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Wilson & McColl

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***RESTATED AND AMENDED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF THE COAST TO COAST
SUBDIVISION***

This Restated and Amended Declaration of Covenants, Conditions and Restrictions of the Coast to Coast Subdivision supersede, amend in its entirety, and restate that certain Declaration of Covenants, Conditions and Restrictions of the Coast to Coast Subdivision, recorded October 6, 2006, Ada County Recorder's Office, as Instrument No. 106159438.

Final: 4/16/07

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RESTATED AND AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COAST TO COAST SUBDIVISION

THIS DECLARATION is made as of the 19th day of April, 2007, by Coast 2 Coast, L.L.C., an Idaho limited liability company, hereinafter referred to as "Declarant."

RECITALS:

A. Declarant was the owner of certain real property in the City of Eagle, Ada County, State of Idaho, consisting of approximately 117.5 acres, which the Declarant has developed into a single family residential subdivision. The real property has been platted on the Plat of Coast to Coast Subdivision, Instrument No. 106159427, in the office of the Recorder of Ada County, Idaho. The described parcel of real property in said Plat is hereinafter referred to as the "Real Property." The Declarant, as of the date of recordation with the Ada County Recorder's Office of this instrument, owns more than two-thirds (2/3) of all of the Residential Lots; and further the Declarant has one hundred percent (100%) of the membership voting rights of the Laguna Pointe Homeowners' Association, Inc., an Idaho non-profit corporation, and the Declarant is accordingly empowered and authorized to amend, and restate, the original Declaration of Covenants, Conditions and Restrictions of the Coast to Coast Subdivision, recorded as Instrument No. 106159438, records Ada County, Idaho.

B. Coast to Coast Subdivision is a mixed use development consisting of 41 residential lots, 3 commercial lots and certain common areas. In addition to the residential lots, commercial lots, and tree lined dedicated streets, the development contains parcels of common areas including, but not limited to a lake, ponds, other natural water features, significant open space, an island with recreational facilities, a public greenbelt path along the south side of the South Channel of the Boise River, and other amenities and facilities. The development lies partially in the Boise River floodplain and will be developed subject to special development criteria relating to wetlands areas to be preserved in their natural state and non-buildable open space floodway areas.

C. The purpose of this Declaration is to set forth the restrictions, covenants, limitations, easements and conditions that, together with the City of Eagle ordinances and approvals of this property, are designed to preserve the unique value of the Real Property, and its desirability and attractiveness as a high quality residential development, with limited mixed use, in which both the improved common areas and the undeveloped natural resources are maintained, preserved and protected.

D. The protective covenants, conditions, restrictions, reservations, easements, liens and charges are for the benefit of Real Property and all owners thereof. All conveyances of the Real Property or any part thereof shall be subject to this Declaration.

DECLARATION:

NOW, THEREFORE, Declarant hereby imposes upon the Real Property the following easements, conditions, covenants, restrictions and reservations which shall run with the Real Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof. Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit the Declarant's right to complete the development of the Real Property and to construct improvements thereon.

ARTICLE 1: DEFINITIONS.

The following capitalized and italicized terms shall, as used in this Declaration, have the following meanings. Italicized words or terms within a definition refer to other defined words or terms:

- 1.1 "ADC" shall mean the Architectural Design Committee.
- 1.2 "*Architectural Design Guidelines*" shall mean such standards promulgated by the Declarant and/or the ADC as authorized by **Section 11.3** below.
- 1.3 "*ACHD*" shall mean Ada County Highway District.
- 1.4 "*Assessment*" shall mean a payment required of *Association Members*, including Regular, Special, Limited, or Private Street Assessments, as permitted in this Declaration.
- 1.5 "*Association*" shall mean and refer to Laguna Pointe Home Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.
- 1.6 "*Association Rules*" shall mean such rules promulgated by the Declarant and/or the *Association* pursuant to **Section 8.4(e)**.
- 1.7 "*Board*" shall mean the duly elected and qualified Board of Directors of the *Association*.
- 1.8 "*Building*" includes any *Dwelling*, house, garage, or any other partially or fully enclosed building, or other structure, consisting of one or more walls or roof. A Building includes pet enclosures which have partial or full roofs and similar structures, and any commercial building constructed on the *Commercial Lots*.

1.9 “*Commercial Lots*” shall mean Lots 16, 17 and 49, Block 1 of the *Development*. Lot 49 is designated for office use and limited to a single story structure. Lots 16 and 17 are designated for mixed use and are limited to a two-story structure.

1.10 “*Commercial Lot Owner*” shall mean the person(s) who is the record owner of fee simple title to any *Commercial Lot*, excluding in all cases any party holding an interest in a *Commercial Lot* merely as security for the performance of an obligation.

1.11 “*Common Areas*” shall mean and include the *Entry Lots*, the *Street Islands*, *Lake Laguna* and other *Waterways*, the *Natural Area* and *Greenbelt Easement*; and any lot or parcel designated as a Common Lot in the final Plat of the subdivision. No Common Area may be transferred, sold or further subdivided without the prior written approval of the City of Eagle.

1.12 “*Common Facilities*” shall mean and refer to those physical improvements constructed by Declarant upon *Common Areas*, or in the case of the *Pressurized Irrigation System*, *Storm Water Drainage Facilities*, *Gravity Irrigation Ditch* and *Floodplain Connection System* that are located in utility easements crossing Lots. Other Common Facilities include, without limitation, improvements to pedestrian paths, including the portion of the greenbelt that does not run through the *Wetlands* and walkways; *Common Areas* lighting, street lights, and accent lighting; the *Recreational Island* and all related equipment and improvements and the *Entry Lots*, waterfalls, signage, and other improvements; and all landscaping on the Common Areas.

1.13 “*Declarant*” shall mean the undersigned owner of the *Real Property*, including any successor to the Declarant, who succeeds to the ownership of substantially all of Grantor’s interest in the whole of the Real Property.

1.14 “*Declaration*” shall mean this Declaration, as it may be amended from time to time.

1.15 “*Development*” shall mean the Coast to Coast Subdivision.

1.16 “*Drainage Facility Manual*” shall mean that certain Operation and Maintenance Manual for Storm Water Drainage Facilities for Laguna Pointe dated January 4, 2006, setting forth the operation and maintenance requirements for the *Storm Water Drainage Facilities*.

1.17 “*Dwelling*” shall mean any structure intended to be occupied as a single-family residence, together with the vehicular parking garage next to such Dwelling and all projections therefrom.

1.18 “*Entry Lots*” shall mean Lot 1, Block 2 and Lot 50, Block 1 of the *Development*, together with waterfalls, stone columns, landscaping berms, and other improvements thereon. To the extent that the berming on Lot 50, Block 1 of the *Development*, encroaches onto Lot 49, Block 1 of the *Development*, such encroachment is expressly authorized herein.

1.19 “*First Mortgagee*” shall mean any Mortgagee possessing or holding a lien on a *Residential Lot* or any part thereof prior to any other Mortgage.

1.20 “*Floodplain Connection System*” shall mean all *Common Facilities* relating to the control of flooding in the floodplain, including that certain pond elevation control structure (an irrigation box and head gate that conveys water in *Lake Laguna* in a twenty-four inch culvert under the private road easement on Lot 37, Block 1 of the *Development*); a levee and four spillways separating the South Channel of the Boise River and the *Development* on Lot 35, Block 1; the Laguna Lake overflow area located in an easement on Lot 40, Block 1 of the *Development*; and the pond draw down structure (a 24 inch irrigation culvert, irrigation box and head gate) located in *Lake Laguna*. No fill structures of any kind shall ever be placed within the *Lake Laguna* overflow area and easement.

1.21 “*Floodway*” shall mean and refer to those areas that are defined and specifically shown on the February 19, 2003 effective date Federal Emergency Management Administration Maps # 16001C0161 and # 16001C0162 covering the *Real Property*. The Floodway boundary line is depicted on the *Plat*.

1.22 “*Gravity Irrigation Ditch*” shall mean (i) all portions of the Graham-Gilbert Ditch on the Real Property, including the twenty-four inch (24”) culvert on Lot 34, Block 1; the pipe and irrigation boxes located on Lot 15 and Lot 2, Block 1, and Lot 1, Block 2; the siphon under Laguna Shore Drive and S. Woodlet Way; and the irrigation box that directs the ditch water into a culvert under South Eagle Road; AND (ii) certain off site facilities of the Graham-Gilbert Ditch, including the diversion structure along the South Channel of the Boise River and the ditch connecting diversion structure to the culvert on Lot 34, Block 1 of the Development.

1.23 “*Greenbelt Easement*” shall mean the area designated on the *Plat* as a “Greenbelt Easement,” which Easement is 25 feet in width over the northerly boundary of the *Development* and recorded as Instrument No. 99117198, records Ada County, Idaho. Meandering through those portions of the Greenbelt Easement that does not cross *Wetland Areas* is an approximately 10 foot wide cinder surfaced path. Those portions of the *Greenbelt Easements* located within *Wetland Areas* are to be defined by clearing the existing vegetation to provide a 10-foot natural cleared pathway. The Greenbelt Easement is for the use by the general public for pedestrian, equestrian, and other non-motorized travel.

1.24 “*Lakebank(s)*” shall mean the portion of any *Lot* that slopes from the relatively flat grade of such *Lot* down to the waterline of *Lake Laguna* or other amenity ponds.

1.25 “*Lake Laguna*” shall mean the largest amenity pond on the Real Property of approximately 43 acres, part of which is located in the *Common Area* Lot 35, Block 1, and other parts of the lake are located in the rear portions of *Residential Lots* 10-34 and 36-39, 40 and 42, Block 1, all as more particularly identified on the *Plat*.

1.26 “*Limited Assessment*” shall mean an Assessment levied by the Association upon one or more *Residential Lots* or *Commercial Lots*, but not upon all *Lots* within the *Real Property*, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the *Association* to correct a condition prohibited or to cure an Owner’s breach hereunder.

1.27 “*Lot(s)*” when the word “*Lot(s)*” is utilized without any qualification it shall mean and refer to any tract of land within the *Real Property* designated on the *Plat* as a subdivided lot, be it a *Residential Lot*, *Commercial Lot*, or a *Common Area*.

1.28 “*Member*” shall mean any person who is an *Owner* of a *Residential Lot* within the *Development*.

1.29 “*Mortgage*” shall mean any mortgage, deed of trust, land sale contract or other security instrument by which a *Residential Lot* is encumbered.

1.30 “*Mortgagee*” shall mean any *Person* or the successor to any *Person* named as the mortgagee, beneficiary, seller or creditor under a *Mortgage*.

1.31 “*Multi Facility Manual*” shall mean that certain Operation and Maintenance Users Manual for Graham-Gilbert Ditch, Pressure Irrigation System, Floodplain Connection System and Private Roads for Laguna Pointe dated May 1, 2006, setting forth the operation and maintenance requirements for the referenced facilities.

1.32 “*Natural Area*” means that area of *Common Area*, Lot 35, Block 1 that is neither the *Greenbelt Easement*, *Laguna Lake*, nor other *Waterways*.

1.33 “*Occupant*” shall mean any person, association, corporation or other entity who is an *Owner*, the guest of an *Owner*, or has leased, rented, or is otherwise legally entitled to occupy and use any *Dwelling* on a *Residential Lot* or *Building* or any *Commercial Lot*.

1.34 “*Owner*” shall mean and refer to the Person(s) who is the record owner of fee simple title to any *Residential Lot*, excluding in all cases, any party holding an interest in a *Residential Lot* merely as security for the performance of an obligation.

1.35 “*Person*” shall mean a human being, a corporation, a partnership, a limited liability company, or any other legal entity.

1.36 “*Plat*” shall mean and refer to that certain plat of the Coast to Coast Subdivision, recorded in the Ada County Recorder's office, which Plat when recorded subdivided all of the *Real Property*.

1.37 “*Pressurized Irrigation System*” shall mean the physical infrastructure that delivers irrigation water to each *Lot*, including the intake structure pumping water from Lake Laguna to the pump station located on Lot 10, Block 1 within a 30 foot wide easement; the underground irrigation main pipes and valves located in ten and twelve foot irrigation easements noted on the *Plat*; and the user service connections, including valve boxes and service boxes, delivering the irrigation water to all *Lots* and the shared access to Lots 38, 39 and 40 of Block 1; and the underground sprinkler systems on the Common Areas, and all related equipment, parts and materials, including but not limited to those items of personal property described or depicted on the engineering drawings prepared for the Pressurized Irrigation System of the *Development*. Specifically excluded from the Pressurized Irrigation System, as herein defined, are the buried sprinkler lines, heads and valves or other sprinkler facilities located on the individual *Residential Lots* and *Commercial Lots*.

1.38 “*Private Gates*” shall mean the two gates located at the westerly end of each of the *Private Streets*.

1.39 “*Private Streets*” shall mean those two streets identified on the Plat as W. Riversedge Lane (the northerly Private Street) and W. Laguna Shore Lane (the southerly Private Street), and the *Shared Driveway*. The northerly Private Street consists of Lot 41, Block 1, and its extension encroaching onto Lots 37 and 36, Block 1 of the *Development*. The southerly private street is not a separate lot; rather, it is part of an easement that encumbers Lots 10, and 25-34, Block 1 of the *Development*. The Private Streets are for the use and benefit of the *Residential Lots* that front on said Private Streets; the *Association* for maintenance purposes; and any utilities that utilize the easement of the Private Streets. The Private Streets are not part of the *Common Areas*.

1.40 “*Public Parking and Access*” shall mean those certain ten (10) paved public parking spaces located on Lot 49, Block 1, of the *Development*, at least one of which is contiguous to the Greenbelt Easement thereby providing the public access to the pathway that is within the *Greenbelt Easement*.

1.41 “*Real Property*” shall mean the property defined in the recitals above.

1.42 “*Recreational Island*” shall mean the island located in *Lake Laguna* as part of Lot 35, Block 1, and all improvements thereon.

1.43 “*Regular Assessment*” shall mean an Assessment levied by the *Association* to provide funds to pay the ordinary expenses of the Association.

1.44 “*Residential Lot(s)*” shall mean and refer to any tract of land within the *Real Property* designated on the *Plat* as a subdivided lot that may be independently owned and intended for development, use, and occupancy as a single family residence.

1.45 “*Shared Driveway*” shall mean the road bed portion of the access, utility, and

sewer easement that straddles the common boundary between Lots 38 and 39, Block 1, and crosses Lot 39, providing driveway access to Lots 38, 39 and 40, Block 1 of the *Development*.

1.46 “*Special Assessment*” shall mean an Assessment levied by the *Association* other than a Regular, Limited, or Private Street Assessment.

1.47 “*Storm Water Drainage Facilities*” shall mean the facilities for storm water collection and conveyance within the *Development*, including the roadside swales that have been constructed by the *Declarant* between the streets and sidewalks in ACHD’s right-of-way with respect to the dedicated public streets, and also next to the *Private Streets* within the *Private Street* easements.

1.48 “*Street Islands*” shall mean and refer to strips of land landscaped with trees, native grasses and other plant materials that separate the public streets of the *Development* into two one way travel lanes, consisting of either lineal island type strips, or small round-a-bouts, each designed for vehicular circulation and turning. The Street Islands are part of the *Common Areas* and not part of the public streets dedicated to the Ada County Highway District. Lots 1 of Blocks 3-7 of the *Development* comprise the Street Islands.

1.49 “*Transition Date*” shall mean the latter of the date the *Declarant* certifies in writing to the Association that no additional *Real Property* shall hereafter be made subject to this *Declaration*, or the date when the *Declarant* owns five percent (5%) or less of all of the *Residential Lots*, which are part of the Real Property.

1.50 “*Water Rights*” shall mean those certain Water Rights owned by the *Declarant* registered with the Idaho Department of Water Resources, as more particularly identified in Section 7.2, together with any additional Water Rights acquired by the Declarant for use on the Real Property.

1.51 “*Waterways or Waterway*” shall mean and refer to any water features constructed, including without limitation, the four natural ponds (the largest of which is *Lake Laguna*) on the Real Property, and any channels, sloughs, streams, together with the banks thereof and adjacent landscaping, located within or managed as *Common Areas* and including waterfalls, pools, fountains, pumps, pipes and conveyance apparatuses used in connection therewith.

1.52 “*Wetland Areas*” shall mean those certain areas containing wetland and floodplain value throughout the *Development*, including the wetland areas described and delineated in United States Army Corp of Engineers Clean Water Act 404 Permit NWW No. 052100141 (the “USACE 404 Permit”). Such Wetland Areas include both wetlands in existence prior to the construction of the *Development* and Wetland Areas specifically constructed within the *Development* (commonly known as mitigated wetlands).

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

ARTICLE 2: PURPOSE

2.1 The Real Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Residential Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure a well integrated high quality residential development, with limited mixed use, and to guaranty maintenance of the Common Area and the Common Facilities located thereon, and to protect the natural resources of the contiguous South Channel of the Boise River, the Wetlands Areas and the Greenbelt Easement. The covenants and restrictions contained in this Declaration have been specifically designed to meet such objectives, to comply with the City of Eagle ordinances and approvals, and for the specific purposes of:

(a) Insuring Owners and Occupants of high quality design, development and construction of the Dwellings, and to protect and enhance their investment and use of the improved Residential Lots.

(b) Preventing the construction within the Development of inferior designed Dwellings, or Dwellings constructed with unsuitable materials.

(c) Encouraging and insuring the building of the Dwellings in appropriate locations on the Residential Lots, to assure visual quality, harmonious appearance, and to protect sensitive environmental areas within the Real Property.

(d) Insuring that the Commercial Lots are improved with Buildings of high quality construction and that they are integrated into the residential portion of the Development in a manner that provides aesthetic continuity between the Commercial Lot improvements and the neighboring Dwellings.

(e) Providing for the protection of the Wetland Areas.

(f) Securing and maintaining proper set-backs from streets, adjoining lots, the Floodway, Wetland Areas, and open areas, and maintaining scenic views.

(g) The integration of development of the different Residential Lots by setting common general standards consistent with the Architectural Design Guidelines.

(h) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

ARTICLE 3: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to Real Property and shall be for the benefit of, and limitation upon, all present and future Owners, or any interest therein, and the Association, which is hereby empowered, in addition to each Owner, to enforce the same:

3.1 Use. Each Residential Lot shall be used only for residential purposes. As used herein “residential purposes” shall mean the use of the Dwellings on a Residential Lot for living accommodations for not more than two (2) unrelated persons, excluding guests of the principal occupants, which guests may reside therein on a temporary basis. “Residential” is not intended, nor shall the same be construed to include the use of the Residential Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant. Any use of a Residential Lot, other than for residential purposes, shall not be permitted, including but not limited to use of the Dwellings for any trade, business, professional or illegal activity.

3.2 Leasing Restrictions. Any Lease (as defined below) permitting the occupancy of a Residential Lot by a tenant shall provide that the terms of the Lease shall be subject in all respects to the provisions contained in this Declaration, the Association Rules, and its Bylaws; and shall further provide that the failure by any such tenant to comply with the terms of such documents shall be a default under such lease, and that upon the failure of the Owner to enforce the terms of such documents, the Association shall be deemed the Owner’s attorney-in-fact for the purpose of enforcing the terms of this Declaration, including the right to evict the tenant. For the purposes of this Declaration, a “Lease” shall mean any agreement for the leasing and rental of a Dwelling, including a month-to-month rental agreement. All such leases shall be in writing; provided, however, the failure of the Owner to enter into a written Lease shall not prevent the Association from enforcing its rights under this provision.

3.3 Subdivision. No Residential Lot may be further subdivided.

3.4 Animals. No animals, livestock, birds, insect or poultry of any kind shall be raised, bred, or kept on any Residential Lot, except that domesticated dogs and/or cats or other small household pets which do not unreasonably bother or constitute a nuisance to other Owners may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided further, if any pets are permitted outside a Dwelling, under no circumstances shall there be any more than four (4) domesticated dogs and/or cats. Any fenced area or other enclosures for permitted household pets must be approved by the ADC. All such areas shall be integrated into the design of the Dwelling. Dogs and other similar pets shall be on a leash when not confined to an Owner's Residential Lot. Owners of pets shall be responsible to immediately cleanup and dispose of any waste created by their pets anywhere on the Real Property. The rights and privileges relating to ownership of household pets may be further regulated and restricted by Association Rules.

3.5 Trash. All garbage, refuse and animal waste shall be properly and promptly cleaned and stored and appropriately removed from each Lot and Common Area so as to prevent unsightliness, or unnecessary or unreasonable odors. No part of the Real Property shall be littered or used for the dumping or storage of any garbage, trash, discarded personal property or other waste. Garbage, trash, or other waste shall be kept, until its removal, in suitable trash cans or other containers as may be regulated by the Association. Trash receptacles must be stored in contained areas so that they are not visible from any spot external to the Residential Lot.

3.6 Hazardous Activities. No activities shall be conducted, and no improvements shall be constructed on any Lot or Common Area which are or might be unsafe or hazardous to any person or property. Without limiting the foregoing, no firearms shall be discharged upon the Real Property and no open fires shall be lighted or permitted except in a contained barbecue unit or while attended and in use for cooking purposes, or within a designated fire-pit located on the Recreational Island or otherwise located on a Residential Lot, provided such pit shall not become a nuisance to adjoining Owners.

3.7 Boise City Public Works. Boise City presently owns land situated along the southern portions of Lots 30, 31, 32, 33 and 34, Block 1 of the Development. The Owners of said Residential Lots are herein on notice that Boise City has future expansion rights, if needed, for the expansion of its sewer treatment plants located on their property.

3.8 Wildlife. The Development has been developed in and adjacent to the South Channel of the Boise River, in areas with ecological features that provide habitat conducive to bird and mammal wildlife, including, without limitation, Great Blue Heron, Green Heron, hawks, owls, deer, beaver and fox. Certain types of landscaping will be more attractive to such wildlife than others. The Declarant and The Community of Laguna Pointe Homeowners' Association, Inc. will not be responsible for the impact of wildlife on the Residential Lot improvements and landscaping. Further, no hunting, trapping or other capturing of wildlife shall be permitted on the Real Property; excepting however, fishing that is permitted subject to any State of Idaho, City of Eagle or Association Rules and Regulations.

3.9 Parking and Vehicle Storage.

(a) The residential streets of the Development that are dedicated to the Ada County Highway District ("ACHD") shall be subject to use, speed, parking and other regulations of ACHD, the Association Rules, and the restrictions of this Declaration. Similarly, the Private Streets shall be subject to use, speed and parking of the Association Rules and the restrictions of this Declaration. No parking shall be permitted on the Private Streets. Whenever there is a conflict between such Association Rules and regulations of this Declaration, the stricter rule or regulation shall apply.

(b) No motor homes, trailers, boats, jet skis, snowmobiles, buses, inoperable vehicles, campers, recreational vehicles, and/or other mobile equipment, trailers, implements, and vehicles of all kinds or nature shall be stored on any Residential Lot, unless (i) such items are fully enclosed within the Dwellings' garage, and (ii) the ADC has otherwise approved the location and/or screening of said items. No vehicle should be parked or stored for a period in excess of forty-eight (48) consecutive hours on any street or on any outside portion of a Residential Lot, including driveways. The primary purpose of the garage required on each Residential Lot is for the parking and storage of automobiles and other vehicles. The Owner, subject to the approval of the ADC, shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Residential Lot, which vehicles shall be kept within the garage other than for temporary purposes (as determined by the ADC). No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored within the

Development.

(c) No truck, truck camper, trailer, tent, garage, barn, shack or other outbuilding or vehicle shall at any time be used as living quarters on any part of Real Property.

(d) The use of all vehicles, including but not limited to automobiles, trucks, bicycles, motorcycles, sailboats, canoes, and other water craft, shall be subject to Association Rules, which may prohibit or limit the use thereof within the Real Property, and provide further regulations regarding the use and storage of the same.

3.10 Motorized Watercrafts Prohibited. The use of motorized watercrafts on Laguna Lake and the other Waterways shall be prohibited unless the City of Eagle modifies its current code provision prohibiting the use of motorized watercraft. If the City permits watercraft powered by battery charged electric motors, such watercraft shall be permitted on Laguna Lake subject to the Association Rules. In all other cases, motorized watercrafts shall only be permitted to the extent the use is authorized by a vote of more than four fifths of the Members of the Association, and only to the extent authorized by any such revised Eagle City Code.

3.11 Commercial Use Prohibited. No Residential Lot shall be used at any time for commercial or business activity; provided, however, that the Declarant or other persons authorized by the Declarant may use Residential Lot(s) for development and sales activities related to the Real Property. Use of the Commercial Lots shall be subject to the City of Eagle ordinances and approvals obtained.

3.12 Commercial Lot Use Limitation. The Declarant has obtained from the City of Eagle an MU (“Mixed Use”) zoning classification to develop approximately 5.26 acres of the Development platted as Lots 49, 16 and 17, Block 1 of the Development. Uses of the Commercial Lot are subject to and limited by the City of Eagle ordinances and approvals and more particularly by that certain Development Agreement between the City of Eagle and the Declarant recorded as Instrument No. 106057133 in the Recorder’s Office of Ada County. Although certain provisions of the Development Agreement are recited or summarized herein, the Real Property is burdened by the Development Agreement as a whole.

(a) Concept Plan. **Exhibit B** attached to this Declaration is the Declarant’s concept plan for the Mixed Use that includes an office site on Lot 49, Block 1, and a restaurant/specialty shop site on Lots 16 and 17, Block 1. Uses and restrictions with respect to the Mixed Use areas include the following:

(i) A single story professional office Building up to a maximum of 12,000 square feet shall be permitted on Lot 49, subject to review and approval of City of Eagle’s Design Review board.

(ii) A two story restaurant with a bar/lounge up to a maximum of 12,000 square feet may be permitted on Lots 16 and 17, subject to the review and approval of City of Eagle’s Design Review board. This Building may contain an open air deck extending off

the east side of the second story. It may also include a clubhouse area with banquet rooms and/or a health and fitness facility. Substantial landscape screening shall be required along the north and south property lines and be further subject to review and approval of the City of Eagle's Design Review board.

(iii) An additional 5,000 square feet of the restaurant/specialty shop Building may be permitted with uses restricted to those set forth in Section 2.6.3 of the Development Agreement. An additional open air deck may be permitted to be constructed on top of the single story portion of the mixed use Building to be located off the northwest and southeast sides of the single story portion of the Building as more particularly depicted on Exhibit B. The final size and configuration of the open air decks shall be subject to review and approval of the City of Eagle's Design Review board.

(b) Noise Restrictions. No activities conducted outside of any Buildings on the Commercial Lots shall utilize sound amplification at any time. Commercial entertainment and/or commercial musical events shall not be permitted on any Residential Lot. Further, all existing City of Eagle noise and nuisance ordinances in existence now or as subsequently modified or amended shall be complied with, including, without limitation, Eagle City Code Section 4-9-3: Public Disturbance Noise Prohibited, which states in pertinent part:

A. Between the hours of ten o'clock (10:00) P.M. one day and seven o'clock (7:00) A.M. the next day, it shall be unlawful for any person or business to make or cause loud or offensive noise by means of voice, musical instrument, horn, radio, loudspeaker, automobile, machinery, other sound amplifying equipment, or any other means which disturbs the peace, quiet, and comfort of any reasonable person of normal sensitiveness residing in the area. Loud or offensive noise is that which is plainly audible within any residence or business other than the source of the sound, or upon a public right of way or street at a distance of one hundred feet (100') or more from the source of such sound.

B. Due to extreme heat during the summer months of June, July and August construction noise may begin at six o'clock (6:00) A.M. (Ord. 457, 9-9-2003).

C. Due to extreme heat during the summer months of June, July and August landscape maintenance noise may begin at 6:00 o'clock (6:00) A.M. (Ord. 457, 9-9-2003).

If, however, the City of Eagle modifies the noise regulations within the City code then the restrictions provided herein shall comply in all respects with the modified code.

(c) Signage. Signs identifying the name of the buildings on the Commercial Lots and the names and addresses of the tenants in such buildings may be constructed on the

Entry Lots and the Commercial Lots; provided however that all signage shall comply with Eagle City Code, Section 8-2A-8 and/or all other applicable Eagle City Ordinances and sign regulations in effect at the time such signage is approved by the City of Eagle.

3.13 No Offensive Use. No noxious, offensive or unsightly conditions shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. The ADC, within its absolute discretion, shall be the arbiter of whether or not any conditions are in violation of this provision.

3.14 Sewer Restrictions. All bathroom, sink, toilet facilities, and showers shall be located inside the Dwellings or as part of other appurtenant structures approved by the ADC, and shall be connected by underground pipe to wet sewer connection lines of the Development.

3.15 Drainage Restrictions. Storm or irrigation water from the rear portion of the Residential Lots shall be retained on said Residential Lots. For each of Residential Lots 34, 36-40, 42 and 43, Block 1 of the Development, the storm and irrigation water must be retained on the Lots in a swale or other drainage facility installed at the time of the construction of the Dwelling. Storm water runoff and irrigation water emanating from the front portion of all other Residential Lots shall drain to the roadside swale in front of such Residential Lots. Storm water on each of the Commercial Lots shall be retained on each Commercial Lot. No storm water or pressurized irrigation water shall cross side lot lines onto adjacent Residential Lots.

3.16 Storm Water Drainage Facilities. The Development is improved with Storm Water Drainage Facilities. The Storm Water Drainage Facilities include, without limitation, the roadside swales on both the Development's public streets and the Private Streets; the swales to be constructed on the Commercial Lots; and the drainage facilities required to be constructed on Lots 34, 36-40, 42 and 43, Block 1. Residential Lot Owners, Commercial Lot Owners, and/or Occupants shall not interfere in any way with any of the drainage facilities, including, without limitation, refraining from landscaping on, or depositing any material into the roadside swales or parking in the roadside swales. The roadside swales' primary purpose is to capture and drain storm water. The roadside swales and any landscaping installed thereon by the Declarant shall be maintained by the Association, all as more particularly set forth in **Section 8.6** below.

3.17 Wetland Areas and Lakebanks. Lot Owners are not permitted to alter the course of the Lakebanks either on the Lots or at any other location within the Development, without prior written consent from the ADC, and shall maintain the Lakebanks condition consistent with the final design of the Development. The slope of the Lakebanks as established by the Declarant may only be altered if the ADC gives its written approval, and any landscaping thereof shall be subject to the requirement of sandy beaches set forth in the Architectural Design Guidelines. The Lakebanks of Lots 39 and 40, and the rip-rap, shall not be disturbed. The top of Lakebank along the shoreline of Lake Laguna must be maintained at or above an elevation of 2570 datum NAVD88. Filling and or building within any of the Wetland Areas is strictly prohibited and is subject to prosecution under federal law.

ARTICLE 4: EASEMENTS.

The Residential Lots or some of them as the case may be, are hereby burdened with certain easements and related restrictions that are either designated on the Plat and/or set forth in this Article. Any easements designated on the Plat shall be deemed to be expressly dedicated, reserved or granted easements.

4.1 Greenbelt Easement. The Greenbelt Easement is designated on the Plat, and lies primarily within the Natural Area except where it encumbers a portion of Lots 46 through 50, Block 1 of the Development. It is twenty-five (25) feet in width and shall include a ten (10) foot wide pathway open to the public for pedestrian, equestrian, bicycle and other non-motorized travel. The Greenbelt Easement is held by the City of Eagle as grantee, all as more particularly set forth in Instrument No. 99117198, records Ada County, Idaho.

4.2 Ingress and Egress Easements on Private Streets. There is hereby reserved for the benefit of the Owners of Lots 21, 22, 23, 24, 36, 37, 38, 39, 40 and 42, all in Block 1 of the Development, a perpetual ingress and egress easement over the road bed portion of W. Riversedge Lane consisting of Lot 41, Block 1 and its extension over Lots 36 and 37 for vehicle and pedestrian access; and further reserved for the benefit of the Owners of Lots 38, 39 and 40, Block 1 of the Development an access easement over the Shared Driveway; and further reserved for the benefit of the Association for repair and maintenance an easement over all of W. Riversedge Lane specifically including the roadside swales and road bed. Similarly, there is hereby reserved for the benefit of the Owners of Lots 25-34, and 10 of Block 1 of the Development an ingress and egress easement over the road bed portion of W. Laguna Shore Lane that crosses Lots 9 and 10, 25-33, Block 1 of the Development; and further reserved for the benefit of the Association for repair and maintenance; and an easement over all of W. Laguna Shore Lane, specifically including the roadside swales and road bed. The easements reserved herein for the Association are also for the purposes of the installation, use and repair of a sewer main and all utilities. The responsibility for repairing and maintaining the Private Streets shall lie with the Association, but shall be funded only from the Private Street Assessments more particularly set forth in **Section 10.1(b)** herein. No additional private roads or gates are allowed in the Development, except individual Lot driveways and/or gates.

4.3 Public Utility Easements. There is hereby reserved for the use and benefit of the Declarant, the Association and public utilities a permanent easement for public and private utilities, including without limitation, electrical power, gas, phone, cable, sewer, and water distribution lines, over, under and across the Private Streets, the Shared Driveway over Lots 38, 39 and 40, Block 1, the driveway to Lot 34, Block 1, and other Lots as indicated on the Plat.

4.4 Lake Laguna Easement. There is hereby reserved for the benefit of the Owners an easement to utilize for all purposes permitted in this Declaration that portion of Lake Laguna that encroaches onto any of the Residential Lots; provided however such easement shall not permit any of the Owners to embark onto any portion of the shoreline of Lake Laguna that is not the Owners own Lot.

4.5 Pressurized Irrigation System Easement. There is hereby reserved for the benefit of the Association and any subsequent owner of the Pressurized Irrigation System an easement for the Pressurized Irrigation System, all as more particularly shown on the Plat. For informational purposes only, the easement for mainlines of the Pressurized Irrigation System, delivering irrigation water to the individual Residential Lots is generally located on the rear portion of the buildable area of most Residential Lots that are adjacent to the lake shore and adjacent to the Wetland Areas for other Lots. No excavation for retaining walls and the like, or otherwise digging for landscaping or other purposes, shall be conducted in the Pressurized Irrigation System easement areas without obtaining the written approval of the ADC. The easement for the construction, operation and maintenance of the Pressurized Irrigation System pump station with pumping facilities is located on Lot 10, Block 1 of the Development. The precise location of these Pressurized Irrigation System easements is located on the Plat.

4.6 Drainage Easement. There is hereby reserved an easement for the benefit of Drainage District No. 4, across portions of Lots 3-9, 25, 26 of Block 1, and Lot 1, Block 2 of the Development, in varying widths as more particularly located on the Plat.

4.7 Roadside Swales. The roadside swales along the streets dedicated to the Public are in ACHD's right-of-way. The roadside swales along the Private Streets are in the Private Streets easement. **NO PARKING SHALL BE PERMITTED ON THE ROADSIDE SWALES.** The roadside swales along the public streets are servient to and are part of the ACHD Storm Water Drainage System, and are thereby encumbered by that certain Master Perpetual Storm Water Drainage Easement recorded on June 1, 2004 as Instrument No. 104068411, Official Records of Ada County, and incorporated herein by this reference as if set forth in full (the "**Master Storm Water Easement**").

4.8 Lake Access Easement. There is hereby reserved for the use and benefit of the Declarant, the Association, and Owners a pedestrian and boat access easement across Common Area Lot 18, Block 1 of the Development for the purpose of launching permissible watercraft into Lake Laguna; subject however to all Association Rules applicable to such use.

4.9 Gravity Irrigation Ditch Easement. Although the components of the Gravity Irrigation Ditch are located on Common Area Lots, there is hereby reserved for the use and benefit of the Declarant, the Association, and its agents, the right to go across certain Residential Lots as necessary, and particularly Lot 34, Block 1, to access the Gravity Irrigation Ditch components for maintenance purposes, from time to time.

4.10 Flood Plain Connection System Easement. There is hereby reserved for the Declarant, the Association, and its agents, an access easement over portions of Lot 40, Block 1 of the Development to maintain the main pond overflow area, and a license to cross other Lots from time to time as may be reasonably necessary to maintain all components of the Floodplain Connection System.

4.11 Pipeline Easement. Lot 1, Block 2 of the *Development* is encumbered by that certain Salt Lake Pipeline Co. 16.5 foot easement recorded as Instrument No. 9208075, records Ada County, Idaho, and as depicted on the Plat.

ARTICLE 5: BUILDING RESTRICTIONS

5.1 Plans. No Dwelling, building, fence, wall or other structure, initial landscaping or subsequent or substantial landscaping, or screening planting shall be undertaken, erected or maintained upon any Residential Lot, nor shall any exterior addition to or change or alteration to the exterior of any Dwelling, be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the ADC, in accordance with the Architectural Design Guidelines, this Declaration, and any reasonable application process adopted by the ADC.

5.2 Remodeling/Renovations. Approval of the ADC shall not be required for any remodeling or renovation involving the interior of any Building or structure, nor the repainting, in the same color, of the exterior of any Building, structure or improvement, the replacement or repair of broken, deteriorated or damaged exterior windows, siding, trim, decking, sidewalks, driveways, fences, exposed structural members or foundations, provided such work does not alter the size of the structure, the configuration or architectural features of its exterior, (including the size and shape of windows), the pitch or configuration of roof lines, eaves and exposed gables, or the height or material of fences, and is consistent with Architectural Design Guidelines for Laguna Pointe and the provisions of this Declaration.

5.3 Drainage/Grading. Each Lot is subject to a drainage plan approved by the City of Eagle. Owners shall not alter any existing and proposed drainage paths and patterns, roadside swales, culverts, catch basins, or subsurface drainage systems. The Owners shall not interfere with the established drainage pattern over the Lot or any other Lot, and shall comply with all drainage requirements more particularly set forth in **Sections 3.14 and 3.15**. In connection with the Owners' construction, grading and site improvement work, the Owner shall make adequate provisions to handle the runoff of surface water so as to comply with the Lot's drainage plan.

5.4 Repair of Damage/Compliance Deposit. Any damage to streets, curbs, sidewalks, mailboxes, fences, irrigation lines, roadside swales, and utility facilities, caused during construction shall be the responsibility of the Owner. Owner may conduct an inspection of the Lot and complete a lot inspection form at least ten (10) days prior to the first purchase of the Lot and submit to the Declarant the completed lot inspection form identifying any damages to the Lot. Damages not identified on the lot inspection form shall be deemed to be the responsibility of the Owner. The Compliance Deposit, required pursuant to Section 11.7 of this Declaration, shall be held as security for the Owner's obligations under this Declaration and the Architectural Design Guidelines. The Owner will forfeit its Compliance Deposit if (i) the Owner commences construction without first obtaining approval of its plans and specifications from the ADC, or (ii) constructs the improvements in material variance with the approved plans and specifications. The Declarant will be entitled to utilize the Compliance Deposit or part thereof to cure the Owner's (i) failure to repair any damage caused by the Owner's agents or subcontractors to

streets, curbs, sidewalks, mailboxes, fences, irrigation lines, utility facilities, Common Areas, Wetland Areas, or Common Facilities, or (ii) failure to keep clean the work site and to dispose of all debris and waste material.

5.5 Pre-Built Homes. No mobile home, prefabricated home, modular home, or other pre-built home shall be allowed on any Residential Lot, at any time.

5.6 Building Envelopes. The area on any Residential Lot upon which a Building may be constructed and located is limited by several factors and easements. The location of any Building must comply with the City of Eagle zoning regulations in effect at the time of the issuance of a building permit, including, without limitation, setback requirements. Additionally, all Dwellings and other structures constructed on the Residential Lots that front on the Private Street W. Laguna Shore Lane shall be set back a minimum of twenty five feet (25') from the edge of pavement of the Street, or fifty feet (50') from the front property line, whichever is greater. All Buildings must be set back a minimum of fifty feet (50') from the FEMA Regulatory Floodway, as determined by the applicable FEMA maps at the time a building permit is issued, and otherwise comply with Eagle City Code, Section 10-8-8-5(D). The Declarant has prepared plats ("Lot Plats") for individual lots or small groupings of lots which will indicate thereon the restrictions to buildable areas on the Residential Lots. Such Lot Plats will be provided for the convenience of the Owners; however, the Owners are ultimately responsible for the location of any Buildings on the Lots. The final footprint of any Building may be further restricted by the ADC so as to reasonably preserve views of Laguna Lake, other Waterways, the Boise foothills and mountain front, and other geographic features that could otherwise be seen from other Residential Lots. All the Residential Lots are located within the FEMA 100-year regulatory floodplain. During the site construction of the Development, some or all of the Lots, were filled above the regulatory base flood elevation. A Letter of Map Revision based on Fill (LOMRF) is being submitted to the City of Eagle and FEMA based on a survey of the fill placed. The LOMRF demonstrates that the Lots as graded are above the regulatory base flood elevation. Accordingly, flood insurance may not be required, though some lenders may still require flood insurance. When approved, copies of the LOMRF will be available upon request and the Lot Plats, if provided to the Owner, shall clearly define the area on the Owner's Lot that is to be removed from the floodplain by the LOMR process. As specific areas on each Lot may be removed from the floodplain while others may remain, it is the Owner's responsibility to verify that any proposed Building be located within the limits of the LOMRF area. Construction of Buildings located outside of this area that still adhere to all other buildable area requirements shall be at the discretion of the Owner. No Buildings shall be constructed within the Wetland Areas. For any Residential Lot that has Laguna Lake shore frontage, all Buildings shall be set back from such lake shore a sufficient distance to permit as a minimum the installation and maintenance of a sandy beach from a line that is from the high water mark of Lake Laguna, as shown on the Plat, to the top of the slope of the shoreline for Lake Laguna as constructed by the Declarant. No Buildings shall be constructed over any of the easements set forth in Article 4, including without limitation the Greenbelt Easement, Public Utilities Easements, Pressurized Irrigation Easement, the W. Laguna Shore Lane easement; the easement portion of the W. Riversedge Lane; the Shared Driveway on Lots 38, 39 and 40, Block 1 of the Development; and the driveway on Lot 34, Block 1 of the Development.

5.7 Elevation Restrictions. All finished floor elevations for any Building must be a minimum of two feet (2') above the FEMA regulatory base flood elevation per City code and be at or above the minimum finish floor elevation shown on the Lot Plats. Additionally, the bottom of all footings shall be separated from the groundwater elevation in an amount recommended by a geotechnical engineer who will have determined the seasonal high groundwater elevation for various areas in the Development. Upon the completion of the foundation for any Building, no further construction shall be permitted until the Owner has provided the ADC a finished floor certificate certifying that the elevation restrictions contained herein have been complied with.

5.8 Height Restriction. All Dwellings are subject to any City of Eagle building, zoning and/or subdivision ordinances in effect at the time a building permit is issued.

5.9 Dwelling Size. No Dwelling shall be constructed or placed on any Residential Lot containing a total floor area on all floors intended and suitable for use as living area, not including a garage, of less than 2,800 square feet measured from the outside of the exterior walls for single story Dwellings and no less than 3,200 square feet for two-story Dwellings, and such two-story Dwellings shall have no less than 2,000 square feet on the ground floor. The foregoing size limitation is an absolute minimum but shall not be construed to permit Dwellings solely based on meeting these minimum sizes. The City of Eagle Fire Department may require interior fire sprinkler systems for certain large square footage homes. THE OWNER (OR HIS/HER BUILDER) SHOULD REVIEW THE ARCHITECTURAL DESIGN GUIDELINES. THE ADC SHALL CONSIDER THE ADVERSE AFFECT OF DWELLINGS SIZE MINIMUMS AND MAXIMUMS AND HEIGHT RESTRICTIONS ON OTHER RESIDENTIAL LOTS WITHIN THE DEVELOPMENT IN GRANTING OR WITHHOLDING ITS APPROVAL OF THE PLANS AND SPECIFICATIONS.

5.10 Garages. All garages should be of "Side Entry", "Side Load", or "Rear Load" design. Front entry garages will only be permitted if they are screened from street view at least partially by a breezeway and/or the ADC has given its written approval. Garage doors will be required to have some architectural detail (such as faux paint, hardware, "carriage style" doors, windows, etc.). RV garage doors will be allowed as long as they are in matching appearance to the standard size garage doors. Garage interiors are to be taped and painted at minimum.

5.11 Basements. Basements may be permitted provided their plans and specifications have been approved in writing by the ADC; and provided further that the Residential Lot Owner will be required to execute an indemnity holding the Declarant and Association harmless from any claims resulting from the Lot's suitability for installation of a basement. Lot Owners should obtain certification from an engineer that the Lot is suitable for installation of a basement, which certification should take into consideration the water table and geotechnical soil tests.

5.12 Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Residential Lot, except as permitted in the Architectural Design Guidelines, and the same shall, to the extent possible, be shielded from view from neighboring Residential Lots and streets.

5.13 Service Facilities. No outside clotheslines shall be permitted, and all garbage cans, maintenance tools, and similar items shall be stored in a screened or enclosed fashion to conceal them from the view of neighboring Lots and streets.

5.14 Exterior Energy Devices. All energy production devices including, but not limited to, generators of any kind and solar energy devices, shall not be constructed or maintained on any Residential Lot without the prior written approval of the ADC, except for heat pumps or similar appliances shown on the plans approved by the ADC.

5.15 Lighting. Any exterior lighting shall comply with the Architectural Design Guidelines.

5.16 Roofs. The type, pitch and roof covering materials(s) which shall be required on all Buildings shall be as set forth in the Architectural Design Guidelines. All Dwellings constructed on the Residential Lots located on the Private Streets shall have tile, or tile like, roofs with the type of tile approved by the ADC. All other Dwellings shall have either tile roofs or forty-five or fifty year architectural style shingle roofs with a high profile ridge, unless otherwise approved by the ADC in writing.

5.17 Maintenance. The following provisions shall govern the maintenance of each Residential Lot, its landscaping, and all improvements thereon:

(a) Each Owner of a Lot shall maintain all Buildings and improvements located thereon in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds controlled and otherwise maintain the same in a neat and aesthetically pleasing condition. Notwithstanding the foregoing, with respect to the Wetlands, there shall be no alteration of the vegetation or hydrology, or any building, dumping, chemical application, or drudging, or any other use or activity that disturbs the Wetland Areas. Such restrictions on use and activity in the Wetland Areas may be enforced by the Association, the City of Eagle, the United State Corp of Engineers, or other agencies having jurisdiction over the preservation of Wetlands. The Owners of Residential Lots shall maintain the Wetland Areas as open space upon which no improvements may be constructed nor any vehicles or equipment may be stored. Limited pruning may be permitted in the Wetland Areas, subject to coordination with and approval by the City of Eagle; and only in accordance with the requirements of the U.S.C.E. 404 Permit.

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

(c) Included in the maintenance and landscaping requirements of the Commercial Lot Owners, the Owner of Lot 49, Block 1 of the Development shall be responsible for the maintenance of all parking areas and landscaping on such Lot, including, without limitation, the public parking and access portion of said Lot.

(d) A Dwelling which is vacant for any extended time period shall be kept locked in order to prevent entrance by vandals. Vacant Dwellings and unimproved Residential Lots shall not be exempt from the provisions of this Declaration.

(e) Any structure, facility, equipment, objects and conditions determined by the ADC, in its sole discretion, to be unsightly, if permitted by the ADC at all, shall be enclosed within an approved structure, appropriately screened from public view, or removed if required by the ADC. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.

(f) Any event or condition on a Lot which, in the sole discretion of the ADC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot.

(g) In the event that any Owner shall permit any Building or improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in **Article 10.1(b)** of this Declaration.

5.18 Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ADC and which are compatible with other Buildings on the Residential Lot and on neighboring Residential Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ADC prior to installation, and color and material samples shall be supplied to the ADC in accordance with the Architectural Design Guidelines.

5.19 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Residential Lot. Owners may advertise an improved Residential Lot for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon, subject to any reasonable restrictions imposed by the ADC. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Residential Lot during construction of the Dwellings. All such signage must be removed upon completion of the construction. Lighted, moving or flashing signs for any purposes are prohibited, except holiday lighting subject to any applicable Association Rules. Any directional or identification

sign within the Real Property shall be permitted, provided the same is approved by the ADC prior to installation. Notwithstanding the foregoing, the ADC shall have the right to adopt Architectural Design Guidelines with respect to signs allowed within the Development, which Architectural Design Guidelines, if adopted, shall further regulate signs within the Real Property. All signs erected on any Commercial Lot or the commercial Buildings thereon must comply with the City of Eagle's sign ordinance and approval procedures.

5.20 Construction Time Frame. The Association has delegated to the ADC the authority to establish building timelines, and such timelines shall, from time to time, be specified in the Architectural Design Guidelines.

5.21 Storage Facilities and Equipment. Outbuildings, separate garages, sheds and shelters, if permitted, may be constructed only simultaneously with or after a Dwelling has been constructed on the Owner's Residential Lot. All such buildings shall be constructed only after written approval thereof by the ADC and shall comply with the detailed Architectural Design Guidelines provision governing such Buildings.

5.22 Swimming Pools. Above ground swimming pools shall not be permitted. The installation of in-ground swimming pools and pool houses will be permitted, provided their plans and specifications, location, and design have been approved in writing by the ADC prior to their construction or installation; and provided further that the Residential Lot Owner will be required to execute an indemnity holding the Declarant and Association harmless from any claims resulting from the Lot's suitability for installation of a swimming pool and claims resulting from use of the swimming pool. Lot Owners should obtain a certification from an Engineer that the Lot is suitable for installation of an in-ground swimming pool.

5.23 Fences and Walls. No fence or wall of any kind shall be constructed on a Residential Lot unless the plans and specifications, including the location, design, material and color, have been approved in writing by the ADC prior to the construction or installation. Although Residential Lot fencing is discouraged, no lot boundary fencing other than open wrought iron fencing approved by the ADC shall be permitted.

Any fences and walls shall be subject to the following restrictions:

(a) Fences and walls shall not extend closer to any sidewalk than twenty feet (20') nor project beyond the front setback of the Dwellings. No fence higher than five feet (5') or lower than four feet (4') shall be allowed without the prior written approval of the ADC.

(b) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Residential Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.

(c) Unless otherwise permitted in this Declaration or in any easement, no fence or wall shall interfere with the use and enjoyment of any easement reserved in this

Declaration or shown on the recorded Development Plat.

(d) No wall, hedge, high planting, obstruction or barrier shall be allowed which would, in the opinion of the ADC, unreasonably interfere with the use, enjoyment, and view of neighboring Residential Lots and streets, and shall not be allowed if, in the opinion of the ADC, the same constitutes an undesirable, noxious or nuisance effect upon neighboring Residential Lots.

(e) There shall be no fencing on a common Residential Lot Line, unless the Owners of the two contiguous Residential Lots agree to have a common lot line fence constructed. If only one of the Owners of the contiguous lots desires to fence, such fence, subject to ACC approval, will be permitted only if it is constructed entirely on the lot of the owner who desires the same.

(f) The restriction against any Building in the Floodway or on the Wetland Areas shall apply to fencing.

(g) Notwithstanding the foregoing restrictions, Owners of those Lots that front on the portion of the Private Streets where the Private Gates are installed shall be permitted to install fencing on the portion of their front and side Lot lines that lie west of the Private Gates, provided the location, design, dimension and material of such fencing are approved in writing by the ADC prior to the construction or installation of such fencing.

5.24 Landscaping. The following provisions shall govern the landscaping of Residential Lots within the Real Property:

(a) The Owner shall prepare a landscape plan and shall submit the same to the ADC. The installation and/or construction of the landscaping shall not commence without the prior approval of the ADC of the Owner's Landscape Plan. The use of berms, mounds, sculptures, rock terraces and large stones in planting areas is encouraged. Landscaping of a Residential Lot shall be in accordance with the approved plan. All berms shall be designed to handle all drainage impacts.

(b) All approved landscaping that meets the minimum requirements set forth in the Architectural Design Guidelines shall be installed within thirty (30) days after substantial completion of the Dwelling on the Residential Lot, with a reasonable extension allowed for delays caused by weather.

(c) An underground automatic sprinkler system shall be installed sufficient to irrigate the entire landscaped portion of the Residential Lot; specifically excluding, however, any Wetlands Areas. The installation and operation of the Residential Lot's automatic sprinkler system shall be in accordance with the Pressure Irrigation System and portions of the Multi Facility Manual.

(d) After all landscaping, including hardscaping, have been installed, pursuant to the Owner's landscape plan approved by the ADC, plantings, landscape elements, berming, fencing, and the sprinkler system may be repaired, maintained, augmented or replaced, provided it is consistent with said Architectural Design Guidelines and the provisions of this Declaration. All plantings, lawn and landscaping shall at all times be properly irrigated and maintained, and shall conform to the specifications and requirements set forth in the Architectural Design Guidelines.

(e) Plantings, landscape elements and the sprinkler system may be repaired, maintained, augmented or replaced, provided it is consistent with said Architectural Design Guidelines and the provisions of this Declaration. All plantings, lawn and landscaping shall at all times be properly irrigated and maintained, and shall conform to the specifications and requirements set forth in the Architectural Design Guidelines.

5.25 Mailboxes. Mailboxes shall comply with the Architectural Design Guidelines concerning mailboxes. In the event a mailbox is damaged or destroyed, it shall be repaired and/or replaced in an identical manner to the original approved installation.

5.26 Utilities. All utility connections and service lines shall be underground, and shall conform to all applicable code requirements. Approval of the ADC prior to installation shall not be required.

5.27 Docks. Owners of Residential Lots 25-34 and 36-38, Block 1 shall be entitled to construct a dock, provided plans and specifications showing the locations, size, materials, design and structure have been approved in writing by the ADC prior to the construction and/or installation of the dock; and provided further that the Residential Lot Owner will be required to execute an indemnity holding the Declarant and Association harmless from any claims resulting from the use of the dock. Small swimming docks in the Lake Laguna portion of other Residential Lots may be permitted by the ADC on a case by case basis if the ADC determines that the location, size and construction materials proposed do not negatively impact the overall aesthetics of the lake front or negatively impact the view from other Residential Lots.

ARTICLE 6: COMMON AREAS AND FACILITIES.

6.1 Purpose. The Common Areas and Common Facilities shall be maintained for the common benefit of the Development. All Common Areas and Common Facilities shall be owned by and maintained by the Association. Several of the Common Areas are multi-purposed and not all Common Areas are devoted for the use and occupation by the Owners. Use of the Common Areas and Common Facilities is not dedicated to the public and the public shall not be permitted to use them, with the exception of the Greenbelt and the Public Parking and Access to the Greenbelt, and the pathway constructed in the Greenbelt Easement.

6.2 Owner's Enjoyment of Common Areas. Each Owner shall have a right of use and enjoyment of the following Common Areas, together with the Common Facilities thereon:

(a) Entry Lots. The pathways, benches and other open spaces on the Entry Lots.

(b) Pathway. The access portion of Lot 35, Block 1 that connects W. Riverside Drive to the pathway constructed in the Greenbelt Easement. Use of the pathway in the Greenbelt Easement shall be subject to the terms of the Greenbelt Easement which permit use by the general public for pedestrian, equestrian, and other non-motorized travel.

(c) Recreation Areas. The Recreational Island, together with all of its open spaces and facilities, which may include a volleyball court, fire pit, beaches, tent sites, and other similar recreational facilities. The Owner's right to use the Recreation Island and its facilities shall be subject to any Association Rules promulgated by the Association.

(d) Waterways. The Owner's use of the Laguna Lake shall be limited to non-motorized boating (unless otherwise permitted in accordance with Section 3.10 of this Declaration), swimming and fishing, provided no Owners or Occupants shall be permitted to trespass on other Residential Lots either to access Lake Laguna or the other Waterways or to stop on the shoreline of Lake Laguna that is part of a Residential Lot, including Owners' docks, without the Owner's permission. Use of the Waterways may be further restricted and/or permitted by the Association through its promulgation of Association Rules.

(e) Lake Access. The pathway and boat ramp portion of Lot 18, Block 1 of the Development that connects W. Riversedge Drive to Lake Laguna is for the purpose of launching any permissible watercraft. Swimming, picnicking, camping, or any public use of the boat ramp lot is not permitted.

(f) Natural Area. In addition to the Greenbelt, Owners shall have the right to walk, stroll, or otherwise hike on that portion of Lot 35, Block 1 that is not a part of the Wetlands Area; provided however that any equestrian or non-motorized travel shall be confined to the pathway on the Greenbelt. Further, no picnicking or camping shall be permitted on any portion of the Natural Area, it being understood that such activities are limited to the Recreational Island portion of Lot 35, Block 1 of the Development.

6.3 Use Limitations. The right of each Owner to the use and enjoyment of the Common Areas identified in the foregoing provisions are subject, however, to the following limitations:

(a) The right of the Association to suspend the voting rights and right to use of the Recreational Island by an Owner for any period during which any Assessment against his Residential Lot remains unpaid; and for significant or recurrent infractions of the Association Rules.

(b) The right of the Association to limit the number of Owners' guests permitted to use the Common Areas.

(c) The right of the Association to charge reasonable fees for the use of the Recreational Island, including the right to charge a special use fee for Owners who desire exclusive short-term use of such facility and who are willing to pay a special fee for such use.

(d) The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and Common Facilities; and, in aid thereof, to place a deed of trust thereon; provided that the Common Areas may not be mortgaged without the consent of at least sixty-six and two-thirds percent of the Owners, and that any deed of trust of Common Areas shall be subject to and subordinate to the rights of use of an Owner to the Common Areas. Under no circumstances shall any Common Area or portion thereof be sold, or transferred, without both the consent of at least sixty-six and two-thirds percent of the Owners and the written approval of the City of Eagle. Further, to the extent the Association elects to improve any of the Common Areas and Common Facilities, such improvements shall be in accordance with applicable City of Eagle ordinances and approvals.

(e) The right of the Directors of the Association to promulgate reasonable Association Rules governing the use of the such Common Areas for the purpose of securing safe use by the Owners without unduly infringing upon the privacy or enjoyment of the Owners or Occupants, including without being limited thereto, rules restricting persons under or over designated ages from using certain Common Facilities during certain times and reasonable regulations and restrictions regarding vehicle parking.

(f) The right of the Association to expense reasonable maintenance of the Common Areas.

(g) The right of the Association prohibit access to close the Recreation Island and other Common Areas and Common Facilities for any reasonable reason, including, without limitation, repairs, weather, and safety or health considerations.

6.4 Special Purpose Common Areas. The following Common Areas, Common Facilities constructed thereon, and Wetland Areas are limited to particular purposes, and the Owners, Occupants, their guests and invitees. Use, if any, is restricted as follows:

(a) Emergency Access Lots. Although the Owners are permitted to utilize the portion of Lot 35, Block 1 that provides access from W. Riverside Dr. to the Greenbelt Easement, and Lot 18, Block 1 that provides boat ramp access from W. Riverside Dr. to Lake Laguna, those Common Areas are also designated for emergency Boise River or Laguna Lake access, as the case may be, by the Eagle Fire Department, Flood Control District No. 10, and other emergency services; and the further use by the Association and any public utility utilizing such Common Areas for utility easement purposes.

(b) Street Islands. The Street Islands are multi-purposed: all serving as vehicular circulation structures, landscaped amenities, and as street lights.

(c) Irrigation Water Storage. In addition to the Owner permitted uses, Lake

Laguna is also used for irrigation water storage and flood water storage. The Owner's use of Laguna Lake shall not interfere with any pressurized irrigation or floodwater structures and other Common Facilities. Tampering with the pond control mechanisms, structures, waterfalls, and any other Waterways is strictly prohibited.

(d) Wetland Areas. All of the Wetland Areas in the Development, either on Common Areas or on Lots, are subject to the restrictions and limitations of the USACE 404 Permit and the *Final Wetland Mitigation Plan Laguna Pointe Subdivision, Eagle, Idaho, dated March 22, 2006*. The location of Wetland Areas are designated on the Lot Plats. Pursuant to the USACE 404 Permit, the Mitigation Plan and the Clean Water Act, the Declarant, the Association, and Lot Owners are charged with the obligation to perpetually protect the existing, mitigated and enhanced Wetland Areas located within the Development. Filling and/or building within the Wetland Areas, or altering such areas, shall be prohibited unless an Owner seeking a variance from the USACE 404 Permit and/or Mitigation Plan obtains written permission from the United States Department of Army Corp of Engineers and all other applicable regulatory agencies. The Mitigation Plan contains certain maintenance and monitoring requirements, summaries of which are attached hereto as **Exhibit A**. The Association shall keep in its files a copy of the USACE 404 Permit and the Mitigation Plan, which copies shall be made available for inspection and further copying by Owners upon reasonable notice. Should the Declarant, Association or Owners have any questions concerning their rights and obligations with respect to the Wetland Areas, they should refer to the complete USACE 404 Permit and Mitigation Plan.

6.5 Damages. An Owner shall be liable for damages to the Common Areas, Common Facilities and public and private utilities sustained by reason of the negligence or intentional misconduct of said Owner, or of his family, licensees, invitees and lessees, both minor and adult. In the case of a joint ownership of a Residential Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against that Owners' Residential Lots and may be collected as provided in **Section 10.3**.

6.6 INDEMNITY. EACH OWNER BY ACQUIRING TITLE TO ANY RESIDENTIAL LOT IS DEEMED TO ACKNOWLEDGE THAT THE SUBDIVISION KNOWN AS LAGUNA POINTE IS A UNIQUE DEVELOPMENT ENCOMPASSING LAKE LAGUNA, OTHER WATERWAYS, AND THE RECREATIONAL ISLAND THAT PERMIT SWIMMING, FISHING, AND OTHER WATER RELATED ACTIVITIES SUBJECT TO THE TERMS OF THESE CC&R'S; AND THAT SUCH AMENITIES YIELD ADDITIONAL RISKS FOR THE OWNER AND THE OWNER'S GUESTS. EACH OWNER COVENANTS ON ITS OWN BEHALF, ON BEHALF OF ITS GUESTS AND ALL OCCUPANTS OF THE OWNER'S DWELLING, AND ON BEHALF OF ALL BUSINESS INVITEES TO THE OWNER'S RESIDENTIAL LOT (COLLECTIVELY THE "INDEMNITORS") TO INDEMNIFY, HOLD HARMLESS, AND TO DEFEND THE DECLARANT, AND ITS AGENTS, SUCCESSORS AND ASSIGNS, AND THE LAGUNA POINTE HOME OWNERS' ASSOCIATION FROM ANY AND ALL CLAIMS, ACTIONS, DAMAGES, COSTS AND ANY COMPENSATION WHATSOEVER RESULTING FROM THE INDEMNITORS' USE OF THE SUBJECT LOT, THE COMMON AREAS, LAKE LAGUNA, AND OTHER RECREATIONAL FACILITIES OF THE SUBDIVISION.

ARTICLE 7: WATER SYSTEMS

7.1 Domestic Water. Each Residential Lot shall have Access to the domestic water system to be owned and operated by United Water Company. The domestic water system will provide water for culinary and other ordinary domestic household uses. Cross-connections between the domestic water system and the pressure irrigation system are prohibited. Any Owner's use of water from the domestic water system shall constitute an agreement to pay the charges imposed by United Water Idaho.

7.2 Water Rights. The Declarant owns certain water rights (Water Rights 63-144A, and a portion of 63-144C) and has pending an application for a permit to appropriate 690 acre feet of shallow alluvial groundwater. These Water Rights shall be utilized by the Declarant, and subsequently the Association, to (i) store for aesthetic purposes water to naturally fill Lake Laguna and the other ponds within the Development; (ii) mitigate water evaporation from the ponds and (iii) provide irrigation water to the Pressurized Irrigation System that will irrigate all landscaped areas within the Development, including the Residential Lots. The Water Rights shall be transferred to the Association on or before the Transition Date, but cannot be diverted or transferred to any other real property. Nor shall the Association or Declarant change the use of the irrigation water from its irrigation purposes in accordance with the terms of this Article 7.

7.3 Irrigation System. The irrigation water is diverted from Lake Laguna and directed through the Pressurized Irrigation System via a central pump station that shall deliver pressurized irrigation water through main irrigation lines and ultimately to service lines to the Lots. All Lots and the Common Areas shall have access to the Pressurized Irrigation System to be constructed by Declarant and owned and operated by the Association. Water is supplied by the Gravity Irrigation Ditch, which delivers the surface water rights from the Gravity Irrigation Ditch into Lake Laguna. Owners of Residential Lots may be required to pay as part of their regular assessment, from time to time, the Development's share of any costs to maintain the Gravity Irrigation Ditch; personal property taxes in connection with the Pressurized Irrigation System; the cost of operating and maintaining the Pressurized Irrigation System, including the funding of a reserve fund, and monthly power bills regardless of actual use or nonuse of water from the Pressurized Irrigation System. Use of the Pressurized Irrigation System shall be subject to such rules and regulations of the Association, and the right to receive water therefrom is, in any event, subject to availability. The surface and ground water rights associated with the Real Property shall belong to the Declarant until transferred to the Association, and notwithstanding the foregoing, individual Residential Lots shall not be deemed to have water rights, beyond the right to utilize the Pressurized Irrigation System subject to the Association Rules. THE AVAILABILITY OF PRESSURIZED IRRIGATION WATER FOR ANY RESIDENTIAL LOT SHALL BE SUBJECT TO A WATERING SCHEDULE PREPARED BY THE ASSOCIATION THAT IS SUBJECT TO CHANGE. A SCHEDULE WILL REGULATE THE TIME AVAILABLE TO INDIVIDUAL RESIDENTIAL LOTS OR GROUPS OF RESIDENTIAL LOTS FOR WATERING. THE SCHEDULE AND THE ASSOCIATION RULES REGARDING THE CONNECTION TO, AND OPERATION OF THE LOT OWNER'S INDIVIDUAL SPRINKLER SYSTEMS IS SET FORTH IN *THE LAGUNA POINTE*

PRESSURE IRRIGATION SYSTEM PORTION OF THE MULTI FACILITY MANUAL, (as may be revised from time to time). Each Owner is prohibited from interfering with, adjusting or altering any portion of the Pressurized Irrigation System and shall be bound by the watering schedule prepared by the Association. Each Owner shall not operate their sprinkler system outside of their scheduled time without permission of the system operator retained by the Association. Although it is contemplated that the schedule will provide for irrigation every other day, such alternate date watering may not be the same as an even-odd day irrigation schedule. Each Owner is prohibited from making any cross connection or tie in between the Pressurized Irrigation System and the domestic water system. Each Owner is required to install an underground sprinkler system for the Owner's Lot and to connect it to the Pressurized Irrigation System stub-out service line provided to each Lot. The individual sprinkler systems shall be designed in accordance with the requirements and specifications set forth in the Pressure Irrigation System Portion of the Multi Facility Manual. The repair and maintenance of the individual Lot Owner's sprinkler system will be the responsibility of the Lot Owner. The Association's system operator shall be entitled to access the Residential Lots and Commercial Lots for the purpose of inspecting, servicing and maintaining any Pressurized Irrigation System components located on the Residential Lots.

WATER FROM THE PRESSURIZED IRRIGATION SYSTEM IS NOT DRINKABLE; RESIDENTIAL LOT OWNERS SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF THEIR RESIDENTIAL LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES. EACH LOT OWNER SHALL MARK THEIR INDIVIDUAL SPRINKLER SYSTEM AT ALL SURFACE FEATURES AS "NON-POTABLE WATER – FOR IRRIGATION ONLY."

ARTICLE 8: HOMEOWNERS ASSOCIATION

8.1 Formation. There shall be only one homeowners association for the Development. The Association has been organized by the Declarant as an Idaho nonprofit corporation. The Association will be incorporated and will adopt By-Laws for its governance. To the extent the Articles of Incorporation or By-Laws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

8.2 Membership. Each Owner and Commercial Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The ownership of a Residential Lot shall be the sole qualification for membership and shall automatically commence when a person becomes an Owner and shall automatically terminate when such ownership is conveyed or transferred. There shall be only one membership for each Lot. If there are multiple Owners of a Lot, or if a business entity owns any Lot, the Owners shall, by written instrument filed with the Association, designate the individual entitled to exercise the privileges of Membership.

8.3 Association Control Transfer. Until the Transition Date, the Declarant, or the Declarant's successor or assignee, shall have the exclusive control of the Association and the Owners, excluding the Declarant, shall not have the right to vote on any matters involving the

operation of the Association or the Association's exercise of its authority. On and after the Transition Date, the membership shall be franchised and each Member shall be entitled to one vote for each Residential Lot owned.

8.4 Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power through its Board, officers, or committees, as duly delegated, to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this 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 Areas and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

(a) Assessments. The power to determine the amount of and to levy Regular, Special, Private Street, and Limited Assessments on the Residential Lots and to enforce payment thereof in Accordance with the provisions of this Declaration.

(b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owners(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or Architectural Design Guidelines, and to enforce by mandatory injunction or otherwise, all provisions thereof.

(c) Delegation of Powers. The right and obligation to elect the Board, together with 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.

(d) 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 ADC, 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.

(e) Association Rules. The power to adopt, amend and repeal such Association Rules as the Association deems reasonable. Such Association Rules shall govern the use by Owners and Occupants or any other person of the Residential Lots, Common Areas (particularly use of Lake Laguna and the Recreational Island) Common Facilities and other property owned or controlled by the Association; provided, however, Association Rules shall not unreasonably discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. The Association Rules cover the Owner's obligations in connection with constructing, operating, and connecting their individual underground sprinkler systems to

the Pressurized Irrigation System; and include an irrigation schedule. Such rules and irrigation schedule are set forth in the Pressure Irrigation System Portion of the Multi Facility Manual. 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 and Occupant. 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 Declaration. In the event of any conflict between an Association Rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.

(f) Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any other Building 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.

(g) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, and rights-of-way, on, through, under or over the Common Areas, or the access, utility, and sewer easements of the Development, 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:

(i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.

(ii) Public sewers, storm drains, water drains and pipes, water systems, irrigation systems, electrical and gas lines or pipes.

(iii) Any similar public or quasi-public improvements or facilities.

8.5 Dedication. The Association shall have the right to dedicate or transfer all or any part of the Common Areas or Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association, subject however to the prior written approval of the City of Eagle. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-thirds of the members of the Association.

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

(a) Operation and Maintenance of Common Areas and Common Facilities.

Perform, or provide for the performance of, the operation, maintenance and management of the Common Areas and Common Facilities owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss; the maintenance, repair and replacement of any facilities installed by the Declarant, and the maintenance, management, repair or replacement of all other personal and real property owned or controlled by the Association. Notwithstanding the foregoing, nothing herein shall be deemed to relieve any third party of its obligations concerning facilities located in the Development, which obligations are imposed upon such third parties by contract, easement, statutory authority, or other rules and regulations pursuant to their governing authority.

(b) Maintenance of Landscaped Areas.

Periodically, and on a regular basis during the growing season, care and maintain any and all landscaped areas on the Common Areas or otherwise subject to the control of the Association, including, but not limited to watering, mowing and fertilizing of grassed areas as well as the watering, fertilizing and pruning of trees and shrubs and flowers as required. In connection with this maintenance, all Owners and Occupants should be aware that the Association may, from time to time, spray for insect and weed control and such insecticide and weed control chemicals are to varying degrees toxic to certain individuals or animals that come in contact with them. Also, the City of Eagle or other local municipal agencies may subject the Development to its mosquito abatement procedures.

(c) Maintenance of Greenbelt Pathway.

Maintain the pathway in the Greenbelt Easement, including sections that are improved by the Declarant, in the event the City of Eagle or any other public agency or authority does not adequately maintain the pathway. The portion of the Greenbelt pathway that lies within Wetland Areas may only be hand trimmed to the ground and only within the width of the pathway.

(d) Maintenance of Storm Water Drainage Facilities.

(i) Heavy Maintenance of Storm Water Drainage Facilities.

Heavy maintenance consists of periodically inspecting the Storm Water Drainage Facilities to insure they are functioning properly; cleaning out the piping and mucking out and rebuilding the drainage infiltration swales and similar drainage facilities, when the sediment levels are prohibiting drainage and the infiltration rate of the facilities becomes unacceptable resulting in periods of standing water greater than 48 hours or as otherwise deemed unacceptable by ACHD. ACHD has opted to perform this heavy maintenance pursuant to the Master Storm Water Easement referred to in **Section 4.8**, but only with respect to the roadside swales in the ACHD right-of-way. The Association shall perform the heavy maintenance with respect to the roadside swales in the Private Streets easement area in accordance with and pursuant to the Drainage Facility Manual. ACHD has both the authority and obligation to perform this maintenance work and to repair the Storm Water Drainage Facilities constructed by the Declarant on, over and under the Drainage Areas. In the event ACHD ever fails to do such "heavy maintenance" then the Association shall have the authority to repair and maintain the Storm Water Drainage Facilities. No structures, fences or other improvements shall be placed in a manner that would interfere with the heavy maintenance. In the event that it is necessary to replace any

improvements or landscaping such as fences, trees or sod, in connection with performing maintenance, such replacement shall be the responsibility of the Owner of any Residential Lot upon which such improvements or landscaping has been placed, or otherwise the responsibility of the Association in connection with repairing or replacing improvements and/or landscaping on Common Areas.

(ii) Light Maintenance of Storm Water Drainage Facilities. The Association shall perform all "light maintenance" of all the roadside swales pursuant to Drainage Facility Manual, the original of which shall be kept on file with the Association with copies made available to any interested party upon request. Said Drainage Facility Manual is incorporated herein by this reference. The light duty maintenance shall include but not be limited to the trimming, mowing and irrigation of vegetation including grassed areas, shrubs and trees within the drainage areas. The Association will be responsible for the removal of all weeds and trash within the drainage areas and will replenish decorative rock as required. Inspection to determine the need for light duty maintenance shall be performed by the Association on a monthly basis and following any significant rainstorm events. In connection with the Association's light maintenance obligations, the Association shall enforce the Lot Owners' requirement in **Section 3.15** to keep any drainage swales bordering a particular Residential Lot in good condition and repair. The failure of the Association to meet its light maintenance obligations will trigger ACHD's enforcement rights more particularly set forth in **Section 8.8** hereunder.

(e) Maintenance and Operation of Facilities. The Association's maintenance obligation shall include preventative maintenance, inspection, repair and replacement of components of the Pressurized Irrigation System, the Gravity Irrigation Ditch, the Floodplain Connection System (including the maintenance easement on Lot 40, Block 1 containing the lake overflow area); the ponds, sloughs and channels; waterfalls and related pumps; and any floodplain connection pipes. The Association's maintenance obligation for the pond overflow area is to replace or modify, if needed, the riprap only. The Owner of Lot 40, Block 1 shall maintain any sand or vegetation materials installed in the pond overflow area. The Multi Facility Manual sets forth the maintenance requirements for the Graham-Gilbert Ditch, Pressure Irrigation System, and Floodplain Connection System and Private Streets. In addition to said maintenance requirements, the Association shall also retain a systems operator to operate the Gravity Irrigation Ditch, the Pressure Irrigation System, and the Floodplain Connection System, which operational requirements and guidelines are also set forth in the Multi Facility Manual. As required in the Multi Facility Manual, a registered professional engineer with experience in river hydrology shall be retained by the Association to inspect the Floodplain Connection System (levee, riverbank, overflows, and spillways) once a year. The engineer shall provide a written report to the Association identifying any problems and, as needed, recommendations for repair.

(f) Maintenance of Water Ways. Periodically, and on a regular basis during the warmer months, maintain the water quality and clarity of Lake Laguna and the other amenity ponds. Such maintenance may include, but is not limited to, algae control, debris removal, fish habitat maintenance, and Lakebank weed abatement; provided however that any such

maintenance is undertaken in a manner that both complies with and maintains compliance with the USACE 404 Permit issued in connection with the Development.

(g) IDT Right-of-Way. The portion of the front entry berms that encroach onto the Idaho Department of Transportation right-of-way on South Eagle Road, as well as the meandering sidewalk installed thereon, shall be maintained by the Association.

(h) Taxes and Assessments. Pay all real and personal property taxes and Assessments levied against the Common Area and Common Facilities 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 non-profit corporation.

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

(j) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Development, whether the same be located within or without the boundaries of the Real Property.

(k) Rule Making. Make, establish, promulgate, amend and repeal Association Rules.

(l) Architectural Design Committee. Appoint and remove Members of the Architectural Design Committee, all subject to the provisions of this Declaration.

(m) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

8.7 Improvements. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Areas and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners use of Common Areas under this Declaration; and provided further any modifications and/or improvements to the Common Areas shall be in accordance with applicable City of Eagle ordinances and approvals.

8.8 Enforcement of Common and Drainage Area Maintenance. Notwithstanding that the Association is obligated to maintain the Common Areas, Common Facilities, and provide maintenance of the Storm Water Drainage Facilities as more particularly set forth in **Section 8.6(d)**, it is hereby provided that the City of Eagle and/or ACHD (with respect to the drainage areas), and/or the other owners of the Graham-Gilbert Ditch (the “Ditch Users Association”) (collectively the “Agencies”) may elect, but have no responsibility, to maintain any part of the Common Areas, Common Facilities or Storm Water Drainage Facilities should the Association, Lot Owners, or the Declarant fail to maintain the same. In the event an Agency determines, in its sole discretion, that the Association is not adequately maintaining the Common Areas, Common Facilities or Storm Water Drainage Facilities in a reasonable time frame, the Agency shall, before undertaking maintenance of said areas, provide written notice of its and/or their intention to begin maintenance of the Common Areas, Common Facilities or Storm Water Drainage Facilities within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by the Agency. In the event that the Association shall fail to commence within said time period, and conclude maintenance of the defined Common Areas, Common Facilities or Storm Water Drainage Facilities, the Agency is hereby granted an irrevocable license to enter upon any portion of the Common Areas, Common Facilities or Storm Water Drainage Facilities to perform inspection and maintenance. The thirty (30) day cure period herein shall be deemed to have been modified to a shorter cure period if the same is set forth in any writing between the Declarant and a specific agency, including that certain Temporary License Agreement dated March 7, 2006, between the Declarant and ACHD. Should the Agency engage in maintenance of the defined Common Areas, Common Facilities or Storm Water Drainage Facilities after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Agency shall be entitled to and empowered to file a ratable lien against all Lots within the Real Property to secure payment of any and all Assessments levied against any and all Lots in the Real Property pursuant to this Declaration, together with interest at the rate which accrues on judgments and all costs of collection which may be paid or incurred by the Agency in connection therewith, including reasonable attorney fees. The Agency may exercise their rights under Idaho Code by assessing the Lot Owners and certifying those Assessments in the same manner as real property tax. This section shall not be amended without prior written approval from the Agencies. The Association shall not be dissolved or relieved of its responsibility to maintain the Common Areas and Common Facilities without the prior written approval from the Agencies. The Association and all Owners, by accepting title to a Lot, agree that all Owners within the Real Property are benefited property Owners for purposes of this section.

ARTICLE 9: RIGHTS RESERVED BY DECLARANT

9.1 Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

(a) Itself, its successors contractors and their subcontractors (including any district, company, City of Eagle, association or other entity providing a utility or other similar services), easements and rights-of-way on, over, under and across the utility easements over and under all Residential Lots and Common Area as provided for herein or on the Plat for

installation, maintenance and repair of all lines, wires, pipes, pumps, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(b) Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Real Property, or any portion thereof, until the same have been conveyed to the Association.

(c) Itself, its agents and successors, a nonexclusive easement on, over, under and across any irrigation pipeline easement or any other utility easements as provided for herein or created on the Plat for the construction and maintenance of the Pressurized Irrigation System.

ARTICLE 10: ASSESSMENTS:

10.1 Agreement to Pay Assessments.

Each Owner, by acceptance of the deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay when due all Regular, Special, Private Streets and Limited Assessments made by the Association or the Declarant.

(a) Regular Assessments: An annual Regular Assessment shall be made by the Association in such amounts 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 Areas and Common Facilities and all easement areas, if any (excluding however the Private Gates and Private Streets), 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, real and personal property 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, any and all utility bills, including Idaho Power and United Water Company, the Ditch Users Association other water suppliers, trash collection, sewer charges, repair and maintenance, legal, accounting, and other professional fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s). The initial annual Regular Assessment shall be the amount of \$3,400 per Residential and Commercial Lot, until changed by the Association.

(b) Private Street Assessments: The Association shall have the power and duty to add to the regular assessment assessed against those Residential Lots with driveways accessed from the Private Streets (the “**Gated Lots**”) an annual Private Street assessment. This assessment shall be based upon a schedule for the future repair and maintenance of the Private Gates and Private Streets. The maintenance and repair obligation with respect to the Private Streets shall include maintenance requirements for the street bed, adjacent sidewalks, landscape medium strip with landscaping, and roadside swales. An estimate of the cash requirement for such repair and maintenance shall include two components: an annual maintenance expense

component and an amount for the creation of a reserve to cover the future scheduled repair. In computing such estimates, the Association shall consider, subject to the Association's modifications, the time schedule and probable cost estimates set forth in the Private Roads section of the Multi Facility Manual. The initial annual Private Street assessment shall be the amount of Nine Hundred Thirty Nine Dollars (\$939.00), and the first year of the Private Street assessments shall be 2007. The Association shall have the authority to adjust the Private Street assessments from year to year. This Private Street assessment shall be assessed equally against the Gated Lots, and no part of this assessment shall be the obligation of other Lot Owners. Accordingly, the Association shall maintain a separate accounting for the Private Street assessment component of the Regular Assessment and for all expenditures made in connection with the repair and maintenance obligations of this paragraph.

(c) Limited Assessments: The Association shall have the power to levy a Limited Assessment against Owners and Residential Lots for maintenance and repair of any Residential Lot or any improvement on a Residential Lot, if such maintenance and repair is necessary to preserve the quality of the Development; and/or to correct a violation of the Declaration or any amendment thereto or the Architectural Design Guidelines. No such Limited Assessment shall be levied until (a) the Board or ADC has given written notice to the Owner of the maintenance or violation cure required; (b) the Owner has refused to perform the required maintenance or correct the violation within a reasonable time; and (c) the Association has incurred expenses for maintenance or correcting the violation. Thereupon, the Board shall have the power to levy a Limited Assessment against the Owner to pay for the costs of such maintenance and repair or correction of violation and any other costs or expenses, including attorney fees, arising out of or incident to such maintenance and repair of the Association.

(d) Special Assessments: In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

(i) To defray, in whole or in part, the cost of any construction or reconstruction of Common Areas or Common Facilities, unexpected repair or replacement of a Common Area or Common 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 Declaration.

(ii) 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.

(iii) To cover any costs, fees, or damages incurred by the Association, in connection with its obligations and enforcement exposure set forth in the Deed of Wetland Conservation Easement.

(e) Irrigation Water: It is contemplated that the Ditch Users Association shall provide irrigation water to the Real Property. In addition to any Assessments made by the Ditch Users Association for irrigation water, the Association may be required to pay additional fees to the Ditch Users Association for the operation, maintenance and repair of the Ditch Users Association facilities. Any such fees charged to the Association shall be included as part of the Association's overall costs to be paid by the Regular Assessment to each Lot Owner.

10.2 Purpose of Assessments. The Assessments levied by the Association or the Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and to carry out the objectives and responsibilities of the Association, and for the improvements and maintenance of any Common Area, Common Facilities and all improvements constructed thereon, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and Common Facilities, and including without being limited thereto, the payment of taxes and insurance on all or any part of the Real Property.

10.3 Collection and Enforcement. The Regular, Private Streets, Special and Limited Assessments, together with interest thereon and costs of collection and reasonable attorney fees, shall be a charge on the applicable Lots, pursuant to this **Article 10**, and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorney fees shall also be the personal obligation of the Owner at the time when the Assessment fell due. The right to collect and enforce payment of the Assessments is vested in the Association.

If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written notice of setting forth the type of Assessment, the amount of the Assessment, the amount remaining unpaid, the name of the record Owner of the Lot, and a legal description of the Lot. Such notice shall be signed by the President and Secretary of the Association, whose signatures shall be acknowledged by a notary public, and such notice shall be recorded in the office of the Ada County Recorder. Thereupon, and upon the continuing failure of the Owner to pay an Assessment, the lien for Assessment herein created may be foreclosed upon as provided by law for foreclosure of a mortgage on real property and other real property liens. Notwithstanding anything to the contrary contained in the Declaration and any amendment thereof, no action may be brought to foreclose the lien of any Assessment until the expiration of thirty (30) days after written notice of default has been deposited in the United States mail, addressed to the Owner of the Lot at the street address of the Lot or the last known address of the Owner, or otherwise if shown on the books and records of the Association. Such notice shall specify the amount and due date of the unpaid Assessments and the legal description of the Lot, and may further include any reasonable attorneys' fees incurred to date in collection attempts in the minimum amount of \$250.00 for preparation of the claim notice.

10.4 Set up and Initial Regular Assessment. Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Declarant, or as to the remaining Lots owned by Declarant, when such Lots are no longer offered for sale to the general public. At each such closing, the Owner thereof shall pay the sum of \$450.00 and also such portion of the

existing Regular Assessment, plus the Private Street Assessment if applicable, pro rated for the remainder of the calendar year. These initial Assessments shall be paid to the Declarant to reimburse the Declarant the set up cost and the maintenance of the Common Areas and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment, plus the Private Street Assessment if applicable, will be paid to the Declarant at each Closing that occurs prior to the Transition Date and only paid to the Association if the Association has conducted its first annual meeting, elected a board of directors and assumed the obligations and expenses of the Association. Until the Association has conducted its first meeting, the Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Association. The Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this Declaration. The Association shall, upon its first meeting, initiate Assessments in accordance with this **Article 10**, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant. After the first sale of each Lot, upon any subsequent sale a transfer fee in the amount of \$450.00, or such other sum as may be established from time to time by the Association, shall be paid at the closing of the sale of the Lot by the Owner selling the Lot.

10.5 Assessment Due Date. The due date for Regular Assessment shall be March 1, unless some other due date(s) is established by the Board, and specified in the Regular Assessment billings. Each Assessment shall be delinquent if not paid within fifteen days after the due date set forth in any notice of Assessment.

10.6 Interest and Penalties. Any Regular, Private Street, Special, or Limited Assessments levied on Residential 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 15%. Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charged, the Board may, in accordance with Association Rules 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.

10.7 Billing for Annual Assessment. The Regular Assessment, plus the Private Street Assessment when applicable, may be billed on a monthly basis, 1/12th per month, on a quarterly basis, 1/4th per quarter, or annually, in advance.

10.8 Notice and Quorum for Special Assessment. Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Association members not less than twenty (20) days in advance of such meeting. Such notice shall specifically indicate that a Special Assessment is to be considered at such meeting. A quorum of not less than a one-third of the members entitled to vote shall be required at such meeting whether in person or by proxy.

10.9 Uniform Rate of Assessment. Regular and Special Assessments must be fixed in an equal amount for each Residential and Commercial Lot. All Regular and Special Assessments shall equally apply to all Residential and Commercial Lots, and no special rate or reduction in Assessment rate shall be allowed because any Lot is unimproved or does not have a Building thereon.

10.10 Subordination to the Lien of Mortgage. The lien of Assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Residential Lot shall not affect the Assessment lien, but the sale or transfer of any Residential Lot pursuant to a Mortgage foreclosure, if the Mortgage is held by any person other than a prior Owner of the Residential Lot, shall extinguish the lien of such Assessments as to payments which have become due prior to such sale or transfer.

ARTICLE 11: ARCHITECTURAL DESIGN COMMITTEE.

11.1 Members of the Committee. An Architectural Design Committee of the Board shall be formed, comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ADC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ADC may be removed at any time, with or without cause.

11.2 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ADC. Thereafter, all members of the ADC shall be appointed or removed by the Board. The ADC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ADC. In the absence of such designation, the vote of any two (2) members of the ADC shall constitute an act of the ADC.

11.3 Adoption of Architectural Design Guidelines. Initially the Declarant and ultimately the ADC shall have the power to promulgate Architectural Design Guidelines relating to the planning, construction, alteration and modification of Buildings and other improvements and appurtenant landscaping within the Development deemed necessary or desirable by the Declarant or the ADC, as the case may be, to carry out the purposes of this Declaration. All Architectural Design Guidelines shall be consistent with the provisions of this Declaration. The Architectural Design Guidelines may contain provisions, not limited to design standards, exterior finishes and colors, fences, landscaping, exterior lighting, mailboxes and the like. They may also include policies, procedures and rules, which in the discretion of the ADC are reasonable to maintain a quality subdivision and to protect property values. The Residential Lot Owner shall review and be familiar with the current Architectural Design Guidelines, copies of which are available from the Declarant, the Declarant's marketing representative and at various title and escrow companies operating in the vicinity of the City of Eagle.

11.4 Certification by Secretary. The ADC shall, upon written request, certify that improvements upon any Residential Lot comply with this Declaration and have been duly approved by the ADC, or in the event such Building or other improvements do not so comply,

specifying the extent of noncompliance.

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

If a variance is granted as provided herein, no violation of this Declaration, Architectural Design Guidelines or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Design Guidelines for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ADC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing thereon. The granting of a variance by the ADC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with applicable ordinances of the City of Eagle, Idaho.

11.6 Plan Review Application. No Dwelling, Building on a Commercial Lot, fence, wall or other structure, initial landscaping or subsequent substantial landscaping, or screening planting shall be undertaken, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration to the exterior of any Dwelling or other Building, be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the ADC, in accordance with the Architectural Design Guidelines, this Declaration, and any reasonable application process adopted by the ADC. To request ADC approval for the construction, alteration, or modification of any improvements on a Lot, the Owner shall submit, prior to any construction, a written application in a form required by the ADC which must be signed by the Owner and contain all information requested and be accompanied by all other material required to be submitted as hereafter provided, or by the ADC.

All applications must contain, or have submitted therewith, at a minimum, the following material (collectively called "Plans and Specifications") prepared in accordance with acceptable architectural standards and submitted with the application form:

(a) Site Plan. A site plan showing the location of the Building(s) and all other structures and improvements including fences and walls on the Lot, grading and lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements, as more particularly set forth and required in the Architectural Design Guidelines.

(b) Architectural Drawings. A plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall include, by sample if required by the ADC, all exterior colors,

materials and finishes, including roof shingles, proposed to be used; and other details required by the Architectural Design Guidelines.

(c) Landscape Plan. A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways; and other details required by the Architectural Design Guidelines.

11.7 Compliance Deposit. At the time the Owner submits its plan review application for construction of the new Dwelling on a Residential Lot or for the substantial replacement of a Dwelling, the Owner shall deposit with the ADC, as a deposit (hereafter "Compliance Deposit"), in the amount of Ten Thousand Dollars (\$10,000.00), or such other amount as shall be determined by the ADC. The Compliance Deposit shall be held by the ADC as security for the Owners' performance of all construction obligations contained in its lot purchase agreement or otherwise required by the plans and specifications approved by the ADC, including, but not limited to the landscaping requirements. Upon the Owner or the Owner's builder's full compliance with the construction and landscaping of all improvements as evidenced by an ADC compliant site inspection, the Compliance Deposit shall be returned to the Owner (without interest). If the Owner or builder fails to (i) comply with any of its construction obligations, (ii) substantially construct the improvements in accordance with the approved plans and specifications (including landscape), or (iii) fails to timely complete such improvements, the ADC shall have the right to deduct from such Compliance Deposit the amount of any costs which may be paid or incurred by the Association or a third party to complete such improvements, and to bring the Lot improvements into compliance.

11.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ADC shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Development as a high quality residential development. The ADC may, in its discretion, require the Owner to furnish additional materials beyond those required herein. Unless extended by mutual consent of the Owner and the ADC, the ADC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted application. The decision of the ADC can be in the form of an approval, a conditional approval or denial. The decision of the ADC shall be in writing, signed by a member of the ADC, dated, and a copy thereof mailed or delivered to the Owner at the address shown on the application or remitted by facsimile to the fax number, if any, shown on the application, or by email to the email address, if any, shown on the application. A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

11.9 Inspection and Complaints. The ADC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining

whether the Owner is proceeding in accordance with the approved plans and specifications or is deviating therefrom, or is violating this Declaration or the Architectural Design Guidelines.

Should the ADC determine that the Owner or the Owner's builder is deviating from the approved plans and specifications or is violating the provisions of this Declaration or the provisions of the Architectural Design Guidelines, the ADC shall promptly issue a notice in writing to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

(a) The Owner shall immediately cease the activity which constitutes a deviation or violation: and/or

(b) The Owner shall adhere to the correction measures set forth in the written Notice.

Should the ADC determine there has any reported deviation or violation has been cured, it shall promptly issue a notice of such determination to the Owner.

11.10 Interpretation and Enforcement. The ADC, subject to Board approval, shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lots improvements. This right of enforcement can include the ADC hiring any or all of such work to be done and levying a Limited Assessment against the Lot on which said work takes place for the full amount of the cost of said work plus any other costs ADC may incur in such enforcement. All costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation, or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Lot owned by said Owner.

11.11 Judicial Enforcement. The ADC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Development, the continuation of which violates the provisions of this Declaration, the Architectural Design Guidelines or the approved plans and specifications of any improvements to a Residential Lot. The Board shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the Board shall have the sole discretion to commence such proceedings. The authority of the Board as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

ARTICLE 12: GENERAL PROVISION.

12.1 Government Rules and Ordinances. In the event any of these covenants, conditions and restrictions are less restrictive than any government rules, including City of Eagle

ordinances, then the more restrictive government rule, regulation or ordinances shall apply. These covenants, conditions and restrictions are subject to all rules, regulations, laws and ordinances of all applicable government bodies. In the event a governmental rule, regulation, law or ordinance would render a part of these covenants, conditions and restrictions unlawful, then in such event that portion shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.

12.2 Enforcement. The Association, the Declarant, any Owner, or any First Mortgagee shall have the right to enforce, by proceedings of law or in equity, the terms and provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

12.3 Severability. Invalidation of any one of these covenants or restrictions shall in no way affect other provisions which shall remain in full force or effect.

12.4 Term. This Declaration shall run with the land and shall inure to the benefit of the Association, the Owner of any Lot, and any First Mortgagee as provided herein, and their respective legal representatives, heirs, successors, grantees, and assigns, for an initial term of forty (40) years from the date of this Declaration. After the initial term, this Declaration shall automatically renew for successive ten (10) year periods unless two-thirds (2/3) of the votes of the membership vote, in a duly noticed membership meeting, to terminate the Declaration.

12.5 Amendments. Except as otherwise provided herein, and specifically accepting any amendments, modifications, or changes requiring the City of Eagle approval, any of the covenants and restrictions of this Declaration, except the easements herein granted for utilities and water distribution facilities, may be amended by an instrument signed by members entitled to cast not less than two-thirds (66 and 2/3%) of the votes of the membership; provided however any proposed amendment to the uses of or restrictions to the Commercial Lots shall additionally require the vote of the current Commercial Lot Owner of the particular Commercial Lot that would be affected by the amendment. Any amendment must be recorded.

12.6 Conveyance of Common Area. The Common Areas, or easements thereon, Common Facilities and Water Rights may be conveyed to the Association by Declarant, free and clear of all encumbrances, prior to the First Mortgage in that phase being insured by HUD. Until conveyed, Declarant shall be solely responsible for the maintenance and operation of Common Area and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided for herein.

12.7 FHA/VA Approval. Prior to the Transition Date, the following actions may require the prior approval of the Federal Housing Administration or the Veterans Administration; annexation of additional real property to the Project, mergers and consolidations, mortgaging or dedication of Common Areas, dissolution or amendment of the Articles of Incorporation or Bylaws of the Association, and amendment of this Declaration.

12.8 Contracts or Agreements. The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering building Residential Lots in the Project with Dwellings thereon.

IN WITNESS WHEREOF, the Declarant has set his hand and seal as of the date and year first above written.

COAST 2 COAST, L.L.C.

By

Name:

C. THORNTON

Its:

Managing Member

EXHIBIT A
MAINTENANCE AND MONITORING REQUIREMENTS OF THE MITIGATION PLAN

5.0 MAINTENANCE

Although the specific plant supplier has not yet been identified for the site all efforts will be made to inspect vegetation for wilt, disease and infestation prior to installation on site. Any plant species that is identified as having "survival concerns" will be returned to the supplier immediately upon identification.

Plant maintenance of the enhanced and created areas will be conducted over a three-year period. The first year's maintenance will include periodic watering (irrigation) and control of undesirable species. Maintenance during the subsequent years will be focused on weeding (invasive plant removal). Also, if crowding of newly planted vegetation by grass species is determined to affect plant survival during the monitoring events, the maintenance company will return to trim grasses from around the drip lines of the planted vegetation, inspect plants for growth, survival, and disease. Speck replacement actions will be coordinated with the USACE and considered in relation to natural recruitment of native plant species that may occur on the site.

Reed canarygrass (RCG) (*Phalaris arundinacea*) will be the primary invasive species that most weed control efforts will be focused on, along with other various broad-leafed species. Only desirable native volunteer species in addition to those planned for the area will be encouraged to grow. Some of the other maintenance responsibilities such as trash removal and vandalism repair will be performed on an as-needed basis. Efforts to control invasive species (e.g. RCG) will consist of a combination of the following activities:

- Grading activities will remove approximately 18 to 30 inches of soil. There will be an attempt to remove the RCG root mass and rhizomes from the mitigation areas;
- Planting of more desirable species facilitating species richness and maintaining a complex herbaceous canopy to prevent RCG growth through reduced sunlight;
- As time progresses invading RCG will be dug up, chemically sprayed with an aquatic safe herbicide and/or spot flamed with a propane torch;
- Inspections of the mitigation areas will be conducted on a quarterly basis for the first year following final planting and twice a year thereafter.

Irrigation of the wetland creation area will be required for the first two years after installation of native plants. A temporary irrigation system may be required or a regular watering schedule established if on-site water is not available or a watering truck cannot access the mitigation areas as needed. Watering during the plant establishment period is crucial for plant survival. During the dry months, usually June through September, it may be necessary to add up to three gallons of water per plant per week.

6.0 MONITORING PLAN

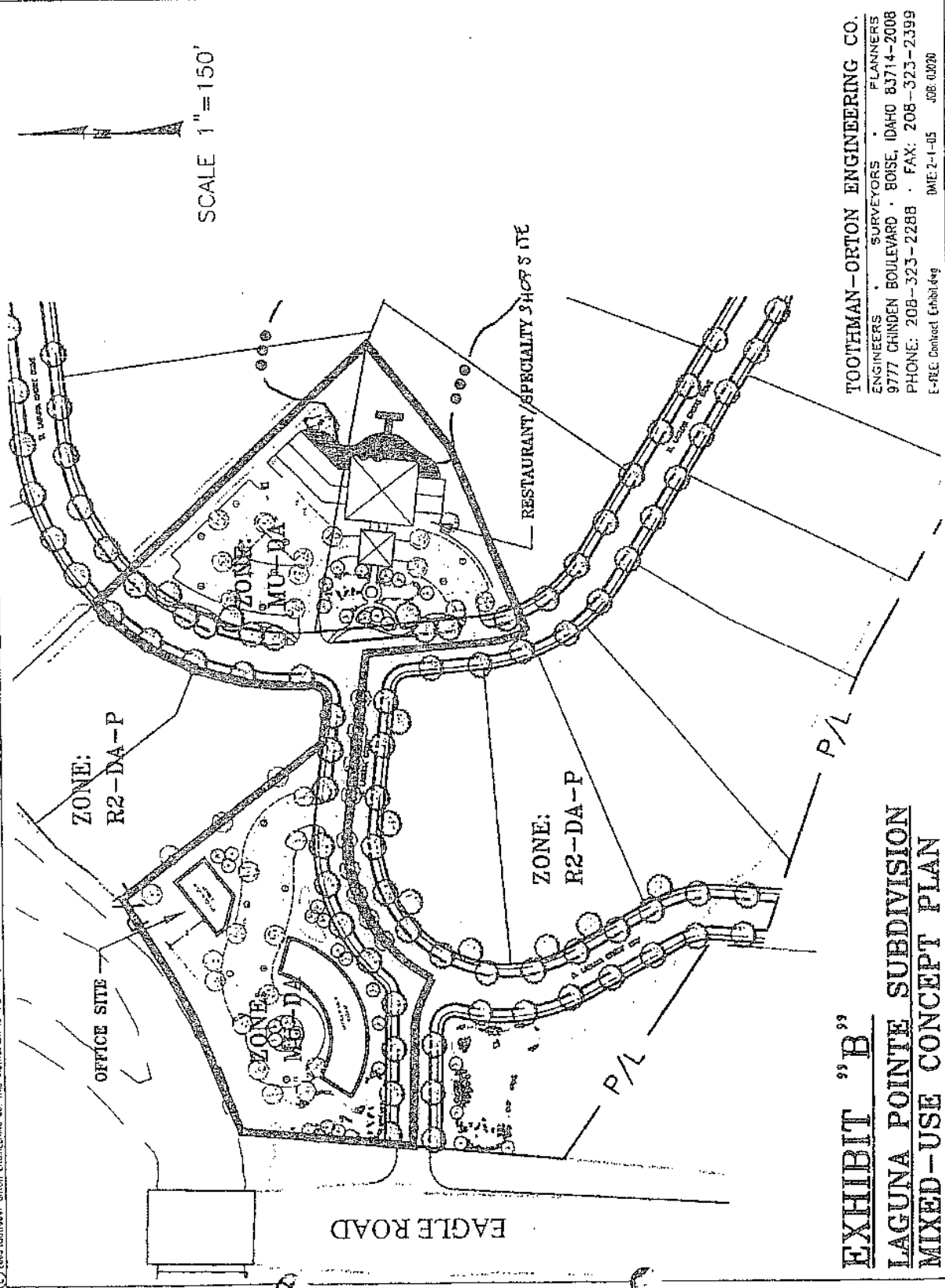
A specific set of performance standards corresponding to the stated mitigation goals has been established. The goals listed in "Goals and Objectives" section are implemented below. These standards will be used to judge the results of this project. The success of this mitigation is dependent upon the components specified in this plan.

Monitoring will occur every six months for a minimum of three years or until wetland stabilization has been obtained and the USACE has concurred with stabilization. The first observation event will occur following completion of the installation of the vegetative species. This event will document that the created and enhanced wetland appear to meet the construction plans. Items to be noted will include: plants were installed as specified and that the wetland appears to be receiving hydrology as planned. At this time, the wetland specialist will aid in the production of the "as-built drawings." The monitoring report prepared subsequent to this first observation will include the as-built drawing.

Whether the second monitoring event will occur in the spring or in the fall depends on the time of year during which the planting of the created wetland has occurred. The second and third year monitoring events will occur at approximately six-month intervals following the second monitoring event. The primary focus of the annual spring monitoring event will be on hydrologic functions with the fall monitoring event focusing on vegetative diversity, cover and mortality. A brief monitoring report will be prepared subsequent to each monitoring visit and will be submitted to the appropriate agencies. Following the third year monitoring, USACOE staff will be notified and a site visit scheduled for concurrence on the success of the mitigation area.

EXHIBIT B
CONCEPT PLAN
(ATTACHED)

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SCALE 1" = 150'

EXHIBIT "B"

**LAGUNA POINTE SUBDIVISION
MIXED-USE CONCEPT PLAN**

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