

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF
ALLIANCE TITLE
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MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TWO RIVERS SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by T R Company, LLC, an Idaho limited liability company, hereafter referred to as "Declarant".

RECITALS

1. Declarant is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as the "Properties", more particularly described as follows in Exhibit A attached hereto.

2. Two Rivers Subdivision is a residential development, which Declarant currently intends to develop in accordance with existing development approval obtained from the City of Eagle or any other development plans for which Declarant may, from time to time, obtain approval. Certain portions of the Properties may be developed for quality detached single-family residential homes, townhomes and patio homes. The Properties may contain parcels of Common Area, including but not limited to ponds and streams, private open space, park areas, landscaping, recreational facilities, private streets, drives and other amenities and facilities. Any development plans or schemes for the Properties in existence prior to or following the effective date of this Master Declaration are subject to change at any time by Declarant, and impose no obligation on Declarant as to how the property is to be developed or improved.

3. The purpose of this Master Declaration is to set forth basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that will apply to the entire development and use of all portions of the Properties. The Restrictions are designed to preserve the Properties' value, desirability and attractiveness to insure a well integrated, high-quality development, and to guarantee adequate maintenance of the Common Area and the improvements located thereon in a cost effective and administratively efficient manner.

4. Declarant desires to subject the above described Properties to certain Restrictions for the benefit of the Properties and their present and subsequent Owners as hereinafter specified, and will convey the Properties subject thereto.

NOW, THEREFORE, Declarant hereby declares that all of the Properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the Properties and be binding on all parties now or hereafter

having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof. Notwithstanding the foregoing, no provision of this Master Declaration shall be construed as to prevent or limit Declarant's right to complete development of the property and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Properties, including the Common Area or any public right-of-way, nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE I: DEFINITIONS

The following terms shall have the following meanings:

Section 1. "ASSOCIATION" shall mean and refer to the Master Association, and/or a Local Association, whichever is appropriate in the context.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinabove described.

Section 3. "COMMON AREA" shall mean all real property and improvements thereon (including private streets, drives, parking areas, recreational facilities and waterways) owned by an Association for the common use and enjoyment of the Owners.

Section 4. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Areas.

Section 5. "LOCAL ASSOCIATION" shall mean and refer to any profit or not for profit Idaho corporation or unincorporated association, or the successors of any of them, organized and established by Declarant pursuant to the terms of this declaration or a supplemental declaration.

Section 6. "MASTER ASSOCIATION" shall mean and refer to Two Rivers Homeowner's Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 7. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "DECLARANT" shall mean and refer to T R Company, LLC, an Idaho limited liability company, its successors and, subject to the provisions of Article XVIII, Section 4, its assigns.

Section 9. "DECLARATION" shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions or a Supplemental Declaration applicable to the

Properties or any portion thereof recorded in the office of the County Recorder of Ada County, State of Idaho.

Section 10. "SUPPLEMENTAL DECLARATION" shall mean any Supplemental Declaration including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Properties.

Section 11. "DWELLING UNIT" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling unit, together with the vehicular parking garage next thereto, and all projections therefrom. A Dwelling Unit may be either attached to or detached from other Dwelling Units.

Section 12. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

Section 13. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any Mortgage.

Section 14. "FIRST MORTGAGEE" shall mean any Mortgagee possessing a lien on any Dwelling Unit first and prior to any other Mortgage.

Section 15. "INSTITUTIONAL HOLDER" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 16. "WATERWAY" or "WATERWAYS" shall mean any surface water amenity, including, without limitation, any lake, pond, channel, slough, stream, or reservoir, natural or artificial, the banks thereof and adjacent landscaping, including pumps, pipes and other conveyancing apparatus used in connection therewith which is located on the Properties and which is included within or managed as Common Area.

Section 17. "PLAT" shall mean any subdivision plat covering any portion of the Properties as recorded at the Office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof.

ARTICLE II: PROPERTY RIGHTS; RESERVATION OF WATER RIGHTS

Section 1. Enjoyment of Common Area: Each owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of an Association to charge reasonable maintenance and other fees for the use and maintenance of any landscaping improvement or recreational facility situated upon the Common Area.
- B. The right of an Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C. The right of an Association to limit the number of members permitted to use the Common Area.
- D. The right of an Association to charge reasonable admission fees for the use of any recreational facility situated upon the Common Area or otherwise controlled by an Association, including, particularly, the right to charge a special use fee for members who desire exclusive short-term use of such facility and who are willing to pay a special fee or assessment for such use.
- E. The rights of an Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien there against ; provided that the Common Area may not be mortgaged or conveyed without the consent of at least 66-2/3% of the Owners (excluding the Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.
- F. The right of an Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the written approval of all First Mortgagees and two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.
- G. The right of the Directors of an Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the members of that Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of said property during certain times and reasonable regulations and restrictions regarding vehicle parking.

Section 2. Delegation of Use: Any member may delegate, in accordance with the rules and regulations adopted from time to time by the directors, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, provided they reside on the property at the time of use.

Section 3. Reservation of Water Rights: Except for water rights specifically transferred in writing to the Association, Declarant hereby reserves for and to Declarant all water rights and all entitlements to receive water that have been placed to beneficial use upon the Properties or are appurtenant to or associated with the Properties, including, without limitation, all licenses, permits, claims, permit applications, and storage entitlements; all ditch or canal company shares and/or entitlements to receive water from any such company or from any irrigation district or other water delivery entity; and all ditch rights, easements or rights-of-way associated with any irrigation or other water delivery ditch, canal, lateral or pipeline.

Section 4. Agricultural Uses: 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 acknowledge that commercial and agricultural traffic will be using the public streets within the Properties for access to and from Eagle Road to parcels not within the Properties. Each Owner is deemed to further acknowledge that agricultural activities surrounding the Properties, which may include noise from farm equipment, may occur at any time (24 hours a day).

ARTICLE III: MASTER ASSOCIATION

Section 1. Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Master Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred. Absolute liability is not imposed on Owners/members for damage to Common Areas or Lots in the subdivision.

Section 2. Voting Rights: The Master Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one 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. Fractional votes shall not be allowed. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B member(s) shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On July 1, 2010.

Section 3. Assessments:

A. Creation of Lien and Personal Obligation of Assessments: 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 Master Association:

- 1. Regular annual or other regular periodic assessments or charges; and
- 2. Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular and special assessments, together with interest, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

B. Purpose of Assessments: The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, for the operation, maintenance, repair and improvement of the Irrigation Water Supply system and the Common Areas and facilities located thereon, for the reasonable expenses incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration or in the Bylaws of the Association, and for any other purpose reasonably authorized by the directors of the Association.

C. Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$800.00.

1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%), or the maximum percentage increase allowable by Federal National Mortgage Association (whichever is greater), above the maximum assessment as set forth above.
 2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount set forth in the preceding paragraph by a vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
 3. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum; and said assessments shall be payable to the Master Association in regular monthly or quarterly installments as may be determined by the Board of Directors.
- D. Initiation Assessment: Upon the initial conveyance of each lot, the purchaser thereof shall pay an initiation assessment in the amount of \$500.00.
- E. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Master Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be payable over such a period as the Master Association shall determine.
- F. Notice and Quorum for Any Action Authorized Under Sections 3C and 3E: Written notice of any meeting called for the purpose of taking any action authorized under Section 3C or 3E, above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such

subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- G. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for non-exempt Lots.
- H. Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day of the month following the initial conveyance of the said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Master Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Master Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Master Association as to the status of assessments on a Lot is binding upon the Master Association as of the date of its issuance.
- I. Effect of Nonpayment of Assessments; Remedies of Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Master Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- J. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- K. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:
1. All property expressly dedicated to and accepted by a local public authority;
 2. The Common Area;

3. All other Properties owned by the Declarant or an Association; and
4. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.

ARTICLE IV: LOCAL ASSOCIATIONS

Section 1. Creation by Declarant: Declarant may create Local Associations as profit or nonprofit corporations under the laws of the State of Idaho or may create such Local Associations as any unincorporated entity which Declarant deems appropriate. Declarant may, in its discretion, create a Local Association by means of a Supplemental Declaration, or create such an Association by means of separate instruments.

Section 2. Management, Powers and Duties: Each Local Association shall be managed in the same manner specified in the applicable Supplemental Declaration or other instrument and/or in the Articles of Incorporation and the Bylaws of the Local Association, shall have the same powers, rights, obligations and duties and be subject to the same limitations and restrictions, including levying assessments, adopting rules and regulations, granting easements, managing property, paying expenses, taxes, assessments, utility charges, consulting fees and insurance premiums as are provided for herein for the Master Association, except as modified herein or by a Supplemental Declaration. The board members, officers, managers and Declarant shall be free of personal liability as to the Local Association in the same manner as described herein with respect to the Master Association.

Section 3. Membership: Where a Local Association is created, the members thereof shall be all the Owners of Lots, including Declarant, while it remains an owner, in the respective Properties designated in the applicable Supplemental Declaration or other instrument. Memberships may be transferred only as provided for memberships in the Master Association.

Section 4. Voting Rights: The Members of each Local Association shall have such voting rights as may be specified in the applicable Supplemental Declaration or other instrument and/or in the Articles of Incorporation and the Bylaws of the Local Association.

ARTICLE V: IRRIGATION WATER SUPPLY SYSTEM

Section 1. Irrigation Water Supply: Each lot shall have access to an Irrigation Water Supply System, to be constructed by Declarant and owned and operated by the Master Association. All owners to which the system has been extended shall be required to pay the assessment therefore as provided in Section 3, below, regardless of actual use or non use of water from the irrigation system.

Section 2. Operation of the Irrigation Water Supply System: The Irrigation Water Supply System shall be operated in accordance with the laws of the State of Idaho and all rules and regulations promulgated from time to time by the Master Association and any governmental entity having jurisdiction thereof. The right to receive water from the Irrigation Water Supply System is, in any event, subject to availability of water. The Master Association shall have the right to adopt reasonable rules regarding use of water, including but not limited to use schedules and limitations on the amount of water available for use on each Lot. The Master Association shall have no liability for any temporary interruptions in water supply service so long as necessary repairs are made in a reasonably prompt manner. The Association shall be permitted to enter into a contract with a qualified water system management and maintenance entity for the management and maintenance of the irrigation water supply system.

Section 3. Assessments: The Master Association shall have the right to establish, levy and collect an irrigation water supply system assessment pursuant to the following provisions.

- A. Purpose of Assessments: The assessments levied hereunder by the Association shall be used exclusively for the operation, maintenance and improvement of the Irrigation Water Supply System.
- B. Amount of Assessment: Annual assessments shall be levied against each Lot in the subdivision in accordance with the number of square feet contained in the said Lot so that the amount of the assessment for each Lot shall be based upon the percentage that the number of square feet of area in the Lot or Lots owned by each Member bears to the total number of square feet of area contained in the Properties. The maximum annual assessment shall be set each year in such an amount as is necessary in order to generate sufficient funds to operate, improve and maintain the irrigation water supply system, including the maintenance of adequate reserves, in a prudent and businesslike manner, and to comply with any and all requirements of any governmental agency having jurisdiction thereof. Said assessments shall be payable to the Master Association in regular monthly or quarterly installments as may be determined by the Board of Directors.
- C. Additional Provisions: To the extent applicable, the provisions of Article III, Section 3, paragraphs A, E, F, H, I, J and K herein shall be applicable to the levy and collection of assessments for the Irrigation Water Supply System to the same extent as if set out in full in this paragraph.

ARTICLE VI: STORM WATER DRAINAGE AND RETENTION SYSTEM

Section 1. Ada County Highway District Storm Water and Drainage Easement: Ada County Highway District (ACHD) is hereby granted a perpetual blanket storm water, drainage, overflow and retention easement over Lot 2, Block 8 and Lot 26, Block 13, Two

Rivers Subdivision No. 1 on which Declarant shall have constructed storm water retention ponds to be owned by the Master Association and operated and maintained as set forth herein. The easement granted hereby shall include the right to construct, install, maintain and replace a Storm Water Drainage and Retention System, together with the right of access thereto for all purposes consistent with this grant of easement. As used herein, the Storm Water Drainage and Retention System also includes the street gutters, drop inlets, storm drainpipes and all related facilities.

Section 2. Storm Water and Drainage Easement Area Restrictions: The drainage easement area described in this Article shall be improved with biovegetated grassy swalls in which no permanent buildings, fences, trees or structures shall be placed. Notwithstanding the foregoing, other landscaping improvements (for example, shrubs and grass) and playground equipment, benches and the like may be placed or installed in the biovegetated grassy swall areas, providing that the placement and installation of such improvements shall not interfere with the easements granted to ACHD hereunder or interfere with the Storm Water Drainage and Retention System. In the event any such improvements are placed or installed in the said easement area, ACHD shall have no responsibility or liability for any damage thereto or destruction thereof which may occur as a result of any reasonable maintenance or repair activities undertaken by ACHD.

Section 3. Operation and Maintenance of Storm Water Drainage and Retention System: The Master Association shall provide all "light" maintenance of the Storm Water Drainage and Retention System, including the storm water retention ponds described herein as specified in the Operation and Maintenance Manual for Light Maintenance of the Storm Water Retention Ponds Located Within Two River Subdivision No.1, prepared by JUB Engineering, dated April 14, 2000. Required maintenance shall include, but not be limited to the following:

A. Periodic inspection of the Storm Water Drainage and Retention System, including the banks of the retention area and biovegetated grassy swalls for water spots and other erosion, on at least a monthly basis;

B. Landscape maintenance including, but not limited to, mowing, trimming, fertilizing and irrigating, provided, however, any such irrigation shall not interfere with the operation of the Storm Water Drainage and Retention System;

C. Collection and disposal of any and all trash and debris found in and around the easement area; and

D. Periodic inspection of the bottom of the biovegetated grassy swall areas for the accumulation of sediment or organics,

Section 4. Association's Failure to Maintain; Ada County Highway District Remedies: In the event that ACHD determines in its sole discretion, that the Association is not adequately maintaining the Storm Water Drainage and Retention System, then

ACHD shall be permitted to do so; provided, however, that before undertaking maintenance of the said system, ACHD shall provide thirty (30) days advance written notice of its intention to do so and by which said notice shall specifically identify the maintenance which is then required. In the event the Association shall fail to complete the items of maintenance as specified in said notice within the thirty (30) day period provided, then in that event, ACHD may begin to undertake such maintenance. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the storm water and drainage easement area to perform such maintenance and inspection of the Storm Water Drainage and Retention System. Should ACHD engage in maintenance of the Storm Water Drainage and Retention System after having provided the required notice to the Association and having provided the Association an opportunity to undertake said maintenance, ACHD shall first bill the Association for the cost of the said maintenance and, if said bill shall not be paid within sixty (60) days, then ACHD shall be entitled and empowered to file a taxable lien against all Lots within the subdivision with the power of sale as to each and every lot in order to secure any and all assessments levied against all Lots in the subdivision pursuant to this Declaration as if the said maintenance had been performed by the Association, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD. The Association, and all Lot owners, by accepting title to a Lot, agree that all Lot owners in the subdivision are benefited property owners of such maintenance. The Association shall not be dissolved or relieved of its responsibility to maintain the Storm Water Drainage and Retention System without the prior written approval of ACHD.

Section 5. Heavy Maintenance of Storm Water Drainage and Retention System: ACHD shall perform the "heavy" maintenance of the Storm Water Drainage and Retention System which said "heavy" maintenance consists of periodically inspecting the Storm Water Drainage and Retention System to insure it is functioning properly, cleaning out the facility piping, and mucking out the facility when the sediment level exceeds the designed storage level. In the event ACHD shall elect not to perform such "heavy" maintenance, then the Association shall do so. Notwithstanding anything contained hereinabove to the contrary, ACHD shall own and be responsible for the operation, maintenance and repair of all storm drains within the public rights-of-way and within any Ada County Highway District storm drain easements as may depicted on the Plat.

ARTICLE VII: PRIVATE STREETS:

Declarant may elect to provide access to portions of the Properties by a system or systems of private streets to be constructed by Declarant and owned and operated by the Master Association or a local Association as a part of the Common Area for which such Association may be responsible. In the event Declarant elects to do so, such private streets shall be designated on the Plat of that portion of the property to which access therefrom is to be provided, in which event a said private street shall be dedicated and restricted to the perpetual and indefeasible right of ingress and egress over and across the same for the exclusive use and benefit of the Owners and residents of the said Properties, their guests and invitees. The provisions of this Article shall be implemented

and the maintenance responsibilities set forth in a Supplemental Declaration applicable to that portion of the Properties to be served by the said private streets.

ARTICLE VIII: PATHWAYS

Declarant may elect to provide one or more pathways to be constructed by Declarant and owned and operated by the Master Association or a local Association as part of the Common Area for which the said Association may be responsible. The location of the pathways may be designated on the Plat of, or in a Supplemental Declaration applicable to that portion of the Properties on which it is to be located. Any such pathways and the property upon which they are located shall, for all purposes as are contained in this Declaration, be treated as if it were a part of the Common Area, subject, however, to the following special provisions:

A. Public access to, over, and across the designated pathways shall not be prevented at any time. It is understood that members of the public shall have a perpetual easement for the use and enjoyment of the designated pathways for so long as the said pathways shall be owed by an Association or its successors.

B. Notwithstanding anything to the contrary in this Declaration, Declarant or the Board of Director of the responsible Association may dedicate or transfer all or any part of any designated pathway to the city of Eagle or other governmental entity for such purposes and subject to such conditions as may be agreed upon. The provisions of this Article may be implemented in a Supplemental Declaration applicable to that portion of the Properties in which any designated pathway may be located.

ARTICLE IX: EASEMENTS

Section 1. Future Easements: An Association shall have the future right to provide for such easements across, upon and under the surface of its Common Area as platted herein as may be reasonably necessary to serve the interests and convenience of the property Owners of this subdivision for public or private ways, public utilities (including cable television), drainage, access, subterranean irrigation lines, eave and balcony overhangs.

Section 2. Encroachments: In the event that, by reason of the construction, settlement or shifting of the building, any part of any Dwelling Unit or drainage water from any Lot or Dwelling Unit encroaches or shall hereafter encroach upon any part of the Common Area or any adjacent Lot, easements for the maintenance of such encroachment and for such use of the areas encroached upon are hereby established and shall exist for the benefit of said Dwelling Unit, so long as all or any part of the buildings shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Area or adjacent Dwelling Units be created in favor of any Owner of such encroachment or use if it is detrimental to or interferes with the reasonable use and enjoyment of the property by other Owners and if it occurred due to the willful conduct of any Owner.

Section 3. Easement for Maintenance: The Declarant and any Association shall have a permanent easement to go upon the privately owned property of Owners in this subdivision to perform maintenance upon the Properties, the Common Area, the Storm Water Drainage and Retention System and the Irrigation Water Supply System, including, but not limited to, snow removal, lawn maintenance, utility service and drainage system maintenance, subterranean irrigation water system maintenance and perimeter fence maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems.

Section 4. Waterway Easements: Declarant hereby reserves for the benefit of the Master Association an easement for all waterways and related pipes, pumps and other equipment over, across and under all Lots and Common Areas to the extent reasonably required to maintain any Waterway system installed by Declarant on the Properties. Declarant reserves the right to make any reconfiguration of any Waterway which it determines, in its own discretion, to be necessary, expedient or desirable.

Section 5. Easement for Irrigation Water Supply System: The Declarant and the Master Association shall have a permanent easement for the construction, maintenance and repair of the Irrigation Water Supply System and related pumps, pipes, and any other conveyancing apparatus in the utility, drainage and irrigation easements as depicted, described or set forth on the Plat. Declarant reserves the right to make any reconfiguration of any portion of the Irrigation Water Supply System which determines, in its own discretion, to be necessary, expedient or desirable.

ARTICLE X: MAINTENANCE RESPONSIBILITY

The Association designated in this Declaration and any Supplemental Declaration shall provide maintenance to and be responsible for the Common Areas and improvements thereon, including any Association-owned street lights, the Irrigation Water Supply System, the Storm Water Drainage and Retention System (as provided in Article VI, above), and any Waterway which may be located upon a Lot. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject. Each Owner shall be responsible for maintaining and keeping in good order and repair the exterior of his Dwelling Unit and any private decks, fences (if permitted as herein provided), courtyards, landscaping and lawn contiguous to his Dwelling Unit, and any parking strip located between the sidewalk and the street adjacent to his Lot. The designated Association shall have an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within one hundred twenty (120) days of the damage or destruction.

ARTICLE XI: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the Properties and shall be for the benefit of and limitations upon all present and future Owners of said property, or of any interest therein:

- A. Lot Use: No Lot, with the exception of the Common Area, shall be used except for single-family residential purpose. No Lot or the Common Area shall be used for the conduct of any trade, business or professional activity. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations. The Owner of each Lot shall complete construction of a Dwelling Unit as permitted herein within two (2) years after the date of the first conveyance of a Lot to an Owner by Declarant.
- B. Animals: Except as is set forth in a Supplemental Declaration applicable to any portion of the Properties, no animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except that two dogs, cats or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling Unit or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee.

- C. Garbage and Refuse Disposal: No part of said property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. Any incinerators or other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee and shall be kept in a clean and sanitary condition.
- D. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No exposed antennae or satellite dishes shall be erected on the Properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion.
- E. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Properties.
- F. Parking and Storage of Vehicles and Equipment: Parking and storage of boats, trailers, motorcycles, trucks, truck campers, motorhomes, recreational vehicles, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any Lot nor on public ways or Common Area adjacent thereto, except under such circumstances, if any, as may be prescribed in writing by, and in the sole discretion of the Board of Directors of the Master Association, which discretion may not be challenged for having been exercised unreasonably. All other parking of equipment shall be prohibited, except as approved in writing by the Board of Directions of the Master Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.
- G. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement.
- H. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, any applicable

Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall mean any agreement for the leasing or rental of a Dwelling Unit (including a month-to-month rental agreement); and all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling Unit.

- I. Sewer Restrictions: All bathroom, sink and toilet facilities shall be located inside the Dwelling Unit or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot.
- J. Parking Rights: Any automobile or other vehicle used by any Owner shall be parked in the driveway or garage which is a part of his Dwelling Unit.
- K. Mail Boxes: All mail boxes will be of consistent design, material and coloration as required by Declarant or the Architectural Control Committee and shall be located on or adjoining building Lot lines and places designated by or Declarant or the Architectural Control Committee.

ARTICLE XII: BUILDING RESTRICTIONS

Section 1. Building Type and Size: With the exception of Common Area Lots and except as may otherwise be provided in a Supplemental Declaration applicable to that portion of the Properties as is identified therein, no buildings shall be erected, altered, placed or permitted to remain on any Lot other than single-family dwellings, which may not exceed thirty-five feet (35') in height, and a private garage for two (2) or more motor vehicles. Each dwelling unit may not be occupied by more than one (1) family.

Section 2. Setbacks: No improvements may be constructed or maintained on a Lot within the minimum building setback lines as provided for in a Supplemental Declaration applicable to any portion of the Properties as is identified therein or by the Eagle City Zoning Ordinance in effect at the time of the issuance of the building permit for such Lot.

Section 3. Construction Requirements: The construction requirements applicable to each Dwelling Unit shall be set forth in a Supplemental Declaration applicable to that portion of the Properties as is identified therein.

Section 4. Landscaping: Upon the earlier of substantial completion or occupancy of the Dwelling Unit located thereon, each Lot shall have installed thereon such landscaping improvements as are set forth in a Supplemental Declaration applicable to that portion of the Properties as is identified therein.

Section 5. Fences: Fences, including fences around swimming pools, dog runs or other uses, may be permitted under such circumstances, if any, as may be set forth in a Supplemental Declaration applicable to any portion of the Properties as is identified therein.

Section 6. Garages and Accessory Outbuildings: Garage, accessory and outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to style and exterior colors.

Section 7. Building Elevations: All Dwelling Units shall be designed and constructed so that the finished floor level of the interior living area of such Dwelling Unit is at least two feet above the 100 year flood plain level of the Boise River, or at such other elevation as is specified by the Federal Emergency Management Act or the City of Eagle, Idaho.

Section 8. Grading and Drainage: Each Owner shall be responsible to insure that the finish grade and elevation of his Lot is properly constructed so as to prevent the migration or accumulation thereon of drainage waters from the Common Area or any other Lots within the Properties. The Declarant shall have no liability or responsibility for any damages which may be caused as a result of the failure of an Owner to comply with the provisions of this Section.

ARTICLE XIII: ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Declarant for so long as Declarant owns any Lot, part, parcel or portion of the Properties. Thereafter, the members of the Architectural Control Committee are to be appointed by the Board of Directors of the Master Association at each annual meeting of the Board.

Section 2. Approvals Required: No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing in such design, the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement, structure or alteration. Actual construction shall comply substantially with the plans and specifications approved.

Section 3. Submissions: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee including, without limitation, the following:

- A. Site Plan: A site plan showing the location of buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all setbacks and other pertinent information related to the improvements; and
- B. Building Plan: A building plan which shall consist of the preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicate, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used.
- C. Landscape Plan: A landscape plan for that portion of the Lot to be landscaped which shall show the location, type and size of trees, plants, groundcover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, free-standing exterior lights, driveways, parking areas and walkways.

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Architectural

Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each owner submitting plans and specifications 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 Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

Section 6. Waivers: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 7. Variances: The Architectural Control Committee may authorize variances from compliance with any of the architectural provisions of this Master Declaration, including restrictions on height, size, floor area, or placement of structures or other similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. However, no variances will be granted for construction of structures or improvements, including without limitation, manicured lawns, in the Common Areas. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Control Committee, and shall become effective upon recordation in the office of the County Recorder of Ada County. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Master Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration or any Supplemental Declaration for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the owner's obligation to comply with all governmental laws and regulations affecting such owner's use of the Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

Section 8. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Master Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 9. Certification by Secretary: The records of the Secretary of the Master Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or

Assistant Secretary of the Master Association showing that the plans and specifications for the improvement or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Master Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Master Association shall have appeared of record in the office of the County Recorder of Ada County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

Section 10. Construction and Sales Period Exception: During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwelling Units; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarant shall have the right to select and use any individual Dwelling Units as models for sales purposes and, for so long as Declarant shall own any Lot, part, parcel or portion of the Properties, Declarant shall have the right to use any clubhouse or similar facility owned or to be owned by the Association as a sales and marketing office or for other such similar uses.

Section 11. Local Architectural Control Committee: The Declarant may, at its option, create a Local Architectural Control Committee for the property designated by a Supplemental Declaration. Upon its formation, all proposals, plans and specifications for improvements within the designated property requiring approval of the Architectural Control Committee described above must be submitted to the Local Architectural Control Committee for approval, rather than being submitted to the Architectural Control Committee. Thus, all proposals, plans and specifications for improvements require the approval of either the Architectural Control Committee or the Local Architectural Control Committee, if such has been created, but not both such committees. Each provision of this Article X shall apply to the Local Architectural Control Committee as if it were the Architectural Control Committee and to the Local Association as if it were the Master Association, except to the extent that such interpretation would be in conflict with the provisions of this Article XI.

ARTICLE XIV: INSURANCE AND BOND

Section 1. Required Insurance: The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time.

- A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).
- B. A comprehensive policy of public liability insurance covering all of the Common Areas, commercial spaces and public ways in the Properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Dwelling Unit Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the Properties contain more than one hundred (100) Units, coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.
- C. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

Section 2. Optional Insurance: The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho.

- A. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.
- B. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the Properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

Section 3. Additional Provisions: The following additional provisions shall apply with respect to insurance:

- A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.
- B. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
- C. All policies shall be written by a company licensed to write insurance in the state of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.
- D. Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal Home Loan Mortgage Corporation.

ARTICLE XV: CONDEMNATION

Section 1. Consequences of Condemnation: If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association owing the condemned Common Area.

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The appropriate Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the appropriate Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

ARTICLE XVI: MORTGAGEE PROTECTION

Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws of an Association:

- A. All Associations shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.
- B. The holders of First Mortgages shall have the right to examine the books and records of any Association and to require annual reports or other appropriate financial data.
- C. Any management agreement for the Properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the contracting Association for cause upon thirty (30) days' written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.
- D. Any lien which an Association may have on any Dwelling Unit for the payment of assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date notice of such assessment lien is duly recorded.
- E. Unless all institutional holders of First Mortgages have given their prior written approval, no Association shall:
 1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the maintenance of the Common Area property, party walls, or common

fences and driveways, or the upkeep of lawns and plantings in the subdivision.

4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XVII: ANNEXATION

Section 1. Time for Annexation; Land Subject to Annexation: Declarant hereby reserves the right to annex any abutting, adjoining or contiguous real property, into the project by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to the project created by this Declaration, pursuant to the provisions of this Article.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the project; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots and Units within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Dwelling Units within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

Section 2. Procedure for Annexation: Any of the above-described real property may be annexed into the project by the recordation of a Notice of Annexation executed by Declarant and containing the following information:

- A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and

page of the official records of Ada County where this Declaration is recorded;

- B. An exact legal description of the added land;
- C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and
- D. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

Section 3. Deannexation: Declarant may delete all or a portion of the property described on Exhibit A and any annexed property from the Properties and from coverage of this Declaration and the jurisdiction of the Master Association, so long as Declarant is the owner of all such property and provided that a Notice of Deannexation is recorded in the Office of the Ada County Recorder in the same manner as a Notice of Annexation. Members other than Declarant as described above, shall not be entitled to deannex all or any portion of the Properties except on the favorable vote of all members of the Association and approval of Declarant so long as Declarant owns any Lot, part, parcel or portion of the Properties.

ARTICLE XVIII: GENERAL PROVISIONS

Section 1. Enforcement: The Master Association or the applicable Local Association or any Owner or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by an Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of membership. Any amendment must be recorded.



Exhibit "A"

Engineers Surveyors Planners

Project: 11478
Date: December 15, 1998
Revised: November 5, 1999 (to 83 datum)

PARCEL DESCRIPTION FOR TWO RIVERS SUBDIVISION - TOTAL BOUNDARY

A parcel of land being all of Lots 6, 7, and 8, and portions of Lot 5, the North half of the Southeast quarter and the South half of the Southeast quarter, all in Section 17, T.4N., R.1E., B.M., Eagle, Idaho, and more particularly described as follows:

Commencing at a point marking the East 1/4 corner of Section 17, T.4N., R.1E., B.M., Eagle, Idaho; thence South 00°55'58" West, 42.87 feet along the Easterly line of said Section 17 (formerly described as South 00°56'03" West, 61.27 feet) to a point; thence leaving said Easterly line, North 89°04'26" West, 52.55 feet (formerly described as North 89°03'57" West, 33.00 feet) to a point on the Westerly right-of-way of State Highway No. 55 (Eagle Road), Project No. NH-F-3271(037) highway survey as shown on the plans thereof now on file in the office of the Idaho Transportation Department, also described in Warranty Deed Instrument No. 96098736; said point being the REAL POINT OF BEGINNING;

thence North 45°55'31" West, 361.19 feet (formerly described as North 45°55'26" West, 387.98 feet) to a point;

thence North 37°00'07" West, 409.25 feet (formerly described as North 37°00'02" West, 409.25 feet) to a point;

thence North 53°05'24" West, 205.78 feet (formerly described as North 53°05'19" West, 205.78 feet) to a point;

thence South 81°27'07" West, 1,659.98 feet (formerly described as South 81°27'12" West, 1,659.98 feet) to a point;

thence South 84°27'54" West, 922.50 feet (formerly described as South 84°27'59", 922.50 feet) to a point;

thence North 85°17'48" West, 519.15 feet (formerly described as North 85°17'43" West, 519.15 feet) to a point;

thence North 84°28'20" West, 236.23 feet (formerly described as North 84°28'15" West, 236.23 feet) to a point;

thence South 00°21'17" East, 920.83 feet (formerly described as South 00°21'12" East 920.83 feet) to a point on a line between Lots 5 and 6;

thence South 00°53'11" West, 794.07 feet (formerly described as South 00°53'16" West, 794.07 feet) to a point marking the Northwest corner of the Southeast quarter of the Southwest quarter of said Section 17;

thence continuing South 00°53'11" West, 345.37 feet (formerly described as South 00°53'16" West, 345.37 feet) to a point on the Southerly line of the North 1/2, North 1/2, SE 1/4, SW 1/4;

thence North 89°37'11" East, 1,348.44 feet (formerly described as North 89°37'16" East, 1,348.44 feet) along said Southerly line to a point on the center section line of said Section 17;





thence South 01°09'33" West, 419.36 feet along said center section line (formerly described as South 01°09'38" West, 419.36 feet) to a point on the Northerly right-of-way of South Channel Road;

thence along said Northerly right-of-way the following courses and distances:

South 67°33'35" East, 1,190.46 feet (formerly described as South 67°33'30" East, 1,190.46 feet) to a point;

thence North 66°55'25" East, 329.25 feet (formerly described as North 66°55'30" East, 329.25 feet) to a point;

thence South 84°50'35" East, 396.00 feet (formerly described as South 84°50'30" East, 396.00 feet) to a point;

thence South 52°45'35" East, 165.00 feet (formerly described as South 52°45'30" East, 165.00 feet) to a point;

thence South 40°18'35" East, 93.72 feet (formerly described as South 40°18'30" East, 93.72 feet) to a point;

thence South 51°59'55" East, 35.43 feet (formerly described as South 51°59'50" East, 35.43 feet) to a point;

thence North 88°55'27" East, 592.98 feet (formerly described as North 88°55'32" East, 614.71 feet) to a point on the Westerly right-of-way of said State Highway No. 55 (Eagle Road);

thence North 00°58'51" East, 2,582.51 feet along said Westerly right-of-way (formerly described as North 00°56'03" East, 2,563.43 feet) to the REAL POINT OF BEGINNING.

Said parcel contains 237.13 acres, more or less.

END OF DESCRIPTION.

Prepared by

J-U-B ENGINEERS, Inc.



LHK:lhc

Lawrence H. Koerner, P.L.S.



ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF
TR Company
FEE 12.00 DEPUTY *Jasper*

**AMENDMENT TO MASTER DECLARATION
OF**

101087062

**COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TWO RIVERS SUBDIVISION**

THIS AMENDMENT to Master Declaration of Covenants, Conditions and Restrictions of Two Rivers Subdivision is made on the date hereinafter set forth by T R Company, LLC, an Idaho limited liability company ("Declarant").

WHEREAS, Declarant has heretofore filed of record the Master Declaration of Covenants, Conditions and Restrictions of Two Rivers Subdivision (hereinafter the "Master Declaration"), which Master Declaration was recorded on July 25, 2000 as Instrument No. 100058217, records of Ada County, Idaho; and

WHEREAS, pursuant to the Declaration, amendment of any provision thereof requires an instrument signed by members of Two Rivers Subdivision Homeowners Association (the "Master Association") entitled to cast not less than 66 2/3% of the votes of membership; and

WHEREAS, Declarant is currently entitled to cast in excess of 66 2/3% of the votes of membership of the Master Association;

NOW, THEREFORE, Declarant hereby declares that the Master Declaration is hereby amended as follows:

1. A new Section 9, in Article XII, shall be added to read as follows:

Section 9. Maintenance During Construction: The following requirements shall apply during the construction of improvements on a Lot:

- a. All job sites are to be kept as clean as possible during construction. A receptacle for trash and debris shall be located on the subject Lot and shall not be overfilled nor shall debris be permitted to be blown by wind, tracked by vehicles or otherwise be permitted to accumulate on the subject Lot or on surrounding Lots or Common Areas. All dirt, nails, gravel and other building materials must be removed from the street and sidewalk daily.

- b. Vehicles belonging to workmen or used in the construction of the improvements on a Lot shall not be parked in front of occupied Dwelling Units or interfere with traffic on public or private streets.
- c. Utilities, including power and water, shall not be taken from any other Lot without the approval from the Owner thereof.
- d. All contractors and subcontractors shall be prohibited from keeping dogs at the job site.
- e. Each Owner shall be responsible to repair any damage which may occur during the construction of any improvements to any road, mailbox, utility facility or other onsite or offsite improvement caused by the Owner or the Owner's agents or contractors.

In the event an Owner or an Owner's agent or contractor shall fail or refuse to comply with the maintenance requirements of this Section, the Declarant or an Association may take such remedial action as it deems appropriate, including but not limited to the cleanup of the Lot and surrounding areas, the costs of which may be added to and become a part of the assessment to which such Owner's Lot is subject.

2. Article XVIII, Section 1 of the said Master Declaration is hereby amended in its entirety to read as follows:

Section 1. Enforcement: The Master Association or the applicable Local Association or any Owner or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In addition to the foregoing, an Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$100 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown on the records of the applicable Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of Directors of the applicable

Association or by a Committee composed of not less than three (3) persons appointed by the Board of Directors. Such hearing shall be conducted in good faith and in a fair and reasonable manner. Any Owner challenging the monetary penalty imposed as provided herein, including any claim alleging defective notice, must commence legal action within one (1) year after the date of the imposition of the said penalty. Any monetary penalty imposed as provided herein shall become a part of the assessment to which such Owner's Lot is subject. In the event an Association or an Owner is required to initiate any action to enforce the provisions of this Declaration or in the event an Association retains legal counsel in connection with any of its methods of enforcement as set forth herein, the Association or the enforcing Owner shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees and costs incurred as a consequence thereof, whether or not any lawsuit is actually filed, and any such attorney fees and costs so incurred by an Association shall be added to and become a part of the assessment to which such Owner's Lot is subject. Failure by an Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

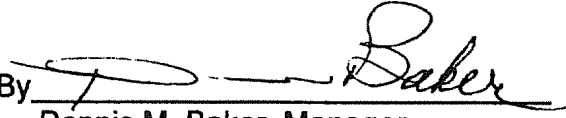
3. A new paragraph L in Article XI, shall be added to read as follows:

L. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for sale by displaying a single, neat and standard sized sign on a Lot containing only such information as is required to indicate that the property is for sale. No other signs may be displayed on a Lot, including temporary signs advertising the names of the contractor, subcontractors, or financing institutions, unless such signs have been approved, in writing, by the Architectural Control Committee prior to installation.

Except as amended herein, the Declaration shall remain in full force and effect with no other change of modification.

DATED this 24 day of August 2001.

T R Company, LLC

By 
Dennis M. Baker, Manager

DA 4983 ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

ACCOMMODATION

2001 NO -1 PM 2:45

RECORDED - REQUEST OF

FEE 9.00 DEPUTY *Maple*

101114988

PIONEER TITLE

**SECOND AMENDMENT TO MASTER DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TWO RIVERS SUBDIVISION**

THIS Second Amendment to Master Declaration of Covenants, Conditions and Restrictions of Two Rivers Subdivision is made on the date hereinafter set forth by T R Company, LLC, an Idaho limited liability company ("Declarant").

WHEREAS, Declarant has heretofore filed of record the Master Declaration of Covenants, Conditions and Restrictions of Two Rivers Subdivision (hereinafter the "Master Declaration"), which Master Declaration was recorded on July 25, 2000 as Instrument No. 100058217, records of Ada County, Idaho; and

WHEREAS, pursuant to the Declaration, amendment of any provision thereof requires an instrument signed by members of Two Rivers Subdivision Homeowners Association (the "Master Association") entitled to cast not less than 66 2/3% of the votes of membership; and

WHEREAS, Declarant is currently entitled to cast in excess of 66 2/3% of the votes of membership of the Master Association;

NOW, THEREFORE, Declarant hereby declares that the Master Declaration is hereby amended as follows:

1. Article X of the Master Declaration is hereby amended in its entirety to read as follows:

ARTICLE X. MAINTENANCE RESPONSIBILITY

Section 1. Maintenance by Association. The Association designated in this Declaration and any Supplemental Declaration shall provide maintenance to and be responsible for the Common Areas and improvements thereon, including any Association-owned streetlights, the Irrigation Water Supply System, the Storm Water Drainage and Retention

System (as provided in Article VI, above), and any Waterway which may be located upon a Lot.

In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject. The designated Association shall have an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association.

Section 2. Maintenance by Owner. Each Owner shall be responsible for maintaining and keeping in good order and repair the exterior of his Dwelling Unit and any private decks, fences (if permitted as herein provided), courtyards, landscaping and lawn contiguous to his Dwelling Unit, and any parking strip located between the sidewalk and the street adjacent to his Lot. Prior to the construction of a Dwelling Unit thereon, each Owner shall be responsible to keep his Lot in a neat and aesthetically pleasing condition, reasonably free of weeds and accumulation of rubbish and debris. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within one hundred twenty (120) days of the damage or destruction.

Section 3. Failure of Owner to Maintain. In the event an Owner shall fail or refuse to perform its maintenance or repair obligations as set forth herein, the Master Association or the applicable Local Association shall have the power to enter on to said Owner's Lot for the purpose of performing such maintenance or repairs as may be reasonably required and shall have the power to incur expenses therefore; provided, however, that the Board of Directors of the applicable Association shall have delivered to such Owner written notice at least seven (7) days in advance of performing such maintenance and repairs describing the maintenance or repairs required to be made and advising the Owner of the Association's intent to perform such maintenance and repairs if the Owner fails or refuses to do so within the time set forth in such notice. The cost incurred by the Association in performing such maintenance or repairs, together with interest thereon from the date of expenditure at the rate of two percent (2%) per month, shall be added to and become part of the assessment to which such Owner's Lot is subject.

