

Instrument # 444569
HAILEY, BLAINE, IDAHO
2000-10-27 04:19:00 No. of Pages: 21
Recorded for : BLAINE COUNTY TITLE
MARSHA RIEMANN Fee: 63.00
Ex-Officio Recorder Deputy
Index to: COVENANTS & RESTRICTIONS



**DECLARATION ESTABLISHING COVENANTS
CONDITIONS AND RESTRICTIONS
FOR CEDAR BEND SUBDIVISION**

This Declaration is made this 27th day of OCTOBER 2000, by **KENNETH and CYNTHIA WARD**, husband and wife, and **C&E L.L.C.**, an Idaho limited liability company, (hereafter collectively referred to as "Declarant"), with reference to the following facts:

RECITALS

A. The Declarant owns all real property described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference.

B. The Declarant proposes to develop said real property in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the City of Hailey and the State of Idaho; and

C. The subdivision plat was filed in the office of the Recorder of the County of Blaine, State of Idaho as Instrument Number 444568. A reproduction of such is attached as Exhibit "B".

NOW THEREFORE, it is hereby declared that the Lots shown on the said subdivision map are held and shall be conveyed subject to the following covenants, conditions and restrictions:

**ARTICLE I.
DEFINITIONS**

1.1 "**Association**" shall mean the Cedar Bend Homeowners' Association, Inc., a nonprofit corporation, organized under the laws of the State of Idaho and composed of the Owners of the Lots.

1.2 "**Board**" shall mean the Board of Directors of the Association, as created pursuant to Article IV of the Declaration.

1.3 "**Building Envelope**" shall refer to the designated building area on Lot 11, Block 2 as set forth on the Plat.

1.4 "**Declarant**" shall mean Kenneth and Cynthia Ward, husband and wife, and C&E L.L.C., an Idaho limited liability company.

1.5 "**Declaration**" shall mean this instrument as it shall be amended from time to time.

1.6 **"Designated Driveway"** shall refer to the designated driveway areas on Lot 9, Block 1 and Lots 10 and 11, Block 2 as set forth on the Plat.

1.7 **"Committee"** shall mean the Design Review Committee established under Article III hereof.

1.8 **"Lot"** shall mean the numbered Lots shown on the Plat, whether improved or unimproved.

1.9 **"Owner"** shall mean and refer to the record owner, whether one or more persons, of the fee simple title of any of the numbered Lots above described and includes contract buyers but excludes those having such interest merely as security for the performance of an obligation.

1.10 **"Plat"** shall mean and refer to the official subdivision plat for Cedar Bend Subdivision referred to in paragraph C, above

1.11 **"Subdivision"** shall mean the real property shown on the Plat.

1.12 **"Wetland Impacted Lots"** shall mean Lot 9, Block 1, and Lots 4, 5, 9, 10 and 11, Block 2, each of which includes area delineated as part of the United States Army Corps of Engineers Jurisdictional Wetlands on the Plat.

ARTICLE II.

USE REGULATIONS, RESTRICTIONS, AND MAINTENANCE REQUIREMENTS

2.1 No use whatsoever shall be made of any Lot except its use and improvement for a single family private residence. Lots owned by Declarant or its nominee may be used as offices for the purpose of selling the Lots within the Subdivision.

2.2 The ground floor area of any dwelling located on any Lot, exclusive of decks, steps, porches, carports and garages, shall be not less than one thousand seven hundred (1,700) square feet for a one story building or one thousand (1,000) square feet ground floor, and a total of not less than one thousand seven hundred (1,700) square feet, for a two story building. No dwelling shall have a first floor total floor area of greater than two thousand three hundred (2,300) square feet. No dwelling shall have more than three thousand seven hundred (3,700) total square feet.

2.3 Each dwelling constructed on any Lot shall include a garage for two or more automobiles, with minimum dimensions of twenty-two feet (22') by twenty-four feet (24'). No trailer or garage shall be used as a temporary or permanent residence.

2.4 When the construction of any structure is begun, the work thereon must be prosecuted diligently and said structure must be completed within eighteen (18) months, unless

otherwise permitted by the Committee. All landscaping improvements to a Lot must be completed within twenty-four (24) months of the commencement of construction on that Lot, unless an extension is granted by the Committee.

2.5 All construction shall be in compliance with the Design Standards set forth in Section 3.2 of this Declaration.

2.6 No more than one (1) recreational vehicle, trailer, boat or camper shall be kept on a Lot except within an enclosed building (i.e., third car garage) or screened from public view from outside the Lot. All boats, snow mobiles, recreational vehicles, campers, lawn and garden equipment, garbage and trash containers, clothes lines, maintenance and service equipment, firewood, stored materials, satellite dishes, and similar personal property shall be screened from streets and adjoining Lots by Committee approved fences, berms, hedges and similar landscaping or enclosures.

2.7 No signs shall be permitted on any Lot except residential identification signs and temporary "For Sale" signs of not more than six (6) square feet in surface area, nor maximum height in excess of four (4) feet; provided, however, that the Declarant may erect subdivision advertising signs in conformance with applicable City of Hailey Ordinances.

2.8 No noxious or offensive activity 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 adjacent Owners or neighborhood. All Lots and improvements thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and repair.

2.9 Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

2.10 No vehicle repairs shall be permitted to occur on any streets or driveways within the Subdivision, with the exception of short term general maintenance completed in a timely manner.

2.11 No commercial or industrial trucks, trailers or vehicles, except for pick-up trucks and vans used in an occupant's trade, business or employment, shall be stored or parked on any Lot or on any of the streets fronting on any Lot, except within the garage or in conjunction with residential deliveries and/or services.

2.12 All utility lines located within any Lot for the transmission of telephone service, the reception of audio or visual signals or electricity and all pipes for the transmission of water,

gas, sewer, drainage (except roof gutters and down spouts), or other utility purposes, shall be installed and maintained below the surface of the ground.

2.13 No manufactured home or home moved from another location may be located or constructed upon any Lot within the Subdivision, unless said home is in compliance with all regulations, restrictions and standards contained herein and approved by the Committee.

2.14 No animal, bird, fowl, poultry, reptile or livestock, ("**Animal**"), other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for any commercial, agricultural or hobby purpose. No Animal shall be allowed to make any unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Animal shall be constructed without the approval of the Committee. Upon the written request of any Owner, the Board, or if the Association has not been created, the Declarant, shall conclusively determine in its sole and absolute discretion, whether, for the purpose of this Section, a particular Animal is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of Animals on any such property is reasonable. Any decision rendered by the Board or Declarant shall be enforceable in the same manner as other restrictions contained herein.

2.15 Lots shall not be further subdivided and no portion of a Lot may be sold separately from the rest of that Lot.

2.16 No oil or gas drilling, quarrying or mining operations of any kind shall be permitted upon nor under any Lot, nor shall oil wells, tunnels, mineral excavations or shafts be permitted upon nor under any Lot.

2.17 No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other refuse shall be kept at all times in covered sanitary containers and all such containers kept on a Lot shall be kept within an enclosed structure or screened from public view on non-pickup days. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

2.18 Every Owner, whether or not his Lot contains improvements, shall take all action necessary to restrict the growth of, and to remove, noxious weeds and grasses in accordance with the requirement of the Association and any local, state or federal requirements. Whenever practical, weed control actions shall not be chemically dependant, but shall utilize plants and other means of control.

2.19 Every Owner, whether or not his Lot contains improvements, shall take all necessary action to remove any unhealthy or dead trees on his Lot which pose a risk of damage to any other Lot.

2.20 No individual well or water supply system shall be permitted on any Lot. No individual sewage disposal system shall be permitted on any Lot. Notwithstanding the foregoing, standard lawn irrigation systems connected to City of Hailey water may be installed.

2.21 Any Owner that has a home occupation must meet the requirements of the City of Hailey in the Limited Residential zoning district. In addition, no noise and no excessive traffic shall occur from either customers, clients or deliveries. Tenants of homes in the subdivision shall not operate any home occupation without the written permission of the Association.

2.22 Exterior fires are permitted only in barbecue pits or outdoor fireplaces subject to applicable ordinances regarding the same. No outdoor burning of lawn clippings, leaves, tree or shrub branches or other landscape material shall be permitted.

2.23 The following provisions shall govern the maintenance of Lots and all improvements thereon:

- (a) Each owner of a Lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition;
- (b) All damage to any improvements shall be repaired as promptly as is reasonably possible.
- (c) A building that is vacant for any reason shall be kept locked in order to prevent entrance by vandals. Vacant buildings and unimproved Lots shall not be exempt from the provisions of this Declaration.
- (d) All structures, facilities, equipment, objects and conditions determined by the Committee, in its sole discretion, to be offensive, shall be enclosed with a Committee approved structure or appropriately screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open nor exposed to public view.
- (f) Any event or condition on a Lot which, in the sole discretion of the Committee, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the owner

of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

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

ARTICLE III. DESIGN CONTROL

3.1 DESIGN REVIEW COMMITTEE

All rights, functions, and authority herein delegated or granted herein to the Design Review Committee shall be implemented in the following manner.

3.1.1 There shall be a Design Review Committee composed of three (3) persons initially appointed by the Declarant to each serve a term of two years. Declarant shall retain the power to appoint the members of the Committee so long as Declarant owns at least five (5) Lots in the Subdivision; thereafter, the rights and responsibilities of appointing and overseeing the Committee shall pass to the Board. In the event of death or resignation of any member of the Committee, the Declarant shall have full authority to designate a successor, unless responsibility for the Committee has passed to the Board, in which case the Board shall have such authority. The Committee shall monitor, review and control the removal and/or enhancement of trees and shrubs, as well as adherence to the Subdivision's regulations, restrictions and standards as set forth herein. A majority of the Committee may designate a representative to act for it.

3.1.2 The vote or written consent of any two members of the Committee shall constitute action of the Committee. The Committee shall report in writing all approvals and disapprovals of changes to the existing state of any Lot to the Association.

3.1.3 No changes to the existing state of any Lot shall be made or permitted without the prior written approval of the Committee. Changes to the existing state of a Lot shall include without limitation, the construction of any building, structure or other improvement, including utility facilities, fences and screening; the excavation, filling or similar disturbance of the surface of the land including, without limitation, the change of grade, stream bed, ground level or drainage pattern, the clearing, removal, marring, defacing or damaging trees, shrubs or other growing things; and the landscaping texture or exterior appearance of any previously approved change to the existing state of a Lot.

3.1.4 The Committee shall have complete discretion to approve or disapprove any change to the existing state of a Lot and shall exercise such discretion with the following objectives in mind:

- (a) To enforce the Design Standards established in this Declaration; and
- (b) To ensure that the natural vegetation occurring within the Subdivision is preserved to the greatest extent possible as a resource and benefit to the Owners and the citizens of the City of Hailey in accordance with the language contained on the Plat and in this Declaration.

3.1.5 After the nature and scope of a proposed change to the existing state of a Lot is determined by its Owner and prior to the commencement of work to accomplish such change, the Lot Owner shall furnish the Committee with the following:

- (a) **Design Review Application** - a completed Application on a form approved by the Committee shall be submitted to the Committee by the Owner seeking to perform any work. The necessary application shall be available from the Committee. The Application shall be submitted simultaneously with all other documents required by this section;
- (b) **Design Review Application Fee** - a fee of fifty dollars (\$50), or such other amount as may hereafter be established by the Board, shall accompany all Applications;
- (c) **Building Plan and Specifications** - showing all proposed construction, elevations of the buildings to be constructed, materials to be used, location of all fencing and screening and any other information or documentation to show conformance with the Design Standards set forth herein;
- (d) **Landscape Plan** - showing existing vegetation that will remain and all new plantings that are proposed as well as all driveways, walkways, retaining walls, planter areas, rock features, guest parking areas and any other information or

documentation to show conformance with the Site Mitigation requirements set forth herein;

- (e) **Site and Grading Plan** - showing all boundaries, existing and proposed contour lines and elevations at reasonable intervals, existing and proposed surface drainage patterns, existing trees of greater than six inches (6") caliper at twelve inches (12") above ground level, shrubs and existing utility line locations; and
- (f) **Other Required Information** - With respect to the existing state of the Lot and the plans for improvement which the Committee may reasonably require to permit it to make an informed decision on whether or not to grant approval of the proposed change;

3.1.6 The Committee shall also have responsibility for reviewing, approving and enforcing the conformance of Owners with the Subdivision's regulations, restrictions, and standards. All new construction and any subsequent modification of, alteration of or addition to any structure on a Lot must first be approved by the Committee upon the Owner's submission of a Design Review Application as set forth in Section 3.1.5 above. All such applications shall be reviewed and approved as set forth above. Such review shall evaluate and consider the Application's conformance with the Subdivision's regulations, restrictions and standards as set forth herein or established pursuant hereto. The Committee shall make every effort to make its final determination on a Design Review Application within thirty (30) days of receipt of each completed application. An Application will be deemed complete when all necessary supporting documentation and payment has been received by the Committee.

3.1.7 The Committee shall not be liable in damages to any person or association submitting any plans for approval or to any owner or owners of lands within the Subdivision by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. Any person or association acquiring the title to any Lot, or any person or association submitting plans to the Committee for approval, by so doing, does agree and covenant that he, she or it will not bring any action or suit to recover damages against the Committee, its members as individuals, or its advisors, employees or agents.

3.1.8 The Committee shall keep and safeguard for at least five (5) years complete permanent written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans so submitted) and of all actions taken by it.

3.1.9 The Board may establish, and from time to time amend, a fee schedule for reviewing plans as herein provided for, which fee shall be paid by the person requesting plan approval at the time the application is submitted to the Committee. Said fees shall be made payable to the "Cedar Bend Homeowners' Association".

3.1.10 The Board may establish, and from time to time amend, Design Guidelines in conformance with the regulations, restrictions and standards set forth in this Declaration. In the event of a discrepancy between any Design Guidelines established by the Board and the Declaration, the Declaration shall control. In no event shall any duly established Design Guideline be enforced on a retroactive basis.

3.2 BUILDING DESIGN STANDARDS

The underlying premise of the Building Design Standards is to establish and convey the developer's intent for the look and feel of the Subdivision. Each Lot shall be developed with consideration of, and so as to benefit the Subdivision as a whole. The Committee is to encourage uniqueness in home design while at the same time preserve enough consistency in construction to blend the homes into the neighborhood. The heavily treed land, especially the natural canopy created by the trees, is special, unique, valuable and a treasure that every Owner must respect and preserve to the best of his or her ability. Absolutely no "clear cutting" of Lots will be allowed and any restrictions set forth herein, as well as those established by the City of Hailey and by the Army Corps of Engineers will be strictly enforced. All improvements must be designed to accommodate the existing vegetation to the fullest extent possible.

3.2.1 Grading/Drainage: No structure, planting or other material shall be placed or permitted to remain, or excavations or other activities undertaken, which may damage or interfere with established slopes, creating erosion or sliding problems, or which may change the direction of flow of water through drainage channels. The stability of all sloped areas of each Lot shall be maintained by the owner of the Lot, with the exception of those areas for which a public authority or utility company has responsibility.

A site plan indicating the proposed grading and drainage of a Lot must be approved by the Committee before any construction is initiated. Lot grading shall be kept to a minimum and buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be allowed to drain or flow upon, across or under adjoining Lots or Common Areas unless an express written easement for such purpose exists. Each Owner is responsible to retain his or her own drainage.

3.2.2 Buildings: No Lot shall be improved except with one (1) dwelling. Each dwelling shall have an enclosed garage (which may be detached) adequate for a minimum of two (2) standard automobiles. Attached, covered carports are allowed if screened or sided on three (3) sides; however, carports shall not be used for storage.

3.2.3 Outbuildings: Subject to compliance with City of Hailey's Zoning Ordinance, no more than one (1) outbuilding (not including detached garages), with an area of no more than two hundred twenty-five (225) square feet (i.e., 15' x 15') shall be permitted on

any Lot. The exterior of any outbuilding must be consistent with the dwelling in materials and colors.

3.2.4 **Set-Backs:** All setbacks must comply with the City of Hailey's minimum standards. Designs should make every effort to protect all trees and vegetation to the fullest extent possible.

3.2.5 **Height Limit:** No structure or part thereof shall exceed a height of thirty-five (35) feet.

3.2.6 **Exterior Materials and Colors:** All exterior materials and colors shall be approved by the Committee. Exterior finishes and/or colors shall be of natural tones which harmonize with the existing landscape and neighboring homes. A limited use of a strong accent color may be approved by the Committee. Unless specifically approved by the Committee, no reflective finishes shall be used, other than hardware and detail items. No exposed block construction is allowed. Composite (seamable) siding similar to "Masonite" products and (so long as it is wood textured, dull in sheen and the color approved by the Committee in advance) Vinyl siding may be used; except, on street facing elevations, these types of siding may not consist of more than sixty percent (60%) of the elevation and must have complimentary siding of a different type (i.e., stone, brick, cedar, shingles, etc.).

3.2.7 **Roofs:** Each dwelling shall have a minimum of three (3) different rooflines, a roof pitch of not less than 5:12, eaves of a minimum of one (1) foot around the perimeter of the house, one (1) front elevation break and one (1) extra fascia board on the front eaves. Roofing material shall be wooden shakes, sawed shingles, architectural asphalt/composition shingles, or non-reflective metal, subject to prior approval of the Committee. Tar and gravel shall not be used as a finished roofing material, except flat roof structures where the surface is not visible from any road or any adjoining structure in existence at the time of construction.

3.2.8 **Driveways:** Unless otherwise approved by the United States Army Corps of Engineers and the Committee, driveways and paved areas on Lots with Designated Driveways, identified on the Plat (Lot 9, Block 1, and Lots 10 and 11, Block 2), must be at grade and located entirely within the Designated Driveway and driveways on Wetland Impacted Lots 4, 5, and 9, Block 2, may not encroach upon designated wetland areas. Every Lot shall have a driveway which is paved with "blacktop" asphalt from the edge of the roadway to the property line; and such portion of the driveway shall have a maximum width of sixteen (16) feet. The remainder of all driveways shall be constructed of asphalt, concrete and/or brick pavers, unless another all weather surface is approved by the Committee. Notwithstanding the foregoing, driveway materials shall not create dust nor spread to adjacent properties and/or rights-of-way. All driveway approaches shall be in conformance with adopted specifications of the City of Hailey.

3.2.9 **Parking:** Not more than two (2) vehicle parking spaces per Lot may be provided in an exposed parking area as part of the driveway. Temporary guest parking in exposed parking areas shall be controlled by the Lot owner on a reasonable basis.

3.2.10 **Fences:** All fences, screens, kennels and similar exterior structures shall be constructed of wood, stone, or iron, except for hardware, fasteners and footings and approved by the Committee prior to construction. These must be kept in good repair and visual upkeep at all times.

3.2.11 **Exterior Lighting:** The light source of any exterior lighting fixtures shall be downcast and not directed at any other Lots, and all reasonable efforts shall be made to minimize the harshness or glare of any lighting on neighboring Lots.

3.2.12 **Antennas/Satellite Dishes:** Antennas, satellite dishes and similar devices shall be installed in a manner and location minimizing visibility from roads and adjoining Lots. Satellite dishes must be twenty four inches (24") or less in diameter and attached to the dwelling. No antennae or satellite dish shall be installed without prior approval of the Committee.

3.2.13 **Wetland Impacted Lots:** Additional restrictions regarding building, use and/or improvements may be applicable to the Wetland Impacted Lots pursuant to regulations issued by the United States Army Corps of Engineers. Portions of property in the Wetlands Impacted Lots have been designated as wetlands by the United States Army Corps of Engineers. Those wetland areas are shown on the Plat. Lot 9, Block 1, and Lots 10 and 11, Block 2, have restrictions on driveway elevations in the Designated Driveways. Lot 11, Block 2, has a designated Building Envelope. These restrictions may not be avoided without the specific approval of the United States Army Corps of Engineers and the Committee. There may be additional restrictions on building, improvements and other activity in the Wetland Impacted Areas. Any approval by the Committee **does not** imply compliance with any wetland regulations.

3.2.14 **Amendment:** Notwithstanding any other provision of this Declaration, the architectural standards set forth in this Section 3.2 may be modified at any time by the consent of a simple majority (i.e., greater than fifty (50%) percent) of all Owners in the Subdivision.

3.3 SITE MITIGATION REQUIREMENTS

The natural vegetation found within the Subdivision is an asset and general benefit to the Owners, the community and the City of Hailey ("City"). Additionally, the City requires the preservation of existing vegetation to reduce flood hazards and to retain the natural character of the surrounding area. Therefore, preservation of the natural vegetation deserves special consideration as the Subdivision is developed and changes to the existing state of any Lot are proposed by Owners. To that end, and in keeping with the intent of preserving native landscape materials and the natural vegetation of the Subdivision wherever possible, the Committee shall consider the following guidelines when reviewing any new construction and any change to the

existing state of any Lot, and approve or deny such Applications in consideration of conformance of them.

- (a) **Impact on Existing Vegetation:** Owners shall attempt to locate all structures and improvements on their Lot in a manner that serves to minimize the impact on the existing vegetation including the trees, tree canopy and the understory of smaller trees, saplings and shrubs that grow beneath the larger trees.
- (b) **Tree and Shrub Removal:** Removal of trees and understory shall be limited to that which is reasonably required to accommodate the proposed structures, improvements, driveways, walkways, as well as normal construction activity associated with construction. Removal of trees and understory, when necessary, shall be accomplished in a manner such as to not damage adjacent vegetation to the fullest extent possible.
- (c) **New Landscaping:** New landscape planting activity shall accommodate existing vegetation wherever possible by allowing the native material to co-exist and thrive within and around the new plant material.
- (d) **Removal of Dangerous Trees:** Removal of larger trees (6" caliper and above) that have reached an age or condition that is deemed to be dangerous to owners and/or structures is allowable but shall be mitigated in the manner set forth in paragraph (e) below.
- (e) **Mitigation:** Native trees and understory outside of the building improvement or driveway or walkway that are removed shall be replaced in species and count according to the following chart:
 - (1) Trees and understory with less than 6" caliper measured at twelve inches above ground level shall be replaced one for one with the same species or one selected from the plant list below.
 - (2) Trees with greater than 6" caliper measured at twelve inches above ground level shall be replaced with two trees for each tree removed with like species or a species selected from the plant list below.
 - (3) The size of the replacement tree or shrub should be such that it can withstand the rigors of surviving in this area. One (1) gallon shrubs and five (5) gallon trees are generally considered adequate. Staking may be required.

- (f) **Plant List:** The following list of trees and plants should be used in determining which species are appropriate or acceptable for use as replacement vegetation as well as which species are acceptable for general landscape planting on Lots:

TREES:

Quaking Aspen
Cottonwood (Black, Fremont, Plains)
Lodgepole Pine
Willow
Alder (Sitka, Mountain)
Birch (River, Bog)
Maple (Rocky Mountain, Bigtooth)

SHRUBS:

Dogwood
Willows (all varieties)
Western Sand Cherry
Chokecherry
Wild Rose
Currant
Elderberry

Other varieties of trees and understory shrubs may be submitted to the Committee for approval, but the general intent of these standards is to preserve the native vegetation and natural look of the area as much as possible by protecting the existing vegetation to the greatest extent possible and planting only compatible species where new plantings, mitigation or replacement takes place within the Subdivision. Any and all planting plans submitted to the Committee will be approved or denied on that basis.

3.4 The provisions of Section 3.3 arise out of a condition to final plat approval imposed on Declarant by the City and Declarant agrees that the City is intended as a third-party beneficiary hereof and that Section 3.3 may not be amended or terminated without the consent of the City and shall be enforceable by the City against any Owner, or the Association, by an action for an injunction, specific performance or by means of any other legal or equitable process or remedy.

3.5 After approval by the Committee of any proposed change to the existing state of a Lot or structure on any Lot, the proposed change shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed change and any plans and specifications therefor given to the Committee. If construction of the proposed change is not commenced within nine (9) months from the date of Committee approval, such approval shall lapse and become null and void. Failure to accomplish the change strictly in accordance with the description thereof and plans and specifications therefor shall operate to

automatically revoke the approval of the proposed change, and, upon demand by the Committee, the Lot shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Committee and its duly appointed agents may enter upon any Lot, after prior notice, at any reasonable time or times to inspect the progress or status of any changes to the existing state of a Lot being made or which may have been made. The Committee shall have the right and authority to record a notice to show that any particular change to the existing state of a Lot has not been approved or that any approval given has been automatically revoked. The Committee shall have all rights and remedies set forth in Article V in enforcing the standards contained in this Declaration.

3.6 Design review according to the Declaration is conducted solely to address aesthetic issues and the Subdivision's adherence with the conditions imposed by the City of Hailey in approving the platting of the Subdivision governing the preservation of the natural vegetation. All plans, drawings and specifications approved by the Committee are not approved for engineering, design, architectural competence or suitability to withstand natural disasters, including flooding. Through its approval of such plans, drawings and specifications, the Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Neither Declarant, the Committee, the Board, the Association, nor any individual member thereof, shall be liable to any Owner, other person or entity for any damage, loss or prejudice suffered or claimed because of the approval or disapproval of any plans, drawings or specifications, whether or not defective; or the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

ARTICLE IV. ESTABLISHMENT AND ORGANIZATION OF ASSOCIATION

4.1 The Cedar Bend Homeowners' Association, Inc., shall be a nonprofit corporation, organized under the laws of the State of Idaho. The purposes and powers of the Association and the rights and obligations inherent in membership are set forth in the provisions of this Declaration with respect thereto are for general descriptive purposes only. The Association is and shall be obligated to assure the functions and obligations imposed on it or contemplated for it under this Declaration and any similar functions and obligations under any supplemental declaration with respect to property now or hereafter subject to this Declaration.

4.2 The Association shall be governed by a Board composed of three Directors, all of whom shall be elected at the first annual meeting. The Association shall provide Directors and Officers liability insurance for the Board and members of the Committee.

4.3 Regular meetings of the Association will be held at the time and in the place determined by the Board. The first annual meeting shall be held within ninety (90) days after the closing of the sale of the Lot representing the fifty-first (51st) percentile interest of the Lots described herein but in no event later than six (6) months after sale of the first Lot.

4.4 Each Owner of each Lot is subject to pro rata assessments by the Association for the costs and expenses, including insurance, incurred by the Association, the Board and the Committee. Each Owner shall be a member of the Association. Said membership shall be appurtenant to and shall not be severed from the Lot.

4.5 The Association shall have one (1) class of voting membership comprised of all Owners each of whom shall be entitled to one (1) vote for each Lot owned. When more than one 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 vote be cast with respect to any Lot.

4.6 Written notice of any meeting of the members of the Association shall be sent to all members at their address shown in the books of the Association, by regular mail, not less than ten (10) days nor more than thirty (30) days in advance of the meeting and shall describe the nature of the business to be conducted. The presence at any meeting of the members or of proxies entitled to cast fifty percent (50%) of all of the votes shall constitute a quorum. If the required quorum is not present or represented at any meeting, the members entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. Such adjournment shall be for not less than five (5) days and not more than thirty (30) days from the original meeting date. In the absence of a quorum, no other business may be conducted at any such meeting.

4.7 Any vote may be cast by an Owner in person or by proxy. All proxies shall be in writing, dated and signed by the Owners and filed with the Board before commencement of any meeting. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the Owner of his or their Lot or upon notice of the death or incapacity of the member executing the proxy statement.

ARTICLE V. CREATION OF ASSESSMENT LIENS AND REMEDIES FOR ANY OWNER'S BREACH OF THE DECLARATION

5.1 The Declarant, for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments as may be established and collected as provided herein.

5.2 The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot 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 became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.3 The assessment levied by the Association shall be used exclusively to pay the expense of directors' and officers' liability insurance, the expense of enforcing its design restrictions and expense of general administration for its business.

5.4 Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at eighteen percent (18%) per annum or at the then current maximum rate allowed by law, if less. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Each of the Owners do hereby grant and appoint the Board as trustee to enforce such lien and to foreclose such lien by private power of sale, and the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Owner and the Board may have to enforce the provisions hereof.

5.5 The lien of assessment provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect any assessment lien. However, the sale of any Lot pursuant to a mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

5.6 In addition, the Declarant, Committee, Association or Board upon violation or breach of any covenant, restriction or condition contained in this Declaration may with reasonable notice enter upon or have their agents enter upon, any Lot where such violation or breach exists and may abate or remove the thing or condition causing the violation or breach or may otherwise cure the violation or breach by reasonable means. Any expense incurred when curing such violation may be charged as an Assessment against the Owner and a lien placed on the Lot as set forth herein.

5.7 The Declarant, Committee, Association or Board may also at their sole discretion and as they deem appropriate institute equitable or legal proceedings to obtain injunctive relief or monetary damages for any violation of this Declaration. If the Declarant, Committee, Association or Board prevails then the Lot Owner against whom such action has been brought shall be liable for the costs of the proceeding including the attorneys' fees incurred by the Declarant, Committee, Association or Board. The Declarant, Committee, Association or Board shall be deemed to have prevailed if the proceeding results in a judgment entered in its favor, an

arbitration award is made in its favor, the proceeding is resolved in its favor by means of mediation or the Owner agrees to settle the dispute by taking corrective action or paying damages. If the Owner of any Lot fails, after demand, to pay such costs, including attorneys' fees, then the Association shall have a lien, from and after the time a notice of such failure to pay is recorded in the records of Blaine County, Idaho, against the Lot of such Owner or Owners for the amount due and not paid, plus interest from the date of demand for payment at the statutory rate, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees.

5.8 No action by the Declarant, Committee, Association or Board shall constitute a waiver of any right or remedy they possess under this Declaration, nor shall the selection of any remedy constitute an exclusive election of that remedy. Any and all remedy permitted by this Declaration may be utilized in the enforcement of this Declaration.

ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 Except as otherwise provided in Section 3.2.15, the provisions hereof may be amended by a vote or the written consent of sixty-six and 67/100ths percent (66.67%) or more of the Owners. Only one (1) Owner for each Lot shall be entitled to vote. Irrespective of the provisions of this Article, the percentage of voting power to amend a specific clause herein shall prevail with relation to that specific Article.

6.2 The subject headings of the paragraphs and subparagraphs of this Declaration are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

6.3 Every provision of this Declaration is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Declaration.

6.4 The rights and remedies provided by this Declaration are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

6.5 Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to reasonable attorney's fees including attorney's fees on appeal, if any.

6.6 This Declaration and the terms and provisions hereof shall be covenants running with the land and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

6.7 This Declaration shall be construed in accordance with the laws of the State of Idaho.

Dated as of the date first above written.

C&E, L.L.C.

By: [Signature]
Its: Managing Member

[Signature]
KENNETH WARD

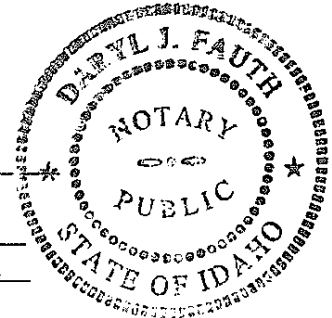
[Signature]
CYNTHIA WARD

STATE OF IDAHO)
) ss.
County of Blaine)

On this 27 day of October, 2000, before me, a Notary Public in and for said State, personally appeared Ernie Gore, the managing member of C&E, L.L.C., known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

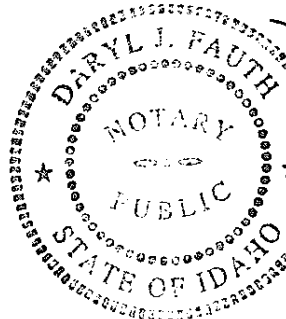
[Signature]
Notary Public for Idaho
Residing at Boise, ID
My commission expires 9/9/2006



STATE OF IDAHO)
) ss.
County of Blaine)

On this 27th day of October, 2000, before me, a Notary Public in and for said State, personally appeared Kenneth Ward, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

 Daryl J. Fauth
Notary Public for Idaho
Residing at Bozeman, ID
My commission expires 9/9/2006

STATE OF IDAHO)
) ss.
County of Blaine)

On this 27th day of October, 2000, before me, a Notary Public in and for said State, personally appeared Cynthia Ward, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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

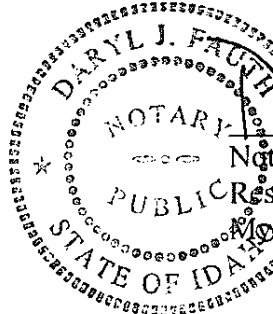
 Daryl J. Fauth
Notary Public for Idaho
Residing at Bozeman, ID
My commission expires 9/9/2006

EXHIBIT "A"
Legal Description

A parcel of land within Section 16, Township 2 North, Range 18 East, City of Hailey, Blaine County, Idaho, and more particularly described as follows:

Commencing at a brass cap marking the North Quarter Corner of said Section 16;

Thence S0°27'42"E, 1053.93 feet to a 5/8 inch diameter iron pin and the TRUE POINT OF BEGINNING;

Thence N60°58'00"E, 1065.12 feet;

Thence S29°00'00"E, 60.00 feet;

Thence N60°58'00"E, 81.40 feet;

Thence 53.55 feet along a curve to the right with a radius of 30.00 feet, a central angle of 102°16'13" and a long chord of 46.72 feet that bears S67°54'09"E;

Thence 266.47 feet along a curve to the left with a radius of 1150.57 feet, a central angle of 13°16'11" and a long chord of 265.88 feet that bears S23°23'52"E;

Thence S61°00'00"W, 1345.84 feet;

Thence N00°27'42"W, 410.13 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "B"
Subdivision Plat