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STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF
Sperle's Investments
2005 NOV -9 P 3:48
DANIEL J. ENGLISH CP
DEPUTY 93.00
FEES 31 pgs

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR BEAR CREEK ESTATES**

This Declaration of Covenants, Conditions, Restrictions and Easements for Bear Creek Estates is made and executed this 9 day of November, 2005, by Sperle's Investments, Inc., an Idaho corporation ("Declarant").

WHEREAS:

A. Declarant is the Owner of the real property located in the City of Hayden, Kootenai County, Idaho, consisting of a portion of the Southeast 1/4 of Section 12, Township 51 North, Range 3 West, Boise Meridian, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property").

B. The Property has been approved for division into thirty-two (32) lots for building development (the "Lot" or Lots"), as set forth on the subdivision plat to be recorded in the real property records of Kootenai County, Idaho, known as "Bear Creek Estates."

D. By this Declaration, Declarant desires to subject the Property and the Lots to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth for the benefit of the Property and for each owner of a Lot thereon.

NOW, THEREFORE, in order to promote the best use and the most appropriate development and improvement of each Lot, Declarant hereby declares that the Property and each Lot shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the covenants, restrictions, conditions, reservations, liens, easements and charges set forth herein, all of which shall be deemed to be imposed upon and run with the land, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of ensuring quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots.

**ARTICLE I
DEFINITIONS**

Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.1 ACC: The Architectural Control Committee for Bear Creek Estates. At the discretion of the Board of Directors, the ACC may be the same as the Board of Directors.

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1.2 ACC Rules / ACC Standards: Such rules or standards as may be promulgated by the ACC from time to time as authorized herein.

1.3 Assessment: That portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Lot Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments or Special Assessments, as those terms are more specifically defined in Article VIII of this Declaration.

1.4 Association: The Bear Creek Estates Owners' Association, an Idaho unincorporated nonprofit association, the members of which shall be the Owners of Lots in the Project.

1.5 Board or Board of Directors: The governing body of the Association, which may also constitute the ACC.

1.6 Bylaws: The Bylaws of the Association as amended from time to time.

1.7 Common Area or Areas: The real property and improvements located within the Project, other than the Lots and Dwellings, but including without limitation the open space, storm water collection and treatment areas, private roads, sidewalks, common easements, drainage areas and similar amenities (some of which are designated Parcel 1, Parcel 2 and Parcel 3 on the Map), and the Common Facilities, all of which shall be owned and maintained by the Association for the common use and enjoyment of all Owners. Additionally, the Common Area shall include any other property conveyed to the Association for the use and benefit of the Owners of all Lots in the Project.

1.8 Common Expenses: The actual and estimated expenses of maintenance, improvement, repair, operation, insurance and management of the Common Areas, expenses of administration of the Association by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents.

1.9 Common Facilities: All furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned, used, maintained or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund, including but not limited to the sewer lines, lift station and related facilities serving the Project, to the point of connection with the existing sewer main in the Rocking R subdivision. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.10 Compliance Deposit: Such deposit and/or performance guaranty required by the ACC pursuant to Article X of this Declaration.

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1.11 Conservation Area: Those areas so designated on the Map which, due to topography and geologic conditions, shall remain undisturbed in perpetuity.

1.12 Declarant: Sperle's Investments, Inc., an Idaho corporation, and any successors or assigns who come to stand in the same relationship to the Project.

1.13 Declaration: This Declaration of Covenants, Conditions, Restrictions and Reservation of Easements, as it may be amended from time to time.

1.14 Dwelling: Any building or portion thereof within the Project which is designed and intended for use and occupancy as a residence.

1.15 Lot: Any residential Lot shown upon the recorded Map of the Project created for the construction of a private Dwelling (for a total of thirty-two (32) "Lots"). The term "Lot" does not include any portion of the Common Area.

1.16 Map: The site plan for Bear Creek Estates, a copy of which is attached hereto as Exhibit "B" and by this reference incorporated herein, and any amendments thereto hereafter recorded in the office of the County Recorder for Kootenai County, Idaho.

1.17 Member: A person entitled to membership in the Association as provided herein.

1.18 Mortgage: Includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Lot.

1.19 Mortgagee: Includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Lot, and any successor to the interest of such person or entity under such mortgage.

1.20 Owner: The person or persons owning in fee simple a Lot in the Project, as such ownership is shown by the records of the County Recorder of Kootenai County, Idaho, as well as any person or persons purchasing a Lot under contract until such contract is fully performed and legal title conveyed of record. The term "Owner" shall not refer to any Mortgagee unless such Mortgagee has obtained title in fee simple to a Lot pursuant to judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

1.21 Private Roads: Those portions of the Common Area consisting of private streets and roadways providing access from the Lots to the public right of way, to be owned in fee and maintained by the Association, together with associated drainage facilities and/or structures.

1.22 Project Documents: This Declaration, the Map, and any architectural or other rules promulgated by the Declarant or the Association pursuant to this Declaration as each shall be amended from time to time.

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1.23 Property or Project (Synonymous): The real property covered by this Declaration, all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon, all constituting "Bear Creek Estates."

**ARTICLE II
ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND
VOTING RIGHTS**

2.1 Organization of Association. The Association is or shall be an unincorporated nonprofit association in accordance with Idaho Code sections 53-701, *et seq*, under the name of BEAR CREEK ESTATES OWNERS' ASSOCIATION.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, together with the general and implied powers of a nonprofit association, and generally to do any and all things necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration. Without limiting the generality of the foregoing, the primary functions of the Association shall be the management and enforcement of the ACC Rules / ACC Standards, and the maintenance, operation and insurance of the Common Areas.

2.3 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of the Lot, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, in accordance with the Bylaws of the Association.

2.4 Transfer of Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. Each membership shall be transferred automatically to any subsequent purchaser by conveyance of that Lot.

2.5 Classes of Membership; Voting Requirements. For so long as the title to any Lot or Lots remains in the Declarant, the Association shall have two (2) classes of voting membership. One class shall consist of the Declarant, which shall be entitled to five (5) votes for each Lot owned. The other class of voting membership shall consist of all Owners other than Declarant, who shall be entitled to one (1) vote for each Lot owned. The Project shall be deemed to include thirty-two (32) Lots for voting purposes.

2.6 Membership Meetings. Regular and special meetings of the Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association.

2.7 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.

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2.8 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board.

**ARTICLE III
COMMON AREAS**

3.1 Common Area. The Common Area shall include all real property and improvements within the Project designated as Common Area, open space, private roads (together with drainage facilities associated therewith), sidewalks, common easements, drainage easements, storm water collection and treatment areas and facilities, garbage collection areas, and any other land which may be conveyed to and accepted by the Association, all of which shall be dedicated to the common use and enjoyment of all Owners (but specifically not including the Conservation Areas designated on Lots 10 and 11). The Common Area shall be owned, operated, maintained, and insured by the Association, for the use and benefit of Owners of Lots in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Lot Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended, without hindering the exercise of or encroaching upon the lawful rights of any other Lot Owners.

Notwithstanding the foregoing, the owners of the interior lots (Block 2, Lots 1- 10) shall have the right to the exclusive use and enjoyment of the grassy swale areas adjacent to their respective lots, and shall maintain the same by incorporating them into their landscaping plan for watering, mowing, weeding and the like. The grassy swales shall only be planted with grass as approved by the ACC and required by the applicable ordinances, and shall not be altered, filled or their utility for treating storm water runoff from the roadways, sidewalks or other impervious surfaces impaired.

Common Areas shall have a permanent character and shall not be altered except with the written consent of not less than two-thirds (2/3) of the voting power of the Association, expressed in an amendment to this Declaration duly recorded.

3.2 Common Facilities. The Association shall further operate, repair and maintain any and all Common Facilities of the Project, whether or not such facilities lie within the Common Area or Limited Common Area. The Association shall have the right to enter any Lot or the Dwelling located thereon for the purpose of performing repairs or maintenance on such Common Facilities. Except in the case of an emergency, the Association shall give not less than 48 hours notice of its intent to enter upon a Lot or Dwelling for the purpose of inspecting, maintaining or repairing such Common Facilities. The Common Facilities include, but are not limited to the sewer lines, lift station and related facilities serving the Project, to the point of connection with the existing sewer main in the Rocking R subdivision. Notwithstanding the dedication and transfer of such sewer facilities to the Association pursuant to this Declaration, Declarant reserves the sole and exclusive right to connect to and extend the same to other property, whether or not part of the Project or any annexations thereto, at Declarant's sole cost and expense. Upon completion of any such extension, the cost of operation, maintenance, repair and/or replacement of such sewer facilities shall be shared by all of the users thereof

proportionally. The reserved rights of the Declarant may not be altered or amended by the Association or the Owners without the express written consent of the Declarant.

3.3 Reservation of Easement by Declarant. Notwithstanding the transfer of the Common Areas to the Association, the Declarant hereby reserves in itself and its successors-in-interest and assigns, an easement (and the right to grant further easements) over and onto the Common Areas for ingress to and egress from the Project for the purpose of completing improvements thereon or for the performance of necessary construction, maintenance, or repair work, and for ingress and egress to and from adjacent property in connection with the development, use, and occupancy thereof.

3.5 Transfer of Title to Common Area. It is the intent of the Declarant by this Declaration to grant and dedicate all Common Areas and Common Facilities to the Association for the use, benefit and enjoyment of the Owners in the Project. Such grant and dedication shall be effective upon recordation of this Declaration and the formation and due constitution of the Association, at which time title to the Common Areas and Common Facilities shall be deemed vested in the Association, subject to the reserved rights of the Declarant set forth herein.

3.6 Partition of Common Areas Prohibited. In the event of dissolution of the Association and conveyance of fee title to the Common Areas and Common Facilities to the Owners as tenants in common pursuant thereto, no Owner shall bring any action for, or be entitled to, partition or division of any part of the Common Areas Common Facilities, without the unanimous consent of all Owners. This restriction is necessary to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Areas and Common Facilities.

3.7 Damage by Member. Each Member shall be liable to the Association for any damage to the Common Areas or Common Facilities not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Areas and Common Facilities from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against the Owner and the Owner's interest in his Lot and Dwelling, and may be recovered from the Compliance Deposit, if any, and/or enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE IV EASEMENTS AND OTHER RIGHTS

4.1 Easements for Encroachments. If any part of the Common Areas encroach or shall hereafter encroach upon any Lot, an easement for such encroachment and for the

maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances on the Lots.

4.2 Easements of Maintenance, Cleaning and Repair. Some of the Common Areas are or may be located upon the Lots or may be conveniently accessible only through the Lots. The Association and its agents, contractors and subcontractors shall have the irrevocable right to have access to each Lot and Dwelling and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas. Such entry shall be made upon reasonable notice, except in the event of emergency, and with as little inconvenience to the Owners or occupants as practicable.

4.3 Easements for Utilities and Drainage. Declarant expressly reserves for the benefit of itself and its successors in interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, and telephone lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required to serve the Property. No structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the Project. The area of each Lot which includes utilities and drainage facilities shall be continuously maintained by the Owner of such Lot.

4.4 Right to Ingress, Egress and Support. Subject to the rules and regulations of the Association, each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Lot. Such rights shall be perpetual and shall be appurtenant to and pass with title to each Lot.

4.5 Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration.

4.6 Easement for Completion of Project. Declarant shall have a transferable easement over and on the Common Areas and the Lots for the purpose of completing construction of the Project and making improvements therein as shown on the Map and for the purpose of doing all things reasonably necessary or appropriate in connection therewith.

4.7 Easements Deemed Created. All conveyances of Lots within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE V
RESTRICTIONS ON USE

The use of the Property and each Lot and Dwelling thereon is subject to the following:

5.1 Use of Individual Lots. All Lots and Dwellings shall be used for residential purposes only, and such uses as are customarily incidental thereto.

5.2 Business Use Prohibited. With the exception of the business of Declarant in developing and marketing the Project, no trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted or carried on upon any Lot, or within any Dwelling located on a Lot.

5.3 Nuisances. No Lot or Dwelling shall be used, occupied, or altered: (1) in violation of law; (2) so as to detract from the appearance or value of any other Lot or Dwelling; (3) so as to create a nuisance; (4) to interfere with the rights of any other Owner; or (5) in a way which would result in an increase in the cost, cancellation or non-renewal of any insurance covering the Project as a whole. No noxious, illegal, or offensive activities shall be carried on in any Lot or Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with the quiet enjoyment of, each of the Owners of his respective Lot or Dwelling.

5.4 Use of Common Areas. The Common Areas shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Lots. Without limiting the generality of the foregoing: (i) No sidewalk, entrance, passage, stairway or corridor comprising a part of the Common Areas may be obstructed or encumbered or used for any purpose other than ingress or egress to and from Lots; (ii) No articles belonging to Owners shall be kept within or upon Common Areas (other than Limited Common Area associated with his Lot); and (iii) No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities.

5.5 Private Roads and Parking. All Private Roads located within the Project are for the use of Association Members on an equal basis, subject to reasonable rules and regulations promulgated in writing by the Association. It shall be the responsibility of each Member to allow maximum ease of pedestrian, bicycle and vehicular ingress and egress over the Private Roads by prohibiting automobile parking in front of carports or garages, or in the driveways, alleyways, or Private Roads, and allowing no obstruction or barrier on, across or adjacent to sidewalks or paths which would interfere with any other Member's use of the Common Area or access to his Lot. No inoperable vehicles shall be parked or stored within the Project. Boats, motor homes, trailers and any other recreational vehicles shall be kept at all times in a "solid framed" enclosed structure (garage) and at no time shall any said vehicles or equipment be parked or stored on the Private Roads or open areas upon a Lot, except that boats, motor homes, trailers and other recreational vehicles may be parked in a driveway for not more than twenty-four (24) hours at a time for loading, unloading and the like. In the event of a violation of this

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section, the Board of Directors may employ a tow truck or other device to remove the offending vehicle, and the Owner shall be responsible for any charges arising therefrom.

5.6 Signs. Except for those signs erected or maintained by Declarant or its agents, no signs, flags or advertising devices of any nature shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Directors, except as may be necessary temporarily to caution or warn of danger. If the Board of Directors consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Board of Directors. Notwithstanding the foregoing, an Owner may place one sign not more than two (2) square feet in size, advertising the Lot or Dwelling for sale or rent, without the prior consent of the Board of Directors.

5.7 Animals. No animals or birds of any kind shall be raised, bred, or kept in any Lot or Dwelling, or on any portion of the Property, except that no more than one (1) usual and ordinary household pet such as a domestic dog, cat, or bird, may be kept, subject to local ordinances and zoning regulations, provided that they are not kept, bred or maintained for any commercial purposes, and that they are kept under reasonable control at all times. Owners shall prevent their pets from soiling all portions of the Property and in the event a pet does soil a portion of the Property, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project and may designate certain areas in which animals may not be taken or kept, or may require that specific animals not be allowed on any part of the Property.

5.8 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers located in appropriate areas. All equipment, garbage cans, or storage piles shall be kept screened and concealed from view of other Lots or Dwellings and the Common Area.

5.9 Clothes Lines. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

5.10 Garage Doors. Garage doors shall be closed except when open for a temporary purpose.

5.11 Vehicles. The use of all vehicles, including but not limited to automobiles, trucks, bicycles, snowmobiles, motorcycles, and ATV's, shall be subject to ACC rules, which may prohibit or limit the use thereof within the Project as it may see fit.

5.12 Conservation Areas. Due to topography and geologic conditions, the Conservation Areas designated on Lots 10 and 11 on the Map shall remain undisturbed in perpetuity.

5.13 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Lots, the Dwellings, the Common Areas and the Project, as such rules and regulations may be modified, amended and

construed by the Association in the reasonable discretion of its Board of Directors, so long as they do not conflict with this Declaration or the Bylaws of the Association.

5.14 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article V or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE VI BUILDING RESTRICTIONS

6.1 Structures. Except those Lots which are designated as Common Area, no Lot shall be improved except with one (1) Dwelling and such accessory building or buildings allowed for under applicable zoning and approved by the ACC (including storage buildings, swimming pool cabanas and the like). All accessory buildings shall be of like, kind, and quality of finishing as the Dwelling, and shall not exceed 1500 interior square feet in the aggregate. No accessory buildings shall be allowed prior to the construction of a Dwelling. Each Dwelling shall contain such minimum floor area as may be specified in this Declaration or the ACC Rules / ACC Standards as may be adopted from time to time.

6.2 Approval of Use and Plans. No improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article X below.

6.3 Landscaping. The Owner shall prepare a landscape plan and shall submit it to the ACC for approval, as provided in Article X, below. Approval of the ACC shall be required prior to the installation and/or construction of landscaping on a Lot. Landscaping shall be in accordance with the approved plan. All landscaping shall be installed by a professional landscape firm, and shall be installed in a timely manner in accordance with the duly adopted ACC Rules / ACC Standards as may be adopted from time to time.

6.4 Minimum Improvements. Dwellings shall contain a minimum of 2500 square feet of fully enclosed interior living space, exclusive of all basements, garages, porches and patios, and shall have not less than a fully enclosed two-car garage (three-car garage preferred). Garage doors shall face to the side of the Lot rather than the front, unless a variance is approved by the ACC.

6.5 Adoption of ACC Rules / ACC Guidelines. Declarant, or in the event of Declarant's failure to do so, the ACC, shall have the power to promulgate standards relating to the planning, construction, alteration, modification, removal or destruction of improvements within the Project deemed necessary or desirable by the Declarant or the ACC to carry out the

purposes of this Declaration. All ACC Rules / ACC Standards shall be consistent with the provisions of this Declaration.

6.6 Exemption of Declarant. Nothing contained herein shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property, or to grant licenses, reservations, rights-of-way or easements with respect to the Common Areas to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Property owned or controlled by the Declarant, or to alter the foregoing and its development plans and designs, or construct additional improvements as the Declarant deems advisable in the course of development of the Project; or to construct or complete improvements on a Lot that was commenced prior to the recordation of this Declaration. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary for the complete development of the Project. The Declarant need not seek or obtain ACC approval of any improvements constructed or placed within the Property by the Declarant in connection with the development of the Project (except for buildings constructed on a Lot owned by Declarant commenced after the recordation of this Declaration).

6.7 Repair and Maintenance Rights and Duties of Owners. Except for those portions of the Property which the Association is required or elects to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair all components of his Dwelling and Lot (including interior and exterior, structural and nonstructural, and all landscaping), keeping the same in good condition, and shall repair all damage to the Common Areas for which the Owner is responsible under section 3.7, above. Without limiting the generality of the foregoing:

(a) Each Owner of a Lot shall keep the improvements painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut, and otherwise maintain the Lot in a neat and aesthetically pleasing condition;

(b) All damage to any improvements shall be repaired as promptly as is reasonably possible.

(c) Vacant buildings and unimproved lots are not exempt from the provisions of this Declaration. Unimproved lots shall be weeded and maintained in a neat and tidy condition by the Owner, prior to development of a Dwelling thereon.

(d) Any event or condition which, in the sole discretion of the ACC, creates an unsightly or blighting influence shall be corrected, removed or obstructed from public view, whether or not such condition or event is specifically described in or prohibited by this Declaration or the ACC guidelines.

6.8 Damage to Dwellings. In the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained by the Owner for the reconstruction or repair

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shall be made available for such purpose. The Dwelling or Dwellings shall be reconstructed or rebuilt substantially in accordance with the original construction plans, or with such new plans as may be approved by the ACC. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Dwelling or Dwellings shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency.

6.9 Rights of Association. In the event an Owner fails to maintain or repair his Lot or Dwelling, or any of the Common Areas located thereon, as required by this Declaration, the Association shall have the right to enter upon such Lot or Dwelling and perform the same, and to charge and assess the cost thereof as a Special Assessment to the Owner. Except in the case of an emergency, the Association shall provide not less than 48 hours' written notice to an Owner prior to undertaking any maintenance or repair activities pursuant to this section.

6.10 Re-Subdivision. Except for the rights reserved by the Declarant herein, no lot may be subdivided further than the size indicated on the Map.

6.11 Temporary Structures. No structure of temporary character, trailer, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently, except for temporary dwellings used by Declarant or its contractors or agents during the course of construction of the Project.

6.12 Fences. No fence, wall or hedge shall be erected or maintained on any Lot unless approved by the ACC prior to construction or installation. It is the goal of the ACC to minimize fences, with separation between Lots to be established by the utilization of natural vegetation. Unless otherwise approved by the ACC, there shall be no front yard fencing; side yard fencing shall be set back a minimum of fifty (50) feet from the edge of the road pavement, and with the materials and features established in the ACC Guidelines as the same may be amended from time to time. Animal control fences shall also require the approval of the ACC.

6.13 Lighting. Exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot, and shall be in accordance with the ACC Rules / ACC Standards.

6.14 Fuel Tanks. There shall be no installation or maintenance of fuel storage tanks, above or below ground.

6.15 Exterior Energy Devices. No energy production device, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

6.16 Mailboxes. Mailboxes will be centrally located in accordance with ACC standards.

6.17 Grading, Drainage and Grassy Swales. A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction is initiated. Lot grading shall be kept to a minimum, and improvements are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be allowed to drain or flow upon, across or under adjoining Lots, unless an express written easement for such purpose exists. All runoff from impervious surfaces (rooftops, driveways, patios, etc.) must be treated in a swale before entering the storm drain. The only direct connections to the storm sewer shall be via French drains or the like from foundations.

The Department of Environmental Quality for the State of Idaho and the City of Hayden have required that a subdivision contain grassy swales in order to properly collect and treat storm water runoff. Each Lot Owner is responsible for the construction and proper maintenance of the grassy swales bordering Owner's Lot. Swales shall be part of the landscaped / lawn area, and shall be maintained in conformity with the requirements of the Department of Environmental Quality, the City of Hayden, or other regulatory authority.

**ARTICLE VII
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION
AND BOARD OF DIRECTORS**

7.1 Common Areas. The Board of Directors, acting on behalf of the Association, and subject to the obligations and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon, and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. All goods and services procured by the Board of Directors in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.

7.2 Common Area Manager. While the Board of Directors has the obligation to operate and manage the Common Areas, it also has the right to employ a Common Area Manager to perform certain services on behalf of the Association, including but not limited to the responsibilities of the Board of Directors relating to the Common Areas. The Board of Directors may by written contract delegate in whole or in part to the Common Area Manager such of the duties, responsibilities, functions and powers hereunder of the Board of Directors as are delegable. The services of the Common Area Manager retained by the Board of Directors shall be paid for with funds from the Common Expense Fund.

7.3 Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for the services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished directly by the Association or by any person or entity with whom or with which it contracts. Whenever reasonable and advisable, all such personnel shall be independent contractors. Any contracts between the Association or the Common Area Manager, on the one hand, and any affiliate of the Common Area Manager, on the other, shall be competitive with

those available from unrelated third parties. The Board of Directors may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, snow removal, electrical, gas and other necessary or desirable utility services for the Common Areas (and for the Lots or Dwellings to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Lots or Dwellings.

7.4 Real and Personal Property. The Board of Directors may acquire and hold on behalf of the Association real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise.

7.5 Rules and Regulations. The Board of Directors may make reasonable rules and regulations governing the use of the Lots, Dwellings, Common Areas, Limited Common Areas and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors, on behalf of the Association, may take judicial action against any owner or occupant to enforce compliance with such rules and regulations or other obligations of such Owner or occupant arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner or occupant.

7.6 Granting Easement. The Board of Directors may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

7.7 Implied Rights. The Association may exercise any right, power or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.8 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Association his true and lawful agent in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Map as may be required by law or by vote taken pursuant to the provisions of the Declaration.

ARTICLE VIII ASSESSMENTS

8.1 Agreement to Pay Assessments. The Declarant, for each Lot owned within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Lot by the acceptance of instruments of conveyance and transfer therefor,

whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article VIII.

8.2 Annual Assessment. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

(a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments relating to the Common Areas (unless and until the Lots are separately assessed for the same); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees; fees for the Common Area Manager; utility charges, including charges for utility services to the Lots or Dwellings to the extent not separately metered or billed; snow removal expenses; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis (such reserve shall be funded by monthly payments rather than extraordinary Special Assessments); and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such items shall constitute the Common Expenses, and all funds received from assessments under this section 8.2, except for reserves which shall be established pursuant to Section 8.8, shall be part of the Common Expense Fund.

(b) Apportionment. Each Lot, including Lots owned by Declarant, shall bear an equal share of each Regular and Special Assessment (except for those Assessments charged to individual Owners pursuant to this Declaration), without regard as to whether a Lot has been improved or not.

(c) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning November 1 and ending October 31 next following, provided the first fiscal year shall begin on the date this Declaration is recorded. On or before October 15 of each year, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated amounts of Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating periods. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the Annual Assessment against his

or her Lot and Dwelling on or before October 15 each year for the fiscal year beginning on November 1 next following. No further notice shall be required. Each Annual Assessment shall be payable in twelve equal monthly installments, commencing on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Lots no later than sixty (60) days after the conveyance of the first Lot in the Project. All unpaid installments of any Annual Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid (or at such other lawful rate as the Board of Directors shall establish). The failure of the Board of Directors to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration. In the alternative and at the option of the Board of Directors, the Annual Assessment shall be paid in one lump sum installment due on or before November 15 of the fiscal year.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time by reason of nonpayment of any Owner's assessment, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 8.3 below, except that the vote therein specified shall be unnecessary.

8.3 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum (or such other lawful rate as the Board of Directors may establish) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

8.4 Lien for Assessments. All sums assessed to Owners of any Lot or Dwelling within the Project pursuant to the provisions of this Article VIII, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Lot, Dwelling and any other improvements thereon in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VIII, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such a notice shall be signed by an officer of the Association and shall be recorded in the office of the county recorder of Kootenai County, State of Idaho. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Upon payment of all delinquent assessments, plus interest, costs and expenses of such delinquency (including reasonable attorneys' fees incurred in the investigation, preparation and filing of such lien), or other satisfaction thereof, the Board of Directors shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. If the delinquency is not cured, such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot and Dwelling which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot and Dwelling in the name of the Association.

8.5 Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Lot and Dwelling shall be the personal obligation of the Owner of such Lot and Dwelling to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

8.6 Statement of Account. Upon payment of a reasonable fee set by the Board of Directors (but not to exceed any statutory limitation thereon) and upon written request of any Owner, Mortgagee or prospective purchaser of a Lot, the Board of Directors shall issue a written statement setting forth the following: the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and credit for advance payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

8.7 Personal Liability of Purchaser. A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the

grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

8.8 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The reserve fund shall be maintained out of regular assessments for Common Expenses.

8.9 Amendment of Article. This Article VIII shall not be amended except upon approval of not less than two-thirds (2/3) of the total voting power of the Association.

ARTICLE IX INSURANCE

9.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies authorized or licensed to do business in the State of Idaho:

(a) Hazard Insurance: A "master" or "blanket" type of hazard insurance policy or policies with respect to the Common Areas, protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement. The hazard policy shall cover one hundred percent (100%) of the current replacement cost of all insured facilities, but excluding land, foundations, excavations or other items normally excluded from insurance coverage. Additionally, the policy shall include the following special endorsements and provisions:

- (i) Agreed amount and inflation guard endorsement, when available;
- (ii) Construction code endorsements;
- (iii) The requirement that any Insurance Trust Agreement will be recognized;
- (iv) A waiver of any right of subrogation against Lot Owners;
- (v) A requirement that the insurance will not be prejudiced by any acts or omissions of individual Lot Owners that are not under the control of the Association; and
- (vi) An indication that the policy is a primary policy, even if a Lot Owner has other insurance covering the same loss.

The policy shall name the Association (for the use and benefit of the individual Owners), as the named insured, and shall contain the standard mortgage clause, naming the holders of first mortgages (and their successors and assigns) as the mortgagees.

(b) Liability Insurance: A comprehensive general liability insurance policy covering all Common Areas and all public ways and other areas that are under the supervision of the Association. The liability policy shall provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence, covering bodily injury and property damage resulting from the operation, maintenance or use of the Common Areas, and any legal liability resulting from lawsuits related to employment contracts to which the Association may be a party.

(c) Fidelity Bonds: If required by a lender under one of the programs described in section 9.2 below, blanket fidelity bonds for anyone who either handles or is responsible for funds that are held or administered by the Association, whether or not they receive compensation for such services. Any management agent that handles funds for the Association shall also be covered by its own fidelity bond. The bond shall cover the maximum funds that will be in the custody of the Association or its agent at any time while the bond is in force. Additionally, the fidelity bond coverage must at least equal the sum of three (3) months' assessments on all Lots in the Project, plus the Association's reserve funds.

9.2 Lenders' Requirements. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and bond requirements for similar projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), The Mortgage Corporation ("TMC"), Veterans Administration ("VA") and/or the Federal Housing Administration ("FHA"), so long as any of them shall be a holder, insurer or guarantor of a mortgage encumbering a Lot and Dwelling within the Project (or an actual Owner of a Lot and Dwelling), except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA, TMC, VA and/or FHA, as applicable.

9.3 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

9.4 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide hazard insurance on his or her Dwelling, and on his or her personal property and upon all other property and improvements within his Lot. Nothing hereby shall preclude any Owner from carrying any public liability insurance as he or she deems desirable to cover his or her individual liability for damage to persons or property occurring within his or her individual Lot or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered

by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.5 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated or expired by their terms, without thirty (30) days prior written notice to the Board, Declarant, Owners and their respective first mortgagees (provided that such persons other than the Board have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

9.6 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. That portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the reserve fund to be used solely for the payment of premiums of required insurance as such premiums become due.

9.7 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Paragraph 9.1 above shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

ARTICLE X ARCHITECTURAL CONTROL COMMITTEE

10.1 Members of Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. members of the ACC may be removed at any time, with or without cause. Nothing contained herein is intended to limit or preclude members of the Board of Directors from also serving on the Architectural Control Committee.

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10.2 Appointment. So long as the Declarant owns any Lot within the Project, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board of Directors. The ACC shall have the right to make a resolution in writing, unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute the act of the ACC.

10.3 Compensation. The members of the ACC shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder, in such amounts as the Board may determine.

10.4 Non-liability. Neither the ACC, any member thereof, the Declarant, or any partner, officer, employee, agent, successor or assign, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

10.5 Approval Required. No construction, alteration, modification, removal or destruction of any improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Project without the prior express written approval of the ACC.

10.6 Basis of Approval. Approval by the ACC shall be based, among other things, on the ACC Rules / ACC Standards, the adequacy of the Lot dimensions; conformity and harmony of external design with neighboring improvements; the effect of location and use of improvements on neighboring Lots; operations and uses; relations to topography, grade, finished ground elevation and landscaping of the Lot being improved to that of neighboring Lots; proper facing of the main elevation with respect to nearby streets; and the conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

10.7 Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules / ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

If a variance is granted as provided herein, no violation of this Declaration, ACC Rules / ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for

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which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Rules / ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance either with or without notice to other Owners or a hearing of Owners thereon.

10.8 Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within the Project, the Owner shall submit a written application in a form required by the ACC, signed by the owner, and containing such information as the ACC may require, including but not limited to the "plans and specifications" described below:

(a) A site plan showing the location of the buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements.

(b) A building plan, consisting of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications, indicating by sample if required by the ACC, all exterior colors, materials and finishes, including roofing materials, to be used.

(c) A landscape plan for portions of the Lot to be landscaped, which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, free-standing exterior lights, driveways, parking areas and walkways.

The ACC may assess a fee to the Owner at the time the application is submitted, to cover the reasonable and actual expenses of the ACC that are likely to be incurred in reviewing and processing the application. The ACC shall not be obligated to commence the review and process of an application until such fee, if required, is paid.

10.9 Decision. The ACC shall use its best efforts and judgment to ensure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance and be of a quality required to maintain Bear Creek Estates as a first class residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty-five (45) days after its receipt of a complete application and application fee, if any. The decision of the ACC may be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved, and the Owner shall be required to affix a copy of such conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work.

A denial of an application shall state with particularity the reasons for such denial.

10.10 Compliance Deposit. In addition to the fee for review services described above, the ACC may, prior to the commencement of any construction, painting, alteration or change of any improvement on the Project, require the Owner proposing the same to deliver a deposit, bond, letter of credit, or other suitable financial guaranty acceptable to the ACC a Compliance Deposit, as security for the Owner's full and faithful performance of the work in accordance with the approved plans and specifications, duly adopted guidelines, and any terms and conditions set forth in the ACC approval, and as security for the Owner's obligation to repair any damage to the Common Areas or Common Facilities arising out of the Owner's construction activities.

(a) The amount of the Compliance Deposit shall be equal to two percent (2%) of the estimated cost of construction, as set forth in the application for a building permit submitted to Kootenai County, the City of Hayden, or other applicable authority. In the event the work to be performed consists solely of work that does not require a building permit (e.g., landscaping, painting, etc.), then the amount of the Compliance Deposit shall be equal to two percent (2%) of the estimated cost as may be mutually agreed between the Owner and the ACC or, in the absence of agreement, as set forth in a verified statement of the Owner's architect, engineer or contractor performing the work.

Notwithstanding the foregoing, the Compliance Deposit shall not, in any event, exceed the sum of \$50,000.00 for any particular project.

(b) The purpose of the Compliance Deposit shall be to ensure that an individual project is completed to the extent necessary to protect the interests of the members of the Association and surrounding property owners, and not to ensure final completion of an individual project in accordance with approved plans or applicable contracts of sale, if any. Thus, the Compliance Deposit would first be used to complete such things as exterior finishes, landscaping, site cleanup, signage, and storm water management and erosion control measures. The Compliance Deposit may also be used, to the extent funds are available, to mothball an abandoned project to preserve the same for resale. If, in the sole discretion of the ACC, an abandoned project has not proceeded to a point where mothballing would be cost effective, the Compliance Deposit may be used to demolish any work performed to the date of abandonment, and to restore the premises to their condition existing prior to the commencement of the subject work as much as possible.

(c) Nothing in this Declaration is intended, nor shall it be construed, to impose any duty or liability upon the ACC, the Association, or any of its members, officers, directors, agents or employees, to perform any work in connection with a project subject to ACC approval, with a cost in excess of the amount posted as the Compliance

Deposit. Neither is this Declaration intended, nor shall it be construed, to relieve the Owner of a project of its responsibility for full compliance with the terms of this Declaration and any approval of the ACC, regardless of the payment or posting by the Owner of the Compliance Deposit. The use of the Compliance Deposit as provided in this section shall be in the sole and absolute discretion of the Committee, and in addition to, not in lieu of, all other rights and remedies of the ACC and/or the Association to enforce this Declaration and any rules or regulations adopted pursuant hereto.

(d) Upon payment of the Compliance Deposit provided in cash, the same shall be deposited by the ACC into an interest bearing account at a commercial banking institution, with all interest accruing to the benefit of the Owner. The Committee may use, apply or retain the whole or any part of a Compliance Deposit to the extent required to reimburse the ACC for any cost which the ACC may incur, or may be required to incur, by reason of an Owner's non-compliance with respect to the approved plans and specifications, duly adopted design guidelines, and any terms and conditions set forth in the ACC's approval. The ACC shall be entitled to a fee in an amount equal to fifteen percent (15%) of the amount of any costs incurred by the ACC to cure any noncompliance by the Owner, which fee may be paid from the Compliance Deposit.

(e) If the Compliance Deposit is not sufficient to cure all areas of noncompliance by the Owner, the ACC may apply the same in a manner which, in the sole discretion of the ACC, best mitigates the effects of the deficiencies, while not actually curing all deficiencies.

(f) Any part of the Compliance Deposit not used by the ACC as provided for herein shall be released or returned to the Owner within thirty (30) days after confirmation of completion of all construction, painting, alteration or change of any improvement on the project, approved by the ACC as in accordance with the approved plans and specifications, duly adopted ACC Rules / ACC Regulations, and any terms and conditions set forth in the ACC's approval, and the issuance of a Certificate of Compliance by the ACC.

10.10 Inspections and Enforcement. The ACC shall be allowed access to inspect all work in progress on any Lot at any time, for the purpose of determining whether an Owner is proceeding in accordance with this Declaration, the approved plans and specifications, and the ACC Rules / ACC Standards. If the ACC determines that a deviation or violation has occurred, it shall promptly issue a notice in writing to the Owner, specifying the details of the deviation or violation, and demanding that the Owner immediately cease the activity which constitutes the deviation or violation, and adhere to the corrective measures set forth in the written notice. In the event the Owner fails to bring the work into compliance, the ACC, with the approval of the Board, shall be authorized to commence a legal action on behalf of the Association, to correct or enjoin the activity existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Rules / ACC Standards, or the approved plans and specifications. In the event the ACC and/or the Association shall prevail in any such proceedings, all costs, expenses and reasonable attorneys fees incurred shall be reimbursed to the Association by the Owner against whom the action was brought within five (5) days of written demand therefore. If

the Owner fails, neglects, or refuses to pay, the Association may first recover the same out of the Compliance Deposit, if any, and thereafter assess and enforce such charges as a Special Assessment against the Owner, enforceable on the terms and conditions set forth in this Declaration. The rights and authorities of the ACC and the Association under this section 10.10 shall be in addition to, and not in lieu of, all other rights and remedies available to it under this Declaration and under Idaho law, including but not limited to the right to take corrective action and to cover the costs out of the Compliance Deposit.

10.11 Private Rights. The Association shall not have the right or duty to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve such disputes when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

ARTICLE XI DESTRUCTION; CONDEMNATION

11.1 Damage to Common Areas. In the event of any destruction of any portion of the Common Areas, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article XI hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Special Assessment for the deficiency and proceed with such restoration and repair.

11.2 Damage to Dwellings. In the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the ACC, in accordance with the terms of this Declaration.

11.3 Condemnation. The taking or partial taking of any Lot or the Common Area by condemnation or threat thereof shall be negotiated by the party whose property is affected thereby, and such party shall be entitled to receive all compensation paid by the condemning authority. In the event of a taking or partial taking of the Common Area, the Board shall be authorized to negotiate the condemnation award, which shall be deposited in the general funds of the Association, subject to disbursement or other use according to an agreement supported by two-thirds (2/3) of the voting power of the Association.

ARTICLE XII DURATION AND AMENDMENT

12.1 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for

successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set forth in Paragraph 12.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the concomitant membership of the Association, as long as this Declaration shall continue in full force and effect.

12.2 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members, representing not less than two-thirds (2/3) of the voting power of the Association.

Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specified provision of this Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision. In addition, no amendment shall be effective to alter or amend any of the reserved rights of the Declarant without the Declarant's specific written consent.

A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Lots have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of first mortgages shall be signed and sworn to by such first mortgagees.

ARTICLE XIII GENERAL PROVISIONS

13.1 Compliance. Each Owner shall comply strictly with the provisions of this Declaration and the Bylaws of the Association, rules and regulations promulgated by the Association, the Board or the ACC, and the decisions and resolutions adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

13.2 Enforcement and Remedies. The Board, any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project 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 this Declaration, or by the Articles of Incorporation, Bylaws and rules and regulations of the Association, and in such action shall be entitled to recover costs and reasonable attorney fees as may be ordered by the Court. Any such action by the Board shall be taken on behalf of two (2) or more Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Area or more

than one Lot. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

13.3 Intent and Purpose. The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

13.2 Construction. The provisions of this Declaration shall be in addition and supplemental to all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof. To the extent of any inconsistency, the provisions of the Declaration shall control over the Articles of Incorporation of the Association and said Articles shall control over the Bylaws of the Association.

13.3 Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the tax notice address of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. Mail, postage prepaid, addressed to the Association at its offices at or to such other address as the Association may hereinafter specify to the Owners in writing. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section, as the case may be.

13.4 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

13.5 Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Map; Bylaws; and ACC Rules / ACC Standards. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

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13.6 Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, may, at any time, obtain an audit, by certified public accountants, of all books and records pertaining to the Project, and copies thereof shall be furnished to the Owners.

13.7 Effective Date. This Declaration shall take effect upon recording.

13.8 Limitation on Association's Liability. The Association shall not be liable for any failure of any utility services (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the buildings or the drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

13.9 Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration, shall continue, notwithstanding that he may be leasing, renting or selling under contract his Lot. The Owner of a Lot within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Lot.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

SPERLE'S INVESTMENTS INC.



By: Michael L. Sperle
Its: President

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STATE OF IDAHO)

: ss.

County of Kootenai)

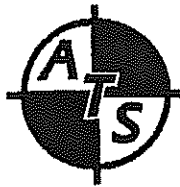
On this 9 day of November, 2005, before me Erica Leavell, the undersigned Notary Public, personally appeared Michael L. Sperle, known or identified to me to be the President of Sperle's Investments Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)



Erica Leavell
Notary Public for Kootenai County
Residing at 840 W. Kyles Ave J
Commission Expires: 9/6/11

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Advanced Technology Surveying & Engineering

EXHIBIT A BEAR CREEK ESTATES LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 51 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, CITY OF HAYDEN, KOOTENAI COUNTY, IDAHO. MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 12, MONUMENTED WITH A 2½" ALUMINUM CAP WHICH BEARS SOUTH 88°36'18" EAST, 2654.77 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 12. THENCE FROM SAID POINT OF COMMENCEMENT NORTH 00°27'51" EAST, 1079.85 FEET TO A POINT; THENCE NORTH 88°35'43" WEST, 30.00 FEET TO A 5/8" REBAR AND CAP STAMPED "PE/PLS 3451". SAID REBAR AND CAP PLACED ON THE WEST RIGHT-OF-WAY LINE FOR STRAHORN ROAD AND BEING THE TRUE POINT-OF-BEGINNING FOR THIS DESCRIBED PARCEL OF LAND.

THENCE CONTINUING NORTH 88°35'43" WEST, 1291.37 FEET TO A 5/8" REBAR AND CAP STAMPED "PE/PLS 3451";

THENCE NORTH 00°46'38" EAST, 255.52 FEET TO A 5/8" REBAR AND CAP STAMPED "ATS PLS 8962";

THENCE NORTH 00°48'10" EAST, 728.50 FEET TO A 5/8" REBAR AND CAP STAMPED "PLS 832 MECKEL";

THENCE SOUTH 89°20'57" EAST, 1285.50 FEET TO A 5/8" REBAR AND CAP STAMPED "PLS 832 MECKEL". SAID REBAR AND CAP PLACED ON THE AFOREMENTIONED WEST RIGHT-OF-WAY LINE;

THENCE SOUTH 00°27'51" WEST, 1001.01 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE TRUE POINT-OF-BEGINNING FOR THIS DESCRIBED PARCEL OF LAND.

SAID DESCRIBED PARCEL CONTAINING 1,278,700 SQUARE FEET OR 29.357 ACRES MORE OR LESS.

