



RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

Development Services Inc.  
9601 W. State Street #203  
Boise, ID 83714

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR  
EAST SAGECREST COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC.

This Supplemental Declaration of Covenants, Conditions Easements and Restrictions for East Sagecrest Commercial Property Owners Association Inc, (hereinafter the "Supplemental Declaration") is made this 12<sup>th</sup> day of May, 2010 by Dirk L. Marcum, Premier Enterprises LLP, an Idaho Limited Liability Partnership, Dayley Real Estate Ventures LLC, an Idaho Limited Liability Company, D&R Holdings 1 LLC, an Idaho Limited Liability Company, D&R Holdings II, LLC, an Idaho Limited Liability Company and PENSOCO Trust Company, custodian FBO David L Page, IRA, Pensco Acct #PA1MX, as to an undivided sixty six percent (66%) interest and D&K Page LLC, an Idaho Limited Liability Company, as to an undivided thirty four percent (34%) interest. (hereinafter the "Owners").

**ARTICLE 1 – RECITALS**

WHEREAS, this Declaration is a supplement to that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Resolution Subdivision recorded on September 25, 2001, in the official records of Ada County, Idaho as Instrument Number 101098454. The covenants, conditions, restrictions and easements contained in this Declaration are in addition to those covenants, conditions, restrictions and easements contained in the Master Declaration. In the event there shall be duplicate covenants, conditions, restrictions and easements within this Declaration or between this Declaration and the Master Declaration, the more restrictive provision shall apply. In the event of a conflict between the covenants, conditions, restrictions and easements contained in the Master Declaration and those contained in this Declaration, this Declaration shall control.

WHEREAS, the property subject to this Declaration includes the property legally described as Lots 33-38 and Lots 41, 43 & 44, Block 1 of Sagecrest Subdivision, recorded on September 27, 2004, in the official records of Ada County, as Instrument Number 104123401.

WHEREAS, Sagecrest Subdivision is a replat of Lot 6 of Resolution Subdivision No. 1.

WHEREAS, the purposes of this Declaration are to subject the Property to certain covenants, conditions, easements and restrictions in addition to those set forth in the Supplemental Declaration which are unique to the Property and to create the East Sagecrest Commercial Property Owner's Association.

## ARTICLE II – DECLARATION

The Owners hereby declare that the property described above and each, lot, tract or parcel thereof (hereafter called “Lot”, unless specified to the contrary) shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot and any interest therein; and shall inure to the benefit of and be fining upon the Owners and each successor of interest in each, and may be enforced by the Owners or by the Association as hereafter provided.

## ARTICLE III. DEFINITIONS

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

- 3.1 **Architectural Control Committee** shall mean the Architectural Control Committee for the Association.
- 3.2 **Association** shall mean and refer to East Sagecrest Commercial Property Owners Association, Inc. a non-profit corporation organized under the laws of the State of Idaho, or any successor or assign of the corporation.
- 3.3 **Assessment** shall mean a payment required of Association members, including Regular, Special or Limited Assessments as provided in this Supplemental Declaration.
- 3.4 **Board** shall mean the duly elected and qualified Board of Directors of the Association.
- 3.5 **Building** shall mean a structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary shall include all other appurtenances and improvements thereto or used in connection therewith.
- 3.6 **Bylaws** shall mean the Bylaws of the Association including any amendments thereto duly adopted.
- 3.7 **Common Area** shall mean all property, or interest therein, located within or outside of the boundaries of the Property in which the Association owns an interest or controls or which the Association is obligated to maintain, and which is owned, held, or maintained for the betterment of the Owners and Occupants of the Property.
- 3.8 **Common Facilities** shall mean and refer to the physical improvements constructed by Declarant or the Association upon Common Area, or upon the utility easement over each Lot including, without limitation, all Association owned street lights, entry way lights, signs (excluding street signs), benches, walkways and pedestrian paths, and the irrigation water system.

3.9 **Exempt Property** shall mean all properties within the Property which have been dedicated to, and accepted by, a local public authority and all properties owned by the Association, all of which properties shall be exempt from assessments created herein, except that such term shall not include any land or improvements devoted to dwelling use.

3.10 **Improvements** shall mean all structures and appurtenances thereto of all kinds and types, including but not limited to, buildings, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items that are located totally on the interior of a Building and cannot be readily observed when outside thereof.

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

3.12 **Master Declaration** shall mean the Covenants, Conditions, Restrictions and Easements for Resolution Subdivision recorded on September 25, 2001, in the official records of Ada County, Idaho as Instrument Number 101098454.

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

3.14 **Mortgage** shall mean any mortgage or deed or other hypothecation of land located in the Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Supplemental Declaration shall be limited to a "first Mortgage" including a "first Deed of Trust" on a Lot.

3.15 **Mortgagee** shall mean the holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Supplemental Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

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

3.17 **Owner** shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

3.19 **Property** shall mean and refer to the real property consisting of Lots 33-38 and Lots 41, 43 & 44, Block 1 of Sagecrest Subdivision, recorded on September 27, 2004, in the official records of Ada County, as Instrument Number 104123401.

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

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

#### **ARTICLE IV. USES AND REGULATION OF USES**

4.1 **Uses – Generally:** All Lots (and the Improvements constructed thereon) shall be used exclusively in accordance with any and all applicable zoning ordinances, provided such uses are in compliance with any restrictions of record, including those in this Declaration.

4.2 **Prohibited Uses:** No portion of the Property may be used inconsistently with this Declaration or any applicable law, regulation, rule or ordinance.

4.3 **Improvements – Generally:** No Improvement shall be constructed upon any Lot unless such Improvement has been approved by the Architectural Control Committee pursuant to Article IX hereof, and is in compliance with the design requirements of the City of Meridian. All Improvements shall conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location within the building area, height, grade and finished ground elevation, natural conditions, landscaping and all aesthetic considerations.

In the event any Improvement is constructed in violation of this Declaration and/or in violation of any approval received by the Architectural Control Committee, the Association, after reasonable notice to the Owner and/or the offender, may remove any Improvement so constructed and the Owner of the Improvement shall immediately reimburse the Association for all expenses incurred with such removal. Each violation of the Declaration is hereby declared to be and to constitute a nuisance, an every public or private remedy allowed for such violation bylaw or equity against an Owner and/or Member shall be applicable.

4.4 **Nuisances:** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area and no odor shall be permitted to arise from any portion of the property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the property or to its Owners or Occupants, or to any other property in the vicinity thereof or to its occupants or residents. No exterior lighting or sound devices shall be located or used on the Property without the prior approval of the Architectural Control Committee.

4.5 **Storage Areas:** No Owner shall be permitted to store any type of materials, equipment, supplies or dumpsters on any Lot, except inside the buildings or behind barriers on an Owner's lot. Such barrier must screen such area from all adjoining views of the property and must be approved as to design and materials by the Architectural Control Committee prior to installation.

## ARTICLE V PERMITTED USES AND PERFORMANCE STANDARDS

5.1 **Use.** Lots shall only be used for commercial, financial, retail and services uses such as child day care, banking, restaurant, conferencing, medical, legal and similar uses and such other uses as the Architectural Control Committee shall, in its discretion, allow, provided that no such other use so allowed shall conflict with or be incompatible with the above specified identified uses. All uses shall be in accordance with applicable zoning ordinances and approvals.

5.2 **Approval of Use and Plans.** No Improvements shall be built, constructed erected, placed or materially altered within Sagecrest Subdivision unless and until the intended use thereof and the plans, specifications and site plan therefore have been reviewed in advance and approved by the Architectural Control Committee in accordance with the provisions of Article IX below.

5.3 **Prohibited Uses.** Uses not allowed within Sagecrest Subdivision shall be single family residential, public storage, recycling, automobile service and repair and other used prohibited by the applicable provision of the Meridian City Zoning Ordinances, as the same now exist or may hereafter be amended, provided that any future amendments to not permit uses which are inconsistent or incompatible with the project objectives.

No noxious or offensive trades, services or activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the Occupant(s) of any other Lot(s) within Sagecrest Subdivision by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust liquid waste, smoke or noise.

5.4 **Easements.** There is hereby reserved for the use and benefit of each Lot and for each Owner and for the use and benefit of the Association, and their successors and assigns for the purposes incident to such use, development and maintenance of Sagecrest Subdivision, the following easements:

5.4.1 For the installation and maintenance of public utility facilities of all kinds, the easements so designated on the recorded subdivision plat for Sagecrest Subdivision.

5.4.2 For access to any Common Area as designated on the recorded plat for Sagecrest Subdivision, including any equipment or appurtenances used in connection therewith, including any Common Area as may be constructed by the Association within Sagecrest Subdivision and designated for drainage, irrigation, flood protection, recreation or amenity purposes.

5.4.3 Temporary easements, as necessary, for the benefit of an Owner of a Lot to enter onto the side yards of the abutting Lots during the construction of improvements, provided that any repairs or restoration of an abutting Lot or the Improvements thereon shall be the obligation of the Owner utilizing the easement.

5.4.4 The easement areas (excluding any equipment or appurtenances owned by the Association or utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated, except Common Area landscape easements which shall be maintained by the Association.

5.4.5 No improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall materially interfere with the intended use or purpose of such easement (s), and no other activity shall be undertaken on any Lot which will materially interfere with the use an access

intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

5.5 **Common Area and Common Facilities**: Among its other responsibilities, the Association shall be responsible for maintenance of all Common Area and Common Facilities including operation of the irrigation water system. The Association may employ the services of a manager and other personnel to carry out such responsibilities. Such Common Area and Common Facilities shall be maintained in a neat, landscaped and becoming manner. Common Area within the Property hereinabove described shall include Lot 38, Block 1 and Lot 41, Block 1 of Sagecrest Subdivision, according to the plat of the Property on file in the office of the recorder of Ada County, Idaho, together with easements and rights-of-way as shown upon the recorded Plat for pedestrian paths, landscaping and the irrigation system constructed and to be constructed for the Property whether or not within said Common Area. Common Area and Common Facilities shall also include such other real and personal property as may be conveyed to the Association from time to time by Declarant, or designated by it as Common Area in any Supplemental Declaration. The Association may not convey or change the use of the Common Area or Common Area Facilities without the prior written approval of the Meridian City Council. The Association shall at all times comply with the open space, pressurized irrigation, and drainage requirements of the City of Meridian.

5.6 **Drive and Parking Areas**: Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. Without in any manner limiting the foregoing, the Association shall cause the parking lot to be striped not less than every three to four (3-4) years, a seal coat to be applied to the parking lot and all drive aisles not less than every seven (7) years, for all potholes and cracks in the surface of the parking lot and drive aisles to be promptly repaired upon discovery or notification of the same and all directional arrows, crosswalks, and other matters in the drive aisles to be painted not less than every three to four (3-4) years.

5.7 **Debris, Refuse and Snow**: Periodic removal of all papers, debris, filth, refuse, ice and snow (3" on the surface and snowing) including vacuum sweeping to the extent necessary to keep the Common Area in a clean and orderly fashion. All sweeping shall be at appropriate intervals during such times as shall not unreasonably interfere with the conduct of business or use of the Common Area by the Owners.

5.8 **Lighting**: Maintaining, cleaning and replacing Common Area lighting facilities including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers if required by the City of Meridian.

5.9 **Employee Parking**: The Association may designate, from time to time, areas to be used for motor vehicle parking by employees of Owners or Occupants of the Property. In the event employee parking areas are designated as provided herein, then employees of any Owner or Occupant of any part of the Property shall use only those portions of the Common Area designated for such employee parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against or place any undue burden upon any Owner or Occupant of the Property.

5.10 **Parking**: There shall be no charge for parking in the Common Area without the prior written consent of the Association or unless otherwise required by law.

5.11 **Private Property**: Owners of Lots shall be responsible for and perform all exterior maintenance upon such Lots and all improvements thereon. No Building or Structure upon any Lot covered by this Supplemental Declaration shall be permitted to fall into disrepair and each such Building and Structure shall at all times be kept in good condition and repair and adequately painted. The board may choose to include the lawn and irrigation maintenance behind, between and in front of the buildings (or any portion thereof) on Lots 33-37 and 43-44, Block 1 of Sagecrest Subdivision as part of the association assessment. This can be determined annually by the board as to whether the association will maintain these areas as part of the association's annual assessments.

5.12 **Signs**. All signs located on Resolution Business Park common area must be in compliance with Section 5.11 of the Master Declaration for Resolution Subdivision and the City of Meridian sign ordinances. All signs to be placed on East Sagecrest Commercial property/common area must be approved by the Board of Directors for design and placement before installation. All signs erected and/or already erected on the individual buildings must also be approved or re-approved before installation by the Board of Directors.

## **ARTICLE VI.** **EAST SAGECREST COMMERCIAL PROPERTY OWNER'S ASSOCIATION**

6.1 **Membership**: Each Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association. In order for a Member to be allowed to vote, the member must be in good standing with the association.

6.2 **Voting**: The Association shall have one class of voting membership.

6.2.1 Class A Members shall be all Owners of Lots. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

6.3 **Board of Directors and Officers**: The affairs of this Association shall be managed by a board of not less than three (3) directors, who need not be Members of the Association but must be in good standing and all current dues, assessments and/or fines must be paid.

6.4 **Power and Duties of the Association**.

6.4.1 **Powers**. The Association shall have all the powers of a non-profit corporation organized under the general corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Supplemental Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law, the Supplemental Declaration, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area

and the Declaration's other and the performance of the other responsibilities herein assigned; including without limitation:

6.4.1.1 **Assessments.** The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of the Supplemental Declaration.

6.4.1.2 **Right of Enforcement.** The power and authority from time to time in its own name on its own behalf, or on behalf of any Owner who consents thereto/to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Supplemental Declaration, and to enforce by injunction or otherwise, all provisions hereof.

6.4.1.3 **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation-to-act as manager, and to contract for the maintenance, repair, replacement and operation of the Common Area. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

6.4.1.4 **Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Area by the Owners, their families, invitees, licensees, lessees or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that the Association Rules shall apply equally to all Owners and shall not be inconsistent with the Supplemental Declaration. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any other provisions of the Supplemental Declaration, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Supplemental Declaration to the extent of any such inconsistency.

6.4.1.5 **Emergency Powers.** The power, exercised by the Association or by any person authorized by it, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

6.4.2 **Duties.** In addition to duties necessary and proper to carry out the power delegated to the Association by the Supplemental Declaration, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

6.4.2.1 **Operation and Maintenance of Common Areas and Improvements.** Operate, maintain, and otherwise manage or provide for the operation, maintenance, repair, replacement and management of the Common Area(s) and improvements located thereon.



6.4.2.2 **Reserve Account.** If needed, establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Areas and improvements.

6.4.2.3 **Taxes and Assessments.** Pay all real and personal property taxes and Assessments separately levied against the Common Area or against the Property, the Association and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the ' payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state or local taxes, including income or corporate taxes levied against the Association, in. the event that the Association is denied the status of a tax exempt corporation.

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

6.4.2.4.1 A multi-peril-type policy covering any Common Area and Common Facilities providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

6.4.2.4.2 A comprehensive policy of public liability insurance covering all of the Common Areas and Common Facilities. If available, such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

6.4.2.4.3 Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

6.4.2.4.4 Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees, as may be appointed from time to time by the Board in such amount as may be reasonable on the premises.

6.4.2.4.5 Such other insurance as the Board shall deem necessary or required to carry out the Associations functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with them management or possession of any Association funds or other property.

The Association shall be deemed a trustee of the interest of all Owners in any insurance proceeds paid to under such policies, and shall have full power to receive such proceeds and to deal therewith.

Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

6.4.2.5 **Rule Making.** Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable;

6.4.2.6 **Architectural Control Committee.** Appoint and remove members of the Architectural Control Committee, all subject to the provision of this Supplemental Declaration.

## **ARTICLE VII. COVENANT AND LIEN FOR ASSESSMENTS**

Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each Lot owned, to pay to the Association (a) Regular Assessments, (b) Special Assessments, and (c) Limited Assessments, such assessments to be established and collected as hereinafter provided. IN ADDITION, by acceptance of a deed to any Lot in the Property each owner of such Lot hereby acknowledges that the Property is subject to the Master Declaration of Resolution Business Park Property Owners Association and the Commercial Sections prorated assessments. These prorated assessments shall include the landscape maintenance for the perimeter landscaping along Overland Road and Millennium Blvd. and pressurized irrigation, maintenance and operation expenses associated with this perimeter landscaping.

7.1 **Regular Assessment.** Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board. The Regular Assessments shall be based upon advance estimates of annual cash requirements as determined by the Board for the maintenance and operation of the Common Areas and all easements areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

The Board will compute the amount of the initial Regular Assessment not less than thirty (30) days nor more than sixty (60) days before the beginning of each fiscal year of the Association.

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

7.2.1 **Short Fall Assessment:** In the event that the Board shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the expenses of the Association for any reason, including but not limited to, costs of any construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area or any facility located thereon or an easement area controlled by the Association; the furnishing of a special service or services (other than those appropriate for a Limited Assessment); attorney's fees and/or litigation costs or other

professional fees; any other expenses incurred or to be incurred as provided for in the Supplemental Declaration; or for any other reason, the Board shall determine the approximate amount necessary to defray such expense and levy a Special Assessment. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year, without the approval of a majority of the Members of the Association, who are voting in person or by proxy at a meeting duly called for this purpose. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

7.2.2 **Transfer & Refinance Special Assessment**: Upon each transfer and/or refinance of any Lot or residence in the subdivision, each Buyer and/or Owner shall pay the Association a transfer assessment of two hundred dollars (\$200.00), which shall be used for general Association purposes.

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

7.3.1 **Maintenance & Repair**: The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvement on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Area or any other portion of the Property and if the Owner of said Lot has failed or refused to perform said maintenance or repair after written notice of the necessity thereof has been delivered by the Board to said Owner in accordance with the procedures set forth in Section 7.3.3 below. The Board shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such maintenance and repair, together with any other cost or expense, including management fees and attorney fees, arising out of or incident to such maintenance and repair or the collection of the Assessment therefore.

7.3.2 **Correction of Violation**: The Association shall have the power to incur expenses for the correction of a violation of this Supplemental Declaration or the Architectural Control Committee Standards and Guidelines on a Lot if the Owner of said Lot has failed or refused to correct such a violation after written notice of the necessity thereof has been delivered by the Board to said Owner in accordance with the procedures set forth in Section 7.3.3 below. The Board shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such corrective action, together with any other cost or expense, including management fees and attorney fees, arising out of or incident to such corrective action or the collection of the Assessment therefore.

7.3.3 **Notice**: The Owner of the Lot which is in need of maintenance and repair or corrective action as set forth above, shall be given fourteen (14) days written notice of the maintenance and repair or corrective action required. The notice shall be delivered personally to such Owner or sent *via* first class mail or certified mail to the last known address of such Owner shown on the records of the Association.

7.3.4 **Collection Costs**: Each Owner against whom a Limited Assessment is levied agrees to and shall pay all the costs of said corrective action, plus interest on all expended funds, from the date of expenditure at the rate of two percent (2%) per month plus a management fee equal to twenty five percent (25%) of all the costs expended for the corrective action and all attorney fees incurred, which such amounts shall be added to and become a part of the Limited Assessment against that Lot, and Owner and shall create a lien enforceable in the same manner as other Assessments set forth in this Declaration. If such an Assessment is not paid within ten (10) days of notice of the Limited Assessment, the Owner shall also be subject to late fees and collection procedures set out herein.

7.3.5 **Personal Obligation**: Each such Assessment, together with interest thereon at the legal rate, reasonable collection costs incurred by the Association for collection proceedings by a management company for the Association, and reasonable attorney fees shall also be the personal obligation of the Owner of such property at the time when the Assessment falls due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, and in any event shall not relieve the Owner of his personal responsibility therefore, but unpaid Assessments shall constitute a continuing lien against the Lot until paid.

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

The Association may, from time to time, retain the services of a professional organization, bank, credit bureau, attorney, accountant, or such other disinterested party or entity for the purpose of giving notice and collecting the Regular, Limited or Special Assessments.

The Association may:

- 7.4.1 Bring an action at law against the Owner personally for the Assessment, late fee and interest due, and the costs of action; or
- 7.4.2 Foreclose the lien against the Lot in the same manner as provided by law as to statutory materialmen's liens; or
- 7.4.3 Use the enforcement procedures of the Bylaws, if any.

In the event of enforced collection of an Assessment, the costs of collection including management and processing fees as well as reasonable attorney fees shall be added to the amount of the Assessment for collection.

No Owner may waive or otherwise escape liability for the Assessments provided for herein by failure to use the Common Area or the Common Facilities or by the abandonment of his Lot.

7.5 **Subordination of Liens to Mortgages**: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to foreclosure of a mortgage, or deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such foreclosure shall not affect the personal liability of the Owner for such Assessments. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

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

## **ARTICLE VIII. BOOKS AND RECORDS**

8.1 **Right of Inspection.** All books, records and minutes of the Board and all other books and records maintained by an Association shall be made available for inspection and copying by any Owner who is a Member therefore or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in such Association or at such place and time as the Board shall prescribe, provided such place is within fifteen (15) miles of Resolution Subdivision and provided the time(s) are during regular business hours (8am to 5pm, Monday thru Friday).

8.2 **Rules regarding inspection.** The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records by the persons desiring to make an inspection or copy the same; (ii) hours and days of the week when such inspection and copying may be made; and (iii) payment of the cost of reproducing copies of the documents requested pursuant to this Article.

8.3 **Directors Right of Inspection.** Every member of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association of which he is a director and the physical properties owned or controlled by the same. The right of inspection by a director includes the right to make extracts and copies of any said books, records or documents.

## **ARTICLE IX. ARCHITECTURAL REVIEW**

9.1 **Creation of Architectural Control Committee:** In order to protect the quality and value of the buildings built on the Property and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three (3) or more members to be appointed by the Board. This Committee may also be the Board members.

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

9.3 **Rules and Regulations:** The Architectural Control Committee is hereby authorized to adopt rules to govern its procedures including such rules as the Committee deems appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties to be heard on any matter before the

Committee. The Committee is further hereby empowered to adopt such regulations as it shall deem appropriate consistent with the provisions of this Supplemental Declaration with regard to matters requiring the Architectural Control Committee's approval including matters of design, materials, and aesthetic interest.

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

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

9.6 **Variances:** Architectural Control Committee shall have the ability to grant variances in regard to specific cases.

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

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

## **ARTICLE X. ENFORCEMENT**

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

10.1.1 The Board as to all matters;

10.1.2 The Owner or Owners of any Lot adversely affected, but only after written demand is made on the Association and its failure to act, except that no such Owner shall have the right to enforce independently of the Association any assessment or lien herein.

10.2 **Methods of Enforcement:** Subject to the provisions of Section 10.3 hereof, the following methods of enforcement may be utilized:

10.2.1 Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, cancellation of any contracts of an executory nature, or such other remedies at law and equity which may be available in a court of law.

10.2.2 Eviction for trespass by police action.

10.2.3 The Association through its agents shall have the authority to take appropriate corrective action against the Owner of any Lot pursuant to Section 7.3 above.

10.2.4 Monetary penalties and temporary suspension from Association membership rights and privileges including, without limitation, curtailment of water from the irrigation system provided that except for late charges, interest, and other penalties for failure to pay as due Assessments levied by the Association as provided in this Supplemental Declaration, no such discipline or sanction shall be effective against a Member unless:

10.2.4.1 The Member is given seven (7) days written notice of the proposed discipline or sanction and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Member, be oral or in writing. The notice shall be given personally to such Member or sent by first-class or certified mail to the last address of such Member as shown on the records of the Association and shall state the place, date and time of a hearing to be held on the matter, which shall not be less than five (5) days before the effective date of the proposed discipline or sanction.

10.2.4.2 The hearing shall be conducted by the Board or a committee composed of not less than three (3) persons, appointed by the Board, which shall conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding appropriate discipline or sanction until the conclusion of the hearing.

10.2.4.3 Any Member challenging the discipline or sanction imposed by the Board, including any claim alleging defective notice, must commence court action within thirty (30) days after the date of the contested discipline or sanction imposed by the Board.

10.2.4.4 A monetary penalty imposed by the Association as a compliance measure for failure of a Member to comply with the provisions of this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area, or Common Facilities, for which the Member was allegedly responsible, or in bringing the Member and his Lot into compliance with this Declaration, may be treated as a Limited Assessment which may become a lien against the Member's Lot, enforceable by a sale of the interest. This provision does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent Assessments and for charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent Assessments.

10.3 **Limitations on Enforcement:** The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned interest, other than the right to receive water from the irrigation system, on account of the failure of the Owner to comply with provisions of this

Supplemental Declaration except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure for failure of the Owner to pay Regular, Special, or Limited Assessments duly levied by the Association.

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

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

## **ARTICLE XI** **MISCELLANEOUS**

11.1 **Term**. The Supplemental Declaration and all covenants, conditions, easements and restrictions contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, this Supplemental Declaration shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners holding at least three-fourths (3/4) of the voting power of the Association and such written instrument is recorded with the Ada County Recorder.

11.2 **Amendment**. This Supplemental Declaration maybe amended as follows:

11.2.1 **By Owners**. Except where a greater percentage is required by an express provision in this Supplemental Declaration, the provisions of this Supplemental Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of Owners owning at least fifty-one percent (51%) of the Lots within Sagecrest Subdivision and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 11.2.1 shall require the vote or written consent of all Owners. No amendment to this Supplemental Declaration shall apply retroactively to approvals previously granted by the Architectural Control Committee or to Improvements constructed or being constructed pursuant thereto.

11.3 **Notices**. All notices given pursuant to this Supplemental Declaration shall be in writing and shall be given by personal delivery, by United States Mail, or by United States Express Mail or other established express or courier delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the and address shown on the then current real property tax rolls of Ada County. Any person entitled to notice hereunder may change its address at any time by giving written notice to all other parties entitled to notice in the manner specified herein.



11.4 **Non-Waiver**. The failure of the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants and restrictions or other provisions of this Supplemental Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenants, conditions, restrictions, easements or other provisions, but the same shall remain in full force and effect.

11.5 **Acceptance**. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option accepts the same subject to all of the covenants and restrictions and other provisions set forth in this Supplemental Declaration and agrees to be bound by the same.

11.6 **Indemnification of Board Members**. Each member of the Board and each member of the Architectural Control Committee shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the Architectural Control Committee, or any settlement thereof; whether or not said person is a member of the Board or Architectural Control Committee at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of settlement, the indemnification shall apply only when the Board or the Architectural Control Committee approves such settlement and reimbursement as being in the best interest of the Association or Owners.

11.7 **Interpretation**. The provision of this Supplemental Declaration shall be liberally construed to effectuate the purpose set forth herein, and shall be construed and governed by the laws of the State of Idaho.


Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter.

All captions and titles used in this Supplemental Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

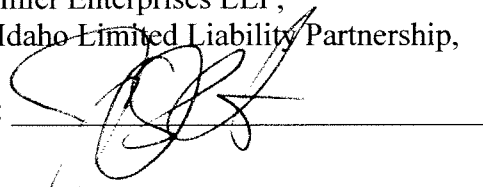
11.8 **Severability**. Notwithstanding the provision of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the undersigned have duly executed this Master Declaration this 12th day of May, 2010.

OWNERS:  
Dirk L Marcum

By: 

Premier Enterprises LLP,  
an Idaho Limited Liability Partnership,

By: 

Dayley Real Estate Ventures LLC,  
an Idaho Limited Liability Company

By: [Signature]

D&R Holdings II LLC

By: Donald B. Harris

D&R Holdings I LLC

By: Donald B. Harris

PENSCO Trust Company, custodian FBO David L Page, IRA, Pensco Acct #PA1MX, as to an undivided sixty six percent (66%) interest

By: [Signature] VP 3/29/10. By: [Signature]

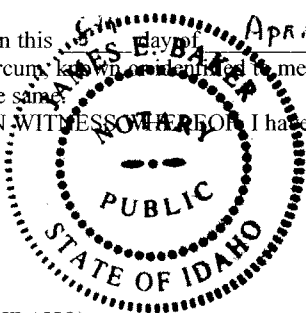
D&K Page LLC, an Idaho Limited Liability Company, as to an undivided thirty four percent (34%) interest

By: [Signature]

STATE OF IDAHO )  
 )  
 ) :ss.  
 )  
County of Ada )

On this 5th day of April, 2010, before me, the undersigned, A Notary Public in and for said State, personally appeared Dirk L. Marcum, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

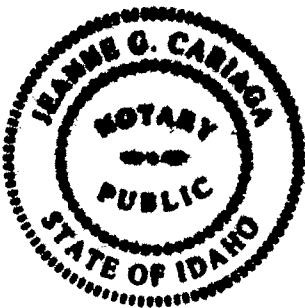


[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at MERIDIAN, ID  
My Commission Expires 12.18.12

STATE OF IDAHO )  
 )  
 ) :ss.  
 )  
County of Ada )

On this 8th day of April, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared JASON OSWALD, known or identified to me, to be the manager or a member of Premier Enterprises LLP, the limited liability partnership that executed the instrument or the person who executed the instrument on behalf of said limited liability partnership and acknowledged to me that such limited liability partnership executed the same.

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



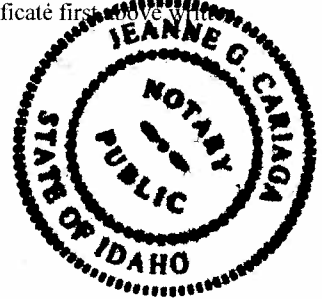
[Signature]  
NOTARY PUBLIC FOR IDAHO  
Residing at East, ID 83604  
My Commission Expires 9/1/2015

STATE OF IDAHO)  
:ss.  
County of Ada )

On this 12th day of May, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Kathryn Dayley, known or identified to me, to be the manager or a member of Dayley Real Estate Ventures, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

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

John D Cariga  
NOTARY PUBLIC FOR IDAHO  
Residing at Keagle ID  
My Commission Expires: 9/1/15



STATE OF IDAHO)  
:ss.  
County of Ada )

On this 9th day of April, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald B. Harris, known or identified to me, to be the manager or a member of D&R Holdings I LLC and D&R Holdings II, LLC, the limited liability companies that executed the instrument or the person who executed the instrument on behalf of said limited liability companies and acknowledged to me that such limited liability companies executed the same.

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

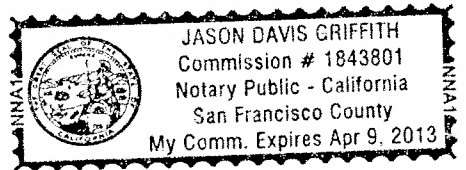
Deborah H. Patton  
NOTARY PUBLIC FOR IDAHO  
Residing at Keagle ID  
My Commission Expires: March 1, 2012

STATE OF California  
County of San Francisco ) :ss.

On this 20th day of March, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared David L. Page, known or identified to me to be the VP Investor of Pensco Trust Company who executed the instrument on behalf of said company, and acknowledged to me that such company executed the same.

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

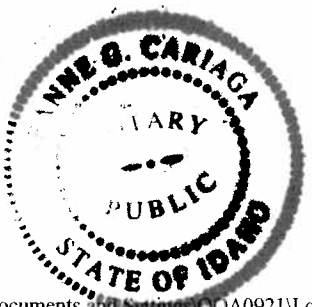
Jim Latta  
NOTARY PUBLIC FOR California  
Residing at San Francisco  
My Commission Expires: April 9, 2013



STATE OF Idaho  
County of Ada ) :ss.

On this 2nd day of April, 2010, before me, the undersigned, A Notary Public in and for said State, personally appeared David L. Page, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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



John D Cariga  
NOTARY PUBLIC FOR Idaho  
Residing at Keagle ID  
My Commission Expires 9/1/2015