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HOFF COMPANIES INC

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**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BANBURY MEADOWS SUBDIVISION No. 8**

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THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BANBURY MEADOWS SUBDIVISION No. 8 is made on the date hereinafter set forth by Hoff Companies, Inc. hereinafter referred to as "Grantor."

ARTICLE 1. RECITALS

1.1. Property Covered

Grantor is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as the "Property", more particularly described in Exhibit A attached hereto and known as "Banbury Meadows Subdivision No. 8" ("Subdivision").

1.2. Residential Development

Banbury Meadows Subdivision No. 8 is a residential development, which Grantor currently intends to develop in accordance with existing development approvals obtained from Eagle City and documented in Eagle City files or any other development plan(s) for which Grantor may from time to time obtain approval. The Property may contain parcels for common use, including but not limited to streams and canals, private open space, park areas, landscaping, wildlife habitat, recreational facilities, private streets or drives, and other amenities and facilities. Any development plans for the Property in existence prior to or following the effective date of this Master Declaration are subject to change at any time by Grantor, and impose no obligation on Grantor as to how the Property is to be developed or improved.

1.3. Purpose of Master Declaration

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

1.4. Government Regulations and Restrictions

In the event any of the CC&Rs are less restrictive than government rules, regulations or ordinances, then the more restrictive government rule, regulation or ordinance(s) shall apply. The CC&Rs are subject to all rules, regulations, laws and ordinances of all applicable government bodies. In the event a government rule, regulation, law or ordinance would render a part of the CC&Rs unlawful, then in such event that portion shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.

ARTICLE 2. DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and should inure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each grantee or Owner and such grantee's or Owner's, respective successors in interest, and may be enforced by Grantor, by any Owner or such Owner's successors in

interest.

Notwithstanding the foregoing, no provision of this Master Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing.

ARTICLE 3. DEFINITIONS

- 3.1. **Architectural Control Committee**
Shall mean the committee created by the Grantor or Association pursuant to Article 13 hereof.
- 3.2. **Articles**
Shall mean the Articles of Incorporation of any Association.
- 3.3. **Assessments**
Shall mean those payments required of Owners, Association Members, including Regular, Special and Limited Assessments of any Association as further defined in this Master Declaration.
- 3.4. **Association**
Shall mean the Idaho profit or non-profit corporation, its successors and assigns, established by the Grantor to exercise powers and carry out the duties set forth in this Master Declaration or any Supplemental Declaration. Grantor shall have the power, in its discretion, to name the Association the "Banbury Meadows No. 8 Homeowners' Association, Inc. or any name which fairly reflects its purpose.
- 3.5. **Board**
Shall mean and refer to the duly elected and qualified board of directors of the Association.
- 3.6. **Bylaws**
Shall mean the corporate Bylaws of an Association.
- 3.7. **Common Area**
Shall mean all real property and Improvements thereon (including private streets or drives, common open space, common landscaped areas, and waterways) owned by the Association for the common use and enjoyment of the Owners.
- 3.8. **Declaration**
Shall mean this Master Declaration as it may be amended from time to time.
- 3.9. **Dwelling**
Shall mean that portion or part of any structure intended to be occupied by one family as a residence, together with the attached vehicular parking garage, and all projections therefrom
- 3.10. **First Mortgagee**
Shall mean any Mortgagee possessing a lien on any dwelling first and prior to any other Mortgage
- 3.11. **Grantor**
Shall mean Hoff Companies, Inc., or its successor in interest, or any person or entity to whom the rights

under this Declaration are expressly transferred by Hoff Companies, Inc. or its successor.

3.12. **Improvements**

Shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, wildlife habitat improvements, signs, lights, mail boxes, electrical lines, pipes, pumps, pressurized irrigation system, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever. Improvements shall not include modifications the interior of a building or other enclosed structure that is not readily visible from the outside.

3.13. **Irrigation Water Supply System**

Shall mean a group of components used in diverting, supplying and distributing irrigation water to all or portions of the Property.

3.14. **Lot or Lots**

Shall mean and refer to any lot or parcel shown upon any recorded Plat or any approved and recorded record of survey creating legal parcels adjacent to the Property.

3.15. **Member**

Shall mean each person or entity holding a membership in the Association.

3.16. **Mortgage**

Shall mean any mortgage, deed of trust or other security instrument by which a Dwelling or any part thereof is encumbered.

3.17. **Mortgagee**

Shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any Mortgage.

3.18. **Owner**

Shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

3.19. **Person**

Shall mean any individual, partnership, corporation or other legal entity.

3.20. **Plat**

Shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof.

3.21. **Property**

Shall mean those portions of the Property described on Exhibit A attached hereto and incorporated herein by this reference, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property.

3.22. **Supplemental Declaration**

Shall mean any supplemental declaration including additional covenants, conditions and restrictions that

might be adopted with respect to any portion of the Property.

3.23. **Waterway**

Shall mean any surface water amenity, including, without limitation, any lake, pond, channel, slough, stream, wetlands, or reservoir, natural or artificial, which is located on the Property and which is included within or managed as Common Area.

ARTICLE 4. RESERVATION OF RIGHTS; ACKNOWLEDGEMENT OF RIGHTS.

4.1. **Agricultural Uses.**

Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to acknowledge that agricultural traffic and golf course equipment may use the streets within the Property for access to and from parcels not within the Property. Each Owner is deemed to further acknowledge that agricultural and golf course activities surrounding the Property, which may include noise from equipment, may occur at any time (24 hours a day).

4.2. **Reservations by Grantor.**

Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to acknowledge that Grantor has expressly conveyed, reserved, created and granted the following rights, interests, and easements for itself and, as it determines appropriate, for the Association :

- 4.2.1. Except for water rights specifically transferred in writing to the Association, Grantor hereby reserves for and to Grantor all water rights and all entitlements to receive water that have been placed to beneficial use upon the Property or are appurtenant to or associated with the Property, including, without limitation, all licenses, permits, claims, permit applications, and storage entitlements; all ditch or canal company shares and/or entitlements to receive water from any such company or from any irrigation district or other water delivery entity; and all ditch rights, easements or rights-of-way associated with any irrigation or other water delivery ditch, canal, lateral or pipeline. Each Owner acknowledges that it does not have any right, title or interest in any such water or water rights or ditch or canal company or other water company shares or rights.
- 4.2.2. A permanent easement for the purpose of permitting the Grantor or the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Common Area to operate, maintain, repair, replace and restore landscaping and other Improvements within the Common Area, including, but not limited to, any sprinkler irrigation system which may be installed to irrigate any landscaping located within the Common Area or any Common Area easement as shown on the recorded Plat for the Subdivision.
- 4.2.3. A permanent easement for the purpose of permitting the Grantor or the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Waterway, whether located on Common Area or on any privately owned Lot for purposes of maintaining any Waterway or Common Area, to operate, maintain, repair, replace and restore landscaping, any facility required for a Waterway of Common Area, and other Improvements within the Waterway, or the Common Area. The scope of such easement shall be as depicted upon any Plat and in no event shall be less than (a) ten feet (10') in width along any boundary of a Lot adjacent to a Waterway or Common Area or (b) ten feet (10') from the high water point of any Waterway regardless of where such Waterway is located on any Lot. Grantor further reserves to both itself and to the Association, the right to reconfigure any Waterway which it determines to be necessary, expedient or desirable in its

sole and absolute discretion.

- 4.2.4. A permanent easement over, across, under and through the Property for the construction, operation, maintenance, repair and replacement of the Irrigation Water Supply System as shown on the Plat. This permanent easement shall also include the right of ingress and egress from the easement over, under and across each Lot in which the easement is located to perform maintenance and repair, together with all rights necessary for the full and complete operation of the Irrigation Water Supply System.
- 4.2.5. Grantor reserves, creates, and grants all easements depicted and created on any recorded Plat for any portion of the Property, hereinafter depicted. The purpose of this reservation and grant is to ensure the creation of all such depicted easements for the purpose otherwise indicated on a Plat for any portion of the Property.
- 4.2.6. Grantor reserves the absolute right to grant and convey the right to the use and enjoyment of the Common Area to individuals and entities that are not Owners of a Lot upon such conditions as Grantor deems appropriate in its sole and absolute discretion. Grantor agrees to document such grants in writing and to provide notice of such to the Association. The Association shall not interfere with or seek to limit such use and enjoyment of the Common Area granted by the Declaration.

4.3. **Enjoyment of Common Area**

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

- 4.3.1. The right of an Association to charge reasonable maintenance and other fees for the use of, as well as the maintenance and operation of, any Improvements, landscaping or recreational facility situated upon the Common Area.
- 4.3.2. The right of an Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid.
- 4.3.3. The right of an Association to suspend an Owner's voting rights and right to use the facilities for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- 4.3.4. The right of an Association to limit the number of Members permitted to use the Common Area.
- 4.3.5. The right of an Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly held for this purpose.

- 4.3.6. The right of the Board of an Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the Members of that Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said Property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of said Property during certain times and reasonable regulations and restrictions regarding vehicle parking.
- 4.3.7. Delegation of Use: Any Member may delegate, in accordance with the rules and regulations adopted from time to time by the Board of an Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, provided they reside on the Property at the time of use.
- 4.3.8. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Lot and may be collected as provided herein for the collection of other Assessments.

ARTICLE 5. ASSOCIATION

5.1. Membership

Every Owner, including Grantor, of a Lot which is subject to assessment shall be a "Member" of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said Lot shall terminate or be transferred.

5.2. Voting Rights

The Association shall have two (2) classes of voting membership:

5.2.1. Class A

Class A Members shall be all Owners, with the exception of the Grantor, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be the Member entitled to exercise the rights. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot, and fractional voting shall not be allowed. The vote of a Member whose Lot is being sold under contract of purchase shall be exercised by the contract buyer, unless the contract expressly provides otherwise.

5.2.2. Class B

Class B Member(s) shall be the Grantor and any successor(s) in title to any Lot(s) to whom Grantor has assigned in a recorded instrument all of its rights as Grantor hereunder, and shall be entitled to three (3) votes for each Lot owned. The Owner of any Lot or any number of Lots shall not be a Class B Member absent such written assignment. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

5.2.2.1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

5.2.2.2. Upon the Change of Control Date as defined in Section 17.6, terminating and converting all of the Class B membership to Class A membership.

5.2.3. **Quorum of Members at Meeting of Members**

The presence at any meeting requiring action by the Members of the Association, of thirty percent (30%) of the Members, in person or by proxy, of those represented by their presence or proxy at a duly noticed meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, such subsequent meeting not to be held more than sixty (60) days following the preceding meeting. The departure of, or- refusal to participate, or recusal of any Member shall not cause a quorum to be lost once a quorum exists at any meeting. For purposes of establishing a quorum, no proxy may be revoked once a quorum is established.

5.3. **Powers of Association**

The Association shall have all powers of a nonprofit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the Bylaws or this Master Declaration. The Association shall be directed by directors and officers chosen in accordance with the Articles, Bylaws or this Master Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, Bylaws or this Master Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Master Declaration, including, but not limited to, the following:

5.3.1. **Assessments**

The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Master Declaration.

5.3.2. **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(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, Bylaws, or Master Declaration and to enforce by mandatory injunction or otherwise, all provisions thereof.

5.3.3. **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 pay to such manager such compensation as shall be reasonable.

5.3.4. **Liability of Board Members and Officers**

Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the Architectural Control Committee, provided

that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

5.3.5. **Association Rules**

The Association has the power to adopt, amend, and repeal such rules and regulations, as the Association deems necessary. Such rules shall govern the use by Owners, their tenants, guests, and any other person of Common Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws or this Master Declaration. A copy of 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 mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Master Declaration'. In the event of any conflict between an Association rule and any provision of the Articles, Bylaws or this Master Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

5.3.6. **Emergency Powers**

The Association, or any person authorized by the Association, may enter onto any Lot, Improvement, or other structure on a Lot 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 it is responsible. Such entry shall be made with as little inconvenience to the occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or occupant.

5.3.7. **Licenses, Easements and Rights of Way**

The Association has the power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area or any easement reserved by the Grantor or granted to the Association hereunder over any portion of the Property as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

- 5.3.7.1. Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
- 5.3.7.2. Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
- 5.3.7.3. Any similar public or quasi-public Improvements or
- 5.3.7.4. Any common facility, portion of the Common Area, or Waterway, where such common facility, Common Area, or Waterway are located whether located on the Common Area or upon a Lot owned by an Owner.

5.3.8. **Establishment of Fines and Fees**

The Board shall have the power to impose a schedule of fines and fees and to assess such in accordance with the procedures for establishing Association rules as set forth above. The establishment of fines and fees shall be in compliance with Idaho Code Section 55-115. The Board shall not impose any fine or for any violation of this Master Declaration or Association rule unless

and until it has provided notice and opportunity to cure pursuant to Section 17.2 for any such violation.

5.3.9. **Fiscal Year**

The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

5.4. **Duties of Association**

In addition to the powers delegated to it by the Articles, Bylaws and this Master Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

5.4.1. **Operation and Maintenance of Common Area**

Perform, or provide for the performance of, the operation, maintenance and management of the Common Area and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, and the maintenance, management, repair or replacement all other property owned or controlled by the Association .

5.4.2. **Taxes and Assessments**

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

5.4.3. **Utilities**

Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.

5.4.4. **Insurance**

Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain In effect the following policies of insurance:

5.4.4.1. Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk;" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all Improvements, equipment, fixtures and other property located within the Common Area owned or controlled by the Association, including such equipment, fixtures and other property not located in the Common Area, if the same are used or necessary for the use of the Common Area or easement areas under the control of the Association.

5.4.4.2. Comprehensive public liability insurance insuring the Association, the Board, the officers, the Grantor and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board.

- 5.4.4.3. If elected by the Board, full coverage directors and officers liability insurance in an amount determined by the Board.
- 5.4.4.4. Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
- 5.4.4.5. The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
- 5.4.4.6. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- 5.4.4.7. Notwithstanding any other provision herein to the contrary, the Association shall continuously maintain in effect such casualty, liability and other insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee or Owner of a Lot within the Subdivision, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA or FHLMC, as applicable.
- 5.4.5. **Identification Signs**
Maintain, repair and replace all permanent entry and special identification signs for the Subdivision, whether the same is located within or without the boundaries of the Subdivision.
- 5.4.6. **Rule Making**
Make, establish, promulgate, amend and repeal Association rules as set forth in Section 3.3.5.
- 5.4.7. **Architectural Control Committee**
Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Master Declaration.
- 5.4.8. **Enforcement of Restrictions and Rules**
Perform such other acts, whether or not expressly authorized by this Master Declaration, as may be reasonably necessary to enforce any of the provisions of this Master Declaration and the Association rules.
- 5.4.9. **Preservation of Common Area**
Take such steps as it deems necessary to prevent those persons not authorized by this Master Declaration to use the Common Area from using the Common Area for ingress, egress, parking, recreation or any other purpose. Such steps shall include, without limitation, posting the property with such notices as may be appropriate and taking any legal action as may be necessary to prevent such use.

5.5. **Quorum Requirements for Board**

A majority of the individual members of the Board shall constitute a quorum for the transaction of business by the Board, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than thirty (30) days after the date of initial meeting. The departure of, or refusal to participate, or recusal of any member of the Board shall not cause a quorum to be lost once a quorum exists at any meeting.

5.6. **Appeal and Hearing Rights**

Actions by the Architectural Control Committee and the Association as set forth herein shall be subject to the following appeal and hearing provisions.

5.6.1. **Hearing by Architectural Control Committee**

An Owner submitting an application to the Architectural Control Committee, or served with a written notice of deviation or violation by the Architectural Control Committee, shall have the right to request and be heard at a hearing held by the Architectural Control Committee for the purpose of presenting facts and information to the Architectural Control Committee. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the Architectural Control Committee is mailed to the Owner as evidenced by the records of the Architectural Control Committee. The hearing shall be held within ten (10) days following receipt by the Architectural Control Committee of the request for a hearing, unless the Architectural Control Committee shall extend said period of time because of the unavailability of Architectural Control Committee members. A hearing may be continued by the Architectural Control Committee for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the Architectural Control Committee shall issue a written opinion to the involved parties within ten (10) days thereafter which opinion shall set forth the findings of the Architectural Control Committee with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice.

5.6.2. **Appeals**

An Owner shall have the right to appeal to the Board (a) a decision of the Architectural Control Committee on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the Architectural Control Committee adverse to the Owner reached following a hearing held pursuant to Section 5.6.1 or (b) any other action by the Association to enforce the provisions of this Master Declaration upon receipt of notice of any violation pursuant to Section 17.2 hereof ("Notice of Violation"). A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the Architectural Control Committee or Notice of Violation. Said notice of appeal shall be dated and shall contain the name of the Owner and a copy of the written decision or determination of the Architectural Control Committee or the Notice of Violation. The failure of an Owner to appeal in the manner and within the time herein provided shall terminate all rights of said Owner to appeal said decision and it shall be binding and enforceable. The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the Architectural Control Committee. The Board may require the Owner to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the Architectural Control Committee or the Notice of

Violation shall be considered final and not subject to further appeal. At the hearing the Owner shall present their position to the Board. The Architectural Control Committee or the agent issuing the Notice of Violation shall also have the opportunity to be heard and to participate in the appeal hearing. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the participating parties shall have the opportunity to question and cross examine witnesses presented by the other and to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the Architectural Control Committee or the Board. Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed. A decision of the Board of an appeal of a decision of the Architectural Control Committee or Notice of Violation shall be final and shall not be subject to reconsideration or further appeal.

ARTICLE 6. ASSESSMENTS

6.1. Covenant to Pay Assessments

Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular Assessments, Special Assessments, and Limited Assessments or charges made by the Association of which the Owner is a Member. All Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless it is expressly assumed. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of his Lot.

6.2. Regular Assessments.

Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area, owned or 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, sewage charges, repair and maintenance, reasonable fees for legal, management, or accounting services, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s). The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto.

6.3. Limitations upon Regular Assessments

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the initial Regular Assessment by the Association shall not exceed Eight Hundred and No/100s Dollars (\$800.00).

- 6.3.1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, Regular Assessments imposed by the Association may be increased each year not more than ten percent (10%), or the maximum percentage increase allowable by FNMA

(whichever is greater), above the initial Regular Assessment as set forth above.

6.3.2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, Regular Assessments may be increased above the limit set forth in the preceding paragraph by a vote of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose by the Association.

6.3.3. The Board may fix the annual assessment at an amount not in excess of the maximum; and said assessments shall be payable to the Association in regular annual, semiannual, or quarterly installments as may be determined by the Board.

6.4. **Special Assessments**

In addition to Regular Assessments, provided that two-thirds (2/3) of the votes of each class voting in person or by proxy at an annual or special meeting duly called for the purpose of approving a Special Assessment vote to approve the 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:

6.4.1. To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a 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), or for any other expenses incurred or to be incurred as provided in this Master Declaration.

6.4.2. To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

6.5. **Limited Assessments**

Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to acknowledge that in addition to Regular Assessments and Special Assessments, in the event of an Owners' default under this Master Declaration, the Association, after having provided notice and an opportunity to cure pursuant to Section 17.2, below, shall have the power to impose and the Owner shall have the obligation to pay Limited Assessments as follows:

6.5.1. **Limited Purpose**

The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose, which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association.

6.5.2. **Maintenance and Repair**

The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements 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 Subdivision, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. Limited Assessments for maintenance of a Lot shall be authorized pursuant to Section 11.3 below. The Board shall perform all such work specified in the written notice provided to the Owner of the Lot and shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees and management

fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

6.5.3. Correction of Violations

In addition to maintenance and repair, the Board, upon the failure or refusal of an Owner to correct a violation of this Master Declaration or the Architecture Control Committee Standards after completion of the initial development and construction of Improvements on a Lot, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection herewith. The cost of such corrective action, together with interest, related expenses, management fees and attorneys' fees shall be assessed and collected as set forth in this Article 6 and Article 7 of this Master Declaration. Consistent with the provisions of this Master Declaration, the Board may impose fines in lieu of undertaking correction of any violation.

6.6. Commencement of Regular Assessments

Regular Assessments of the Association against each Lot shall commence on the date of the closing of the first sale of a Lot to an Owner. However, the Association may waive Regular Assessments until the Association determines that such Regular Assessments are necessary to the Association. Provided, however, that no Lot owned by the Grantor shall be assessed a Regular Assessment or Special Assessment.

6.7. Initial Assessment and Transfer Assessment

The following Special Assessments shall be levied against each Lot as set forth herein. At the closing of the initial sale of each Lot by the Grantor, an "Initial Assessment" in the amount of Five Hundred Dollars (\$500.00) shall be collected from the purchaser of the Lot as payment to the Association for the set up costs and the maintenance of the Common Area and landscape easements to be maintained by the Association. Upon the transfer of ownership of a Lot by an Owner to a third party, a "Transfer Assessment" in the amount of Two Hundred Fifty Dollars (\$250.00) shall be payable by the Owner as payment to the Association to fund the costs associated with the conveyance for the time of the Association confirming payment of prior assessments and to reflect the modification to the Association's records to evidence the conveyance, provided, however, that no Transfer Assessment shall be payable if the Lot was purchased by a builder from the Grantor and the Lot was thereafter sold or transferred to a third party within one (1) year.

6.8. Uniform Rate of Assessment

Except as expressly provided to the contrary in this Master Declaration, Regular Assessments and Special Assessments of the Association shall be fixed at a uniform rate for all Lots. Limited Assessments imposed pursuant to Section 6.5 above shall not be subject to the requirements of this Section.

6.9. Assessment Due Date

The due dates for Regular Assessment or Special Assessment shall be established by the Board. Limited Assessments shall be paid within ten (10) days of the date that the Board invoices the Owner of the Lot upon which a Limited Assessment. All installments of Assessment shall be delinquent if not paid within ten (10) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special Assessments or Limited Assessments be paid in a lump sum instead of installments. The duty and obligation to pay Assessments by any Owner is independent of any other obligation or claim, as such Owners shall pay all Assessment without offset or deduction.

6.10. Interest and Penalties

Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any

Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

6.11. **Estoppel Certificate**

The Association, upon not less than ten (10) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Master Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

6.12. **Notice Requirements**

Notwithstanding anything to the contrary contained in either the Articles or the Bylaws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 6.4, above, or a Limited Assessment described in Section 6.5, above, shall be sent to each Owner whose Lot is subject to the levy of such Special or limited Assessment not less than thirty (30) nor more than sixty (60) days in advance of the meeting.

6.13. **Subordination of the Lien to Mortgages**

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

6.14. **Exempt Property**

The following property, subject to this Master Declaration, shall be exempt from Assessments by an Association created herein:

- 6.14.1. All property expressly dedicated to and accepted by a local public authority;
- 6.14.2. The Common Area;
- 6.14.3. All portions of the Property owned by the Grantor or an Association;
- 6.14.4. All Lots owned by Grantor, until title is transferred to another, or until occupancy, whichever occurs first.

ARTICLE 7. ENFORCEMENT OF ASSESSMENTS

7.1. **Right to Enforce**

The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessment in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Master Declaration, the Owner against whom such enforcement is sought Shall pay

reasonable attorneys' fees, management fees, and collection fees in connection therewith.

7.2. Creation of Assessment Liens

There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Regular Assessments and Special Assessments levied against any and all Lots within the Subdivision pursuant to this Master Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, which amounts shall be deemed to be Assessments once incurred by the Association. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Master Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by first Mortgage, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Master Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Regular Assessments and Special Assessments levied by the Association, whether or not such consent is specifically set forth in the instruments creating such other liens.

7.3. Notice of Assessment Lien

If an Owner fails to pay an Assessment within thirty (30) days of the Owner's receipt of notice of the Assessment, then the Association shall prepare a written Notice of Assessment Lien. The Notice of Assessment Lien shall include:

- 7.3.1. A true statement of the amount due for the unpaid Assessment after deducting all just credits and offsets;
- 7.3.2. The name of the Owner, or reputed Owner, if known;
- 7.3.3. The name and address of the Association; and
- 7.3.4. A description of the Lot to be charged with the lien pursuant to the Notice of Assessment Lien.

The Notice of Assessment Lien shall be verified by the oath of an officer of the Association or the Association's designated agent having knowledge of the facts underlying the notice of assessment, acknowledged by a Notary Public and recorded in the office of the Ada County Recorder. Within twenty-four (24) hours after recording the Notice of Assessment Lien against the Lot, the Association shall serve, by personal delivery to the Owner or reputed Owner of the Lot, or by certified mail to the last known address to the Owner or reputed Owner of the lot a true and correct copy of the recorded Notice of Assessment lien. At such time as a delinquent Assessment, which is described in the Notice of Assessment Lien, is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

7.4. Enforcement

Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All 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, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with said Lot as the Owner thereof.

7.5. **Notice Required**

Notwithstanding anything to the contrary contained in this Master Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after the Notice of Assessment Lien has been delivered as set forth In Section 7.3 above.

7.6. **Notice to Mortgagees**

The Association shall have no obligation to provide a Mortgagee with a copy of a Notice of Assessment Lien served on an Owner under Section 7.3, above; unless and until Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) that shall contain the following:

- 7.6.1. The name and address of said Mortgagee;
- 7.6.2. A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- 7.6.3. The name and address of the Owner;
- 7.6.4. The date the lien of the Mortgage was filed of record in Ada County, Idaho, and the instrument number thereof;
- 7.6.5. The maturity date of the obligation secured by said Mortgage lien;
- 7.6.6. A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- 7.6.7. The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent; a reasonable fee established by the Board, for such notification and such charge shall be a cost of collection deemed to be an Assessment and secured by the Assessment lien described in Section 7.2; above. The charge for such notification shall be subject to change by the Board.

7.7. **Term of Assessment Lien**

Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Master Declaration or any applicable Supplemental Declaration shall be valid for a period of one (1) year from the date the Notice of Assessment Lien is filed and recorded, provided, however, that such period may be extended by the Association for a period of one (1) additional year by recording a written extension thereof or as otherwise permitted by law.

7.8. **Non Exclusive Remedy**

The remedies set forth in this Article or elsewhere in this Master Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity, including but not limited to pursuit of legal action for costs and damages incurred by the Grantor or the Association as a result of the Owner's non-performance, seeking injunctive relief as may be appropriate, and undertaking

commercially reasonable collection measures.

ARTICLE 8. IRRIGATION WATER SUPPLY SYSTEM

8.1. Irrigation Water Supply

Each Lot shall have access to an Irrigation Water Supply System, to be constructed by Grantor and owned and operated by the Association. All Owners to which the Irrigation Water Supply System has been extended shall be required to pay the Assessment therefore as provided in Section 8.3, below ("Irrigation Assessment"), regardless of actual use or non-use of water from the Irrigation Water Supply System.

8.2. Operation of the Irrigation Water Supply System

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

8.3. Irrigation Assessments

The Association shall establish an amount sufficient to pay the cost of operating the Irrigation Water Supply System and such amount will be included as part of the Regular Assessments set forth in Section 6.2.

ARTICLE 9. STORM WATER DRAINAGE AND RETENTION SYSTEM

9.1. Operation and Maintenance of Storm Drainage Facilities

The Association shall operate and maintain or otherwise provide for the operation and maintenance of all public storm drainage and retention facilities, including, without limitation, drainage pipes and collection ponds ("Storm Water Drainage and Retention Facilities") located on and through the Lots, the Common Area and the rights-of-way of the Ada County Highway District ("ACHD"), and the repair and replacement of property damaged or destroyed by casualty loss.

9.2. ACHD Storm Water and Drainage Easement

ACHD is hereby granted a perpetual blanket storm water, drainage and retention easement over the Storm Water Drainage and Retention Facilities as shown and depicted on the design and construction drawings for the Subdivision on file with and approved by the City of Eagle, on which Grantor shall have constructed the Storm Water Drainage and Retention Facilities to be owned by the Association and operated and maintained as set forth herein. The easement granted hereby shall include the right to construct, install, maintain and replace the Storm Water Drainage and Retention Facilities, together with the right of access thereto for all purposes consistent with this grant of easement.

9.3. Storm Water and Drainage and Retention Facilities Easement Area Restrictions

The easement for the Storm Water Drainage and Retention Facilities described in this Article shall be improved with such ponds, pipes and beds as set forth above in which no permanent buildings or structures shall be placed ("Storm Water Drainage and Retention Facilities Easement Area"). Notwithstanding the foregoing, other landscaping improvements (for example, shrubs, trees, fences and grass) and the like may be placed or installed in Storm Water Drainage and Retention Facilities Easement Area, providing that the

placement and installation of such improvements shall not interfere with the easements granted to ACHD hereunder or interfere with the Storm Water Drainage and Retention Facilities. In the event any such improvements are placed or installed in the said easement area, ACHD shall have no responsibility or liability for any damage thereto or destruction thereof which may occur as a result of any reasonable maintenance or repair activities undertaken by ACHD. To the extent that swales are constructed and exist for the purpose of retaining storm water within ACHD's right of way, then such swales constitute Storm Water Drainage and Retention Facilities Easement Areas. The Association shall maintain such swales as Storm Water Drainage and Retention Facilities Easement Areas. No trees shall be planted within any swale and shall be placed to the rear of the swale.

9.4. **Operation and Maintenance of Storm Water Drainage and Retention Facilities**

The Association and individual Owners (as to the portion of the facility located adjacent to their Lot) shall provide all "light duty" maintenance of the Storm Water Drainage and Retention Facilities. All required maintenance shall be performed in accordance with the Maintenance and Operation Manual approved by ACHD. Required "light duty" maintenance shall include, but not be limited to the following:

- 9.4.1. Periodic inspection of the Storm Water Drainage and Retention Facilities, for bank erosion, on at least a monthly basis; and
- 9.4.2. Landscape maintenance including, but not limited to, mowing, trimming, fertilizing and irrigating; provided, however, any such irrigation shall not interfere with the operation of the Storm Water Drainage and Retention Facilities; and
- 9.4.3. Collection and disposal of any and all trash and debris found in and around the easement area.

9.5. **Association's Failure to Maintain: ACHD Remedies**

In the event that ACHD determines in its sole discretion, that the Association is not adequately maintaining the Storm Water Drainage and Retention Facilities, then ACHD shall be permitted to do so; provided, however, that before undertaking maintenance of the said facilities, ACHD shall provide thirty (30) days advance written notice of its intention to do so, which said notice shall specifically identify the maintenance which is then required. In the event the Association shall fail to complete the items of maintenance as specified in said notice within the thirty (30) day period provided, then in that event, ACHD may begin to undertake such maintenance. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the storm water and drainage easement area to perform such maintenance and inspection of the Storm Water Drainage and Retention Facilities. Should ACHD engage in maintenance of the Storm Water Drainage and Retention Facilities after having provided the required notice to the Association and having provided the Association an opportunity to undertake said maintenance, ACHD shall first bill the Association for the cost of the said maintenance and, if said bill shall not be paid within sixty (60) days, then ACHD shall be entitled and empowered to file a taxable lien against all Lots within the subdivision with the power of sale as to each and every lot in order to secure any and all assessments levied against all Lots in the subdivision pursuant to this Declaration as if the said maintenance had been performed by the Association, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD. The Association, and all Lot owners, by accepting title to a Lot, agree that all Lot owners in the subdivision are benefited property owners of such maintenance. The Association shall not be dissolved or relieved of its responsibility to maintain the Storm Water Drainage and Retention Facilities nor shall the facilities or their components be changed without the prior written approval of ACHD. The provisions of this Section shall not be amended without the prior written consent of ACHD.

9.6. **No Right to Dissolve**

The Association shall not be dissolved or relieved of its responsibility to maintain the Drainage and Retention Facility without prior written approval of ACHD.

ARTICLE 10. EASEMENTS

In addition to all easements set forth above, the following easements are hereby expressly conveyed, reserved, created and granted:

10.1. **Future Easements**

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

10.2. **Encroachments**

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

10.3. **Easement for Maintenance**

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

10.4. **Waterway Easements**

Grantor hereby reserves for the benefit of the Association an easement for all Waterways, and appurtenant equipment and systems, over, across and under all Lots and Common Area to the extent reasonably required to maintain any Waterway installed by Grantor on the Property. Grantor reserves the right to make any reconfiguration of any Waterway which it determines, in its own discretion, to be necessary, expedient or desirable.

10.5. **Easement for Irrigation Water Supply System**

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

ARTICLE 11. MAINTENANCE RESPONSIBILITY

11.1. Maintenance by Association

The Association designated in this Master Declaration and any Supplemental Declaration shall provide maintenance to and be responsible for the Common Areas and Improvements thereon, including any Association-owned street lights, the Irrigation Water Supply System, the Storm Water Drainage and Retention System (as provided in Article 9, above), and any Waterway which may be located upon a Lot. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject.

11.2. Maintenance by Owner

Each Owner shall be responsible for installing, maintaining, and keeping in good order and repair the exterior of his Dwelling and any private decks, fences (if permitted as herein provided), courtyards, landscaping and lawn contiguous to his Dwelling, including any parking strip located between the sidewalk and the street adjacent to the Owner's Lot or any portion of the Common Area that functions as a parking strip between the Owner's Lot and any roadway. The Association shall have an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association in the event of an Owner's failure to undertake such. In the event of damage or destruction of a Dwelling or any Improvement on a Lot by fire or other casualty, the Owner must complete repair and/or replacement of the Dwelling or any Improvement on a Lot within one hundred twenty (120) days of the damage or destruction. Upon such event, the Owner shall also keep the Board informed of the status of such work.

11.3. Failure of Owner to Maintain

In the event an Owner shall fail or refuse to perform its maintenance or repair obligations as set forth herein, the Association shall have the power to enter onto said Owner's Lot for the purpose of performing such maintenance or repairs as may be reasonably required and shall have the power to incur expenses therefore; provided, however, that the Association shall have delivered to such Owner written notice at least ten (10) days in advance of performing such maintenance and repairs describing the maintenance or repairs required to be made and advising the Owner of the Association's intent to perform such maintenance and repairs if the Owner fails or refuses to do so within the time set forth in such notice in conformance with Section 17.2. The Association may levy a Limited Assessment against such Lot for all cost incurred by the Association in performing such maintenance or repairs, including attorneys' fees, management fees, or collection fees, together with interest therein. The Association may also impose fines consistent with the provisions of this Master Declaration.

ARTICLE 12. PROPERTY USE RESTRICTIONS

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

12.1. Initial Construction

The Owner of each Lot shall commence construction of a Dwelling on such Lot within one (1) year after the date the Lot is conveyed to the Owner by Grantor and shall complete construction of a Dwelling as permitted herein within two (2) years after the date the Lot is conveyed to the Owner by Grantor. During that period of time, the Owner shall be responsible for keeping the Lot clear of weeds and trash; repairing any damage caused by its contractor and maintaining the general condition of the Lot. Burning of weeds, refuse, or construction materials is absolutely prohibited on every Lot.

12.2. **Lot Use**

No Lot, with the exception of the Common Area, shall be used except for single-family residential purpose. No Lot or the Common Area shall be used for the observable conduct of any trade, business or professional activity and no such activity result in increased traffic or parking demand within the Subdivision. All Lots and Improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations.

12.3. **Animals**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said Property, except that two dogs and one cat, or two cats and one dog, or other household pets may be kept within a Dwelling or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee. The Association shall have the right to remove pets from a Lot in the event of uncontrolled barking, repeated violations of fencing requirements, leash or clean up rules.

12.4. **Garbage and Refuse Disposal**

Garbage and recycling containers shall be screened from view of other homes and the street. Garbage and recycling containers shall be placed curbside no earlier than the evening prior to scheduled pick up and removed from curbside no later than the evening after pick up. No part of said Property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said Property except in a sanitary container. Any other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee and shall be kept in a clean and sanitary condition.

12.5. **Nuisance**

No noxious or offensive or unsightly conditions shall be permitted upon any part of said Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

12.6. **Outbuildings**

No trailer, truck camper; recreational vehicle, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Property.

12.7. **Parking and Storage of Vehicles and Equipment**

Any automobile or other vehicle used by any Owner shall be parked in the driveway or garage which is a part of his Dwelling. Every Dwelling shall have a minimum of a garage that is sufficient to permit interior parking for two automobiles or dual cab trucks. Carports shall be prohibited. Driveways shall be utilized solely for temporary parking of vehicles. The primary purpose of all garages required in conjunction with the garage required for each dwelling is for the parking and storage of vehicles. No other use of a garage which would limit the use of a garage for the parking and storage of the number of vehicles for which the garage is designed shall be permitted. Parking of vehicles on the driveway or on either a public street or a private street is intended to be temporary only. Long term parking or storage of vehicles as well as the parking and storage of boats, trailers, motorcycles, trucks, truck campers, motorhomes, recreational vehicles, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any driveway, public street, private street, or Common Area adjacent thereto, and shall be stored entirely within an enclosed garage or approved structure. All other parking of equipment shall be prohibited, except as approved in writing by the Association. Any vehicle awaiting repair or being repaired shall be removed

from the Subdivision within 48 hours. There shall be no repair of vehicles in the driveways or streets of the Subdivision.

12.8. **Sight Distance at Intersections**

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. All fencing at intersections must comply with the local transportation authority or as noted above, whichever is most restrictive.

12.9. **Leasing Restrictions**

Any Lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Master Declaration, any applicable Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Master Declaration, a "Lease" shall mean any agreement for the leasing or rental of a Dwelling; all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling.

12.10. **Sewer Restrictions**

All bathroom, sink and toilet facilities shall be located inside the Dwelling or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot.

12.11. **Individual Mailboxes**

Any authorized individual mailboxes will be of consistent design, material coloration as required by Grantor or the Architectural Control Committee and shall be located on or adjoining building Lot lines and places designated by or Grantor or the Architectural Control Committee.

12.12. **Signage**

No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling and Lot for rent or for sale by displaying up to two, neat, signs that do not exceed three square feet in area. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot only during construction of the Improvements. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Subdivision shall be permitted, provided the same is approved by the Architectural Control Committee prior to installation. Lighted, moving or flashing signs for any purposes are prohibited.

12.13. **Wildlife**

The Subdivision has been developed near the south channel of the Boise River in areas with ecological features that provide habitat conducive to wildlife. Certain types of landscaping and improvements may be attractive to such wildlife. Neither the Grantor, nor the Association, nor the Architectural Control Committee shall have any responsibility for the impact of wildlife on any Lot, the Improvements, or its landscaping. No hunting, trapping, or other capturing of wildlife shall be permitted on the Property excepting, however, fishing that is permitted subject to the regulations of the State of Idaho, the City of Eagle and the Association.

ARTICLE 13. ARCHITECTURAL CONTROL

13.1. Formation of Architectural Control Committee

In order to protect the quality and value of the homes built on the Property, to assure an attractive, compatible and aesthetically pleasing community, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three members to be appointed by the Grantor until the Change of Control Date as set forth in Section 17.6. Thereafter, the members of the Architectural Control Committee are to be appointed annually by the Board of the Association.

13.2. Purpose

The purpose of the Architectural Control Committee is to implement policies and guidelines for the design and construction of Dwellings and Improvements on the Property with a view to maximize compatibility and quality of Dwellings and Improvements in the Subdivision. The Architectural Control Committee is vested with the power and authority set forth herein to further this purpose.

13.3. Pre-Approval of All Builders Required

Grantor vests in the Architectural Control Committee the power to approve all general contractors authorized to construct Dwellings and Improvements within the Subdivision ("Approved Builder"), as set forth herein. Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), shall be deemed to acknowledge that it shall not engage, hire, retain, or contract with any contractor or subcontractor, other than an Approved Builder, for the purpose of constructing a Dwelling or any Improvement on any Lot, without the prior written approval of the Architectural Control Committee, which approval can be withheld at its sole discretion.

13.4. Selection of Approved Builders

The Architectural Control Committee shall have the exclusive right to select the Approved Builders. The Architectural Control Committee shall select Approved Builders from those general contractors that (a) demonstrate the required standard of excellence in the residential building trade as determined, in the sole discretion of the Architectural Control Committee; (b) demonstrate the financial wherewithal to undertake the construction of Dwellings consistent with the requirements of this Master Declaration; (c) demonstrate the capability to construct Dwellings of the type permitted within the Subdivision; and (d) who have received approval from the Architectural Control Committees as an Approved Builder. Approved Builder status is nontransferable. Until approval is provided by the Architectural Control Committee or the applicant included in the Approved Builder List, the builder is not an Approved Builder. Application for Approved Builder status does not halt or suspend any requirement found herein. The Architectural Control Committee will maintain a list of Approved Builders ("Approved Builder List"). The Approved Builder List shall set forth the names, addresses and other pertinent information relating to the Approved Builders. The Architectural Control Committee may, from time to time, change or update the Approved Builder List. An Approved Builder may be removed from the Approved Builder List in the sole and absolute discretion of the Architectural Control Committee.

13.5. Design Approvals Required

No Improvement shall be commenced, built, constructed, placed, or maintained upon any Lot, nor shall any exterior addition, change or alteration of existing or previously approved Improvements shall be made to any Lot, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail regarding the Improvements have been submitted to and approved in writing by the Architectural Control Committee as conforming with requirements of this 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 they may require, it shall be deemed denied. The

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Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such Improvements, construction or alterations which, it determines are not consistent with the standards set forth in this or any other Declaration applicable to the Property. The Architectural Control Committee is hereby authorized to exercise its discretion as to all considerations herewith. The Architectural Control Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of any proposed Improvement. Actual construction shall comply substantially with the plans and specifications approved.

13.6. **Denial of Plan**

In the event the plan is denied, the Owner and the Architectural Control Committee shall work together to correct the deficiencies in the original plan(s) submitted by the Owner. The Owner shall re-submit such revised plan(s) to the Architectural Control Committee after each denial, if the Owner so desires. The Architectural Control Committee shall have thirty (30) days after a plan is re-submitted within which to notify the Owner whether the revised plan(s) has (have) been approved. Failure to notify the Owner within the time frame set forth above shall constitute the Architectural Control Committee's denial of the revised plan(s).

13.7. **Submissions**

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

13.7.1. **Approved Builder**

The Owner shall provide evidence that the Owner is utilizing a builder from the Approved Builder List by providing a copy of the construction contract. Approval by the Architectural Control Committee of any an Improvement or Dwelling will be withheld unless the construction of the same is to be undertaken by an Approved Builder.

13.7.2. **Site Plan**

A site plan that shall show the all Improvements on the Lot, all applicable setbacks, and any other pertinent information related to the Improvements; and

13.7.3. **Building Plan**

A building plan that shall consist of the preliminary or final blueprints, elevation drawings of the north, south, east, and west sides of the Dwelling, detailed exterior specifications for each Dwelling that shall indicate, by sample, all exterior colors, material, and finishes, including roof, to be used.

13.7.4. **Grading and Landscape Plan**

A grading and landscape plan for the Lot shall show grading, drainage, berms and mounding proposed for the Lot, together with the location, type and size of trees, plants, groundcover, shrubs, sprinkler system, fences, free- standing exterior lights, driveways, parking areas and walkways. The grading and landscape plan shall have a plant list or other indication of species, variety, size, quantity, spacing, and location on all plant material proposed for the Lot. The grading and landscape plan shall be provided at a scale of not less than 1" = 20'-0", shall show spot elevations depicting drainage for the Lot, and shall be prepared by a professional engineer, landscape architect or

professional landscape company. All drainage for the lot shall be retained onsite.

13.7.5. Supporting Plan Submissions

Electronic versions of all plan submittals shall be provided if requested by the Architectural Control Committee to ensure and confirm conformance with all requirements herein.

13.8. Fencing

All fencing located adjacent to open space shall be open-style such as wrought-iron or extruded aluminum (looks identical to wrought iron). All other fencing along common areas (i.e. cedar fencing, vinyl, and chain-link) shall be prohibited. Fencing for all other lots in the subdivision shall be in accordance with ACC requirements and approval.

13.9. Rules and Regulations

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

13.10. Fees

The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required. The Architectural Control Committee may elect to refund a portion of such fee upon full compliance and satisfaction of the completion of all Improvements consistent with the approval granted by the Architectural Control Committee. The Architectural Control Committee will review and provide comments to the Lot Owner and conduct a re-review of the submission at no additional cost to the Owner. However, any additional review required beyond the initial review and first re-review shall be paid for by the Owner at the then existing hourly rate charged by the professional consultants engaged by the Architectural Control Committee to undertake such matter. Upon completion of all work the Owner may request a refund of the refundable portion of the fee from the Architectural Control Committee. The Architectural Control Committee shall evaluate completion of work and upon determination that all work has been completed consistent with the prior approval of the Architectural Control Committee under Sections 13.5 and consistent with the Design Standards set forth herein. The Architectural Control Committee, in addition to enforcing the provisions of this Master Declaration as set forth herein for noncompliance by any Owner shall have the power to retain the fee upon determination that the Owner has not completed work consistent with the with the prior approval of the Architectural Control Committee under Sections 13.5 and consistent with the Design Standards set forth herein.

13.11. Variances

The Architectural Control Committee may authorize variances from compliance with any of the development provisions of this Master Declaration, including restrictions on height; size; material type and

selection; floor area; or placement of structures or other similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Notwithstanding the foregoing, however, no variances will be granted for (a) Improvements, including without limitation, manicured lawns or other Lot landscaping and any other encroachment upon the Common Area or (b) any Improvement that requires relief from or modification to any provision of the Development Agreement. No variance shall be effective until evidenced in a written document executed by signed by at least two (2) members of the Architectural Control Committee and consented to and acknowledged by the Owner of the Lot, and shall become effective upon recordation in the office of the County Recorder of Ada County. Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to acknowledge that if a variance is granted in accordance with the provisions of this Section, then no violation of the covenants, conditions or restrictions contained in this Master Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted and no remedies that may exist as set forth herein or otherwise exist at law may be pursued. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration or any Supplemental Declaration for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

13.12. **Liability**

Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, Contractor, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed. Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to acknowledge that it has waived and released any and all claims that arise from the decisions and actions of the Architectural Control Committee and the members thereof in carrying out the responsibilities delegated to them hereunder. The sole remedy and relief available to any party seeking relief for such decisions or actions shall be declaratory or injunctive relief to the extent expressly authorized hereunder.

13.13. **Construction and Sales Period Exception**

During the course of construction of any permitted Improvement and during the initial sales period, the restrictions (including sign restrictions) contained in this Master Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwellings; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale.

13.14. **Waivers**

The approval of any plans, drawings or specifications for any Improvement 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.

ARTICLE 14. CONDEMNATION

14.1. **Consequences of Condemnation**

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

14.2. **Proceeds**

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

14.3. **Apportionment**

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

ARTICLE 15. MORTGAGEE PROTECTION

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

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

thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the maintenance of the Common Area property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.

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

ARTICLE 16. BANBURY GOLF CLUB (BGC)

16.1. Access to BGC

Access to the BGC within or adjacent to the Property is strictly subject to the rules and procedures established by the respective owners or operators of the BGC and/or its Facilities. No Owner or occupant gains any right to enter or to use the BGC or its Facilities solely by virtue of ownership or occupancy of a Lot or by reason of their status as a Member. Notwithstanding the foregoing, BGC shall be available to owners subject to regular charges, fees, rules, and regulations of the operators or Members of BGC.

16.2. Easement for Golf Balls

Every Lot and Common Area, is burdened with an easement permitting golf balls unintentionally to come upon the Common Area or Lot and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer will seek the Owner's permission before entry. Lot owners should undertake all necessary measures to protect their residence, property, guests, family members and invitees from errant golf balls. The acquisition of a Lot within the Property acknowledges that the Owners are expressly assuming the risk for any damages occurring by virtue of an errant golf ball by virtue of such Owner's acquisition of a Lot adjacent to a Golf Course. The Association agrees to indemnify Grantor against any action by the Owners against Grantor for the damage caused by an errant golf ball.

16.3. Easement in Favor of BGC

The Grantor hereby reserves a perpetual easement in favor of the Grantor and all of its successor and assigns, including the BGC and its owner members, guests, invitees, licensees, employees, or operators and their employees, agents and contractors, over, under and across any Association property for purposes of use, maintenance, ingress, egress, sales and marketing, at no fee or cost whatsoever to the Grantor, its successor or assigns, including the BGC and its Owner Members, guests, invitees, licensees, employees, operators and their employees, agents and contractors. Additionally, said easement shall include, but not be limited to access for the purposes of providing utility service and the construction and maintenance of facilities and/or other improvements necessary for the operation and maintenance of BGC.

16.4. Golf Course Easements

The Lots and Common Area immediately adjacent to the BGC are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the BGC, as well as for any chemicals, fertilizers, insecticides and other substances which may be applied to the BGC but which may impact the Lots and any Common Areas. Under no circumstances shall the Association,

Grantor, Owners, operators and their agents, employees or contractors of the BGC, be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

16.5. **Drainage Easements**

Every Lot and the Common Areas shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property and the BGC; provided, no person shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Property or BGC without the consent of the Owner of the affected property.

16.6. **Modifications to Adjacent Golf Course Facilities**

The Grantor and its successors and assigns, including BGC and its owners or operators shall retain the right to expand, contract, relocate, or terminate any and all operations and improvements conducted or to be conducted, constructed or to be constructed on the adjacent golf course property without liability to the Association, Members or Owners.

16.7. **Golf Course and Clubhouse Facilities.**

16.7.1. **Disclaimer**

ALL PRESENT AND FUTURE OWNERS, OCCUPANTS AND OTHER PERSONS AT ANY TIME PRESENT UPON OR HOLDING ANY INTEREST IN THE PROPERTY OR ANY PORTION OR LOT THEREOF HEREBY ACKNOWLEDGE AND AGREE THAT THEY ARE FULLY AWARE OF THE FACT THAT THE ACQUISITION OF PROPERTY ADJACENT TO OR IN THE VICINITY OF A GOLF COURSE HAS CERTAIN RISKS, INCLUDING THE RISK THAT FROM TIME TO TIME GOLF BALLS FROM THE GOLF COURSE MAY ENTER UPON OTHER PORTIONS OF THE PROPERTY AND DO DAMAGE TO PERSONS AND PROPERTY. ALL SUCH PERSONS ARE HEREBY ADVISED THAT THE GOLF COURSE HAS BEEN DESIGNED WITH LIMITED BUFFERS BETWEEN PLAYING AREAS AND ADJOINING ROADWAYS AND RESIDENTIAL PROPERTIES, AND ALL SUCH PERSONS HEREBY EXPRESSLY ASSUME SUCH RISK AND ACKNOWLEDGE AND AGREE THAT NO CLAIM FOR ANY HARM, DAMAGE OR INJURY OF ANY KIND CAUSED OR OCCASIONED BY GOLF BALLS OR ANY OTHER HAZARD ASSOCIATED WITH THE MAINTENANCE, OPERATION AND USE OF THE GOLF COURSE OR TO ENJOIN THE SAME SHALL BE MADE AGAINST THE GRANTOR, BGC, THE DESIGNERS, THE OWNER OR OPERATOR OF SUCH GOLF COURSE, OR ANY PLAYERS THEREON OR MEMBERS, THEIR INVITED GUESTS OR ANY OTHER OWNER OR OTHER PERSON.

16.7.2. **No Warranties**

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Grantor or any other Person with regard to the continuing existence, ownership or operation of the Golf Course, if any, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by the Grantor. Further, the ownership and/or operation of the Golf Course, if any, may change at any time and from time to time by virtue of (a) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (b) the creation or conversion of the ownership and operating structure of the Golf Course to a "private" club or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the Grantor; (d) the cessation of the use of the Golf Course Facilities as a functioning golf course and its conversion to a different use; and (e) the expansion or construction of the club house facility. No consent of the Association

or any Owners shall be required to effectuate such transfer or conversion.

16.7.3. Golf Course

Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions as may be determined from time to time by the owner or operator of the Golf Course. The owner of the Golf Course shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

16.7.4. Golf Course Layout

Neither the Grantor, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Lots will be preserved without impairment. The owner of the Golf Course shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.7.5. Approval

In recognition of the fact that the provisions of these paragraphs are for the benefit of the owner of the Golf Course, no amendment to this section, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Grantor.

ARTICLE 17. GENERAL PROVISIONS

17.1. Enforcement

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

17.2. Default

A person shall be deemed to be in default of this Master Declaration only upon the expiration of thirty (30) days (five [5] days in the event of failure to pay money) from receipt of written notice from the Grantor or Association specifying the particulars in which such person has failed to perform the obligations of this Master Declaration unless such person, prior to the expiration of said thirty (30) days (five [5] days in the event of failure to pay money), has started in good faith to rectify the particulars specified in said notice of default ("Notice of Violation"). The requirement for written notice shall be satisfied upon the mailing of a Notice of Violation to the address evidenced on the records of the Ada County Assessor as being the address to which tax notices are to be mailed.

17.3. **Severability**

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

17.4. **Amendment**

The covenants and restrictions of this Master Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Master Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Master Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless terminated by an instrument signed by members entitled to cast not less than sixty percent (60%) of the votes of membership. Except as otherwise provided herein, any of the covenants and restrictions of this Master Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty percent (60%) of the votes of the votes of membership. Any amendment must be recorded. Prior to the Change of Control Date, Grantor shall have the unilateral right to amend this Master Declaration without the consent of any other Owner. After the Change of Control Date, so long as Grantor owns any Lot or portion of the Subdivision, no amendment to the Master Declaration shall be effective unless Grantor consents.

17.5. **Assignment by Grantor**

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

17.6. **Grantor Control**

Grantor shall retain and shall exercise all rights and powers hereunder through any such Person until the occurrence of the Change of Control Date. Until the occurrence of the Change of Control Date, Grantor shall have (a) the right to appoint the members of the Architectural Control Committee; (b) the unilateral right to amend the Master Declaration without the consent of any Owner; and (c) appoint at least two members to the Board. For purposes of this Master Declaration the term "Change of Control Date" means the first to occur of the following: (i) the date when Grantor (and any Person in which it or its principals own a majority of the capital and profits interests) ceases to be the Owner of any portion of the Subdivision; or (ii) the date Grantor resigns by recording a written notice of termination of control with the County Recorder of Ada County, Idaho. At such time that Grantor's control rights are terminated, whether voluntarily or involuntarily, Grantor shall cause to be recorded in the records of Ada County, a document stating that Grantor no longer exercises any further controls over the Subdivision. Copies of such document shall be provided to each Owner contemporaneously with the recording of such document.

17.7. **Interpretation**

The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Master Declaration shall be construed and governed under the laws of the State of Idaho.

17.7.1. **Restrictions Construed Together**

All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Master

Declaration.

17.7.2. Restrictions Severable

Notwithstanding the provisions of the foregoing paragraph 17.7.1, each of the provisions of this Master Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

17.7.3. Singular Includes Plural

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 each including the masculine, feminine and neuter.

17.7.4. Captions

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

17.8. Successors and Assigns

All references herein to Grantor, Owners, any Association or person shall be construed to include all successors, assigns; partners and authorized agents of such Grantor, Owners, Association or person.

DATED this 9th day of September, 2016
Banbury Meadows Subdivision No. 8

Hoff Companies, Inc.
By: [Signature]
Its: CFO

STATE OF IDAHO)

)ss.

County of Ada)

On this 9 day of September, 2016, before me, the undersigned notary public in and for the State of Idaho personally appeared Todd Curtis Armstrong, known or represented to me to be the authorized representative for Banbury Meadows Subdivision No. 8, who being first duly sworn upon oath, declared that he has read the within and foregoing Restated Master Declaration of Covenants, Conditions and Restrictions, knows the contents thereof, and the facts therein stated are true, and acknowledged to me that he executed the within and foregoing.



Dawn E. Trivolis
Resides at: Meridian, ID
My commission expires: 1/28/2022