonable point of access in the case of foot and other non-motorized vehicle access).
- B. The cost of maintaining, repairing and replacing the driveway surface improvements shall be born equally by the Owners.
- C. The surface shall be maintained in accordance with any specification or detail shown on the Plat. If no specification or detail is applicable, the surface shall be asphalt, concrete, or other hard surface. Once installed, the same surface shall be maintained, repaired and replaced except upon majority agreement to substitute some other surface, and without majority agreement shall remain the same.
- D. Decisions regarding maintenance, repair and replacement shall be by majority vote, in conformity with such standards provided herein or adopted by the Board.
- E. The speed limit in driveways shall be five (5) miles per hour. Conditions may require a lesser speed. Motor vehicles yield to pedestrians and non-motorized vehicles.
- F. Each Owner, for himself, his guests and invitees, shall have a duty to the co-Owners of the easement to use the common driveway with all due care, and to minimize risks of injury or damage to the driveway surface and to other persons, vehicles and property lawfully present in the common driveway easement.
- G. The common driveway easement area shall not be obstructed in any manner by the parking or placement or storage of vehicles, plantings, or personal property of any kind.

13.6 Provisions for Easement over Lots 1 and 26 for Common Access to Lots 1 and 26 and Three Cottage Lots

The Cottage House Local Association shall have an easement over Lots 1 and 26 in the location, and bounded and described, as shown on the Plat. The purpose and use of the easement shall be for vehicle and pedestrian access from the abutting private road to and from the common garage on Lot 19, in common with vehicle and pedestrian access to any garage or parking constructed and maintained on Lots 1 and 26.

13.6.1 The right of use shall not be in the entire Association, but only in those three Lots or Lot Owners to which use of the common garage is allocated or granted by the Association.

13.6.2 The right of use shall be for moving vehicle and pedestrian use only, and the following uses are specifically not included and are prohibited:  
Parking, standing, loading or unloading, or idling of vehicles.  
Storage of materials or equipment of any kind.  
Recreational use of any kind, including without limitation basketball or other court or ball games, or bicycling.  
Use by construction or delivery vehicles or persons.

13.6.3 Lots 1 and 26 retain the right to construct, use, maintain, and reconstruct from time to time all reasonably necessary underground utility conduits or pipes and connections under the driveway easement. In the event reconstruction or maintenance is required, it shall be performed in an expeditious manner consistent with custom and usage, and no compensation shall be due to the Association or Owners using the garage on Lot 19 for interruption in use of the easement.

13.6.4 The driveway surface shall be primarily asphalt, but may include pavers or pervious concrete for water infiltration. The driveway shall provide access to the garage on Lot 19 at approximately the grade of the back of curb of the private road. The driveway shall extend an adequate distance past the garage location to allow for backing and turning of cars leaving the garage, but the Owner of Lot 26 shall have the right reserved to maintain landscaping of lawn, trees or shrubs in the driveway easement area along the irrigation ditch. The driveway shall be installed initially by the Owner of Lots 1 and 26, within thirty (30) days of the recording of this Declaration, and three-fifths of such cost shall be reimbursed to the Owner by the Owner of Lots 23-25 within thirty (30) days of presentation of a statement of costs and proof of payment of same by the Owner of Lots 1 and 26.

13.6.5 The Owners of Lots 1 and 26 shall be obliged to maintain the driveway free of any overhanging branches or other obstructions within eight (8) feet of the driveway surface, but branches or other obstructions may extend into the driveway easement above eight (8) feet.

13.6.6 The Owners of Lots 1 and 26 shall reasonably determine the amount of maintenance and reconstruction to thereafter be performed on the driveway surface. In the event of a deadlock or impasse between the Owners of Lots 1 and 26, the Cottage Home Association may appoint a representative to serve as a tie-breaker.

13.7 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections or driveways, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Master Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s).

13.8 Irrigation Water Right and Easement. The Master Association shall own the water rights in the Fairview Acres irrigation ditch, running across Block 1, Lots 26 and 19, and shall have an easement as reasonably necessary to construct, maintain, use, repair and replace all pumps, controls and equipment, a pump house, and distribution pipes for irrigation throughout the Property.

13.9 Garage Easement for Cottage Houses. A garage easement shall exist, and is hereby granted and conveyed, for the parking of one automobile, on Lot 19 in favor of Lots 21 through 25. The size of each such easement shall be the areas as shown on the Plat. The cost of maintenance, repair, and reconstruction of the garage shall be borne by the Lot Owner having the right of use of the same. Such maintenance, repair, and reconstruction shall be done at the reasonable discretion of the Cottage House Local Association, and shall be reimbursed to the Local Association or paid in advance, as a Special Assessment. No alterations to the structure shall be made by the Lot Owner having use of the same, except for reasonable wear and tear, as the Local Association may provide. Use shall be limited to the parking of an automobile, and storage. No automobile repair or painting shall be permitted. No hazardous materials, including without limitation, fuel containers, paints, solvents, ammunition, pesticides or other noxious, flammable or explosive materials shall be permitted to be stored in or around the automobile. The Lot Owner having use of the easement shall provide proof of insurance of the automobile. The automobile shall be in good working order, and used regularly.

13.10 Use easements. In order to maximize useable yard space and increase privacy, a system of use easement areas may be established in the Townhouse Lots. Use easements may be utilized to consolidate strips of narrow sideyard with adjoining yards into a single functional area. Any use easement shall be described and located by an appropriate Supplemental Declaration or other document filed of record. In the absence of provisions to the contrary in a particular use easement, the following shall be applicable:

A. Use easements may be used as extensions of garden, quiet play and landscape areas.

- B. Use easements may be planted with shrubs, grass, and garden plants, but not with large trees.
- C. Use easements shall not be improved with buildings or structures.
- D. Nothing in a use easement shall lean, hang or grow against the house on the servient Lot.
- E. No fence or other obstruction shall prevent painting or other maintenance of the house on the servient Lot.
- F. Parking, storage, trash and composting shall be prohibited in use easements.
- G. The Owner of the servient Lot shall be indemnified against any suit, claim or cause of action associated with the use easement.

## ARTICLE XIV

### MISCELLANEOUS

14.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Members holding at least eighty percent (80%) of the voting power of the Master Association and such written instrument is recorded with the Ada County Recorder. Further provided that the Master Association as provided hereunder shall not be dissolved without the prior written approval of the City of Garden City, such consent not to be unreasonably withheld provided that a responsible successor organization shall agree to perform those maintenance responsibilities arising from applicable city requirements.

#### 14.2 Amendment.

14.2.1 By Grantor. Until the close of escrow for the sale of the first Building Lot in the Property, the provisions of this Declaration may be amended or terminated by Grantor by recordation of written instrument setting forth such amendment or termination. Any amendment affecting only Annexed Tracts may be made by Grantor by Supplemental Declaration at any time up to the close of escrow for the sale of the first Building Lot in such Annexed Tract. For the purposes of this Declaration, the close of escrow shall be deemed to be the date on which a deed granting a Building Lot is recorded in the Office of the Ada County Recorder.

14.2.2 By Owners. Except where a greater percentage is required by express provision in this Maser Declaration, the provisions of this Master Declaration, other than this Article, may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Master Association certifying that such amendment has been approved by the vote or written consent of Owners representing more than eighty percent (80%) of the votes in the Master Association, and such amendment shall be effective upon its recordation with

the Ada County Recorder. Any amendment to this Article shall require the vote or written consent of all of the Members holding all of the voting power of the Master Association.

14.3 Mortgage Protection. Notwithstanding any other provision of this Master Declaration, no amendment of this Master Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first deed of trust such Building Lot shall remain subject to this Master Declaration, as amended. Notwithstanding any and all provisions of this Master Declaration to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (“FHLMC”), the Government National Mortgage Association (“GNMA”) and the Federal National Mortgage Association (“FNMA”) to participate in the financing of the sale of Building Lots within the properties, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, or GNMA, conflict with any other provisions of this Master Declaration these added restrictions shall control:

14.3.1 Each first Mortgage of a mortgage encumbering any Building Lot, upon filing a written request for notification with the Board, is entitled to written notification from an Association of any default by the mortgagor of such Building Lot in the performance of such mortgagor’s obligations under the Master Declaration or a Supplemental Declaration, or the Association’s Articles or By-Laws (collectively, the “Project Documents”), which default is not cured within thirty (30) days after the Association learns of such default.

14.3.2 Every Owner, including every first Mortgagee of a mortgage encumbering any Building Lot, which obtains title to such Building Lot pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any “right of first refusal.”

14.3.3 Each holder of a first mortgage lien on a Building Lot who comes into possession of the Building Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take title to such Building Lot free of any claims for unpaid assessments and charges against the Building Lot, which accrue prior to the time such holder comes into possession of the Building Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Building Lots including the mortgaged Building Lot.

14.3.4 Unless all of the first Mortgagees have given their prior written approval, neither the Association nor the Owners shall:

14.3.4.1 by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Improvements thereon which are owned directly or indirectly by the Association; provided, that the granting of Easements for public utilities or for other public purposes consistent with the intended use of such property by the Association, or the

transfer of the Common Area or Improvements to an unincorporated association of the Owners in accordance with the Articles of the Association, shall not be deemed a transfer within the meaning of this clause; or

14.3.4.2 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 or hazard insurance proceeds or condemnation awards.

14.3.5 Except by at least eighty percent (80%) majority vote of the first Mortgagees (based upon one vote for each mortgage owned), neither the Association nor the Owners shall:

14.3.5.1 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 the dwelling units on the Building Lots, the exterior maintenance of the dwelling units on the Building Lots or the upkeep of the lawns and plantings on the Building Lots;

14.3.5.2 fail to maintain Fire and Extended Coverage on insurable Common Area 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);

14.3.5.3 use hazard insurance proceeds for losses to any Common Area Improvements for other than the repair, replacement or reconstruction of such Improvements;

14.3.5.4 abandon or terminate the covenants, conditions, and restrictions of this Master Declaration or any Supplement to this Declaration;

14.3.5.5 make any material amendment to this Declaration or any Supplement to this Master Declaration or to any Articles or By-Laws of any Association created pursuant to this Master Declaration; or

14.3.5.6 terminate professional management of any portion of the Property and assume self-management thereof.

14.3.6 First Mortgagees, upon written request, shall have the right to (1) examine the books and records of an Association during normal business hours, (2) require from an Association the submission of audited annual financial reports and other financial data, (3) receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend all such meetings.

14.3.7 All first Mortgagees who have provided a mailing address or other reasonable means of contact to the Association shall be given immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Area or any Building Lot whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board received notices or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Property.

14.3.8 First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies for such property, and first Mortgagees making such payments shall be owed immediate reimbursement from the Association.

14.3.9 The Board shall contract for professional management of the Property with a bonded professional manager. The agreement between the Association and its agent for such professional management shall provide that the management contract may be terminated for cause on not more than thirty (30) days' written notice, and the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

14.3.10 The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including but not limited to, employees of the professional manager.

14.3.11 Any agreement for the leasing or rental of a Building Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Master Declaration and all applicable Articles and By-Laws. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Master Declaration, the Articles or By-Laws shall be a default under the agreement. Any residential lease shall be permissible only as an exemption in writing from the provisions hereof relating to Owner Occupancy.

14.3.12 All taxes on the Common Areas must be assessable against those Common Areas only and the Master Association or Local Association owning such Common Areas are solely responsible for payment of such taxes.

14.3.13 Any provision in this Master Declaration which requires Owners to indemnify the Association, other Owners or the Board, against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance, the indemnitor is relieved of liability to the extent of insurance coverage.

14.3.14 Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by Federal National Mortgage Association and Government National Mortgage Association,



so long as either is a Mortgagee or Owner of a Building Lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

14.3.15 In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgage encumbering Building Lots with dwelling units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of Building Lots, if such agencies approve the Property or any portion thereof as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any mortgage encumbering a Building Lot.

14.4 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two hours (72) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Master Association for the purpose of service of such notice, or the residence of such person if no address has been given to the Master Association. Such address may be changed from time to time by notice in writing to the Master Association.

#### 14.5 Enforcement and Non-Waiver.

14.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof. Enforcement shall initially be through the Board, on its own initiative or upon request of an Owner.

14.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof or any provision of the Articles or By-Laws of any Association is hereby declared a nuisance and will give rise to a cause of action in the Grantor, the Association or any Owner or Owners of Building Lots within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, the Master Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

14.5.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Master Declaration and subject to any or all of the Enforcement procedures set forth in this Master Declaration.

14.5.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

14.5.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision or any other provision hereof.

14.5.6 Enforcement by Garden City. The City of Garden City (“City”) has approved the Village Oak Subdivision as a Planned Unit Development, based in part upon certain conditions and representations to continue in effect and be enforceable by Garden City. The City shall be a third party beneficiary of the provisions of this Declaration as set forth herein. (The Owners acknowledge and agree that the rights of enforcement and otherwise as third party beneficiary may be enforced by the City at its sole discretion, and the City is under no obligation to do so. The purpose of such rights being granted to the City is to allow convenient enforcement and administration of the conditions of the PUD, and imposes no duty on the City. Without limitation, the City is under no obligation to become involved in any dispute or any management of the Association.) The City shall have the right, at reasonable times upon reasonable notice where entering private property other than exterior common areas, to inspect any or all of the physical elements of the Property related to its third party rights. The following covenants, conditions and restrictions set forth below shall be for the benefit of the City, its successors and assigns, and shall be enforceable by it:

- A. Common Areas shall not be separately sold or transferred, but shall only be sold or transferred as an undivided interest with a Building Lot or Property Unit.
- B. The Lots and Property Units shall only be used for the purposes permitted herein.
- C. The improvements of Lots shall not exceed the dimensions provided herein.
- D. The Common Area shall be preserved as open space and used only for landscaping of lawns, trees, and shrubs with limited sidewalks and other improvements surface, and limited recreation.
- E. The costs of maintenance and repair of private roads and alleys, and all costs associated therewith, shall be the responsibility of the Owners and Association only, and the Owners recognize the City is under no obligation at any time to maintain or accept dedication of any private road or alley as a public road. The City has the right to require the private roads and alleys be maintained according to the plans and specifications shown as part of the final Plat.
- F. In addition to other remedies provided herein, and in addition to its duly enacted codes and statutory powers, the City shall have the right to maintain an action at law or in equity, including an injunction action, to enforce the covenants, conditions and restrictions provided for the benefit of the City.

14.6 Interpretation. The provisions of this Master Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property. This Master Declaration shall be construed and governed under the laws of the State of Idaho.

14.6.1 Restrictions Construed Together. All of the articles and provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the preamble of this Master Declaration.

14.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Paragraph 14.6.1, each of the provisions of this Master Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

14.6.3 Singular Includes Plural. 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 each including the masculine, feminine and neuter.

14.6.4 Captions. 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.

14.7 Successors and Assigns. All references herein to Grantor, Owners, any Association or person shall be construed to include all successors, assigns, and authorized agents of such Grantor, Owners, Association or person.

IN WITNESS WHEREOF, Grantor Village Oak Development Co. LLC and James M. Neill has each hereunto set its and his hand and seal this 11th day of March, 2015.

**VILLAGE OAK DEVELOPMENT CO., LLC**  
an Idaho Limited Liability Company

By: James M Neill  
James M. Neill, Member

James M Neill  
JAMES M. NEILL

State of Idaho )  
 ) ss.  
County of Ada )

On this 11 day of March, 2015 before me, the undersigned, a Notary Public in and for the said State, personally appeared James M. Neill, known or identified to me to be a member of Village Oak Subdivision, LLC, an Idaho limited liability company, that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

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

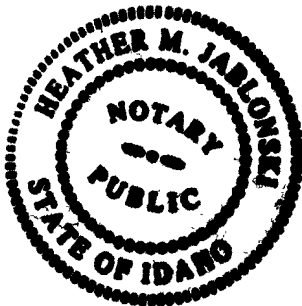


Heather M. Jablonski  
Notary Public for Idaho  
Residing at Boise, ID  
My commission expires: 8-22-17

State of Idaho )  
 ) ss.  
County of Ada )

On this 11<sup>th</sup> day of March, 2015, before me, the undersigned, a Notary Public in and for the said State, personally appeared James M. Neill, known or identified to me to be the person that executed the foregoing instrument, and acknowledged to me that he executed the same.

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



Heather M. Jablonski  
Notary Public for Idaho  
Residing at Boise, ID  
My commission expires: 8-22-17  
  
My commission expires: X

EXHIBIT "A"

Property Description – Lots 10, 11 and 12, Block 11 of Fairview Acres Subdivision No. 3, according to the plat thereof, filed in Book 11 of Plats at Page 617, records of Ada County, Idaho. EXCEPTING THEREFROM that portion deeded to Ada County Highway District by Warranty Deed recorded May 10, 2012, with the Ada County Recorder of Deeds, as Instrument No. 112044256, incorporated herein by reference.

EXHIBIT "B"

Village Oak Subdivision Plat, recorded at Book 108, page <sup>15115-</sup>15117, incorporated by reference