

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE MAPLE HILL SUBDIVISION**

**Date:** \_\_\_\_\_

**Recorded:** \_\_\_\_\_

**Instrument No.:** \_\_\_\_\_

THIS DECLARATION is made on the date hereinafter set forth by the undersigned, hereinafter referred to as "declarant."

WHEREAS, declarant is the owner of certain real property in the County of Ada, State of Idaho, hereinafter referred to as "said property," more particularly described as follows:

The Maple Hill Subdivision, recorded in the office of the County Recorder of Ada County, Idaho as Instrument No. \_\_\_\_\_, and filed in Book \_\_\_\_\_ of Plats, at pages \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

NOW THEREFORE, declarant hereby declares that all of the said property is and shall be held 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 said property. Said easements, covenants, restrictions, conditions and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, easements and reservations shall inure to the benefit of and be limitations upon all future owners of said property, or any interest therein.

**ARTICLE I**

**DEFINITIONS**

Whenever used in this declaration, the following terms shall have the following meanings:

1. "Corporation" shall mean The Maple Hill Subdivision Corporation, a non-profit corporation, to be organized under the laws of the State of Idaho, and its successors and assigns.

2. "Said property" shall mean and refer to that certain real property hereinbefore described, and such additions therein as may hereafter be brought within the jurisdiction of the corporation.

3. "Common area" shall mean all real property and appurtenances thereto, now or hereafter owned by the corporation for the common use and enjoyment of the stockholders of the corporation. The common area to be owned by the corporation upon its incorporation is described as follows:

Lot 9, Block 1, Lot 29, Block 1 and Lot 51, Block 4, The Maple Hill Subdivision, as recorded in the Office of the County Recorder of Ada County, Idaho as Instrument No. \_\_\_\_\_, and filed in Book of Plats \_\_\_\_\_ at pages \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

4. "Lot" shall refer to any lot of land shown upon any recorded subdivision map of the properties with the exception of common area, and to any parcel of said property under one ownership consisting of a portion of one or more of such lots and/or contiguous portions of two or more contiguous lots.

5. "Stockholder" shall mean and refer to every person or entity that holds stock in the corporation.

6. "Owner" shall mean and refer to the record owner of a fee simple title to any lot which is part of said property, (including contract sellers), whether one or more persons or entities, excluding those having such interest merely as security for the performance of the obligation.

7. "Declarant" shall mean and refer to the undersigned, its successors, heirs and assigns.

8. "Building site" shall mean and refer to a lot, or to any parcel of said property under one ownership which consists of a portion of one of such lots or contiguous portions of two or more contiguous lots if a building is constructed thereon.

9. "Set back" means the minimum distance between the dwelling unit or other structure referred to and a given street or road or lot line.

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

11. "Sewage system" shall mean and refer to the sewage disposal systems owned, operated and maintained by the corporation as herein provided and as described on Exhibit A attached hereto and incorporated herein by reference.

## **ARTICLE II**

### **STOCKHOLDER QUALIFICATIONS**

1. Every person or entity who is a record owner (including contract sellers) of a fee or undivided fee interest in any lot with improvements thereon located within said property shall, by virtue of such ownership, be a stockholder of the corporation. When more than one person holds such interest in any lot, all such persons shall be stockholders. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Stock ownership shall be appurtenant to and may not be separated from ownership of any such lot subject to assessment by the corporation. Such ownership 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. The corporation shall maintain a stockholder list and may require written proof of any stockholders' lot ownership interest.

2. The financial reports, books and records of the corporation may be examined, at reasonable times, by any stockholder or mortgagee.

## **ARTICLE III**

### **VOTING RIGHTS**

The corporation shall have one class of voting stock. Each stockholder shall be entitled to cast one vote or fractional vote as set forth herein for each lot in which he holds the interest required for stock. Only one vote shall be cast with respect to each lot. The vote applicable to any lot being sold under a contract of sale shall be exercised by the contract vendor unless the contract expressly provides otherwise and the corporation has been notified, in writing, of such provision. Voting by proxy in accordance with the authorization contained in Article V of the Articles of Incorporation shall be permitted.

## **ARTICLE IV**

### **PROPERTY RIGHTS**

1. **Common Property Ownership.** The corporation shall own, operate, control and maintain the common area.

2. **Stockholders' Easements of Enjoyment.** Every stockholder of the corporation shall have a right and easement of enjoyment in and to the common areas and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

(a) The right of the corporation to limit the number of stockholders permitted to use a particular part of the common areas at any one time;

(b) The right of the corporation to suspend any stockholder's voting rights and/or right to use any of the recreational facilities owned by the corporation, for any period during which any assessment against said stockholder's property remains unpaid; and for a period not exceeding thirty (30) days for each infraction of its published rules and regulations;

(c) The right of the corporation to dedicate or transfer all or any part of the common areas to any public agency authority, or utility for such purposes and subject to such conditions as may be agreed to by the stockholders. No such condition or transfer shall be effective unless authorized by stockholders entitled to cast two-thirds (2/3) of the majority of the votes of the stock at a special or general stockholders' meeting and an instrument signed by the president and secretary has been recorded in the appropriate county deed records, agreeing to such dedication or transfer, and unless written notice of proposed action is sent to every stockholder not less than thirty (30) days nor more than ninety (90) days prior to such dedication or transfer; and

(d) The right of the directors of the corporation to promulgate reasonable rules and regulations governing such rights of use, from time to time, in the interest of securing maximum safe usage of such common areas by the stockholders of the corporation without unduly infringing upon the privacy of 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 parking.

3. **Delegation of use.** Any stockholder may delegate, in accordance with rules and regulations adopted from time to time by the directors, his right or enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers, providing they reside on the property.

## ARTICLE V

### MAINTENANCE ASSESSMENT AND MORTGAGEE RIGHTS

1. **Creation of the Lien and Personal Obligation of Assessments.** The declarant hereby covenant for all of said property; and each owner of any lot by ratification of these covenants or by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the corporation;

(a) regular annual or other regular periodic assessments or charges; and

(b) 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 such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

2. **Purpose of Assessments.** The assessments levied by the corporation shall not be used for any purpose other than promoting the recreation, health, safety and welfare of the residents in said property and in particular for the improvement and maintenance of said property, and common area, the services and facilities devoted to this purpose and related to the use and enjoyment of the common area, and of any structures situated upon said property and including, without being limited thereto, the payment of taxes and insurance on all or any part of said property. Subject to the above provision the corporation shall determine the use of assessment proceeds.

3. **Basis and Maximum Annual Assessment.** Until January 1<sup>st</sup> of the year immediately following the conveyance of the first dwelling unit or lot to an owner, the maximum regular assessment shall be \$\_\_\_\_\_ per month lawful money of the United States of America, for each lot or dwelling unit subject thereto, or such lesser sum as may be provided in the by-laws.

(a) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first lot to an owner, the maximum monthly assessment may be changed by a vote of the stockholders, providing that any such change shall be approved by the affirmation vote of not less than two-thirds (2/3) of the votes of stockholders who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all stockholders not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purposed of the meeting.

(b) In addition to the regular assessments authorized above, the corporation may bevy 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 or reconstruction, unexpected repair or replacement of a capital improvement upon the common areas or to the sewage systems, including the necessary fixtures and personal property related thereto, provided the assent of a two-thirds (2/3) majority of the complete votes represented by the stockholders who are voting in person or by proxy at the meting duly called for this purpose is obtained, written notice of which shall be sent to all stockholders not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

4. **Uniform Rate of Assessment.** Both regular assessments and any special assessments must be fixed at a uniform rate for all lots, and may be collected on an annual, quarterly, or monthly basis in the discretion of the directors, except that assessments may be levied applicable to some lots only, with prior consent by the owners of such lots, if such procedure is considered equitable in the discretion of the board in order to construct facilities to be available only to the stockholders desiring to pay for the cost thereof.

5. **Quorum For Any Action Authorized Under Section 3.** At the first meeting called, as provided in Section 3 hereof, the presence at the meeting of stockholders or of proxies to cast sixty percent (60%) of all votes of the stockholders shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Section 3 and the required quorum at such subsequent meeting shall be two-thirds (2/3) of the votes of stockholders who are voting in person or by proxy at such meeting. No subsequent meeting shall be held more than sixty (60) days following the date of the meeting at which no quorum was forthcoming.

6. **Date of Commencement of Annual Assessment, Due Dates.** All lots shall be subject to the annual or monthly assessments

provided for herein on the first day of the month following the date the common area is conveyed to the corporation. The board of directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment dates shall be established by the board of directors. The corporation shall, upon demand at any reasonable time, furnish a certificate in writing signed by an officer of the corporation setting for whether the assessments on a particular lot have been paid. A reasonable charge may be made by the board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment any assessment therein stated to have been paid.

7. **Effect of Nonpayment of Assessments, Remedies of the Corporation.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of either percent (8%) per annum. The secretary of the said corporation shall file in the office of the County Recorder, Ada County, Idaho, a lien reflecting the amount of any such charges or assessments, together with interest, as aforesaid, which have become delinquent with respect to any lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien releasing the interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the whole lot (including any improvement located thereon) with respect to which it is filed from the date the lien is filed in the office of the said County Recorder for Ada County, Idaho, until the same has been paid or released as herein provided. Such lien may be enforced by said corporation in the manner provided by law with respect to liens upon real property. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements, including attorneys' fees of the declarant or of the corporation, as the case may be, of processing and if necessary, enforcing such fees shall be secured by said lien, including all aforementioned expenses, costs, disbursements and fees on appeal, and such owner at the time such assessment is levied, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his lot.

8. **Subordination of the Lien to Mortgagees.** The lien of the assessments provided for herein shall be inferior, junior and subordinate to the lien of all mortgages and trust deeds now or hereafter placed upon said property or any part thereof. The sale or transfer of any lot or any other part of said property shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant

to a judgment or decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relive such lot from liability for any assessments thereafter becoming due or from the lien thereof.

9. **Exempt Property.** The following property subject to this declaration shall be exempt from the assessments created herein;

(a) all properties expressly dedicated to and accepted by a local public authority;

(b) any common areas and sewage system;

(c) all other properties owned by the corporation; and

(d) property owned by the declarant prior to the time a dwelling unit or other building is constructed thereon and occupied. However, no land or improvements occupied for a dwelling use shall be exempt from said assessments.

10. **Notice of Mortgagees.** The corporation shall give to the mortgagee of any recorded mortgage, which has furnished to the corporation its name and current address, written notification of any default by the mortgagor of performance with respect to such mortgagor's obligations under this declaration, by-laws of the corporation or any duly adopted rules or regulations of the corporation at least ten (10) days prior to the filing of suit by the corporation to enforce those remedies with respect to such default.

11. **Mortgagee's Approval.** The corporation shall not undertake or cause to be undertaken the following acts without the prior written consent of seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage), if such acts would materially lessen the security of such mortgagees:

(a) Abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the corporation, except that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the corporation shall be permitted;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

(c) Change, waive or abandon any scheme or regulations or enforcement thereof, pertaining to architectural design, appearance or maintenance of structures or improvements located on the properties; and

(d) Use hazard insurance proceeds for losses to any common area improvements for other than the repair, replacement reconstruction of such improvements.

12. **Corporation Budget.** The corporation shall prepare an annual budget with shall indicate anticipated management, operating, maintenance, repair and other common expenses for the corporation's next fiscal year and which shall be sufficient to pay all estimated expenses and outlays of the corporation for the next calendar year growing out of or in connection with the maintenance and operation of the common areas and improvements and may include, among other things the cost of exterior maintenance, management, special assessments, fire, casualty and public liability insurance, common lighting, landscaping and care of grounds, repairs, renovations and paintings, to common areas, snow removal, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the corporation under or by reason of this declaration, the payment of any deficit remaining from a previous period, and the creation of any reasonable contingency or other reserve or surplus fund, as well as all costs and expenses relating to the common areas and improvements.

If any part of the sewage system is damaged or destroyed, the corporation shall repair or replace the damage or destruction at the sole expense of the corporation. Any such repair or replacement shall be undertaken immediately by the corporation upon receipt of written notice of the damage or destruction and in all events within forty-eight (48) hours after receipt of the said notice. A quorum of the board of directors of the corporation shall be necessary for the ratification and approval of any such decision to repair or replace damage or destruction to the sewage system. Any one (1) member of the board of directors may authorize the repair or replacement of any such damage or destruction.

## **ARTICLE VI**

### **SEWAGE SYSTEM**

1. **General Rules of Law to Apply:** Each sewage system (septic tank) which is built as part of the original construction of the homes upon the properties on or immediately adjacent to the dividing line between the lots owned by the different persons shall, to the extent not inconsistent with the provisions of this Article, be subject to the

general rules of law regarding liability for property damage due to negligent or willful acts or omissions.

2. **Maintenance.** The septic tank portions of the sewage system shall be pumped when the sludge level reaches forty percent (40%) of the liquid depth or three (3) years, whichever shall first occur. The corporation shall cause an annual inspection of the septic tanks and shall annually report in writing to Central District Health the number of septic tanks which have been pumped.

3. **Destruction.** If a sewage system is destroyed or damaged by any casualty, the repair shall be undertaken in accordance with V, Paragraph 13 hereof.

4. **Arbitration.** Any dispute concerning a sewage system (septic tank) or any provision of this Article shall be arbitrated. Each party shall choose one arbitrator, and such arbitrator shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators.

5. **Encroachments.** If any portion of a sewage system (septic tank) now or hereafter constructed upon said property encroaches upon any part of the common areas or upon the lot or lots used or designated for use by another lot owner, a easement for the encroachment and for the maintenance of same is granted and reserved and shall exist, and be binding upon the declarant and upon all present and future owners of such encroaching building of structures for the purpose of occupying and maintaining the same in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal and upon each dwelling unit and lot for such use as is necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

6. **Sewer Hookup.** At such time as the dry line sewers are made operational by connection to Boise city sanitary sewer systems collection trunks, the improvements located upon the lots within The Maple Hill Subdivision shall, with nine (9) months be connected thereto, and the corporation hereby agrees to pay to Boise City all applicable connection fees and monthly service charges as prescribed by the Boise City ordinances.

**ARTICLE VII**

**ARCHTECTORAL CONTROL**

1. **Approval.** No building, fence, wall, hedge, structure, addition, painting, improvement, obstruction, ornament, landscaping or planting shall be placed upon, added or permitted to remain upon any part of said property unless a written request therefore, including exterior color scheme, has been approved in writing fro the Architectural Control Committee authorized by The Maple Hill Subdivision, being composed of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and their successors. Three (3) years after the first lot is sold, or until all lots within the subdivision have been sold, whichever shall last occur, the board of directors of the corporation shall assume all responsibilities of the committee.

**ARTICLE VIII**

**MAINTENANCE AND INSURANCE**

1. **Maintenance of Common Areas and Sewage System.** The corporation shall maintain or provide for the maintenance of the common areas and the sewage system. In the event that the need for such maintenance or repair is caused through the willful or negligent act or omission of the owner, his family, tenants, guest or invitees, the cost of such maintenance or repairs may, at the directors' discretion, be added to and become a part of the assessment to which such lot is subject, and a separate lien right shall arise and inure to the corporation and shall be enforceable in the same manner as provided for in Article V, Paragraph 7 hereinabove. The corporation shall have the right, after notice to the owner, to enter upon any lot for the purpose of performing such maintenance at reasonable hours on any day.

2. **Insurance.** The corporation shall obtain fire and extended coverage all risk insurance in an amount equal to 100% of the replacement cost of all insurable improvements located on common areas, which insurance shall name, an insured, the corporation for the benefit of the owners. The corporation shall also obtain fidelity coverage insuring against dishonest acts on the part of its directors, officers, employees, managers or volunteers responsible for handling funds collected and held for the benefit of the owners, which insurance shall name the corporation as insured and shall be written in an amount of at least 1 ½ times the corporation's estimated annual expenses and reserves. The corporation shall obtain comprehensive public liability insurance covering all of the common areas, which insurance shall

contain an endorsement precluding the insurer from denying the claim of an owner because of negligent act of the corporation or other owners.

## **ARTICLE IX**

### **PROPERTY USE RESTRICTIONS**

The following restrictions shall be applicable to the real property located in The Maple Hill Subdivision and shall be for the benefit of, and limitation upon, all present and future owners of said property or any interest therein:

1. All improvements constructed upon lots within The Maple Hill Subdivision shall be single family dwellings; provided, declarant shall at all times have the right to construct, place and erect model homes, and sales offices or facilities upon any lot. This restriction may not apply to any property annexed to this subdivision by past amendments or otherwise. Any annexed property shall have a separate and distinct declaration of covenants, conditions and restrictions.

2. Unless written approval is first obtained from the board of directors, no sign of any kind shall be displayed to public view on any building or building site on said property except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by the developer or lot owner to advertise the property during the construction and sales period. If a property is sold or rented, any sign relating thereto shall be removed immediately except that the declarant and only declarant or its agent may post a "sold" sign for a reasonable period following a sale.

3. No animals, livestock or poultry of any kind shall be raised, or kept on any part of said property, except dogs, cats, or other household pets provided that such household pets are not kept, bred or maintained for any commercial purpose and shall not be allowed in the common areas.

4. No part of said property shall be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. No garbage, trash, or other waste shall be kept or maintained on any part of said property except in a sanitary container. All equipment for the storage or disposal of such be kept in a clean and sanitary condition.

5. 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.

6. No trailer, camper, mobile home, camper-truck, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said property. No residence shall have an antenna of any kind or type protruding from the residence.

7. Parking of boats, snowmobiles on or off trailers, trailers, motor homes, motorcycles, trucks in excess of  $\frac{3}{4}$  tons, truck-campers, any recreational vehicle and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any part of said property nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under such circumstances, if any, as may be prescribed by "written permit approved by the board of directors. All parking of equipment shall be prohibited except as approved in writing by the board of directors.

8. No owner shall remove or otherwise alter any plant or tree or any landscaping or improvement in any common area without the written consent of the board of directors.

9. No garage door shall remain open for any time period except during ingress and egress of vehicles or individuals.

## **ARTICLE X**

### **EASEMENTS**

1. **General.** All conveyances of land situate in the said property, made by the declarant, and by all persons claiming by, through or under the declarant, shall be subject to the foregoing restrictions, conditions and covenants, whether or not the same be expressed in the instruments of conveyance, and each and every such instrument of conveyance shall likewise be deemed to grant and reserve, whether or not the same be declared therein, mutual and reciprocal easements over and across and under all common areas and except the following enumerated easements each lot of the said property which may now or hereafter be occupied by a residence shall not thereafter be subject to any easement save and except an easement for the purpose of building, constructing, repairing and maintaining improvements thereon and underground or concealed electric and telephone lines, gas, water, or storm drainage lines, radio or television cables or the sewage system, and other services now or hereafter commonly supplied by public utilities, municipal corporation, or the corporation and all of said easements shall be for the benefit of all present and future owners of property subjected to the jurisdiction of the corporation by covenants and restrictions recorded and approved as hereinabove provided; said easements, however, shall

not be unrestricted, but provided; said easements, however, shall not be unrestricted, but shall be subject to reasonable rules and regulations governing rights of use as adopted from time to time by the directors of the corporation in the interests of securing maximum safe usage of said property. (see also easement for encroachments specified in Article VI.) A further mutual and reciprocal easement for sidewalk purposes is granted and reserved over and across the common areas in the said property, for the purpose of constructing and maintaining and repairing sidewalks for the benefit of the residents of said property, their tenants and guests, subject, however, to rules and regulations reasonably restricting the right to use thereof for the safety and welfare of the public as may be promulgated from time to time by the corporation and/or public authority. Emergency vehicles including, but not limited to, police, fire and ambulance vehicles, and personnel shall be permitted at any time to the common area.

2. **Easements Special to Lots Number 1 Through 51, Block 4.** There is hereby specifically reserved upon each lot (servant tenement) for the benefit of the adjoining lot (dominant tenement) upon which a residential dwelling or structure is located immediately adjacent to (or within) four (4) feet of the common lot line, a four (4) foot wide “non-exclusive” easement the length of and adjoining the common lot line between the dominant and servant tenements, in, under, over and through which the dominant tenement owner or his agents may pass to perform such work during daylight hours as may be necessary or required in connection with the maintenance; repair, or restoration of the dominant tenement lot owner’s residential dwelling and/or structure. The owner of the dominant tenement shall not be liable for reasonable damage to or removal of any structures, decorations, or landscaping existing, erected or growing in (4) foot wide easement, which is occasioned by the work performed on the dominant tenement dwelling house and/or structure pursuant to the terms hereof, provided the dominant tenement owner shall cause at his sole expense a reasonable repair and/or restoration to any such damage.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

1. **Enforcement.** The corporation, or any owner, or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the corporation 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. In

the event suit is brought to enforce the covenants contained herein, the prevailing party shall be entitled to recover a reasonable attorney fee in addition to allowable costs.

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

3. **Term of restrictions and Amendment.** These restrictions shall run with the land described herein, and shall be binding upon the parties hereto and all successors in title or interest to said real property or any part thereof, until January 1, 2007, at which time said restrictions shall be automatically extended for successive period of ten (10) years unless the owner or owners of the legal title to not less than two-thirds of the platted lots, by an instrument or instruments in writing, duly signed and acknowledged by them shall then terminate or amend said restrictions. Such termination or amendment shall become effective upon the filing of such instrument or instruments for records in the Office of the Recorder of Ada County, Idaho. Such instrument or instruments shall contain proper references by volume and page numbers to the records of the plats and deeds in which these restrictive covenants are set forth and all amendments thereof.

4. **No Right of Reversion.** Nothing herein contained in this declaration, or in any form of deed which may be used by declarant or its successors and assigns, in selling said property, or any part thereof, shall be deemed to vest or reserve in declarant or the corporation any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof.

5. **Insurance – Assessment.** The corporation shall assess the cost of any insurance required by the term of this declaration of covenants, conditions and restrictions as part of the assessment provided for in Paragraph V hereof.

6. **Benefit of Provisions – Waiver.** The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by declarant, the corporation and the owner or owners of any portion of said property, and their heirs and assigns, and each of their legal representatives, and failure by declarant or by the corporation or by any of the property owners or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so.

7. **Assignment by Declarant.** Any or all rights, powers and reservations of declarant herein contained may be assigned to the corporation or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such corporation or association evidencing its intent in writing to accept such assignment and assume such duties it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the declarant herein. All rights of declarant hereunder reserved or created shall be held and exercised by the declarant alone, so long as it owns any interest in any portion of said property.

8. **Mortgagees Right to Satisfy Obligation of the Corporation.** In the event that the corporation fails to pay any debt or sum lawfully owned by it, for which a lien has been placed against the corporation common property, or in the event that the corporation fails to pay premiums due on insurance policies required by these covenants, the lapse of which would jeopardize a mortgagee's security, a mortgagee may pay said sum or premium after first having served five (5) days written demand for such payment on the corporation. In the event that the corporation has allowed said insurance policies to lapse, a mortgagee whose security is jeopardized thereby may secure new comparable insurance coverage. In the event a mortgagee makes payments allowed hereunder, it shall be entitled to prompt, reimbursement from the corporation.

## **ARTICLE XII**

### **APPROVAL OF PLANS**

Plans of all buildings and fences to be erected to any building site embraced in the plat must be submitted to the Architectural Control Committee established in Paragraph VII hereof, which shall also exercise the rights herein reserved. Complete plans and specifications of all proposed buildings and structures, together with a detailed plan showing proposed location on the particular building site, shall be submitted to the committee before any construction or alteration is started, and such construction or alteration shall not be commenced until written approval therefore is given by the committee.

No plan shall be deemed to have proved by the committee unless its approval is in writing executed by at least two members of the committee provided that approval shall be deemed given if the committee fails to approve or disapprove a proposed change or to make additional

requirements or request additional information within forty-five (45) days after a full and complete description of the proposed change has been furnished in writing to the committee with a written and specific request for approval.

Owners agree that the actions of the committee shall be wholly discretionary and shall be binding upon owners whether exercised or not.

As to all improvements, construction and alterations upon any building site, the committee shall have the right to refuse improvements, construction or alterations, which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing upon such design, the committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed building or other structure, 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 committee may also consider whether the proposed structure and design shall be in harmony with the surroundings, the effect of the building or other structure or alterations therein as planned when viewed from the adjacent or neighboring property effect or impairment that said structure will have on the view of surrounding building sites, and any and all other factors which, in the Committee's opinion, shall affect the desirability of such proposed structure, improvements or alterations. Actual construction shall comply substantially with the plans and specifications as approved.

Owners specifically agree with declarant that such committee, its members and the declarant shall incur no liability for any omission or act by any of said above-named parties under Article XII of these restrictions. In the event of death or resignation of a member, the remaining two members shall have full authority to act and within a reasonable time after the occurrence of such vacancy, shall appoint a replacement. Declarant reserves the right to construct residences and other improvements upon any residential lot building site in said subdivision, and to offer said lots together with the completed residence and structures thereon for sale to individual owners.

### **ARTICLE XIII**

#### **PROSECUTION OF CONSTRUCTION WORK**

The construction of the dwelling house and structures shall be prosecuted diligently, continuously and without delays from time of commencement thereof until such dwelling house and structure are fully completed and painted. All structures shall be completed as to external



IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
by official seal on the \_\_\_\_\_ day of \_\_\_\_\_,  
1978.

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Notary Public for Idaho  
Residing at Boise, Idaho