

Declaration of Covenants,  
Conditions & Restrictions  
Fairway Estates  
Division 9

A PLAN TO ENHANCE AND BEAUTIFY THE COMMUNITY, ENHANCE PROPERTY VALUES AND  
PROTECT THE ENJOYMENT OF THE SUBDIVISION

ALSO CREATING THE NORTH FAIRWAY HOMEOWNERS ASSOCIATION

March 2001

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FAIRWAY ESTATES DIVISION 9

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FAIRWAY ESTATES DIVISION 9

THIS DECLARATION is made effective on the 17 day of April, 2001, by CAMBRIDGE DEVELOPMENT, INC., hereinafter referred to as "Declarant" and the following present owners of individual Lots within the property:

<u>Name</u>	<u>Division</u>	<u>Block</u>	<u>Lot</u>
William Boyce and Laurel Boyce	9	7	33
Robb S. VanKampen and Renee N. VanKampen	9	8	5

all hereinafter referred to as the "Property Owners".

WHEREAS, Declarant and the Property Owners are the owners of that certain real property located in Bonneville County, Idaho, particularly described as follows:

Fairway Estates, Division 9, according to the official plat thereof on file  
in the office of the County Recorder of Bonneville County, Idaho

which property is herein referred to as the "Property" or "Project."

WHEREAS, Declarant and the Property Owners desire that their individually owned Lots and all the Lots within the Project be subject to the same covenants, conditions, and restrictions, to be administered by a single entity, and

WHEREAS, Declarant and the Property Owners desire to establish mutually beneficial restrictions and obligations with respect to the maintenance, use and enjoyment of the Property to provide a plan for the maintenance, beautification and protection, and desire to enhance the value, desirability and attractiveness of the property for their own benefit and for the benefit of future owners of lots within the Property; and

WHEREAS, Declarant owns adjacent lands which it desires to develop under a common development program; and

WHEREAS, in order to provide an orderly development and use of the Property under a common set of covenants, conditions and restrictions, Declarant desires to create an agency to which shall be delegated and assigned the responsibility for administering certain care and control, enhancing the value and enjoyment of the Property and administering and enforcing the covenants, conditions and restrictions herein set forth, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, this declaration forms as an unincorporated, non-profit association under the laws of the State of Idaho. the Fairway Estates Homeowners Association, hereinafter referred to as the "Association", for the purposes stated above.

*NOTICE: Fairway Estates Division 9 contains no Common Areas. However, the development plan is that Division 9 is the first division of a planned development which will contain Common Areas to be owned by the Association and for benefit of all Owners. Annexation under Article VII will both bring the benefit of expense of such Common Areas to all Owners. The Declarant makes no warranty as to future development.*

## ARTICLE I

### PURPOSE & DECLARATION OF COVENANTS CONDITIONS RESTRICTIONS & EASEMENTS

1.1 Declaration. Declarant and the Property Owners hereby declare that the Property and each Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, reservations, easements and restrictions set forth shall run with the land constituting the Property and with such 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 of the Property and interest therein, and shall inure to the benefit of and be binding upon Declarant, the Property Owners, their successors in interest and each Grantee or Owner and respective successors in interest, and may be enforced by Declarant and/or by any Owner or successors in interest.

1.2 Right to Develop. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to carry out and complete the development of the Property and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE II

### DEFINITIONS

2.1 "Assessment" shall mean a payment required of Owners and Association Members including regular, special, limited and such Assessments of the Association as further defined in this declaration:

2.2 "Association" shall mean and refer to Fairway Estates Homeowners Association, a non-profit Idaho association, its successors and assigns. Association shall include, when the context requires, its Board of Directors, officers and other authorized representatives and agents as the same, or any of them, may from time to time be constituted.

2.3 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property under the jurisdiction or control of the 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 the Association.

2.4 "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 a mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.

2.5 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

2.6 "Building Lot". The terms "Building Lot" and "Lot" shall mean and refer to any parcel of real property shown on a recorded plat or map, or otherwise described in a recorded instrument, which is identified as an individual lot to be used as a single family residential building site. The term "Building Lot" shall also include any "Residence" when such is platted and capable of being sold as a single family residence.

2.7 "Common Area" shall mean all real property easements, licenses, leaseholds, rights, rights of way and other interests in real property, if any, and the improvements thereon in which the Association owns or holds an interest or which it may hereafter acquire and which is held for the common use and enjoyment of the Owners or for betterment of the Property. Any such real property interest and improvements or amenities, which are described as Common Areas in a Supplemental Declaration shall be deemed to be Common Areas as the term is described herein for the common benefit of the Owners, as may be provided, and shall, for all purposes, be integrated into and be deemed to be part of the Common Areas subject to this Declaration.

2.8 "Committee" shall mean the Design Review Committee described in Article VI hereof.

2.9 "Declaration" or "Amended Declaration" shall refer to this declaration as hereafter amended and supplemented from time to time, and as recorded in the records of Bonneville County.

2.10 "Declarant" shall mean and refer to the Cambridge Development, inc. or their successors and assigns.

2.11 "Detached Structure" shall mean any roofed structure with permanent supporting walls or pillars on any Lot which is detached from the Residence on such Lot.

2.12 "Improvement" shall mean any-structure, facility or system, or other Improvement or object, 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, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, swimming pools and other recreational facilities and fixtures of any kind whatsoever.

2.13 "Member" shall mean each person or entity holding membership in the Association.

2.14 "Mortgage" shall mean and refer to any mortgage or deed of trust and "Mortgagee" shall refer to the mortgagee, or beneficiary of a deed of trust, and "Mortgagor" shall refer to the mortgagor, or grantor of a deed of trust.

2.15 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

2.16 "Plat" shall mean the recorded Plat or Plats of Fairway Estates Subdivision, Division No. 1 and the recorded plat of any other Properties annexed hereto.

2.17 "Properties", "Property" or "Project" shall mean and refer to all the real property hereinbefore described, and such additions thereto as may hereafter be annexed and brought within the coverage of this Declaration as more particularly provided for herein together with all easement and improvements.

2.18 "Residence" shall mean a building or buildings, including a garage or similar outbuilding used or intended to be used for residential purposes.

2.19 "Set Back" shall mean the minimum distance between the residence or other structure referred to the nearest given street, road or Lot line. "Set Back Area" shall mean the area between the Set Back line and the Lot Line

2.20 "Single Family Residential Use" means the occupation and use of a single family dwelling in conformity with this Declaration and the Bonneville County Zoning Ordinance in force on the date this Declaration is recorded.

2.21 "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Property and subjecting such real property to this Declaration as provided in Article VII.

2.22 "Zero Lot Line Residence" and attached Single Family Residence means a residence that shares a common wall with a residence on one adjoining Lot.

### ARTICLE III

#### GENERAL COVENANTS; CONDITIONS AND RESTRICTIONS

3.1 Land Use and Building Type. All the subject Lots in the existing Property shall be used and occupied solely for single family residential use. No Lot shall be subdivided or used except for residential purposes. No Lot shall be used for the conduct of any trade or business or professional activity; provided, however, that professional and administrative occupations may be carried on within the residences so long as there exists no meaningful external evidence thereof.

Except as specifically provided otherwise in this Declaration or any Supplemental Declaration, no improvements shall be erected, altered, placed, or permitted to remain on any Lot other than one designed to accommodate no more than one (1) single-family detached residential dwelling, provided, however, on the Lots designated in Table 3.1 attached hereto and incorporated herein by reference, Zero Lot Line Residences may be constructed. Notwithstanding the foregoing, except on Lots on which Zero Lot Line Residences are constructed, the Committee may, in its discretion, after request by an Owner, allow Owner to place any Detached Structure which the Committee determines to be architecturally and aesthetically compatible with the Residence on the Lot.

3.1.a. Size Limitations. No Residence shall be constructed on any Lot having a square feet of an interior area, exclusive of porches and garages less than the minimum size set forth in Table 3.1. No residence shall be constructed higher than two stories.



3.1.b. Garages. Each Residence constructed on any Lot shall include at least a two (2) car enclosed garage as an attached, integral part of the Residence structure.

3.1.c. Roofing. The roof of each Residence shall, at a minimum, be 20-year (or better) architectural grade shingle, tile, or shake. Roof color shall be subject to approval by the Committee.

3.1.d. Zero Lot Line Residences. On the lots identified in Table 3.1 Zero Lot Line Residences may be constructed.

3.2 Architectural Control. No Improvements which will be visible above the ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on the Property, *including without limitation, change of exterior colors or materials*, unless and until the building or other plans, specifications, and plot plan have been reviewed in advance by the Design Review Committee and the same have been approved by the Committee. The Committee may, in its reasonable discretion, approve or disapprove such improvements and the location thereof based upon all relevant factors, including without limitation: design and style, mass and form, value, topography, setback requirements, views, exterior color and materials of such improvements, physical or aesthetic conformity to surrounding 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 the improvements. This Declaration is not intended to serve as authority for the Design Review Committee to control the interior layout or design of buildings except to the extent incidentally necessitated by use and size requirements.

3.3 Maintenance: Owners Obligations. No Improvements, including landscaping, shall be permitted to fall into disrepair or appear unkept, and each Improvement shall at all times be kept in good condition and repair by the Owner thereof. All landscaping shall be adequately and properly maintained and watered. In the event that any Owner fails to maintain the Improvements and landscaping as required by this Declaration and the Association Rules or allows any unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of said Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the 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 set forth herein. The Owner of the offending Lot shall be personally liable, and the Lot may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, may be added to the amounts payable by such Owner as regular Assessments.

In the event the Improvements on any Lot shall suffer damage or destruction from any cause, the Owner thereof shall undertake the repair, restoration or reconstruction thereof within ninety (90) days of such damage or destruction. If, after ninety (90) days, the repair, restoration or reconstruction of such damaged or destroyed improvements has not taken place, the Association, upon fifteen (15) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon said Owner's Lot for the purpose of doing so and such Owner shall bear all costs incurred by the Association and the Association shall have the lien rights set forth above to enforce payment of the same.

3.4 Association as Contract Agent. As to all Lots on which Zero Lot Line Residences are built, the need for uniform maintenance of yards and landscaping is particularly important. Therefore,

each Owner of a lot on which a Zero Lot Line Residence is built hereby appoints the Association said Owner's attorney in fact, irrevocable, coupled with an interest, with full authority in said Owner's place and stead, to contract for provision of the following services at such time and manner as the agent shall determine, at the Owner's sole cost and expense.

3.4.a. Maintenance and cares of lawns and landscaping including fertilizing, mowing, maintenance of the sprinkler system, and maintenance or replacing as required of all landscaping;

3.4.b. Winter snow removal from driveways and sidewalks next to the streets; and

3.4.c. Repair or repainting of exterior painted surfaces of the Residences.

If the Owner fails to timely pay for such services, the Association may pay for said services and collect the cost thereof as provided in Sections 3.3 and 5.2b hereof.

3.5 Set Back Requirement for improvements. All improvements shall be subject to all Set Backs required by the City of Idaho Falls zoning ordinances applicable to the property.

3.6 Nuisances. No noxious or offensive activity, including without limitation, those creating an offensive odor or offensive noise, shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Each owner shall comply with Association Rules.

3.7 Temporary Improvements. No Improvements of a temporary character and no trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time as a residence either temporarily or permanently.

3.8 Signs. No sign of any kind shall be displayed to the public view on any Lot except for signs used by a builder or its assigns to advertise the Property during the Construction and sales period, one sign of not more than five (5) square feet advertising the Property for sale or rent. No builder signs shall remain on the property after the Residence is first occupied.

3.9 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, mining or sand, gravel, pumice or soil extraction operations of any kind shall be permitted upon the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property. No derrick or other structure designed for use in boring for oil or natural gas or otherwise shall be erected, maintained or permitted upon the Property.

3.10 Animals. No animals, birds, fowl, poultry, livestock or reptiles of any kind may be kept, bred or maintained in any Lot or in or upon any Common Areas, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot without a leash, make an unreasonable amount of noise or create a nuisance. No outside dog runs shall be permitted on any Lot. An Owner shall be liable for any and all damage to property and injury to persons and other animals caused by his or her household pets. Each Owner shall be responsible for cleaning up any pet or animal feces deposited by a pet or animal owned or in the possession or control of any Owner or Member. Upon written request of any Owner, the Association may conclusively determine, in its sole and absolute discretion, whether any

animal as described herein is a nuisance and require the removal of such household pet. Any decision rendered by the Association shall be enforceable as are other restrictions contained herein.

3.11 Refuse Storage and Disposal. No rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on the Property except trash kept and maintained within the interior of the Residence or Detached Structures in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, neat and sanitary condition.

3.12 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one half (2½) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded Property corner from the intersection of the street Property lines extended. The same light-line limitation shall apply on any Lot within fifteen (15) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

3.13 Construction by Declarant. Declarant reserves the right to construct Residences and make other Improvements upon any Lot and to offer the same with completed structures thereon for sale.

3.14 Parking, Boats, Campers and Other Vehicles. No vehicle used by a resident shall be parked overnight on the street. No boats, trailers, tractors, recreational vehicles (including but not necessarily limited to campers, motor homes, automobile campers or similar vehicles or equipment), dilapidated, unrepaired or unsightly vehicles or similar equipment, or trucks, vans or buses shall regularly be parked or stored on any portion of the Property (including streets and driveways) unless enclosed by a structure or screened from view in a manner approved in writing by the Committee. Provided, however, on a lot on which a Zero Lot Line Residence is allowed, such vehicles and equipment shall not be regularly parked or stored on any portion of the Property except within an attached garage.

3.15 Antennae and Satellite Receiver. No outside television antennas, radio aerials, satellite dishes, or similar devices or structures shall be installed on any Lot or the exterior of any structure located thereon. Except such devices smaller than six (6) feet in total perimeter dimension shall be permitted only if located behind the front plane of the dwelling structure (toward the rear of the Lot) not within building Set Back areas, and if appropriately screened from view from any direction.

3.16 Hazardous Activities. No activity shall be conducted on or in any Residence or Lot which is or might be unsafe or hazardous to any person, the Property or any other tangible item of value. Without limiting the generality of the foregoing, no firearms shall be discharged upon said Property and no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit or outer fireplace while attended and in use for cooking purposes, or with a safe and well-designed interior fireplace.

3.17 Unsightly Articles. No clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other Lot or any common area. No building materials, lumber, grass, shrub or tree clippings, plant waste, compost piles, metals, or scrap or other similar materials or any other unsightly articles shall be kept, stored, or allowed to accumulate on any portion of the Property.

No basketball standards or other sports apparatus shall be mounted or maintained on the residence or in the front of the front line of the Residence.

3.18 Construction, Construction Materials. During the course of actual construction of any permanent improvements, the restrictions contained in this Declaration and any supplemental declarations shall be deemed waived to the extent necessary to permit such construction, provided that during the course of such construction nothing shall be done which will result in a violation of these restrictions upon completion of construction. All construction shall be diligently prosecuted to completion, continuously and without delays. All structures shall be completed as to external appearance within nine (9) months from date of commencement, unless prevented by causes beyond the control of the Owner or builder. There shall be no storage of construction materials on a lot except during the construction period.

3.19 Fences and Walls, Hedges and Screen. No fences, walls or non-living screens shall be constructed on any lot without written approval first having been obtained from the Design Review Committee. Perimeter fences shall only be of a design promoting open vistas between Lots. Privacy fences enclosing a backyard patio or other such area close to the Residence may be approved. No fence, hedge, wall, landscaping or screen of any kind shall be erected so as to constitute a traffic hazard, particularly near comers and street intersections. The Committee may establish guidelines as to acceptable fence types and materials.

3.20 Plat Conditions. All covenants, conditions, restrictions, easements and other matters set forth on the subdivision plats of all of the Property are hereby incorporated by this reference and notice is hereby given as to the same.

3.21 Landscaping and Landscaping Plan. Written landscaping plans shall be submitted to and approved by the Design Review Committee prior to commencement of installation of landscaping. Landscaping of that portion of the Lot in front of the Residence shall be commenced within four (4) months after substantial completion and completed within six (6) months after substantial completion of the Residence except as prohibited by weather conditions. The failure of the Owner to timely comply with this landscaping requirement shall constitute a failure to perform maintenance and the Association or Declarant may thereupon invoke those rights and remedies provided in this Declaration. As part of the landscaping, an automatic sprinkler system shall be installed.

3.22 Light, Sound and Odor. No light which is unreasonably bright or causes unreasonable glare shall be emitted from any Lot. No sound shall be emitted from any Lot which is unreasonable loud or annoying, and no odors shall be emitted from any Lot which are noxious or offensive to others.

3.23 Detached Structures. No Detached Structure shall be constructed or located on any Lot, unless the Design Review Committee, upon request by the Owner allows such construction or location after determining the Detached Structure is architecturally and aesthetically compatible with the Residence on the Lot and will otherwise be compatible with other improvements within the Property.

3.24 Dumping. No excavation material, grass or yard clippings, rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on any vacant or unimproved Lot on the Common Areas, without the prior written Approval of the Declarant or the Design Review Committee. No discharge shall be made into any common drainage structure. The Owner of any Lot who dumps such material or makes a discharge into a common drainage shall be liable for all cleanup and/or removal costs and any damage to the Property caused thereby.

3.25 Party Wall Between Units. All dividing walls and adjoining roof structures now or hereafter constructed between any two Zero Lot Line Residences shall be considered party walls, shall be deemed to belong to the respective common owners as tenants in common and shall be used for the common purpose of the residences separated thereby. The preservation and structural repair of any one of said party walls, except for interior decoration, shall be the joint duty and obligation of the persons using the particular party wall. No structural changes in any one of said party walls shall be undertaken without the prior written consent and approval of the Association and each of the users of the particular party wall.

3.25.a. In the event any such party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests or agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment of such party wall, then the first such owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining owner.

3.25.b. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

3.25.c. In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the president of the Association, the matter shall be submitted to mediation or arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by each of the owners and the third by the two so chosen, or if they cannot agree within five (5) days, then by any Judge of the District Court of Bonneville County, Idaho. A determination of the matter signed by any two arbitrators shall be binding upon all parties involved in the subject dispute. The cost of arbitration shall be shared equally by the two owners involved in the dispute.

3.25.d. These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while that party was owner.

3.26 Easements. Each is hereby declared to be subject to and conversely the owners thereof and the Association shall have the benefit of the following common easements:

3.26.a. The right of horizontal and lateral support.

3.26.b. The right to clean, maintain, repair, replace, beautify, landscape, and decorate the Common Areas.

3.26.c. As to Lots as to which the Association will provide landscaping maintenance and snow removal, the right to go upon said Lots for such purposes.

3.26.d. If any building upon any of the Lots with common walls encroaches or shall hereafter encroach upon another the adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist.

3.26.e. The right, upon approval by the Association with reasonable notice, to go in upon a Lot as necessary to clean, maintain or repair the Lot and the structures thereon and adjacent units as provided herein.

3.26.f. Each Lot owner, family members and guests shall have the right to go upon the Common Areas, owned by the Association and utilize it in accordance with the rules and regulations of the Association.

#### ARTICLE IV

##### NORTH FAIRWAY HOMEOWNERS ASSOCIATION

4.1 Association Created. By this declaration, Declarant declares the existence of North Fairway Homeowners Association as an unincorporated nonprofit association under Idaho Code § 53-701 et seq. The purpose and powers of the Association shall be all of the purposes and powers set forth in this declaration. The Association shall perform the duties and enforce the covenants and restrictions set forth in this Declaration.

4.2 Name. The name of this Association shall be North Fairway Homeowners Association.

4.3 Powers and Duties of the Association.

4.3.a. Powers. The 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 this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, including the following:

- (i) Assessments. The power to levy assessments (annual, special and limited) on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.
- (ii) Common Areas. The power to acquire, own or control Common Areas in the Properties, to maintain the same for the benefit of the Properties, to levy assessments and pay and provide for the maintenance of said Common Areas, and to take all necessary and proper action to provide for the management and use of the same.
- (iii) Enforcement. The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions thereof.

(iv) Delegation of Powers. The authority to delegate its power and duties to committees, officers and employees, or to appoint any person, firm or corporation to act as manager. Neither the 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 to be delegated.

(v) Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable and which are consistent with this Declaration (the Association Rules).

(vi) Emergency Powers. The Association or any person authorized by the Association may enter upon any Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.

(vii) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through or under the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation, and enjoyment of such Common Areas and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, servicing, operating or maintaining underground lines, cable, wires, pipes, conduits, and other devices for the transmission of any utility service or other public or quasi-public service.

(vii) Management. To contract with other entities to provide to the Association, or for the Association to provide to other homeowner associations management services, including accounting, collecting and disbursing homeowners assessments for the management of income, expenses and duties of homeowner associations.

4.3.b. Duties of the Association. Without limiting the generality thereof, the Association or its agents shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

(i) Insurance. Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:

- (a) Full coverage directors and officers liability insurance if the Board so elects including coverage for the Design Review Committee.
- (b) Such other insurance, including but not necessarily limited to, workers compensation insurance to the extent necessary to comply with all applicable laws.

- (c) Any liability, casualty or other insurance the Board may deem necessary to carry out the Association functions or to insure the Association against any loss, including coverage for the Design Review Committee.
  - (d) The Association shall be deemed trustee of the interests of all Members of the Association for 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.
  - (e) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.
- (ii) Rule Making. Make, establish, promulgate, amend and repeal the Association Rules.
  - (iii) Design Review Committee. Appoint and remove members of the Committee, upon the conditions specified in this Declaration.
  - (iv) Right of Way. Maintain, repair and replace any landscaping, fencing, or other improvements located on or within the Properties as the Board deems necessary or appropriate.
  - (v) Common Areas. Maintain, operate, repair, and provide for the use and management of all Common Areas, storage facilities, recreational facilities, within the Properties, including the installing, maintaining and protecting and replacing the plantings and landscape features on the Common Areas and the system necessary to maintain and improve such Common Areas.

4.4 Membership. Every Owner shall be a member of the Association. If title to a parcel is held by more than one person, the membership related to that parcel shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the parcel is held. Each such membership shall be appurtenant to the parcel upon which it is based and shall be transferred automatically by conveyance of that parcel. No person or entity other than an Owner may be a member of the Association, provided, however, that the rights of membership may be assigned to a mortgagee as further security for a loan secured by a lien on a parcel.

4.5 Administration. The Owners covenant and agree that the administration of the Common Areas property, the enforcement of covenants and restrictions, and exterior decoration functions of the Association Property shall be in accordance with the provision of this Declaration and the Rules and Regulations of this Association.

4.6 Meetings of Association.

4.6.a. Place of Meetings. Meetings of the Association shall be held at such place within the County of Bonneville, State of Idaho, as the Board of Directors may specify in the notice, except as herein otherwise specified.



4.6.b. Annual Meetings. The annual meetings of the Association shall be held on the first Thursday of November of each year, provided that the Board of Directors may by resolution, fix the date and place of the annual meeting on such other date or such other place in Bonneville County, Idaho, as the Board of Directors may deem appropriate.

4.6.c. Special Meetings. Special meetings of the Association may be called at any time by written notice signed by a majority of the Board of Directors, or by Owners having thirty percent (30%) of the total votes, delivered not less than ten (10) days prior to the date fixed for said meeting. Such meeting shall be held on the Project or such other place in Bonneville County, Idaho, as the notice may specify and the notice thereof shall state the date, time, place and matters to be considered and shall contain a proxy for absentee voting.

4.6.d. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered to each Association member either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to each Owner at the address given by such person to the secretary for the purpose of service of such notice or to the parcel of such person if no other address has been given. Such address may be changed from time to time by notice in writing to the secretary.

4.6.e. Quorum. At any meeting of the Association, the Owners of more than twenty-five percent (25%) of the voting rights, present, in person or represented by proxy, shall constitute a quorum for any and all purposes, except where by express provision of this declaration a greater vote is required, in which event a quorum shall be the number required for such vote. In the absence of a quorum a meeting may be adjourned from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any future gathering such an adjourned meeting where a quorum is present, any business may be transacted of which owners were originally notified.

4.6.f. Waiver of Notice. Any Owner may at any time waive any notice required to be given under this declaration or by statute or otherwise. The presence of an Owner in person at any meeting of the Owners shall be deemed such waiver.

4.7 Voting. Until January 1, 2008, unless sooner terminated as provided herein, the Association will have two (2) classes of voting memberships.

4.7.a. Class A. Class A members shall be the Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

4.7.b. Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to the number of votes which when added to the total number of votes outstanding from time to time shall equal a majority of the total votes outstanding for Class A and Class B memberships.

4.7.c. Termination of Class B Membership. The Class B Membership shall cease upon the conveyance to an owner other than the Declarant or an entity in which the Declarant is a partner, member or shareholder, of all property within the Project.

4.7 Action by Written Resolution. Any action that could be approved by a duly constituted meeting of the Association may be approved by written resolution in the following fashion:

4.8.a. By its own motion, or upon written petition signed by at least thirty percent (30%) of the Owners, the Board of Directors shall cause a statement of the proposal to be delivered to all parcel Owners. The statement shall set forth the proposed resolution and contain short statements from the proponents of the resolution and from the opponents of the action if any, which fairly set forth the arguments in favor and against the proposal.

4.8.b. The statement shall be accompanied by a ballot containing the proposal and shall state a period of time beginning at least ten (10) days and not more than twenty-one (21) days from delivery when the ballot will be returnable to the secretary of the association or other location designated by the board.

4.8.c. A statement and ballot shall be either hand delivered or mailed to each Owner at the address maintained on the records of the Association. Mail delivery shall be complete on mailing by first-class mail.

4.8.d. A resolution will be deemed approved upon the receipt by the appointed agent within the designated time period of affirmative ballots signed by a majority of all owners. If the action be one that requires a two-thirds majority of all homeowners, or two-thirds of the members in attendance at a duly called meeting, the receipt of affirmative ballots signed by two-thirds of all homeowners shall be required for approval.

4.9 Board of Directors.

4.9.a. Composition. The business of the Association shall be conducted by a Board of Directors and the officers herein described in accordance with this Declaration. The Board of Directors shall be composed of three (3) members, each of whom must be Owners of lots or interest holders in entities owning lots. On the majority vote of all parcel Owners at a duly constituted meeting of the Association or by written resolution signed by a majority of all parcel Owners, the number of Directors constituting the Board of Directors may be expanded.

4.9.b. Election. At the first special meeting of the Association called for that and any other purpose, an election of the Board of Directors shall be held for the initial Board of Directors. The Directors shall serve for a term of three years, with one elected one year, one elected the next and one every third year. The members of the Board shall hold office until their successors have been elected and hold their first meeting.

4.9.c. Vacancies. In the event of vacancies on the Board of Directors resulting from any reason whatsoever, a special meeting of the Association shall be called pursuant to Section 4.6.c, for the purpose of electing a director to fill the remainder of the term vacated.

4.9.d. Regular Meetings. A regular meeting of the Board of Directors shall be held immediately after the adjournment of each annual Association meeting. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the President or the Board of Directors may from time to time designate.

4.9.e. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the President or by two (2) or more members. By unanimous consent of the Board of Directors, special meetings may be held without call or notice at any time or place.

4.9.f. Quorum and Voting. A quorum for the transaction of business at any meeting of the Board of Directors shall consist of a majority of the Board of Directors. All action shall be approved upon the vote of a majority of those in attendance at the duly called meeting at which a quorum is in attendance. A member of the Board may be represented by a proxy if, but only if, the proxy is unanimously approved by all the other directors in attendance at the meeting.

4.9.g. Compensation. Members of the Board of Directors, as such, shall not receive any stated salary or compensation.

4.9.h. Waiver of Notice. Before or at any meeting of the Board of Directors, any member thereof may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

4.9.i. Adjournments. The Board of Directors may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.9.j. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Board of Directors handling or responsible for funds provide adequate fidelity bonds. The premium on such fidelity bonds shall be a common expense.

4.9.k. Indemnification. Each member of the Board of Directors shall be indemnified and held harmless by the Owners against all costs, expenses and liabilities whatsoever, including without limitation, attorney's fees reasonably incurred by a director in connection with any proceeding to which a director may become involved by reason of a director being or having been a member of said body. Expenses incurred by reason of this indemnification shall be a common expense:

4.9.l. Written Resolution. Any action of the Board of Directors that could be approved at a meeting may be taken without a meeting if a consent in writing setting forth the action to be authorized, shall be signed by all the Directors.

#### 4.10 Officers.

4.10.a. Designation and Election. The principal officers of the Board of Directors shall be a president, a vice-president and a secretary-treasurer, all of whom shall be elected

by and from the Board of Directors at its first meeting following the annual meeting of the Association for a one year term. The Board of Directors may appoint an assistant secretary-treasurer and such other officers as in its judgment may be necessary or desirable, but the same shall not be voting members unless elected from the Board of Directors.

4.10.b. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Board of Directors.

4.10.c. President. The president shall be the chief executive of the Board of Directors and shall exercise general supervision over the Association's Property and affairs. The president may also function as managing agent. The president shall sign on behalf of the Association all contracts relating to the Property and shall do and perform all acts and things which the Board of Directors may require of him. He shall preside at all meetings of the Association and the Board of Directors. He shall have all the general powers and duties which are normally vested in the office of the president of a corporation, including but not limited to, the power to appoint committees from among the members from time to time as he may be in discretion decide is appropriate to assist in the conduct of the Project. The president shall be the agent for serving process in any action relating to the common easement pursuant to Idaho Code § 55 1512.

4.10.d. Vice-President. The vice-president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice-president is able to act, the Board of Directors shall appoint some other members thereof to do so on an Interim basis. The vice-president shall also perform such other duties as shall from time to time be prescribed by the Board of Directors.

4.10.e. Secretary-Treasurer. The secretary-treasurer shall keep the minutes of all meetings of the Board of Directors and of the Association, have charge of the books and papers as the Board of Directors may direct, shall in general, perform all the duties incident to the office of the secretary-treasurer and shall have the responsibility for the funds and securities of the Association and shall be responsible for keeping full and accurate accounts of all receipts and all disbursements in books belonging to the Board of Directors. He shall be responsible for the deposit of all monies and all other valuable effects in the name and to the credit of the Association in such depositories as may be from time to time designated by the Board of Directors.

4.10.f Compensation. No compensation shall be paid to the officers for their services as officers. No compensation shall be paid to an officer for services performed by him for the Board of Directors in any other capacity, unless a resolution authorizing such compensation shall have been unanimously adopted by the Board of Directors before the services are undertaken.

4.11 Administrative Rules and Regulations. The Board of Directors shall have the power to adopt and establish by resolution such management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Property. The Declarant may adopt the initial regulations governing the use of all lots in the Property by the Owners without giving notice to the Owners; however, subsequent rules and regulations shall be adopted only after due notice of the

proposed rules and regulations is given to the Owners and the Owners are given an opportunity to present arguments for or against such rules and regulations.

4.12 **Obligation to Comply Herewith.** All owners shall comply with all provision of this Declaration and the administrative rules and regulations pertaining to the Project and shall require such compliance from their children, tenants, guests, employees and any other person whom they invite upon the Project. All agreements, decisions and determinations lawfully made by the Association shall be deemed to be binding on all owners and shall inure to their benefit. Each Owner, any group of Owners or the Association shall have standing and authority unless otherwise provided, to enforce by any legal means, including suit for specific performance, injunctive relief or damages, the provisions of the declaration and any duly adopted decisions or regulations of the Association.

4.13 **Personal Liability.** No member of the Board or any committee of the Association (including but not limited to the Design Review Committee) or any officer of the Association, or the Declarant, or the manager, if any, shall be personally liable to any Owner or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Design Review Committee, any other committee or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

## ARTICLE V

### COVENANT FOR MAINTENANCE AND ASSESSMENTS

5.1 **Contract for a Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following:

- 5.1.a. Annual regular Assessments or charges;
- 5.1.b. Special Assessments for capital improvements, as hereinafter provided.
- 5.1.c. Limited Assessments as hereinafter provided.

By acceptance of an interest in the property, the Owner contracts and agrees that the regular and limited Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successor in title unless expressly assumed by such successor.

5.2 **Purpose of Assessments.**

- 5.2.a. **Regular Assessments.** The regular Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of landscaped areas and Common Areas maintained by the Association, to pay property taxes and

other assessments, to maintain, operate and improve any Common Areas, and to pay other reasonable costs and expenses which are incurred by the Association in carrying out the duties and business of the Association.

5.2.b. Limited Assessments. Limited Assessments may be levied against any Owner in an amount equal to the costs and expenses incurred by, the Association, including legal fees, for corrective action necessitated by such Owner, and, further including without limitation, costs and expenses incurred for the repair and replacement of any property maintained by the Association damaged by negligent or willful acts of any Owner or occupant of a Lot who is occupying the Lot with the consent of such Owner, or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein.

5.3 Initial Regular Semi-Annual Assessment. The initial regular Assessment shall be zero (0). No assessment shall be due until the Association sets an Assessment following the procedures provided herein.

5.4 Maximum Annual Regular Assessment. The initial maximum annual Assessment shall be no more than One Hundred Twenty and No/100th Dollars (\$120.00) per Lot per year.

5.4.a. The maximum annual Assessment may be increased by the Board each year by not more than twenty percent (20%) above the maximum Assessment for the previous year without a vote of the membership of the Association as provided below.

5.4.b. The maximum annual Assessment may be increased above twenty percent (20%) by a majority vote of each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

5.4.c. The Board of Directors of the Association may fix the amount of the annual Assessment at an amount not in excess of the maximum as established from time to time.

5.4.d. The total annual regular Assessment levied against the Lots owned by the Declarant, shall be the lesser of (a) the amount of the regular assessment per Lot multiplied by the number of lots owned by the Declarant or (b) the difference between the total annual Assessment levied against lots owned by parties' other than the Declarant, and the reasonable expenditure of the Association for the purposes described in Section 5.2.a for the fiscal year.

5.5 Notice and Quorum for any Action Authorized Under Sections 5.2 and 5.4(b). Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.2 and 5.4(b) shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast thirty-three and one-third percent (33 1/3%) of all the votes entitled to be cast at the meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of all the votes of each class of membership. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

5.6 Rate of Assessment. Except as otherwise specifically provided herein, both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected on an annual or other basis as determined by the Association from time to time.

5.7 Date of Commencement of Annual Assessments - Due Dates. The annual regular Assessments or any special Assessments in effect, as provided for herein, shall commence as to a Lot or Lots already conveyed by Declarant to Owners on the first day of the first year following the recording of this Declaration and on the first day of the first year following the conveyance of the Lot or Lots from Declarant to an Owner or Owners. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board Of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

5.8 Effect of Non-Payment of Assessments - Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or transfer or abandonment of the Owner's Lot.

5.9 Association Lien for Unpaid Assessments. A lien shall attach to each Owner's Lot and all real property situated thereon for unpaid Assessments and interest accruing thereon as set forth herein.

5.10 Association Lien Subordinate to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. (Mortgage as used in this context includes conventional mortgages and deed of trust arrangements). However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, by the holder of the first mortgage shall extinguish the lien of such Assessments as to payment which became due prior to such sale or transfer but shall not extinguish personal liability of the seller or any lien for assessments due after transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

5.11 Subordination of Homestead. Each owner and member, now and in the future, to the extent permitted by law, hereby agrees that the lien for assessments shall be superior to and have prior claim over the benefit of any homestead on exemption laws of the State of Idaho.

## ARTICLE VI

### DESIGN REVIEW COMMITTEE

6.1 Members of the Committee. The Design Review Committee for the Property, sometimes referred to in this article as the "Committee" shall consist of three (3) members which shall be appointed by the Board. Each of said persons shall hold office until such time as said person has resigned or has been removed and a successor has been appointed by the Board. Members of the Committee serve at discretion of the Board.

6.2 Review of Proposed Construction. The Committee shall consider and act upon any and all proposals or plans 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, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or by written designation consistent with this Declaration, which types of improvements shall be submitted to the Committee for 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 any structure affected thereby and will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The maintenance of property values is a primary objective thereof and it is intended that all Residences, and lots with all improvements have a minimum market value, based upon current market conditions in the area, as shown on Table 3.1.a, attached hereto and incorporated herein by reference. The Committee may make provision in its rules and guidelines for implementation and maintenance of value standards that will carry out such intent.

6.2.a. 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 (hereafter "Applicant") to grant appropriate easements to the Association for the maintenance thereof, or upon the agreement of the Applicant to reimburse the 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.

6.2.b. Committee Rules and Fees. The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval. Such rules may require 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). Such fees shall be used to defray the costs and expenses of the Committee or for other purposes established by the Board.

Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures, as well as special architectural guidelines applicable to Lots located adjacent to public and/or private open space.

6.2.c. 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, landscape plans, drainage plans, elevation drawings, specification, and descriptions or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

6.2.d. Committee Decisions. Decisions of the Committee and the reasons therefore shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within ten (10) business days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Committee shall have been mailed to the



Applicant within ten (10) business days after the date of the filing of said materials with the Committee. The said ten (10) day period shall only commence to run when an authorized representative of the Committee has executed an applicable form acknowledging acceptance of such application and acknowledging that such application is complete.

6.3 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 not need 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 6.8. In the absence of such designation, the vote of any two (2) members 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.

6.4 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans, specifications or drawings for any work done or proposed, 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.

6.5 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, except as otherwise agreed by the Board.

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

6.6.a. 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.

6.6.b. Within sixty (60) 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 noncompliance within such sixty (60) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same.

6.6.c. If for any reason the Committee fails to notify the Owner of any-noncompliance within sixty (60) days after receipt of the written notice of compliance from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

6.7 Nonliability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, shall be liable to the 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, provided such person has, upon the basis of such information possessed by him, acted in good faith without willful or intentional misconduct. 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 in the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building or elements thereof, landscaping, color schemes, exterior finishes and materials and other similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be construed in any way

to relate to, structural safety of buildings and improvements or their conformance with building or other codes.

6.8 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 it deems such action appropriate because of the existence of circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations. 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 Bonneville County. If such a variance is 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 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.

## ARTICLE VII

### ANNEXATION OF ADDITIONAL PROPERTIES

7.1 Right of Annexation. Declarant presently intends to develop other neighboring properties and may, in Declarant's discretion, deem it desirable to annex some or all of such other properties to the Property covered by this Declaration. The annexed properties may, at Declarant's sole discretion be used and developed for any purpose allowed under appropriate zoning regulations. Such other properties may be annexed to the Property and brought within the provisions of this Declaration by Declarant, its successors or assigns, at any time, and from time to time so long as Declarant still owns at least one lot in the Properties, without the approval of any Owner, the Association or its Board of Directors. Thereafter annexation may occur on the affirmative vote of the Board of the Association. As such properties are developed, Declarant shall, with respect thereto, record a Supplement Declaration, which shall annex such properties to the Property and which may supplement this Declaration with such additional or different covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for the other properties or portions thereof and may delete or eliminate as to such other properties such covenants, conditions, restrictions, reservations and easements as Declarant deems not appropriate for the other properties.

7.2 Method of Annexation. Annexation of real property authorized under Section 1 hereof shall be accomplished by filing of record in the Office of the County Clerk of Bonneville County, Idaho, a Supplemental Declaration describing the real property to be annexed and extending the plan of this Declaration to such real property.

7.3 Supplemental Declarations. Each Supplemental Declaration contemplated by Section 7.2 hereof may contain such additional or different provisions, covenants, conditions and restrictions not found in the Covenants of this Declaration, provided that such shall not be inconsistent with the general plan of this Declaration. Said additional provisions may include, but need not be limited to, provisions for special maintenance, use restrictions, limited common areas, party walls, parking regulations and any other matters of common concern to owners of any lots in the annexed property. No provisions, covenants, conditions or restrictions contained in a Supplemental Declaration shall be considered

applicable to any real property except real property described in a Supplemental Declaration unless otherwise expressly provided.

7.4 Effect of Annexation. Upon the recording of a Supplemental Declaration, all the real property described or covered by the Supplemental Declaration shall be deemed subject to all of the Covenants contained in this Declaration as if, and to the same effect as, the annexed real property was part of the Subject Property (the real property originally specified in and subject to this Declaration) except as specifically stated in the Supplemental Declaration, and to the additional or different provisions, covenants, conditions and restrictions, which may be stated in the Supplemental Declaration; and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Subject Property. In the event of conflict or inconsistency between a Supplemental Declaration and this Declaration, the terms of the Supplemental Declaration shall prevail as to the particular real property described or covered by that Supplemental Declaration.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Enforcement. The Association or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.


8.3 Interpretation. The terms, covenants and conditions hereof are to be read and interpreted consistently and in a manner to protect Property values.

8.4 Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by sixty-six percent (66%) of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. This Declaration may be amended, restated, replaced, terminated or superseded during the first twenty (20) year period by an instrument signed by the President and Secretary of the Association affirming that such amendment was approved by two-thirds (2/3) of the Owners of the Lots covered by this Declaration at a noticed meeting of the Association of the Owners or by an instrument signed by the Declarant.

8.5 Effective Date. This Declaration shall be effective upon recording.

Dated 4/11/01

DECLARANT:  
Cambridge Development, Inc.

By   
Kevin Allcott, President