

**Instrument # 239915**

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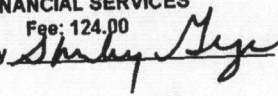
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MARY T. PRISCO

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Ex-Officio Recorder Deputy

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR ELK RUN SUBDIVISION**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR ELK RUN SUBDIVISION (hereinafter "Declaration") is made effective on the date it is recorded in the Official Records of Boise County, Idaho, by Hopkins Growth Fund, LLC, an Idaho limited liability company, "as trustee on a parity for the benefit of all Series "G" Debenture Holders" (hereinafter "Declarant"), successor in interest to Sharpe Enterprises, LLC, a Nevada limited liability company, pursuant to the Assignment of Declarant's Rights, recorded on December 29, 2011, as Instrument No. 233812, Official Records of Boise County.

**RECITALS**

WHEREAS, on March 30, 2007, the original Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Elk Run Subdivision (hereinafter "Original Declaration"), was recorded as Instrument No. 213040, Official Records of Boise County, Idaho;

WHEREAS, the property subject to this Declaration is known as the Elk Run Subdivision, and is described more particularly as follows:

Lots 1 through 46 inclusive, Block 1 of Elk Run Subdivision according to the official plat thereof, filed as Instrument No. 215597, records of Boise County, Idaho and amended by certificate recorded September 27, 2007, as Instrument No. 216201, records of Boise County, Idaho.

WHEREAS, the Original Declaration was subsequently amended by an Addendum Recordation, recorded on November 16, 2007, as Instrument No. 216909, Official Records of Boise County, Idaho; and by a second Addendum Recordation, recorded on November 28, 2007, as Instrument No. 217046, Official Records of Boise County, Idaho;

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

WHEREAS, as additional land owned by the Declarant adjacent to or in the vicinity of the Property is platted and developed for uses similar to that of the Property, upon election by the Declarant, such shall become subject to the terms of this Declaration by annexing the same as provided herein;

WHEREAS, additional land formerly owned and platted by the Declarant or a predecessor in interest of the Declarant may, upon the approval of the Declarant become subject to the terms of this Declaration by annexing all or any of the said Lots as provided herein, provided that the Owner of each Lot so annexed approves said annexation in writing;

WHEREAS, in order to achieve the objectives and desires of the Declarant, the Declarant will control the management and government of the Property and the non-profit Elk Run Homeowners Association, Inc., until such time as the Owners take over the management functions of the Association in accordance with this Declaration.

## **ARTICLE I** **DECLARATION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following Covenants, Conditions, Restrictions and Easements which are established for the purpose of protecting the value and desirability of, and which shall run with and bind, the Property, and each and every part, parcel and Lot thereof, and be binding on all parties having any right, title or interest in the Property or any part, parcel or Lot thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE II** **DEFINITIONS**

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

2.1 **Annexed Property** shall mean any real Property made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for the annexation of additional parcels of real Property.

2.2 **ARC** shall mean the Architectural Review Committee for the Subdivision, as fully described in Article VII of this Declaration.

2.3 **ARC Rules** shall mean such rules and regulations promulgated by the ARC as authorized herein.

2.4 **Articles** shall mean the Articles of Incorporation for Elk Run Homeowners Association, Inc., as filed in the office of the Idaho Secretary of State.

2.5 **Assessment** shall mean a payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.



2.6 **Associate Member** shall mean the owners of individual parcels of property that adjoin the Subdivision within the section of land known generally as Whispering Pines and the owners of the Ivy Dale Church Camp which adjoins the Subdivision to the south. Associate Members are explicitly defined as having rights of ingress and egress across all Subdivision roads, however, Associate Members are limited to this right alone, with no voting rights, or informational and/or organizational contributions rights.

2.7 **Association** shall mean the Elk Run Homeowners Association, Inc., a non-profit corporation organized under the laws of the State of Idaho, or any successor or assign of the corporation.

2.8 **Association Rules** shall mean the rules and regulations promulgated by the Board of Directions as authorized herein.

2.9 **Board** shall mean the duly elected and qualified Board of Directors of the Association.

2.10 **Building** shall mean a Structure constructed on a Lot on a permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

2.11 **By-Laws** shall mean the By-Laws of the Association, including any amendments thereto duly adopted.

2.12 **Common Areas** shall mean all property, or interest therein, located within or outside of the boundaries of the Property in which the Association owns an interest or controls or which the Association is obligated to maintain, and which is owned, held, or maintained for the betterment of the Owners and Occupants of the Property, including all Improvements thereon.

2.13 **Declarant** shall mean and refer to Hopkins Growth Fund, LLC, its successors and assigns, provided that such successor or assign has acquired more than two (2) Lots and that such lots constitute the remainder of unconveyed Lots owned by Declarant.

2.14 **Declaration** shall mean this instrument as it may be amended from time to time.

2.15 **Director** shall mean a member of the Board.

2.16 **Dwelling** shall mean a Building intended for use as a Single-family Residence.

2.17 **Exempt Property** shall mean all properties within the Property which have been dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit corporation exempt from taxation by the laws of the United States of America, all of which properties shall be exempt from Assessments created herein, except that such term shall not include any land or improvements devoted to Dwelling use.

2.18 **Improvements** shall mean all Structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting.

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

2.20 **Lot** shall mean and refer to all Lots within and shown upon any recorded subdivision map of the Property, except the Common Area, and except for streets dedicated to the public as shown upon the recorded plat map.

2.21 **Member** shall mean and refer to any person or entity who is a member of the Association as defined by the Articles and Bylaws of the Association and this Declaration.

2.22 **Mortgage** shall mean any mortgage or deed or other hypothecation of land located in the Subdivision to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a first Mortgage, and shall include a first deed of trust on a Lot in the Subdivision.

2.23 **Mortgagee** shall mean the holder of a Mortgage or the beneficiary under a deed of trust, including an assignee(s) thereof, which Mortgage or deed of trust encumbers a Lot in the Subdivision owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first deed of trust on a Lot.

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

2.25 **Officer** shall mean a duly elected or appointed officer of the Association.

2.26 **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 sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.27 **Period of Declarant Control** shall mean the period of time commencing upon the recordation of this Declaration and continuing for so long as Declarant owns any Lot in the Property, or for such shorter period as Declarant may, in its sole discretion, determine.

2.28 **Plat** shall mean a final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder, Boise County, Idaho, as the same may be amended by duly recorded amendments thereto.

2.29 **Property** shall mean the real property consisting of Elk Run Subdivision according to the official plat thereof and every part, parcel, and Lot thereof, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration by Supplemental Declaration, pursuant to the provisions hereof for the annexation of additional parcels of real property.



2.30 **Records of the Association** shall have the same meaning as "corporate records" defined in the Idaho Non-profit Corporation Act, Idaho Code § 30-3-13.

2.31 **Regular Assessment** shall mean an Assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

2.32 **Single-family Residence** shall be defined by building codes applicable to Boise County, Idaho.

2.33 **Special Assessment** shall mean an Assessment levied by the Association due to a shortfall in the budget or Regular Assessments, or due to the transfer of any Lot or Dwelling.

2.34 **Structure** shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. Among other things, a Structure shall include a Building and a Dwelling.

2.35 **Subdivision** shall mean the whole of the Property and any additional land annexed thereto as provided herein, including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as "Property").

2.36 **Supplemental Declaration** shall mean the additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision promulgated by the Declarant and recorded in the official records of Boise County, Idaho. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include any "Supplemental Declaration(s)."

Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

### **ARTICLE III** **COMMON AREAS**

Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Areas, which shall be appurtenant, to and shall pass with the title to every Lot subject to the following provisions:

3.1 **Dedication**. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by two-thirds (2/3) of the votes of each class of Members of the Association.

3.2 **Delegation**. Any Owner may license or delegate his right of enjoyment of the Common Areas to the members of his family, his Occupants or tenants, or contract purchasers who reside on the Property, subject to the provisions of this Declaration.

3.3 **Easements.** The Association shall have the right to grant easements in the Common Areas for utilities and similar purposes. Each Lot Owner shall have an unrestricted right of ingress and egress to his/her Lot over and across all Common Areas.

3.4 **Easement on Forest Service Land.** Each Lot Owner and Associate Member of the Association shall have an unrestricted right of ingress and egress across the section of Forest Service land described in the U.S. Department of Agriculture/Forest Service Easement attached as Exhibit A. Notwithstanding the provisions in this Declaration regarding amendments, this easement granted to Associate Members may not be terminated.

3.5 **Enforcement.** The Association, the Architectural Review Committee, the Declarant, and any Lot Owner or Owners shall have the right to enforce the provisions of this Declaration as provided for in this Declaration.

3.6 **Improvements.** The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Areas and in support thereof to mortgage said Property, provided that the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this Declaration.

3.7 **Rules And Regulations.** The Association shall have the right from time to time to adopt, amend, or repeal rules and regulations regulating, among other things, the use and enjoyment of the Common Areas.

#### **ARTICLE IV** **RIGHTS RESERVED BY DECLARANT**

4.1 **Powers and Rights During Period of Declarant Control.** During the Period of Declarant Control, Declarant shall have the following powers:

- A) To appoint and remove the members of the Association Board;
- B) To appoint and remove the Officers of the Association;
- C) To appoint and remove the members of the ARC; and
- D) To unilaterally amend this Declaration from time to time. In the event of such amendment, the Association shall, within thirty (30) days of recordation of the amendment, cause to be hand-delivered or sent via first-class U.S. mail to each Lot Owner, a copy of the amendment.
- E) Declarant's written approval shall be required before any amendment to the Declaration which affects Declarant's rights or interests can be effective.
- F) All or any portion of Declarant's rights as designated in this Declaration may be assigned to any successor in interest via a recorded Assignment which specifies the rights of Declarant so assigned.



4.2 **Reserved Rights.** Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

- A) Itself, its employees, agents, representatives, contractors and their subcontractors and employees, and its successors and assigns, easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real Property owned by Declarant, or its successors or assigns;
- B) Itself, its employees, agents, representatives, contractors and their subcontractors and employees (including any district, company, unit of local government, association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), and its successors and assigns, easements, access and rights-of-way on, over, under and across all or part of the Common Areas and utility easements on, over and under all Lots and Common Areas as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and
- C) Itself, its employees, agents, representatives, contractors and their subcontractors and employees, and its successors and assigns, the right to use the Common Areas, where applicable, to facilitate and complete the development of the Property, and any Annexed Property, including without limitation the use of the Common Areas, where applicable, for:
  - 1) Construction, excavation, grading, landscaping, parking and/or storage;
  - 2) Maintenance and operation of a sales office and model homes for sales purposes;
  - 3) The showing to potential purchasers of any unsold Lot, or other Improvements within the Property;
  - 4) Display of signs to aid in the sale of any unsold Lots, other Improvements, or all or part of the Property;
  - 5) Construction, operation and maintenance of all or any portion of any Common Areas by Declarant, its successors or assigns.

**ARTICLE V**  
**HOMEOWNERS ASSOCIATION**

5.1 **Formation.** Declarant has reinstated the Elk Run Homeowners Association, Inc., an Idaho non-profit corporation which is charged with the duties and vested with the powers prescribed under the Idaho Code, the Articles, Bylaws, and this Declaration. To the extent the Articles of Incorporation or Bylaws of the Association may conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

5.2 **Membership.**

A) Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

B) Every owner of record of property defined in Section 2.6 shall be an Associate Member of the Association, granted only the rights as defined in such Section 2.6. Such Associate Member's interest is appurtenant to and may not be separated from ownership of such defined property.

5.3 **Voting.** The Association shall have two (2) classes of voting membership; however, all votes shall be equal and counted as such, except where voting by separate classes may otherwise be provided in the Articles and Bylaws of the Association or this Declaration.

A) Class A Members shall be Lot Owners with the exception of the Declarant (during the period when the Declarant is a Class B Member). Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person is an Owner of a 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.

B) The sole Class B Member shall be the Declarant, who shall be entitled to five (5) votes for each Lot owned. Class B membership shall cease and be converted automatically to Class A membership (one (1) Class A membership for each Lot owned) on the earlier of the following:

1) Thirty (30) days after all Lots have been sold to Owners other than Declarant;

or

2) Twenty years from the recording date of this Declaration.

C) Whenever the vote of a majority of the Members is required under this Declaration, such Majority shall mean those Members representing fifty-one percent (51%) of the voting rights in the Association, in accordance with Article II of the Bylaws of the Association.



5.4 **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of at least three (3), and no more than seven (7) Directors, in an odd number, and such Officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and Bylaws. The initial Board of Directors of the Association shall be appointed by the Declarant and shall hold office until the end of the Period of Declarant Control, at which time a new Board of Directors shall be elected in accordance with the provisions set forth in the Bylaws. Whenever a majority of the Directors is required under this Declaration, such majority shall consist of those Directors representing more than half the number of Directors then currently serving the Association, in accordance with Section 5.2 of the Bylaws.

5.5 **Powers of the Association.** 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 the Articles of Incorporation, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done by it under this Declaration, the Articles of Incorporation, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the proper management and operation of and the performance of the other responsibilities herein assigned, including without limitation:

- A) The power to levy Assessments (Regular, Special, and Limited) on the Owners of Lots and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration, the Articles of Incorporation, and Bylaws.
- B) The power to adopt, amend, and repeal by a Majority vote of the Board of Directors such Rules and Regulations as the Association deems reasonable (the "Association Rules"). The Association Rules shall govern the use of the Common Areas by the Owners, family members of an Owner, or any Occupant, invitee, licensee, lessee, or contract purchaser of an Owner; provided, however the Association rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles of Incorporation, or the Bylaws. A copy of the Association Rules and Regulations, as they may from time to time be adopted, amended, or repealed, shall be hand-delivered or sent via first-class U.S. Mail to the Lot address or such other address designated by the Owner in writing to the Association, within thirty (30) days of such adoption, amendment, or repeal. Upon such mailing or delivery to all Owners, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between any Association Rules and any other provision of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of any such inconsistency.
- C) The power 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 or the Articles of Incorporation or Bylaws, including the Association Rules and Regulations adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise all provisions hereof.

- D) The authority to delegate its power and duties to committees, Officers, employees, or to any person, firm, or corporation to act as manager. Neither the Association nor the members of the Board of Directors shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.
- E) The power to grant and convey to any third party such licenses, easements, and rights-of-way in, on, or under the common areas as may be necessary or appropriate for the orderly maintenance and preservation of the health, safety, convenience, and welfare of the owners, or for the purpose of constructing, erecting, operating, or maintaining:
  - 1) Underground lines, cables, wires, conduits, and other devices for the transmission of electricity for lighting, heating, power, telephone, and other purposes;
  - 2) Public sewers, storm drains, water drains and pipes, or water systems; and
  - 3) Any similar public or quasi-public improvements or facilities. The right to grant such licenses, easements, and rights-of-way are hereby expressly reserved to the Association.

5.6 **Duties of the Association.** In addition to the powers granted to it by the Articles of Incorporation and this Declaration, and without limiting the generality thereof, the Association or its agent, if any, shall conduct all general business affairs of common interest to all Owners including the following:

- A) Operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of any Common Areas, or other property acquired by the Association, including the repair and replacement of property damaged or destroyed by casualty loss.
- B) Pay all real and personal property taxes and assessments separately levied against the Common Areas owned and managed by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided, however, that such taxes and assessments be paid or a bond insuring payment be posted prior to the sale or disposition of any property to satisfy the payment of such taxes or assessments. In addition, the Association shall pay all other taxes, whether federal, state, or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax-exempt corporation.



- C) Acquire, provide, and/or pay for water, sewer, garbage disposal, refuse collection, electrical, or any other necessary services for the Common Areas and other property owned or managed by the Association.
- D) So long as the Association owns the roads located within the Subdivision, the Association shall provide for the plowing, sanding, and removal of snow from the roadways throughout the Subdivision, including the section of Shaw Gulch Road which is included in the U.S. Department of Agriculture/Forest Service Easement attached as Exhibit A hereto.
- E) Operate, maintain, and replace a water pump truck and buried water supply tank, standpipes, or other form of fire protection for emergency fire-fighting purposes, as necessary and as required by the Boise County fire department, costs of which shall be paid by the Association and assessed to each Member.

5.7 **Personal Liability.** No member of the Board of Directors or any committee of the Association, nor any Officer of the Association, nor the manager if any, nor the Declarant, shall be personally liable to any Owner or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board of Directors, the manager if any, or any other representative or employee of the Association, or any committee, or any Officer of the Association, or the Declarant, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

5.8 **Dissolution.** In the event the Association is dissolved, the assets of the Association shall be dedicated to a public body or conveyed to another non-profit organization with similar purposes.

## **ARTICLE VI** **ASSESSMENTS**

6.1 **Covenant and Claim of Lien.** Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each Lot owned, to pay to the Association (a) Regular Assessments, and (b) Special Assessments, and (c) Limited Assessments, such assessments to be established and collected as hereinafter provided. All such Assessments, together with interest, costs and reasonable attorney fees which may be incurred in collecting the same, shall be a charge on the land and a continuing lien upon the Lot against which such Assessment is made.

6.2 **Exempt Property.** Notwithstanding any other provision in this Declaration to the contrary, Exempt Property shall not be subject to the Assessments provided for herein unless a Dwelling is constructed thereon.

6.3 **Property Owned by Declarant.** Notwithstanding any other provision in this Declaration, Declarant shall not be liable to the Association for any Assessments levied hereunder for any Lots owned by Declarant.

6.4 **Regular Assessments.**

- A) Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board. The Regular Assessments shall be based upon advance estimates of annual cash requirements as determined by the Board for the maintenance and operation of the Common Areas and all easements, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve or surplus fund. Such reserve or surplus fund may be established at the discretion of the Board for the purpose of providing for both anticipated and unexpected future expenses of the Association.
- B) The Board will compute the amount of the initial Regular Assessment beginning the first day of the month after the month in which the Association is reinstated (Initiation Date). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) days 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 prorated if such period is less than one (1) year.

6.5 **Special Assessments.** The Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- A) **Short-Fall.** In the event that the Board shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the expenses of the Association for any reason, including but not limited to, costs of any construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Areas or any Improvement located thereon or an easement area controlled by the Association; the furnishing of a special service or services (other than those appropriate for a Limited Assessment); attorney fees and/or litigation costs or other professional fees; any other expenses incurred or to be incurred as provided for in the Declaration; or for any other reason, the Board shall determine the approximate amount necessary to defray such expense and levy a Special Assessment. No Special Assessment shall be levied which exceeds twenty-five percent (25%) of the budgeted gross expenses of the Association for that fiscal year, without the approval of a Majority of the Members of the Association, who are voting in person or by proxy at a meeting duly called for this purpose. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.



- B) **Transfer.** Upon each transfer of any Lot or residence in the Subdivision, including the initial purchase of a Lot from Declarant, each buyer shall pay the Association a special transfer Assessment, as set forth in the Association Rules, and which shall be used for general Association purposes.

6.6 **Limited Assessments.** The Association may levy Limited Assessments in the following circumstances:

- A) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvement on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Areas or any other portion of the Property and if the Owner of said Lot has failed or refused to perform said maintenance or repair after written notice of the necessity thereof has been delivered by the Board to said Owner in accordance with Section (C) below. The Board shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such maintenance and repair, together with any other cost or expense, including management fees and attorney fees, arising out of or incident to such maintenance and repair or the collection of the Assessment therefore.
- B) **Correction of Violation.** In addition to the power to perform maintenance and repair, the Board, upon the failure or refusal of an Owner to correct a violation of this Declaration, the Association Rules, or ARC Rules, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith after written notice of the required correction has been delivered by the Board to said Owner in accordance with Section (C) below. The Board shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such correction, together with any other cost or expense, including management fees and attorney fees, arising out of or incident to such correction or the collection of the Assessment therefore.
- C) **Notice.** The Owner of the Lot which is in need of maintenance, repair, or corrective action as set forth above, shall be given ten (10) days' written notice of the maintenance, repair, or corrective action required. The notice shall be delivered personally to such Owner or sent via first-class mail or certified mail to the last known address of such Owner as shown on the records of the Association.
- D) **Collection Costs.** Each Owner against whom a Limited Assessment is levied agrees to and shall pay all the costs of said maintenance, repair, or corrective action, plus interest on all expended funds, from the date of expenditure at the rate of two percent (2%) per month or twenty-four (24%) per annum, plus a management fee equal to ten percent (10%) of all the costs expended for the corrective action and all attorney fees incurred, which amounts shall be added to and become a part of the Limited Assessment against that Lot and Owner, and shall create a lien enforceable in the same manner as other Assessments set forth

in this Declaration. If such an Assessment is not paid within (10) days of notice of the Limited Assessment, the Owner shall also be subject to late fees and collection procedures set out herein.

6.7 **Collection of Assessments.** Any Assessment not paid within thirty (30) days after the due date shall be assessed an additional late charge of \$25.00 per each month (or portion thereof) the payment is late, plus interest from the due date at the rate of two percent (2%) per month or twenty-four percent (24%) per annum, or at such other rate as may be established annually by the Board. Each Assessment, when levied, shall automatically constitute a lien on and against the Lot to which the Assessment pertains, without any requirement of filing any documentation of such lien. The Association may nonetheless file an Affidavit or Claim of Lien evidencing such lien at any time after the due date of the Assessment.

- A) The Association may, from time to time, retain the services of a professional organization, bank, credit bureau, attorney, accountant, or such other disinterested party or entity for the purpose of giving notice and collecting the Regular, Limited or Special Assessments.
- B) The Association may:
  - 1) Bring an action at law against the Owner personally for the Assessment, late fee and interest due, and the costs of action; or
  - 2) Foreclose the lien against the Lot in the manner provided by Idaho law; or
  - 3) Use the enforcement procedures provided in Article IX of this Declaration, or the Bylaws.
- C) In the event of enforced collection of an Assessment, the costs of collection, including management and processing fees as well as reasonable attorney fees, shall be added to the amount of the Assessment for collection.
- D) No Owner may waive or otherwise escape liability for the Assessments provided for herein by failure to use the Common Areas or by the abandonment of his/her Lot.

6.8 **Personal Obligation.** Each such Assessment, together with interest thereon at the legal rate as set forth in Idaho Code § 28-22-104(2), reasonable collection costs incurred by the Association, and reasonable attorney fees shall be the personal obligation of the Owner of such property at the time when the Assessment becomes due, and shall remain the personal obligation of such Owner after transfer of such property and a continuing lien against the Lot until paid. A transferee of a Lot shall be jointly and severally liable with the transferor for all unpaid assessments against the Lot until the time of the transfer or conveyance, without prejudice to the transferee's right to recover from the transferor the amount paid by the transferee for such Assessments. For the purposes of Sections 6.8 and 6.9, the term "transferee" shall not include the buyer at a duly scheduled and held trustee's sale or sheriff's sale of a deed of trust or mortgage upon any Lot. Neither the buyer at such sale nor any successor to such



buyer shall be deemed to be personally liable for any unpaid Assessments accrued prior to the time of the trustee's sale or sheriff's sale.

6.9 **Subordination of Assessment Liens to Mortgages.** The lien of any unpaid Assessments provided for herein shall be subordinate to the lien of any first Mortgage. The voluntary sale or transfer of a Lot shall not affect the Assessment lien, nor shall the transferee in such voluntary sale or transfer be relieved from personal liability for any such Assessment or from the lien thereof.

6.10 **Rights of Mortgagees.** Mortgagees shall not be required to collect Assessments on behalf of the Association. The Owner's failure to pay Assessments due to the Association shall not constitute a default under any Mortgage affecting the Owner's Lot.

6.11 **Certificate.** Upon written request by an Owner, and for a reasonable charge, the Association shall provide a certificate signed by an Officer or representative of the Association setting forth whether the Assessments on a specified Lot have been paid.

## **ARTICLE VII** **ARCHITECTURAL REVIEW**

7.1 **Creation of Architectural Review Committee.** In order to protect the quality and value of the homes built on the Property and for the continued protection of the Owners thereof, an Architectural Review Committee ("ARC") may be established, consisting of three (3) members, to be initially appointed by Declarant, if Declarant chooses to establish the ARC prior to turnover of the Association to the Owners. So long as the Declarant owns any Lot or parcel within or adjacent to the Property, the Declarant shall have the sole right to appoint and remove all members of the ARC, if such is established. Thereafter, the members of the ARC shall be appointed or removed by the Board.

7.2 **If an ARC is not Established.** If an ARC is not established by the Declarant or the Association, all approvals required from the ARC, as described below, shall instead be required from the Association, acting through its Board of Directors, and all references to the ARC in this Declaration shall instead be deemed to refer to the Association, acting through its Board of Directors.

7.3 **Approvals Required.** No Building, fence, wall, pool, patio cover, window awning or other Structure or landscaping improvements of any type shall be commenced, erected or maintained upon any Lot or Common Area, nor shall any exterior addition to or change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location of the same and such other detail as the ARC may require (including but not limited to any electrical, heating or cooling systems) shall have been submitted to and approved in writing by the ARC as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with the requirements of this Declaration. Such plans and specifications shall be submitted to the ARC at the mailing address of the Association, which address is maintained by the Idaho Secretary of State. In the event the ARC fails to approve, disapprove or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the ARC in such form as it may require, approval will not be required, and this Article will be deemed to have been fully complied with.

7.4 **ARC Rules and Regulations.** The ARC is hereby authorized to adopt rules to govern its procedures including such rules as the Committee deems appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties to be heard on any matter before the Committee. The Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration with regard to matters requiring the ARC's approval, including matters of design, materials, and aesthetic interest.

7.5 **Fees.** The ARC may establish by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications to the Committee for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the ARC for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including any inspections which may be required.

7.6 **Waiver.** The approval of any plans, drawings or specifications for any plans, improvements or construction, or for any matter requiring the approval of the ARC, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

7.7 **Variances.** The ARC shall have the ability to grant variances in regard to specific cases.

7.8 **Liability.** Neither the ARC nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the ARC or any members thereof, so long as the Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

7.9 **Review of Exterior Appearance, Walls, Etc.** The visual harmony and aesthetic appeal of the Property being of mutual concern to all Owners and having a direct bearing on the value of Lots and Improvements thereon, the ARC shall, without limiting the generality of the foregoing sections, have the right to review the texture, design and color scheme of the outside walls, fences, screening devices, roofs, patio roofs, and covers of all Structures erected upon any Lot and to require basic landscaping and maintenance thereof. The Owner shall not repaint the outside walls or fences without the prior approval of the ARC as to color. All open porches and patio roofs shall require the prior approval of the ARC.

## **ARTICLE VIII** **USE AND BUILDING RESTRICTIONS**

The use of any Lot and the construction of any Improvements thereon, shall be subject to the following requirements and restrictions:

8.1 **Residential Use of Property.** All Lots shall be used for single-family residential purposes and such uses as are customarily incidental thereto. No Lot shall be used at any time for commercial or business purposes except for such commercial or business purposes as shall be conducted and maintained solely within a residential Dwelling, provided that no signs relating to said commercial or business activities shall be displayed where visible from any public or private road within the Subdivision; and further provided that such business does not employ any person not living



within the Dwelling constructed on the said Lot. Notwithstanding the foregoing, the Declarant, or persons authorized by the Declarant, may use a Lot or Lots for development and sales activities relating to the Subdivision, including but not limited to use of Lots for model homes or a real estate marketing and sales office. The restrictions set forth herein shall be interpreted and construed in accordance with state and federal law and shall not be enforced against any business, entity or person on the basis of race, color, religion, sex, handicap, familial status, or national origin.

8.2 **Building Permit/Certificate of Occupancy.** Prior to commencement of construction on any Dwelling, the Lot Owner shall obtain an "Upgraded" Building Permit from Boise County, and prior to occupancy, shall obtain a Certificate of Occupancy from Boise County, to ensure that all Dwellings are constructed and inspected according to Idaho Building Codes.

8.3 **Building Restrictions.**

- A) Each Dwelling shall consist of a minimum of one thousand (1,000) square feet, and a maximum of five thousand (5,000) square feet, including all attached garages or enclosed porches, or as approved by the ARC. Other Structures may be built on a Lot with approval of the ARC.
- B) No Building, Structure, or Improvement shall be constructed, erected, altered or maintained on any Lot, nor shall any portion of the Property be used, designed or intended to be used for any purpose other than a Single-family Residence that includes a foundation, together with usual and appropriate structures, if any, approved by the ARC provided however that an office and model home or homes for the purpose of the development, construction and marketing of Lots and homes in the Property may be maintained by Declarant. All Buildings, Structures, and Improvements must comply with the applicable ordinances of Boise County.
- C) No Improvement shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved in writing by the ARC in accordance with the provisions of Article VII hereof, and which also comply with the applicable ordinances of Boise County.
- D) All Buildings shall be constructed of noncombustible materials, including the roof covering, as defined and required by Boise County. A copy of the current requirements/ordinances may be obtained from Boise County.
- E) No Buildings may be constructed of vinyl siding.
- F) All Buildings on the same Lot shall be constructed of the same or similar materials to achieve a uniform appearance.
- G) No roofs may be constructed with aluminum roofing.
- H) All Buildings on the same Lot shall have roofs constructed of the same or similar materials to achieve a uniform appearance.

- I) No Dwelling shall exceed forty (40) feet in height, above grade at its highest point, or as required by Boise County, whichever is less. The ARC may allow a variance to accommodate pitch of roof or slope of property. No other Structure shall exceed twenty-two (22) feet in height, above grade to its highest point, unless the ARC approves the same in writing.

8.4 **Setback.** Subject to the requirements of the applicable ordinances of Boise County and the rights of the ARC to approve the site plan for any Building to be constructed upon a Lot:

- A) All Dwellings, Buildings and Structures shall be subject to a fifty-foot (50') front setback, and thirty-foot (30') side and back setbacks, except that applicable setbacks may be changed by the ARC if necessary to accommodate individual Lot layout issues. Notwithstanding the provisions herein regarding setbacks, if the applicable ordinances of the governmental entities having jurisdiction over the Property require setbacks different than those provided herein, the more restrictive shall prevail.
- B) For the purpose of this Section, eaves, steps, chimneys and gutters shall not be considered as a part of the Structure; provided, however, that this Section shall not be construed to permit any eaves, steps, chimneys or gutters or any portion of a Structure to encroach upon any other Lot. Open porches shall not be considered as a part of Building for purposes of this Section, but any open porch shall, prior to construction, require the approval of the ARC.

8.5 **Building Site Subdivision.** A building site shall consist of at least one (1) Lot, or a parcel composed of more than one (1) Lot. No Lot shall be further subdivided after the initial transfer thereof by Declarant. No parcel composed of more than one (1) Lot conveyed for the purpose of constructing a Single-Family Residence thereon, shall be subdivided or conveyed other than as a single indivisible parcel unless title thereto reverts to Declarant.

8.6 **Construction.** During the course of construction, no trailer, tent, shack, garage, barn or other unattached Structure shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No Building or Structure of any kind shall be erected or maintained on a Lot prior to the construction of the Dwelling thereon. Notwithstanding this Section, a temporary sales office of a portable nature may be placed upon any Lot by Declarant or its authorized agents, to facilitate Lot or house sales.

8.7 **Completion of Construction.** Construction of a Dwelling must be completed within six (6) months from initiation of construction. "Initiation of construction" shall mean the excavation work necessary to begin construction of the Dwelling. During construction, the Lot must be cleaned of trash and debris nightly and maintained in a non-nuisance condition. If construction is not completed within six (6) months from initiation of construction, the Association may impose a monetary penalty or fine on the Lot Owner(s) in accordance with the Association Rules or ARC Rules.



8.8 **Drainage.** No Lot Owner may alter or interfere with the drainage pattern over any Lot so as to impact any other Lot or Common Area, unless plans and specifications for such alteration are approved in advance by the ARC.

8.9 **Fences and Walls.** No fences or walls shall be constructed, erected, installed or maintained on any Lot unless specifically approved by the ARC in writing, in advance of construction, as to location, material, design and color. Fences must be constructed of natural wood (no barbed wire), or as otherwise approved by the ARC, and subject to any other requirements of the ARC. Fencing and wall specifications and location must be submitted for ARC written approval prior to the commencement of construction of such fence or wall.

8.10 **Mining and Drilling.** No derrick or other structure designed for use in boring or drilling for oil, natural gas or other products shall be erected, placed, permitted or maintained upon any portion of the Property, nor shall any oil, natural gas, petroleum, asphalt or other hydrocarbon product or substance be produced or extracted by or from any well upon, in or under said Property. No oil drilling, oil development operations, oil refining, mining, quarrying or other mineral excavation or similar activity shall be permitted on or under any part of the Property, nor shall oil wells, tanks, tunnels, mineral excavations, shafts or drifts be permitted upon or in any Lot. No excavation for stone, sand, gravel, earth or minerals shall be made upon a Lot, unless and only to the extent, such excavation is necessary in connection with the construction of an approved Structure thereon.

8.11 **Animals.**

- A) A reasonable number of “permitted animals” may be raised, kept, and bred on a Lot, subject to the further limitations in Sections (B) through (I) below, and any breeding activities may not be a primary business of the Lot Owner. “Permitted animals” shall include only the following:
- 1) Dogs not known for aggressive or vicious behavior;
  - 2) Domestic cats;
  - 3) Small domesticated animals kept in cages or aquariums such as rabbits, rodents, lizards, snakes, and fish;
  - 4) Chickens;
  - 5) Caged birds, including falcons, hawks, or similar birds used for hunting;
  - 6) Equine animals, defined to include only horses, mules, burros, and llamas.
- B) All other animals, including cattle, swine, poultry, sheep, and goats are prohibited without specific approval of the Association.
- C) A maximum of four (4) dogs and four (4) domesticated cats are allowed per Lot, with the exception of the offspring of such animals, which may be kept on such Lot until the weaning of the offspring or a maximum of three (3) months from birth.

- D) Only one equine animal is allowed per acre per Lot, with the exception of the offspring of such equine animal, which may be kept on such Lot until the weaning of the offspring or a maximum of three (3) months from birth.
- E) All animals must be contained within the boundaries of each Lot and may not be allowed to roam free.
- F) No animals, whether individually or by virtue of the number of such animals, may be allowed to become a nuisance to any Member, nor may the number of such animals be allowed to increase to such a number as would be considered unreasonable for a residential area. The determination of "reasonable" and "unreasonable" shall be left to the discretion of the Board or the ARC, and shall take into account the specific facts of each situation.
- G) No signs are permitted on any Lot advertising the breeding or sale of any permitted animal.
- H) No breeding activity on any Lot can be so large as to require employees, which could be considered a commercial activity, which impacts the health and safety of any animal or Member, which violates any ordinance of Boise County, or which constitutes a nuisance to any Member.
- I) The Association may impose a monetary penalty or fine on any Owner or Member for failure to correct a violation of this Section after being given ten (10) days' notice by first-class or certified U.S. mail pursuant to Section 6.6(C).
- J) Homeowners acknowledge that any animals kept on the Property may attract predators from the adjacent forest. The Association shall not be liable for any personal injury or property damage caused by such predators or for any other reason.

8.12 **Trees.** No live trees whose diameter exceeds six (6) inches may be cut or destroyed without prior written approval by the ARC.

8.13 **Landscaping.**

- A) Each Lot Owner has the right to install additional landscaping beyond that naturally occurring on the Lot, subject to approval of the ARC. Prior to construction of Improvements, the Owner shall remove weeds and maintain the Lot in a clean and safe condition free of debris or any hazardous condition.
- B) The yards and grounds of all improved properties shall be maintained in a neat and attractive condition and in an appearance not out of keeping with that of typical improved properties in the tract.



- C) Owners shall cut and remove weeds and brush to reduce the risk of fire in accordance with Article XIII of this Declaration and requirements of Boise County.
- D) Invasive plants and noxious weeds are prohibited from being introduced or grown on each Lot, including, but not limited to: Canada Thistle; Dalmatian Toadflax; Leafy Spurge; Spotted Knapweed, and any noxious weeds or invasive plants as designated by Boise County or the State of Idaho. Lot Owners are responsible for eradication of any invasive plants or noxious weeds should they be present on their Lot. The Association may add to this list of prohibited plants. If the Lot Owner fails or refuses to remove the prohibited plants after being given ten (10) days' written notice to do so pursuant to Section 6.6(C) of this Declaration, the Association may enter the property to perform the eradication, with the expenses incurred to be charged as a Limited Assessment as allowed in this Declaration.
- E) The Subdivision is a winter range area for deer and elk, which might eat or otherwise damage the landscaping on a Lot. Neither the Declarant, Association, Boise County, nor the Idaho Department of Fish and Game shall be responsible or liable for such damage. The Lot Owner is solely responsible for repairing such damage in a timely manner, but in no event shall such repairs occur later than the first day of June following the winter in which the damage was incurred. If the Lot Owner fails or refuses to repair the damage after being given ten (10) days' written notice to do so pursuant to Section 6.6(C) of this Declaration, the Association may enter the property to perform the repairs, with the expenses incurred to be charged as a Limited Assessment as allowed in this Declaration.

8.14 **Unightly Structures, Property or Practices.** No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing, the following specific restrictions shall apply:

- A) All unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view.
- C) All refuse, garbage, and trash shall be kept at all times in covered containers, which shall be kept and maintained within an enclosed structure or appropriately screened from view except when necessarily placed for pick up by garbage removal service not to exceed 18 hours in any one week period (Monday through Sunday).
- D) Storage piles and compost piles shall be screened from view in a location and of construction approved by the ARC; and located and maintained in a manner to avoid any endangerment of, or nuisance to, adjacent Lot Owners. No lumber, grass, shrubs or tree clippings or scrap, refuse, trash or other materials shall be kept, stored or allowed to accumulate on any Lot.

8.15 **No Hazardous Activities or Nuisances.** No activities shall be conducted, nor any Improvements constructed, which are or might be considered unsafe or hazardous to any person, or which causes a nuisance to any other Lot Owner.

8.16 **Material Storage and Maintenance of Vacant Lots.** No building materials of any kind shall be placed or stored upon a Lot until the Owner is ready and able to commence construction and then such material shall be placed within the property lines of the Lot upon which the Structure is to be erected. The Owner is responsible for reasonably maintaining all weeds while any Lot is vacant.

8.17 **No On-Street Parking.** Except in the event of an emergency, there shall be no parking on the streets within the Subdivision, including, but not limited to personal transportation vehicles, vehicles of family, tenants, guests or invitees, inoperable vehicles, commercial-type vehicles, or recreational vehicles.

8.18 **Recreational and Other Vehicles.** Trailers, travel trailers, RV's, boats, tractors, campers, utility trailers, recreational vehicles including, but not limited to, all-terrain vehicles, motorcycles, jet skis, snowmobiles, garden or maintenance equipment and vehicles other than automobiles may be parked on a Lot, so long as they are parked behind the front building setback. Recreational vehicles may not be used as living quarters, with the exception of temporary camping as described in Section 8.20 below. No inoperative vehicles shall be parked or stored at any time within the Property. No vehicles shall be parked with a "For Sale" sign displayed except for those driven on a daily basis.

8.19 **Permitted Use of Recreational Equipment.** Snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles and equipment shall not be operated at more than ten (10) mph while operating in the Subdivision. No snowmobiles, all-terrain vehicles, motorcycles, or other recreational vehicles shall be operated before 6:30 a.m. or after 9:00 p.m. All vehicles shall be operated so as to maintain the peace and quiet of the Subdivision.

8.20 **Camping.** An Owner or Occupant may use a Lot as an occasional campsite for him/herself, or his/her guests and invitees. Tents may be erected and/or RV's may be parked outside of the building setback on a Lot for a maximum of thirty (30) days in a calendar year, and for no longer than ten (10) consecutive days. Tents may not be left erected overnight and RV's may not be parked outside of the building setback overnight if the Owner or Occupant is not also physically residing at the Lot.

8.21 **Private Roads.** All roads within the Subdivision shall be considered private roads owned by the Association for the use and benefit of Declarant, all Members and Associate Members, unless and until the Association transfers title to such roads to Boise County or other public entity, subject to the rights of ingress and egress of all Members and Associate members. So long as the Association owns the roads, the Association shall have the duty to maintain, plow, repair and resurface the private roads, as necessary, costs of which shall be paid by the Association and assessed to each Member. Driveways are not considered part of the private roads in the Subdivision. Installation, maintenance, repair, and upkeep of driveways on individual Lots are the responsibility of each Lot Owner.



8.22 **Exterior Antennas.** Exterior radio antennas, television antennas, satellite dish antennas or other antennas may be erected on the Dwelling without ARC approval. For any other location of such antennas, the specification and location must be submitted and approved in writing by the ARC.

8.23 **Signage.** Not more than one (1) realtor sign, one (1) marketing sign and one (1) builder sign shall be allowed on any Lot at any one time advertising the property for sale or rent or to advertise the property during the course of construction. No sign of any kind shall be displayed to the public view more than six (6) square feet in size. In addition, signs may also be allowed as follows:

- A) The Association may erect and maintain uniform subdivision identification signs, street signs and other appropriate informational signs upon the Common Areas or upon utility easements of a size and design approved by the ARC. No other signs shall be placed or maintained upon any of the Common Areas.
- B) Declarant is entitled to place signs of such size, design and number as Declarant may deem appropriate, to identify the Property or Subdivision and display related information pertaining thereto, and to advertise Lots for sale, on any portion of the Property.

8.24 **Rental Signs.** No "For Rent" signs shall be permitted on or next to any Lot at any time.

8.25 **Exterior Lighting.** No exterior lighting shall be installed or maintained on any Lot or Structure thereon, which emits an offensive glare or otherwise interferes with the use and enjoyment of adjacent Lots, without prior written approval of the ARC. All exterior lighting shall be in compliance with the applicable ordinances of Boise County.

8.26 **Storage Tanks, and Heating and Air-Conditioning Units.** Any storage tank, including propane tanks, and any heating or air conditioning unit installed on a Lot must be located above ground and screened from view; except that an underground propane tank may be installed if specifically approved by the State of Idaho or Boise County, as required by law.

8.27 **Window Coverings.** Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard, sheets or similar materials.

8.28 **Clotheslines.** Exterior clotheslines or other outside clothes drying or airing facility shall be screened from view in a location and of construction approved by the ARC.

8.29 **Major Appliances.** No major appliances, including without limitation clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio, porch or other exterior area of any structure or improvement.

## **ARTICLE IX** **ENFORCEMENT**

9.1 **Authority to Enforce.** The provisions of this Declaration may be enforced by any of the following persons or entities under the procedure outlined herein:

- A) The Board as to all matters;
- B) The Declarant, so long as it has any retained ownership of any of the Property; and
- C) The Owner or Owners of any Lot adversely affected, but only after written demand is made on the registered agent of the Association, as maintained by the Idaho Secretary of State, and it fails to act, except that no such Owner shall have the right to enforce independently of the Association any Assessment, monetary penalty, fine, or lien herein.

9.2 **Methods of Enforcement.** Subject to the provisions of Section 9.3 hereof, the following methods of enforcement may be utilized by the Association:

- A) Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, cancellation of any contracts of an executory nature, or such other remedies at law and equity which may be available in a court of law.
- B) Eviction for trespass by police action.
- C) The Association through its agents shall have the authority to take appropriate corrective action against the Owner of any Lot pursuant to Section 6.6 of this Declaration.
- D) Monetary penalties or fines, and temporary suspension from Association Membership rights and privileges, provided that except for late charges, interest, and other penalties for failure to pay Assessments levied by the Association as provided in this Declaration, no such discipline or sanction shall be effective against a Member unless:
  - 1) The Member is given ten (10) days' written notice of the proposed discipline or sanction, within such time the Member may correct the violation of this Declaration, the Association Rules, or ARC Rules, request an additional reasonable period of time to correct such violation, or request a hearing. The notice shall be given personally to such Member or sent by first-class or certified U.S. mail to the last address of such Member as shown on the records of the Association. If the Member requests a hearing, the hearing may be oral or in writing, at the election of the Member. If the Member does not correct the violation with the original ten (10) days' notice or such additional time as granted by the Association, and does not request a hearing, the Association may impose such discipline or sanction without further notice to the Member.
  - 2) If a hearing is timely requested by the Member, such hearing shall be conducted by the Board or a committee comprised of not less than three (3) persons, in an odd total number, appointed by the Board, which shall



conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding appropriate discipline or sanction until the conclusion of the hearing.

- 3) Any Member challenging the discipline or sanction imposed by the Board, including any claim alleging defective notice, must commence court action within thirty (30) days after the date of the contested discipline or sanction imposed by the Board.
- 4) A monetary penalty or fine imposed by the Association as a compliance measure for failure of a Member to comply with the provisions of this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Areas, for which the Member, his family, Occupants, guests, invitees, tenants, or agents, was/were responsible, or in bringing the Member and his Lot into compliance with this Declaration, may be treated as a Limited Assessment which may become a lien against the Member's Lot, enforceable by a foreclosure of the Member's interest. This provision does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent Assessments and for charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney fees) in its efforts to collect delinquent Assessments.

9.3 **Limitations on Enforcement.** The Association may not cause a forfeiture or abridgement of a Member's right to the full use and enjoyment of his individually owned interest, other than the right to suspend voting rights of such Member for unpaid Assessments, on account of the failure of the Owner to comply with provisions of this Declaration except by judgment of a court, a decision arising out of arbitration, or on account of a foreclosure for failure of the Owner to pay Regular, Special or Limited Assessments duly levied by the Association.

9.4 **Fees and Costs.** The Association, or any person entitled to enforce any of the terms hereof, by any of the means contained herein, who obtains a judgment or decree from any court or arbitrator enforcing any of the provisions hereof, shall be entitled to reasonable attorney fees and all costs incurred or anticipated to be incurred in remedying or abating the offensive condition as a part of his or its judgment or decree against the party in violation hereof.

9.5 **Failure to Enforce.** Neither the Association nor the ARC shall be liable to any person for failure to enforce any of the terms hereof, for personal injury, loss of life, damage to property, economic detriment or for any other loss caused either by their enforcement or non-enforcement. The failure to enforce any of such matters, including any covenants contained in this Declaration, shall not be deemed a waiver of the right to subsequently do so.