

**THIRD AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**FOR  
THE VILLAGE GREEN AT THE VALLEY CLUB SUBDIVISION**

THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE VILLAGE GREEN AT THE VALLEY CLUB SUBDIVISION ("Declaration") is made and adopted as of this 12<sup>th</sup> day of October, 2012, with reference to the following facts and objectives:

A. That certain Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Village Green at the Valley Club Subdivision, dated and recorded July 18, 2007, in the official records of Blaine County, Idaho, under Instrument No. 549696, as amended by that certain First Amendment to Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Village at the Valley Club Subdivision, dated August 28, 2007, recorded August 29, 2007, in the official records of Blaine County, Idaho, under Instrument No. 551063; the First Amendment to Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Village at the Valley Club Subdivision [*sic*], dated December 12, 2007, recorded March 13, 2008, in the official records of Blaine County, Idaho, under Instrument No. 556401; the First Amendment to Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Village at the Valley Club Subdivision [*sic*], dated April 11, 2008, recorded April 14, 2008, in the official records of Blaine County, Idaho, under Instrument No. 557307; and the Second Amendment to Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Village Green at the Valley Club Subdivision, dated April 6, 2012, recorded April 12, 2012, in the records of Blaine County, Idaho, under Instrument No. 596522 (collectively, the "Original Declaration").

B. The Original Declaration was recorded by the Declarant (as defined below) against certain real property located in Blaine County, Idaho, and known as Block 1 of The Valley Club West Nine PUD ("Block 1") according to the official plat thereof recorded on July 22, 2005 as Instrument No. 523431, records of Blaine County, Idaho (the "West Nine PUD Plat") and property former known as Block 2 of the West Nine PUD Plat, which is currently the property shown on the condominium plat of The Valley Club Community Condominiums, recorded July 18, 2007, as Instrument No. 549697 and amended by The Valley Club Community Condominiums Amended, recorded April 28, 2009, as Instrument No. 566975 (collectively, the "Condominium Plat"), a copy of which is attached hereto as Exhibit D.

C. As described in this Declaration, the Block 1 property subject to and depicted on the West Nine PUD ("Streamside Project") is intended to be developed as a quality residential development for enjoyment and convenience of persons living therein. The Streamside Project consists of (i) forty-three (43) residential lots, and is intended to be developed in two (2) phases. The first phase is comprised of the seventeen (17) lots platted as shown on the plat of The Village Green at the Valley Club: Phase One Amended,, recorded on August 20, 2007 as

Instrument No. 550703 ("Phase 1 Plat"). The second phase, consisting of the remaining twenty-six (26) lots is shown on the plat of the The Village Green at the Valley Club: Phase Two, recorded on August 20, 2007 as Instrument No. 550708 ("Phase 2 Plat"). As further described in this Declaration, Block 2 of the West Nine PUD (the "Condominium Project") was developed as a quality residential condominium project comprised of twelve (12) condominium Units and associated common area as depicted on Condominium Plat. Prior to the date of this Declaration, a lot line adjustment was conducted between the Association and The Valley Club, Inc. pursuant to which certain portions of the Lot Common Area (as defined herein), as previously described and included in the Original Declaration, were conveyed to The Valley Club, Inc. and were released from the Original Declaration, and such property with is described in Exhibit A-1, is not included in or encumbered by this Declaration and shall not be included as part of the Lot Common Area.

D. This Declaration is being recorded by the Association (as defined herein), on behalf of the Owners, to amend and restate the Original Declaration, and this Declaration has been approved by the requisite number of Owners as required by the terms of the Original Declaration. The Original Declaration is hereby amended and restated as provided herein, good cause being determined by the Owners therefore. This Declaration applies to all of the Property described herein, including any Lots and Units conveyed to persons after the date of the Original Declaration and before the recording of this Declaration and replaces and supersedes in its entirety the Original Declaration which, upon recording of this Declaration, shall be of no further force or effect.

## **DECLARATION**

The Property described herein, together with all real property, lots, buildings, improvements and common area now or hereafter situated therein, shall all be held, sold, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, which shall run with the title to said real property subject to this Declaration, and each portion thereof, and be binding upon, and benefit all parties now or hereafter having or acquiring any right, title or interest therein, or to any part thereof, their heirs, devisees, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Property, subject to the terms and conditions set forth in this Declaration.

## **ARTICLE 1 - DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

### **1.1 Architectural Design Review Committee**

The Architectural Design Review Committee of the Association under ARTICLE 9 of this Declaration ("ADRC").

## **1.2 Articles of Incorporation or Articles**

The Articles of Incorporation of the Association filed with the Secretary of State of the State of Idaho, and as they may be amended from time to time.

## **1.3 Association**

The Village Green At The Valley Club Homeowners Association, Inc., an Idaho nonprofit corporation, its successors or assigns.

## **1.4 Board of Directors or Board**

The body responsible for administration of the Association, selected as provided in the Articles, Bylaws and generally serving the same role as the board of directors under Idaho corporate law.

## **1.5 Bylaws**

The Bylaws of the Association, as they may be amended from time to time.

## **1.6 Building**

Any building constructed on the Property, subject to this Declaration.

## **1.7 Common Infrastructure Improvements**

The Domestic Water System and the Wastewater Disposal System.

## **1.8 Community-Wide Standard**

The standard of conduct, maintenance, or other activity generally prevailing throughout the Streamside Project and the Condominium property, which shall include, without limitation, prompt and continuous maintenance, repair, replacement and restoration of the property at issue, in a good, clean, attractive, safe, sound and sanitary condition and in full compliance with all applicable laws and the provisions of this Declaration and related documents. Such standard may be set forth in this Declaration or may be more specifically determined by the Board of Directors.

## **1.9 Condominium**

An estate in real property as defined in Idaho Code § 55-1503 consisting of an undivided interest as a tenant-in-common in the Condominium Common Area as shown on the Condominium Plat, together with a fee interest in a Unit shown and described on the Condominium Plat.

#### **1.10 Condominium Building**

The structure consisting of Units and Condominium Common Area, as depicted on the Condominium Plat.

#### **1.11 Condominium Common Area**

The entire Condominium property described and depicted on the Condominium Plat, including, without limitation, all roads, excepting all Units.

#### **1.12 Condominium Common Expenses**

All expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, and insurance covering Condominium Common Areas, as well as the cost of preparing a separate accounting of Condominium Common Expenses.

#### **1.13 Condominium Director**

The Directors appointed by the Unit Owners as provided herein and in the Bylaws.

#### **1.14 Condominium Issues**

Any and all rules and regulations for the operation and use of, as well as any other matter generally concerning the Condominium or any portion thereof, including, without limitation, Condominium Common Areas.

#### **1.15 Condominium Limited Common Area**

Those parts of the Condominium Common Areas that are either limited to or reserved in this Declaration, so designated on the Condominium Plat, or designated in a recorded supplement or amendment to any of the foregoing, for the exclusive use of a Unit or limited to and reserved for the common use of more than one (1) but fewer than all Units, including the parking spaces allocated to each Unit as set forth in Exhibit "F" attached hereto and incorporated herein, outside staircases, bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, as well as any decks, roof decks, patios, appurtenant landscaping areas and associated improvements, and all exterior doors and windows or other fixtures designed to serve a single Unit or more than one (1) but fewer than all Units but which are located outside the appurtenant boundaries of the Unit(s).

#### **1.16 Condominium Project**

The Block 2 property subject to and depicted on the West Nine PUD, as further defined on the Condominium Plat.

### **1.17 Condominium Property Act**

Chapter 15 of Title 55, Idaho Code, as amended.

### **1.18 Declarant**

At the time of the recording of this Declaration, the successor in interest to the original Declarant is Streamside Associates, LLC, an Idaho limited liability company.

### **1.19 Design Guidelines**

The design and construction guidelines and application and review procedures applicable to the Property promulgated and administered pursuant to ARTICLE 9.

### **1.20 Domestic Water System.**

The Domestic Water System shall include without limitation all wells, pumps, lines, tanks, valves, fixtures, improvements and facilities used to provide domestic potable water to each Lot and Unit. The Domestic Water System is for in-house use only and not for outside irrigation purposes. The Domestic Water System has been provided by connection to and use of the existing water system owned and operated by The Valley Club Owners Association, Inc. ("VCOA") under an agreement with the Association. The domestic water rights for the well shall be conveyed to the Association. The Domestic Water System to the extent that it is owned by the Association shall be operated, maintained, repaired and replaced by the Association as provided in this Declaration.

### **1.21 Future Development Lots.**

Each of the future lots to be located within Streamside Project, and all related improvements.

### **1.22 General Assessment**

Assessments levied on Lots and Units subject to assessment under ARTICLE 8.

### **1.23 General Common Expenses**

The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation, except for Lot Common Expenses and Condominium Common Expenses.,

### **1.24 Golf Course**

That certain real property adjacent to the Property owned by The Valley Club, Inc., its successors or assigns, and operated as a golf course and related and supporting facilities and improvements, and club house.

### **1.25 Irrigation Water System.**

The Irrigation Water System shall include without limitation all pumps, lines, tanks, improvements and facilities used to provide seasonal irrigation water to each Lot and the Lot Common Area and the Condominium Common Area. **THE IRRIGATION WATER SYSTEM IS NON-POTABLE WATER FOR IRRIGATION USE ONLY.** The Irrigation Water System has been constructed on the Property, with the exception of some portions of the system related to the Condominium Common Area, which is in the process of being completed by the Association. The irrigation surface water rights for such use have been conveyed to the Association by the Valley Club, Inc.. Such irrigation water is available only during statutory irrigation season and subject to availability depending on the priority of the water rights held by the Association. The Irrigation Water System shall be owned, operated, maintained, repaired and replaced as provided in this Declaration.

### **1.26 Lot**

Shall mean and refer to each of the PUD lots shown on the Phase 1 Plat, and each of the PUD lots shown on the Phase 2 Plat, or any subsequent subdivision plat thereof. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of Block 1, together with any easement ("Limited Common Area Easement") within the Lot Limited Common Area adjacent to such Lot. In the case of a portion of the Property intended for subdivision into single-family lots as part of the Phase 2 Plat, but which has not been lawfully created by recordation of a subdivision plat, such property shall be deemed to be a single Lot until such time as such plat is filed of record. The single family residence and any approved appurtenant outbuildings or other improvements constructed on a Lot are included as part of the Lot.

### **1.27 Lot Allocated Interest**

Each Lot Owner's pro rata share of certain allocated expenses and interests, based on the total number of Lots within the Streamside Project.

### **1.28 Lot Common Area**

All the property comprising the Streamside Project as described and depicted on the Phase 1 Plat and the Phase 2 Plat, including, without limitation, all roads, excepting all Lots.

### **1.29 Lot Common Expenses**

All expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, and insurance covering Lot Common Areas, as well as the cost of preparing a separate accounting of Lot Common Expenses.

### **1.30 Lot Director**

The Directors appointed by the Class B Members as provided herein and the Bylaws.

### **1.31 Lot Issues**

Any and all rules and regulations for the operation and use of, as well as any other matter generally concerning the Village Green Project or any portion thereof, including, without limitation, Lot Common Areas.

### **1.32 Lot Limited Common Area**

Those parts of the Lot Common Areas that are either limited to or reserved in this Declaration, so designated on the Phase 1 Plat, the Phase 2 Plat, or designated in a recorded supplement or amendment to any of the foregoing, for the exclusive use of a Lot or limited to and reserved for the common use of more than one (1) but fewer than all Lots, including any areas that are adjacent to a Lot for patio, deck, landscaping, accessory structures, roof overhang, architectural appendage and similar improvements, if any, constructed thereon pursuant to the terms hereof.

### **1.33 Member**

A Person who owns membership rights in the Association pursuant to Section 3.2.

### **1.34 Mortgage**

A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot, Unit or other portion of the Property.

### **1.35 Mortgagee**

A beneficiary or holder of a Mortgage.

### **1.36 Mortgagor**

Any Person who gives a Mortgage.

### **1.37 Owner**

One or more Persons who hold the record title to any Lot or Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot or a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

### **1.38 Person**

A person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

### **1.39 Property**

The real property located within Block 1 and Block 2 of the West Nine PUD Plat, the Phase 1 Plat, the Phase 2 Plat, the Condominium Plat, and any subsequent subdivision plat thereof, including, but not limited to, any Lot, Unit, Lot Common Area and Condominium Common Area, and any improvements located thereon, but excluding the real property described on Exhibit "A-1," attached hereto and incorporated herein. The Property, as encumbered by this Declaration, is more particularly described in Exhibit "A" attached hereto and incorporated herein.

### **1.40 Public Records**

The Blaine County, Idaho public records.

### **1.41 Recreation Center**

That certain property and improvements thereon adjacent to the Property owned by The Valley Club, Inc., its successors or assigns, and operated as a recreational facility and related and supporting facilities, improvements and activities.

### **1.42 Special Assessment**

Assessments levied in accordance with Section 8.4.

### **1.43 Specific Assessment**

Assessments levied in accordance with Section 8.5.

### **1.44 Streamside Project**

The Block 1 property subject to and depicted on the West Nine PUD as further defined in the Phase 1 Plat and the Phase 2 Plat.

### **1.45 Supplemental Declaration**

An instrument filed in the Public Records pursuant to ARTICLE 7 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

### **1.46 Unit**

The separate interest in the Condominium, shown and particularly described in the Condominium Plat, as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and including both the portions of the Building so described and the airspace so encompassed and, where applicable, the interior surfaces of built-in fireplaces, as shown and numbered on the Condominium Plat, together with all fixtures and improvements therein contained., and specifically excluding all bearing walls, columns, floors and roofs (except



for the interior surfaces thereof within a Unit), foundations, shafts, central heating systems, reservoirs, tanks, pumps and other services used by more than one (1) Unit, pipes, vents, ducts, flues, chutes, conduits and wires, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed (the physical windows and doors themselves being part of the Condominium Limited Common Area appurtenant to the Unit).

#### **1.47 Unit Allocated Interest**

A percentage calculated on a pro-rata basis based upon the value of a Unit in relation to the total value of the Units, as more fully set forth in Exhibit "E", attached hereto and incorporated herein, as well as for the purposes of tax assessment under Idaho Code § 55-1514 and for purposes of liability determination as provided by Idaho Code § 55-1515.

#### **1.48 Wastewater Disposal System.**

The private wastewater and sewer disposal system including without limitation all lines, tanks, pumps, drain fields, improvements and facilities constructed on the Property and the Golf Course and used to provide sewer treatment to the Property and each Lot, Unit, and structure therein. The Wastewater Disposal System shall be owned, operated, maintained, repaired and replaced by the Association, as provided in this Declaration.

### **ARTICLE 2 - GENERAL PROJECT DEVELOPMENT, DECLARANT'S RESERVATION OF RIGHTS, AND PROPERTY RIGHTS**

#### **2.1 Phasing of Development**

Within the Streamside Project, forty-three (43) Lots are platted for construction of a single residential dwelling on each Lot and permitted structures on adjacent portions of the Lot Limited Common Areas. The foundation of each dwelling shall be constructed within each Lot with a Limited Common Area Easement appurtenant to such Lot for permitted structures constructed on adjacent portions of the Lot Limited Common Areas. Each of the Lots within the Streamside Project shall be restricted exclusively to residential use. No structures of a temporary character, trailer, tent, shack, carport, garage or other similar improvement shall be used as a residence, either temporarily or permanently, on any Lot.

The Condominium Plat consists of, and shall not contain more than, twelve (12) residential Units. The use of the Units shall be restricted exclusively to residential use. No structures of a temporary character, trailer, tent, shack, carport, garage or other similar improvement shall be used as a residence, either temporarily or permanently, on within the Condominium.

#### **2.2 Common Areas and Related Matters**

The Lot Common Area shown on the Phase 1 Plat and the Phase 2 Plat and subject to any easements and Lot Limited Common Area with respect thereto, shall be deemed to be

conveyed to the Association by the Declarant upon completion of the construction of the last residential building on any Lot shown on the Phase 1 Plat and the Phase 2 Plat. Notwithstanding the foregoing, the Declarant may convey any Lot Common Area to the Association at any time. Upon such conveyance by the Declarant to the Association, except as provided herein, such Lot Common Area is to be held, improved, maintained, managed and used by the Association exclusively for the common benefit, use, and enjoyment of the Owners of Lots within the Streamside Project, and their respective family members, guests and invitees.

The Owner(s) of the Lot(s) to which the Lot Limited Common Area is adjacent shall solely be responsible for the maintenance, repair and replacement of all portions of any structure and all stone, brick or other patios, landscape vegetation, irrigation systems, asphalt driveways and parking areas and other improvements or equipment within the Lot Limited Common Area appurtenant to such Lot(s). Notwithstanding the foregoing, the Association shall retain the right to maintain the right, but shall not have an obligation, to maintain, repair or replace all or any portion of the Lot Limited Common Area. No structure, improvement or equipment shall be installed within the Lot Limited Common Area without the approval by the Architectural Design Review Committee pursuant to ARTICLE 9 of this Declaration. Except as to the maintenance rights and obligations in favor of the Declarant and the Association, the Lot Limited Common Area Easement for each Lot shall be for the exclusive use and enjoyment of the Owner(s) of the Lot(s) to which it is appurtenant.

The Condominium Common Areas are owned by the Unit Owners as their interests appear and are set forth in this Declaration, and, except as expressly provided herein, are to be improved, maintained, managed and used by the Association exclusively for the common benefit, use, and enjoyment of the Unit Owners.

Every Lot Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Lot Common Area (excepting the Lot Limited Common Areas), every Unit Owner shall have the right and non exclusive easement of use, access and enjoyment in and to the Condominium Common Area (excepting the Condominium Limited Common Areas), and every Lot Owner and Unit Owner, as the case may be, shall have a right and easement of use, access and enjoyment in and to the Lot Limited Common Areas or Condominium Limited Common Areas that are allocated to such Owner's Lot or Unit, as the case may be, subject to the following:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board and the membership to adopt rules pursuant to ARTICLE 10 regulating the use and enjoyment of the Lot Common Area or the Condominium Common Area, or any portion thereof, including rules limiting the number of guests who may use the same; and
- (d) The right of the Association, acting through the Board, to mortgage,

pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment of the Lot Common Areas or Unit Common Areas, as the case may be, to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board.

The Association may, from time to time, further modify, improve or equip the Lot Common Areas or the Condominium Common Areas for the benefit of the Lot Owners and the Unit Owners, as the case may be, and make such assessments or borrow such funds therefor as may be reasonably necessary, subject to the provisions and limitations set forth in this Declaration.

### **2.3 Common Infrastructure Improvements.**

Upon completion of construction by the Declarant of the Common Infrastructure Improvements, each shall become the property of the Association upon written notice of transfer given by Declarant to Association. Thereafter, each shall be owned, operated, maintained, repaired and replaced by the Association. The Association shall manage and control each of the Common Infrastructure Improvements and shall keep each in good, clean, and sanitary condition, order and repair pursuant to this Declaration and the Bylaws. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and Bylaws, the cost of which shall be a General Common Expense.

### **2.4 Future Development and Reservation of Rights by Declarant.**

The acceptance of any deed to any Lot by any Owner or the acceptance of a security interest therein by a holder thereof shall hereby constitute the irrevocable consent of the Owner or the holder of the security interest to the provisions of this Section 2.4, including all reservations made by Declarant herein. In addition to all other rights, reservations and privileges of the Declarant as set forth in this Declaration, the Declarant, for the benefit of the Declarant and its successors and assigns reserves and retains for itself the unilateral power and authority to exercise the following rights:

(a) the right to amend any subdivision plat on the Streamside Project and to record amended subdivision plats and amendments to this Declaration to amend, adjust, increase, decrease or eliminate the location and size of any Lot, any Lot Common Area, and any easements with respect to the Streamside Project, as well as the right to increase the number of Lots, as the Declarant deems advisable, in the Declarant's sole discretion;

(b) to grant easements over, under, upon and across the Streamside Project any portion of the Phase 1 Plat, the Phase 2 Plat and any other subdivision plat thereof;

(c) to eliminate or relocate easements shown on the Phase 1 Plat or the Phase 2 Plat, or amendments thereto.

Each Owner, each holder of a security interest in any Lot and the Association each hereby irrevocably grants to the Declarant a power coupled with an interest as irrevocable attorney-in-fact to execute and to record the Phase 2 Plat and any subsequent plats thereof, as well as any amendments to this Declaration, Supplemental Declarations, and all applications with governmental entities for approval thereof and all related documents in accordance with the foregoing.

## **2.5 Declarant's Reservation of Rights to Plat and Construct Improvements.**

Nothing in this Declaration or any action taken by the Association or any Owner shall limit the right of the Declarant or construct any Building or improvement on property in the Streamside Project as depicted on the Phase 1 Plat or the Phase 2 Plat or any other subdivision or plat thereof.

## **2.6 Declarant's Rights Incident to Construction.**

Declarant (and persons it may select) shall have the right of ingress and egress over, under, upon and across each Lot, and all Lot Common Areas, as well as the right to store materials thereon, and to make use thereof as may be reasonably necessary or incident to construction by the Declarant of any Buildings or improvements within the Streamside Project.

The acceptance of any deed to any Lot by any Owner or the acceptance of a security interest therein by a holder thereof shall hereby constitute the irrevocable waiver by the Owner or holder of the security interest of any and all claims, damages, injuries and causes of action against the Declarant arising out of or with regard to any construction activity by the Declarant or the Declarant's contractors pursuant to the rights granted in this Section, including, without limitation noises, traffic and dust.

## **2.7 Reservation of Easements.**

Declarant hereby expressly reserves for the benefit of the Declarant, an easement over, under and across the Streamside Project for the construction of access ways, parking, utilities and other improvements deemed necessary or advisable by the Declarant with regard to construction of any Building or improvement within the Streamside Project.

## **2.8 Preservation and Transfer of Declarant's Rights.**

No rights granted to or reserved by the Declarant in this Declaration may be changed, altered, revoked, terminated, limited, or otherwise adversely affected by amendment of this Declaration, amendment to the Articles, Bylaws or any other document or any rule or regulation of the Association without the prior written consent of the Declarant executed by the Declarant in recordable form.

Notwithstanding anything contained herein to the contrary, it shall be permissible for the Declarant, during the period of construction and sale of Lots and/or Buildings by the Declarant to maintain upon such portions of the Streamside Project as the Declarant may deem necessary,

such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction or sale of said Lots and/or Buildings, including, without limitation, a business office, storage area, construction yard, signs, model units and sales offices. Any right or interest reserved hereby to the Declarant may be transferred or assigned by the Declarant to any person or entity.

The Declarant shall have the right, of Declarant's sole discretion, to assign or otherwise transfer any and all of the Declarant's rights under the Declaration.

**2.9 Declarant's Power To Record Amended Plat(s) And Irrevocable Power of Attorney.**

Each Lot Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, and each holder of a security in any of the Property, and the Association each hereby grant a power coupled with an interest to the Declarant as irrevocable attorney-in-fact for each said Owner, said holder of a security interest and the Association to execute and record in the Public Records such amended plat(s) and such amendments to this Declarations and Supplemental Declarations as the Declarant, in the Declarant's sole discretion, deems appropriate with regard to the plats related to the Streamside Project, and to exercise any and all rights reserved by or granted to the Declarant by this Declaration.

**2.10 Association Membership And Voting Rights By Additional Units.**

The Owners of each of the Lots and Units, within including the Declarant, shall automatically have membership in the Association and each shall have the membership classification and voting rights set forth in this Declaration.

**2.11 Easements Created.**

Each conveyance of a Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve to the Declarant for the benefit of the Declarant an easements and equitable servitudes as shall give effect to each of the rights reserved by the Declarant in this Declaration, including, without limitation, those set forth in Sections 2.1 through 2.10, inclusive, of this Declaration, even though no specific reference to such easements or equitable servitudes or those sections appears in any such conveyance.

**2.12 No Rights in Golf Course.**

Each Owner, by acceptance of a deed or recorded contract of sale to a Lot or Unit, acknowledges that ownership of a Lot or Unit does not confer upon the Owner any right, title or interest in or to the Golf Course. Access to and use of the Golf Course is strictly subject to the rules and procedures of its owner, and no Person gains any right to enter or to use the Golf Course by virtue of membership in the Association or ownership or occupancy of a Lot or Unit. Rights to use the Golf Course are granted only to such person, and on such terms and conditions, as may be determined by the owner of the Golf Course. Such owner shall the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and

conditions of use of the Golf Course and to terminate use rights altogether, except as otherwise expressly agreed by the owner of the Golf Course in writing.

Without limiting the generality of the foregoing paragraph, the Golf Course is privately owned and operated and is not intended to be or constitute a portion of any Lot Common Area or Condominium Common Area. No Person shall acquire any interest in the Golf Course by virtue of taking title to a Lot or a Unit. Each Owner, by acceptance of a deed or recorded contract of sale of a Lot or a Unit, acknowledges:

(a) that any entry upon the Golf Course without permission of the owner or operator of the Golf Course may be deemed a trespass, and each Owner shall refrain from and shall cause all occupants of such Owner's Lot or Unit, their guests and invitees to refrain from, any unauthorized entry upon the Golf Course;

(b) that the proximity of the Property to the Golf Course results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, and that each Owner's use and enjoyment of such Owner's Lot or Unit and the Lot Common Area or the Condominium Common Area, as the case may be, may be limited as a result, and that the Association shall not have any obligation to take steps to remove or alleviate such risks, nor shall the Association have any liability to any Owner or occupant of any Lot or Unit, their guests or invitees, for the damage or injury resulting from errant golf balls being hit upon any Lot, Unit, Lot Common Area, Condominium Common Area, or any other portion of the Property;

(c) that the Golf Course owner and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Golf Course property, including, without limitation, changing the location, configuration, size and elevation of the bunkers, fairways, ponds, waterways, landscaping, tees and greens, and construction fences, and that the Association shall not have any liability to Owner as a result of any such modifications to the Golf Course;

(d) that there are no express or implied easements over the Golf Course for view purposes, and no guarantee or representation is made by the Association or any other Person that any view over and across the Golf Course will be preserved without impairment, and that neither the owner nor the operator of the Golf Course shall have any obligation to prune or thin trees or other landscaping to preserve views from the Property over the Golf Course; and

(e) that no representations or warranties which are inconsistent with this Section, either verbal or written, have been or are made by the Association, by the Declarant or by any Person acting on behalf of the Association or on behalf of the Declarant.

### **2.13 No Rights in Recreation Center.**

Each Owner, by acceptance of a deed or recorded contract of sale to a Lot or Unit, acknowledges that ownership of a Lot or a Unit does not confer upon the Owner any right, title or interest in or to the Recreation Center of The Valley Club. Access to and use of the Recreation Center is strictly subject to the rules and procedures of its owner, and no Person gains

any right to enter or to use the Recreation Center by virtue of membership in the Association or ownership or occupancy of a Lot or a Unit. Rights to use the Recreation Center are granted only to such persons, and on such terms and conditions, as may be determined by the owner of the Recreation Center. Such owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Recreation Center and to terminate use rights altogether, except as otherwise expressly agreed by the owner of the Recreation Center in writing.

Without limiting the generality of the foregoing paragraph, the Recreation Center is privately owned and operated and is not intended to be, or to constitute a portion of, any Lot Common Area, Condominium Common Area or any other portion of the Property. No Person shall acquire any interest in the Recreation Center by virtue of taking title to a Lot or a Unit. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot or a Unit, acknowledges:

(a) that any entry upon the Recreation Center without permission of the owner or operator of the Recreation Center may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot or Unit, their guests and invitees to refrain from, any unauthorized entry upon the Recreation Center;

(b) that the Recreation Center owner and its designees may add to, remove or otherwise modify buildings, parking areas, lighting, landscaping, trees, and other features of the Recreation Center property, and that Declarant and the Association shall not have any liability to any Owner as a result of any such modifications to the Recreation Center;

(c) that there are no express or implied easements over the Recreation Center for view purposes, and no guarantee or representation is made by the Association or any other Person that any view over the and across the Recreation Center will be preserved without impairment, and that neither the owner or operation of the Recreation Center shall have any obligation to prune or thin trees or other landscaping to preserve views from the Property over the Recreation Center; and

(d) that no representations or warranties which are inconsistent with this Section, either verbal or written, have been or are made by the Association, by the Declarant or by any Person acting on behalf of the Association or on behalf of the Declarant.

#### **2.14 Owner's Obligation to Maintain Residence**

In addition to all of the other obligations and duties of the Owner of each Lot, an Owner shall have the obligation to maintain such Owner's Lot and all structures thereon as set forth in Section 5.2 of this Declaration. In addition to all the other obligations and duties of an Owner of a Unit, an Owner thereof shall have the same obligation to maintain such Owner's Unit as more particularly set forth in ARTICLE 14.

### **2.15 No Partition**

Except as permitted in this Declaration, there shall be no judicial partition of the Lot Common Area or the Condominium Common Area. No Person shall seek any judicial partition unless the portion of the Lot Common Area or the Condominium Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

### **2.16 Condemnation**

If (i) any part of the Lot Common Area is taken (or conveyed in lieu of and under threat of condemnation by the Board upon decision of the Lot Directors acting on the written direction of Members representing at least 75% of the total votes of the Lot Owners in the Association) by any authority having the power of condemnation or eminent domain, or (ii) any part of the Condominium Common Area is taken (or conveyed in lieu of and under threat of condemnation by the Board upon decision of the Condominium Directors acting on the written direction of Members representing at least 75% of the total votes of the Unit Owners in the Association) by any authority having the power of condemnation or eminent domain, each Lot Owner or Unit Owner, as applicable, shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Lot Common Area or the Condominium Common Area, as applicable, on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Lot Common Area or the Condominium Common Area, as applicable, to the extent available, unless within 60 days after such taking the Members representing at least 75% of the total vote of the Lot Owners or the Unit Owners, as applicable, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Lot Directors or the Condominium Directors, as applicable. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Lot Common Area or the Condominium Common Area, as applicable, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Lot Directors or the Condominium Directors, as applicable, shall determine.

## **ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS**

### **3.1 Function of Association**

The Association shall be the entity responsible for management, maintenance, operation and control of the Common Infrastructure Improvements, the Lot Common Areas, and the



Condominium Common Areas, and other portions of the Property as set forth in this Declaration. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating the use of the Property as the Board or the membership may adopt pursuant to ARTICLE 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and the laws of the State of Idaho.

### **3.2 Membership**

Every Owner shall be a Member of the Association. There shall be only one membership per Lot or Unit. If a Lot or a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, member, manager or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

### **3.3 Voting and Membership Classifications**

(a) The membership of the Association shall be divided into the following three (3) classifications:

(i) Class A membership shall include each of the Lots owned by the Declarant until sold by Declarant.

(ii) Class B membership shall include each of the forty-three (43) Lots within the Village Green Project other than those owned by the Declarant.

(iii) Class C membership shall include the twelve (12) Units within the Condominium Project other than those owned by the Declarant.

(b) Depending upon the classification of membership set forth above, Members shall have only the obligations with regard to the Association and the Lot Common Area or the Condominium Common Area, as applicable, as set forth herein, and those obligations and rights vary depending on such classification.

(c) Voting Rights. The total number of votes which may be cast by each Member of each classification of membership in the Association shall be as follows:

(i) Class A Members shall have eleven (11) votes for each Lot or Unit owned.

(ii) Class B Members shall have one (1) vote for each Lot owned.

(iii) Class C Members shall have one (1) vote for each Unit owned.

When all of the Lots or Units within the Phase 1 Plat, the Phase 2 Plat or the Condominium Plat, as applicable, are owned by Owners other than the Declarant, then Class A, Class B and Class C Members shall have the same number of votes per Lot or Unit, and the total number of votes which may be cast by the Members of each classification of membership in the Association shall be the same as the total number of Lots and Units, and each membership shall be entitled to one (1) vote.

(d) In any election of the members of the Board of Directors, each Member entitled to vote at such election shall have the right to cumulative voting for each director to be elected, and to thereby give one candidate or divide among any number of the candidates a number of votes equal to the total number of votes to which that Member is entitled to vote for all Directors to be elected. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected.

(e) The Association shall be governed by a Board of Directors and officers in accordance with its Articles and Bylaws. The Class A and Class B Members will be entitled to appoint three (3) Lot Directors, and the Class C Members will be entitled to appoint two (2) Condominium Directors.

(f) In any situation where there is more than one Owner of a Lot or a Unit, the vote for such Lot or Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the vote allocated to such Lot or Unit shall be suspended if more than one Person seeks to exercise it.

(g) Notwithstanding anything to the contrary in this Declaration, Board decisions on Lot Issues shall be referred to and made solely by the Lot Directors, and Board decisions on Condominium Issues shall be referred to and made solely by the Condominium Directors. Decisions made by such Directors shall be decisions made by the Board. Decisions on all other issues shall be determined by a majority vote of the Board of Directors (meaning a vote of 3/5 of the Directors) unless otherwise provided in this Declaration. Similarly, notwithstanding anything to the contrary in this Declaration, any issues submitted for a vote of the Members shall be determined solely by the Lot Owners to the extent that solely Lot Issues are concerned, solely by the Unit Owners to the extent that solely Condominium Issues are concerned, and by all Members to the extent that other issues are concerned.

#### **ARTICLE 4 - RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

##### **4.1 Common Area**

Except as otherwise expressly provided herein, the Association shall manage and control the Lot Common Area and the Condominium Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Lot Common Area and the Condominium Common Area, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide

Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws, the cost of which shall be a General Common Expense.

#### **4.2 Personal Property and Real Property for Common Use**

The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of ARTICLE 2 of this Declaration. Any person may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

#### **4.3 Enforcement**

The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the Bylaws, Design Guidelines, or Association rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote. In addition, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot or Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration, the Design Guidelines or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Property for the benefit of the Association and its Members.

#### **4.4 Implied Rights, Board Authority**

The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

#### **4.5 Indemnification**

The Association shall indemnify every officer, director, and committee member, including members of the committees established under ARTICLE 9, against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Idaho law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a General Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **4.6 Dedication of Common Areas**

The Association may convey portions of the Lot Common Area and the Condominium Common Area, or grant easements with respect thereto as an appurtenance to any Lot or Unit, or otherwise grant easements with respect thereto to a governmental entity, utility company or third party.

#### **4.7 Security**

The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. The Association shall not in any way be considered an insurer or guarantor of security within the Property, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot or Unit that the Association, its Board of Directors and committees are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property, including Lots or Units and the contents of Lots or Units, resulting from acts of third parties.

#### **4.8 Irrigation Systems**

The Association has certain water rights and approvals related to irrigation water that it has received from the Idaho Department of Water Resources ("IDWR"). The Association has applied for approval from the IDWR for a change in the point of diversion to allow the Association to change the source of its irrigation water, and the Association shall diligently prosecute the application for such approval from the IDWR ("IDWR Approval"). The Irrigation System as it currently exists as of the date of this Declaration is owned and operated by the Association and is located within the Streamside Project. The portion of the Irrigation System that is located on the Streamside Project will continue to be owned, operated, managed, maintained, repaired and replaced by the Association, in good, clean, and sanitary condition, order and repair pursuant to this Declaration and the Bylaws, as a Lot Common Expense. The Association shall construct (as a Condominium Common Area) and hereafter operate, manage, maintain, repair and replace, a separately metered irrigation system on the Condominium property, including related pumps, lines, tanks, improvements and facilities, in good, clean and sanitary condition, order and repair pursuant to this Declaration and the Bylaws, as a Condominium Common Expense ("Condominium Irrigation System"), which shall draft water (on a separately metered basis) from the Irrigation System located on the Streamside Project. Upon receipt of the IDWR Approval, the Association shall allocate to the Unit Owners such portion of its irrigation water rights as is necessary to provide for 1.3 acres of the irrigation water right to the Condominium Common Area and the Unit Owners.

### **ARTICLE 5 - MAINTENANCE**

#### **5.1 Association's Responsibility**

(a) In addition to other obligations of the Association set forth in this Declaration, including, without limitation, the Association's obligations with respect to the Lot Common Area and the Condominium Common Area as set forth in Section 4.1, the Association shall maintain, repair and replace the Common Infrastructure Improvements. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill its responsibilities under this Declaration. The Association shall maintain, repair and replace the Common Infrastructure Improvements in a manner allowing for their continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance, repair or replacement, unless Lot Owners representing 60% of the votes of all Lot Owners and Unit Owners representing 60% of the votes of all Unit Owners in the Association agree in writing to discontinue the operation of a Common Infrastructure Improvement.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Infrastructure Improvements shall be General Common Expenses to be allocated among all Lots and Units as part of the General

Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Infrastructure Improvements pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

## **5.2 Owner's Responsibility**

Each Owner shall maintain such Owner's Lot or Unit, and except as otherwise expressly provided herein, all Lot Limited Common Areas and Condominium Limited Common Areas appurtenant thereto, in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Lot or Unit. In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot or Unit and the Owner in accordance with Section 8.58.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

## **5.3 Standard of Performance**

Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

# **ARTICLE 6 - INSURANCE AND CASUALTY LOSSES**

## **6.1 Association Insurance**

(a) The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Blanket property insurance covering risks of direct physical loss on a special form basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Lot Common Area, the Condominium Common Area and Common Infrastructure Improvements to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then broad form coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained

by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Common Expenses on all Lots and Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.

(b) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Blaine County, Idaho area.

All Association policies shall provide for a certificate of insurance to be furnished to each insured known and to the Association at the request of such Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a General Common Expense, Lot Common Expense or Condominium Common Expense, as applicable; provided, if the Board reasonably determines, after notice and an opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots and Units pursuant to Section 8.65. Notwithstanding anything to the contrary herein, the Association shall, to the extent practicable, obtain and maintain such policies of insurance separate for the Condominium Project and the

Streamside Project, and the deductibles and premiums for the separate policies shall be treated as Lot Common Expenses or Condominium Common Expenses as the case may be.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the State of Idaho which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Lot Common Area and the Condominium Common Area shall be for the benefit of the Association and the Lot Owners and the Condominium Owners, as applicable;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement; and
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners' individual policies from consideration under any other insurance clause;
- (v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (vi) a cross liability provision; and



(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Lot Common Area or the Condominium Common Area shall be repaired or reconstructed unless the Lot Owners or Unit Owners, as applicable, representing at least 60% of the total votes of the Lot Owners or Unit Owners, as applicable, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Lot Common Area or a Condominium Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Lot Common Area or Condominium Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot or Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall. To the extent possible, the portions of the premiums for any insurance obtained and maintained by the Association as provided herein, shall be apportioned to the Condominium Project or the Streamside Project and included as Condominium Common Expenses and Lot Common Expenses, as applicable. To the extent that such apportionment cannot be made between the Condominium Project and the Streamside Project, such premiums shall be General Common Expenses.

## **6.2 Lot Owners' Insurance**

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising the Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with ARTICLE 9. Alternatively, the Lot Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The Association shall have no obligation to insure any Lot or other improvement situated thereon or appurtenant thereto or any contents thereof, against any casualty, loss, damage or liability except as provided in ARTICLE 12 and ARTICLE 14. Each Owner shall be solely responsible to obtain and pay for the above property insurance, and for such liability insurance or other coverage relating to such Owner's Lot and other improvement situated thereon, and any contents or personal property situated thereon, and all activities conducted or otherwise occurring thereon as the Owner deems appropriate, except as provided in ARTICLE 14.

## **ARTICLE 7 – INTENTIONALLY OMITTED**

### **ARTICLE 8 - ASSESSMENTS**

#### **8.1 Creation of Assessments**

There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments to the Association.

(a) Except as otherwise expressly provided in this Declaration, all assessments for General Common Expenses shall be allocated among the Lots and Units in accordance herewith. General and Special Assessments for General Common Expenses shall be apportioned among the Owners of Lots and Units as follows: Class B Members (Owners of the Lots) shall pay a total of 78.18% of such General and Special Assessments, and Class C Members (Owners of the Units) shall pay a total of 21.82% of such General and Special Assessments; provided that any General Common Expenses solely applicable to the Streamside Project or the Condominium shall be borne by the Lot or Unit Owners, as applicable. With respect to the amounts payable by the Lot Owners, each Lot Owner will be obligated for a share equal to its Lot Allocated Interest. With respect to the amounts payable by the Unit Owners, each Unit Owner will be obligated for a share equal to its Unit Allocated Interest.

(b) Except as otherwise expressly provided in this Declaration, General and Special Assessments for Lot Common Expenses shall be apportioned among the Owners of Lots pro rata in accordance with their Lot Allocated Interests. Except as otherwise expressly provided

in this Declaration, General and Special Assessments for Condominium Common Expenses shall be apportioned among the Owners of Units in accordance with their Unit Allocated Interests.

(c) Notwithstanding anything to the contrary in this Declaration, any expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves and insurance, utilities, and other expenses and expenditures associated with a Lot Limited Common Area or a Condominium Limited Common Area, shall be allocated among and between only the Owners of Lots or Units, as applicable to which such Lot Limited Common Area or Condominium Limited Common Area are allocated as provided in this Declaration, the Phase 1 Plat, the Phase 2 Plat or the Condominium Plat. Each such Lot or Unit Owner shall be obligated to pay a percentage of such expenses equivalent to a fraction, the numerator of which shall be such Owner's Lot Allocated Share or the Unit Allocated Share, as applicable, and the denominator of which shall be the Lot Allocated Shares or Unit Allocated Shares, as applicable, of all other Owners to which the particular Lot Limited Common Area or Condominium Limited Common Area is allocated.

(d) All assessments, together with interest (at a rate not to exceed 18% or the highest rate allowed by Idaho law, if less than 18%) as computed from the date the delinquency first occurs, a late charge equal to the greater of \$10.00 or 5% of the principal amount past due, costs, and reasonable attorneys fees, shall be a charge and continuing lien upon each Lot or Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot or Unit at the time the assessment arose. Upon a transfer of title to a Lot or Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

(e) The Association or its designee shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(f) Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Lot or Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting General Assessments or installments thereof in advance from new Owners out of closing transactions; and (b) different procedures for collecting assessments from Owners who have had a history of being untimely in the payment of assessments.

(g) No Owner may exempt himself from liability for assessments by non-use of the Lot Common Area or Condominium Common Area, abandonment of his Lot or Unit or any other means, and additionally. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(h) For purposes of the creation and payment of General Assessments and Special Assessments under Section 8.1 only, the Declarant shall be deemed to be a Class B Member and shall share in any General Assessments or Special Assessments imposed by the Association in accordance with Article 8 pro rata with all other Class B Members.

## **8.2 Computation of General Assessment**

(a) General Assessments against all Lots or Units are hereby authorized which shall be based upon advance annual estimates of cash requirements by the Association to provide for the payment of all estimated General Common Expenses, Lot Common Expenses and Condominium Common Expenses, to be incurred in the ensuing twelve-month period in the conduct of the Association's affairs as set forth under this Declaration.

(b) At least 60 days before the beginning of each fiscal year, the Board shall prepare budgets for the Streamside Project and the Condominium Project covering the estimated expenses, including Common Expenses, Lot Common Expenses and Condominium Common Expenses, for the coming year. The budgets shall also show, among other things, any capital expenditures, any expected income, any expected surplus or deficit, any existing surplus held by the Association, as well as any amounts for contingencies deemed necessary or desirable to create, replenish or add to Association funds and reserves for capital expenditures.

(c) General Assessments shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves, the budgets for the same.

(d) In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Lots or Units and the membership classification of Lots or Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots or Units reasonably anticipated becoming subject to assessment during the fiscal year.

(e) The Board shall send a copy of the budgets and notice of the amount of the assessments for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. The budget for each of the Streamside Project and the Condominium Project shall be deemed approved unless disapproved at a meeting by a vote Owners of Units or Lots, as applicable, representing at least 60% of the votes of all Unit or Lot Owners, as applicable. There shall be no obligation to call a meeting to consider the budgets

unless the Unit Owners or Lot Owners, as applicable, petition the Board as provided in the Bylaws, which petition must be presented to the Board within 10 days after delivery of the budgets. If the Board fails for any reason to determine the budgets for any year, or the budgets are disapproved, then until such time as budgets are determined, the budgets in effect for the immediately preceding year shall continue for the current year.

### **8.3 Reserve Budget and Capital Contribution**

The Board shall annually prepare reserve budgets for the Streamside Project and the Condominium Project which take into account the number and nature of the Association's replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budgets, with respect both to amount and timing by General Assessments over the budget period or Special Assessments as determined by the Board.

### **8.4 Special Assessments**

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted General Common Expenses, Lot Common Expenses, or Condominium Common Expenses, or any of the foregoing expenses in excess of amounts budgeted for the same. Any Special Assessment which would exceed \$300.00 per Lot or Unit in any one fiscal year shall require the affirmative vote or written consent of Members representing at least 51% of the total votes allocated to the Lots and/or Units to be so assessed. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### **8.5 Specific Assessments**

(a) Except for Units and the Condominium Project and, notwithstanding all other assessments herein provided for, the Association shall also have the power to incur expenses for maintenance, repair and/or replacement of the exterior components and surfaces of any Building which is not to the Community-Wide Standard ("Exterior Maintenance Work"), and the Association, upon incurring such expenses, shall have the authority to levy an Exterior Maintenance Assessment against the Lot on which said Building is situated to recover the cost of such maintenance, repair and replacement. The Exterior Maintenance Assessment shall be payable within thirty (30) days after notice thereof has been given to the Owner of said Lot. However, prior to performing any such Exterior Maintenance Work, the Board must find that the Building in question is in need thereof and notify the Owner of the Building in writing of the Exterior Maintenance Work required and giving the Owner thirty (30) days to complete same. If the Exterior Maintenance Work is not completed within said thirty (30) days, then the Board may proceed with the Exterior Maintenance Work.

(b) In addition to the specific assessment provided for in 8.5(a) and any other assessment above, the Board shall have the power to levy a Specific Assessment against any

Lot(s) or Unit(s) for monetary fines authorized by this Declaration or the Bylaws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Lots or Units within the Property, whether such expenses are incurred (a) upon request of the Owner of a Lot or Unit for specific items or services relating to the Lot or Unit, or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests of the Lots or Units. The Association may also levy a Specific Assessment against any Lot or Unit to reimburse the Association for costs incurred in bringing the Lot or Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, Design Guidelines and rules, provided the Board gives prior notice to the Lot or Unit Owner and an opportunity for a hearing in accordance with the Bylaws.

#### **8.6 Lien for Assessments; Remedies for Nonpayment**

The Association shall have a lien against each Lot or Unit to secure payment of delinquent assessments as well as interest, late charges, and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien for assessments or other charges of the Association. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

The Association may bid for the Lot or Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot or Unit. While a Lot or Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot or Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged against such Lot or Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot or Unit shall not affect the assessment lien or relieve such Lot or Unit from the lien for any subsequent assessments. However, the sale or transfer of any Lot or Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be either Lot Common Expenses or Condominium Common Expenses, as applicable, collectible from Owners of all Lots or Units subject to assessment including such acquirer, its successors and assigns.

#### **8.7 Failure to Assess**

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General

Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

## **8.8 Exempt Property**

The following property shall be exempt from payment of assessments:

- (a) All Lot Common Area and Condominium Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility (except that utility easements across Lots or Units shall not affect the Lot's or Unit's liability for assessments).

## **ARTICLE 9 - ARCHITECTURAL STANDARDS**

### **9.1 General**

No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place within the Streamside Project, except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 9.3. The Condominium Project is not subject to the provisions of this Article. The Condominium Project and each Unit shall be maintained, repaired and replaced in conformance with the Community-Wide Standard applicable to the Condominium Project, and to the extent that any Owner desires to repair, replace or maintain its Unit or any other Condominium property in a manner that is not consistent with the Community-Wide Standard, the Owner must receive the prior written approval of the Condominium Directors.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of porches, patios, and similar portions of structures on a Lot or Lot Limited Common Area visible from outside the Building shall be subject to approval. No approval shall be required to repaint the exterior of a Building in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Streamside Project shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Architectural Design Review Committee.

This Article shall not apply to the activities of the Association or to the structures, activities or construction by the Declarant on any Lot.

### **9.2 Architectural Review**

Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Architectural

Design Review Committee described below (the “ADRC”). The members of the ADRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ADRC in having any application reviewed by architects, engineers or other professionals.

The ADRC shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Streamside Project within the scope of Section 9.1. The Board shall appoint the members of the ADRC, who shall thereafter serve and may be removed in the Board's discretion.

### **9.3 Guidelines and Procedures**

(a) The Design Guidelines for the Streamside Project are contained in the records of the Association and will be made available to any Member or prospective purchaser of any Lot within the Streamside Project upon request. The ADRC shall have the authority to make any minor updates or modifications to the Design Guidelines, or change any fees or costs for review of any plans or documents provided to the ADRC for approval pursuant to such Design Guidelines. Any material modification, amendment or change to the Design Guidelines must be approved by (i) a majority of the Owners of any improved Lots as of the date of the proposed modification, amendment or change; and (ii) a majority of the Owners of the unimproved Lots as of the date of such proposed modification, amendment or change. In addition, any such material modification, amendment or change to the Design Guidelines must receive the written consent of the Board of Directors of the VCOA, which consent shall not be unreasonably withheld. For purposes of this Section, “material” shall mean any reduction in the minimum livable square foot size of residences as specified in Section 3.B of the Design Guidelines or any diminution of the quality of construction as defined in the Design Guidelines. Any such proposed material modification, amendment or change to the Design Guidelines shall be submitted to the VCOA Board of Directors in writing at such time and together with such materials, if any, as are furnished to the then-Members of the Association at the time and in the manner presented to them in connection with their consideration of any such amendment. The VCOA Board of Directors shall promptly review and, within 30 days of receipt of such request and materials, provide its written comments or its consent to the proposed amendment or change. Failure by the VCOA Board of Directors to provide its consent within thirty (30) days of receipt of the request and the materials referred to herein shall be deemed to be an approval of the requested amendment or change. This provision requiring consent of the VCOA Board of Directors shall no longer be required at such time as there are fifteen (15) residences of the forty-three (43) single-family Lots within the Streamside Project which are beneficially owned by individuals and occupied as primary or secondary residences or subject to long term leases (i.e., leases with terms no less than one (1) year). Any such amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of plans or structures previously approved by the ADRC.

(b) No activities within the scope of Section 9.1 shall commence on any



portion of the Streamside Project until an application for approval of the proposed work has been submitted to and approved by the ADRC and a construction agreement between the Association and the Owner of the proposed work, in such form as may be required by the Board, has been fully executed. Such application shall be in the form required by the ADRC and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening thereof, and other features of proposed construction, as applicable. The ADRC may require the submission of such additional information as it deems necessary to consider any application.

In reviewing each submission, the ADRC may consider (but shall not be restricted to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the ADRC may be based on purely aesthetic considerations. Each Lot Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ADRC members change over time.

In the event that the ADRC fails to approve or to disapprove in writing any application within 30 days after submission of all information and materials reasonably requested, the applicant may notify the ADRC by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the committee's receipt of the Owner's notice, as evidenced by the return receipt, the application shall be deemed approved. A response shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Board pursuant to Section 9.5.

If construction does not commence on a project for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration. All work shall be completed within one year of commencement or such other period as the ADRC may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ADRC.

#### **9.4 No Waiver of Future Approvals**

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

## **9.5 Variance**

The Board may authorize variances from compliance with any of the Design Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted resolutions. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

## **9.6 Limitation of Liability**

The standards and procedures established by this Article are intended to enhance the overall aesthetics of the Property and shall not create any duty to any Person. The ADRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Association, the Board, nor any committee or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.5.

## **9.7 Enforcement**

Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 9.5. Upon written request from the Board, the Owner shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment.

Unless otherwise specified in writing by the ADRC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded

by the Board from the Streamside Project, subject to the notice and hearing procedures contained in the Bylaws. In such event, none of the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ADRC.

## **ARTICLE 10 - USE RESTRICTIONS AND RULES**

### **10.1 Plan of Development; Applicability; Effect**

This Declaration establishes a general plan of development for the Property in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community and to regulate and control the Common Infrastructure Improvements, the Lot Common Areas and the Condominium Common Areas. The Property is subject to the land development, architectural, and design provisions set forth in ARTICLE 9, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Property, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

Except as otherwise provided in this Declaration, the provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot or Unit. Any lease on any Lot or Unit shall provide that the lessee and all occupants of the leased Lot or Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

This Article shall not apply to the activities of the Association or to the structures, activities or construction by the Declarant on any Lot.

### **10.2 Authority to Promulgate Use Restrictions and Rules**

Rules and restrictions applicable to all of the Property are attached as Exhibit "B" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the restrictions set forth on Exhibit "B." The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Notwithstanding anything to the contrary herein, and subject to the terms hereof,

the Condominium Directors, with respect to the Condominium Project, and the Lot Directors, with respect to the Streamside Project, have the right and authority to promulgate such supplement rules and regulations applicable to the Condominium Project or the Streamside Project, as applicable.

Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total votes of Lot Owners and 51% of the total votes of Unit Owners, as applicable. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the Bylaws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total votes of Lot Owners and 51% of the total votes of Unit Owners, as applicable.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost to an Owner, a copy of the restrictions and rules then in effect (the "Restrictions and Rules") to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

### **10.3 Owners' Acknowledgement**

All Owners and occupants of Lots or Units are given notice that use of their Lots or Units is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his Lot or Unit can be affected and that the Restrictions and Rules may change from time to time.

### **10.4 Rights of Owners**

Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "B," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Lots or Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing

damage and disturbance to other Owners and occupants of Lots or Units.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots or Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Lots or Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot or Unit on the basis of the size and facilities of the Lot or Unit and its fair use of the Lot Common Area or Condominium Common Area, as the case may be.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots and Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or Units or rights to use the Lot Common Area or the Condominium Common Area, as the case may be, to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Lot Common Area or the Condominium Common Area, from adopting generally applicable rules for use of Lot Common Area or the Condominium Common Area, or from denying use privileges to those who abuse the same or violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in ARTICLE 8.

(g) Alienation. No rule shall prohibit leasing or transfer of any Lot or Unit, or require consent of the Association or Board for leasing or transfer of any Lot or Unit; provided, the Association or the Board may require that any lease or rental agreement for any Building constructed upon a Lot be in writing and for a minimum lease term of up to six (6) months.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Lots or Units to dispose of personal property which they maintained in or on the Lot or Unit prior to the effective date of such rule, or to vacate a Lot in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Lot or Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2.

## **ARTICLE 11 – EASEMENTS**

### **11.1 Easements of Encroachment**

There shall be appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Lot Common Area and each Unit and any adjacent Condominium Common Area, as the case may be, and between adjacent Lots and Units due to the placement structures or portions thereof, or due to settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions).

### **11.2 Easements for Utilities, Etc.**

(a) There are hereby reserved to the Declarant and to the Association, and its designees (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Property (but not through a structure except for Condominium Buildings) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Association owns or within easements designated for such purposes on recorded plats of the Property. The Association, electric company, and natural gas supplier have been granted easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes as applicable.

(b) Any damage to a Lot or Unit resulting from the exercise of the easements described in subsection (a) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot or within any Unit, nor shall it unreasonably interfere with the use of any Lot or Unit and, except in an emergency, entry onto any Lot or into any Unit shall be made only after reasonable notice to the Owner or occupant.

### **11.3 Right of Entry**

The Association shall have the right, but not the obligation, to enter upon any Lot or any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to ARTICLE 5 hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, Design Guidelines and Association rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, members of the ADRC pursuant to ARTICLE 9, and all policemen, firemen,

ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to do any Exterior Maintenance Work pursuant to Section 8.5 or upon the Condominium Common Area or any Unit to do any Condominium Building maintenance, repair and replacement pursuant ARTICLE 14 of this Declaration or to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

#### **11.4 Easements for Golf Course**

(a) Every Lot, the Lot Common Area, the Condominium Common Area, every Building and the Condominium Building are burdened with an easement permitting golf balls unintentionally to come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the foregoing portions of the Property to retrieve errant golf balls; provided, however, to the extent that any portion of the Property is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement by: the Association or its Members (in their capacity as such); Streamside Associates, LLC, The Valley Club, Inc. or their successors, successors-in-title to the golf course, or assigns; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The owner of the Golf Course, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Lot Common Area reasonably necessary to the operation, maintenance, repair and replacement of the Golf Course.

(c) Any portion of the Property immediately adjacent to the Golf Course is hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from the irrigation system serving the Golf Course. Under no circumstances shall the Association or the owner of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of the Golf Course, its successors and assigns, shall have a perpetual, exclusive easement of access over the Property for the purpose of retrieving golf balls from bodies of water within the Lot Common Area lying reasonably within range of golf balls hit from the Golf Course.

### **11.5 Easements for Construction by Declarant**

Declarant shall have a non-exclusive easement for itself, its agents, employees, contractors, licensees, and assignees over all portions of the Streamside Project to undertake and carry out the construction of the Streamside Project as set forth in ARTICLE 2.

## **ARTICLE 12 - MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Units in the Property.

### **12.1 Notices of Action**

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot or Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot or Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Lot or Unit or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

### **12.2 No Priority**

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot or Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot Common Area or Condominium Common Area.

### **12.3 Notice to Association**

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot or Unit.

## **ARTICLE 13 - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

### **13.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes**



The Association, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 13.2, shall be resolved using the procedures set forth in Section 13.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

### **13.2 Exempt Claims**

The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 13.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of ARTICLE 8 ("Assessments");

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of ARTICLE 9 ("Architectural Standards") and ARTICLE 10 ("Restrictions and Rules");

(c) any suit between Owners seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Idaho in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) any suit arising out of any written contract between Owners which would constitute a cause of action under the laws of the State of Idaho in the absence of the Declaration, Bylaws, and Articles of the Association; and

(e) any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 13.3 shall require the approval of the Association.

### **13.3 Mandatory Procedures for All Other Claims**

All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii) the basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the claim.

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the State of Idaho upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as

determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

**(d) Final and Binding Arbitration.**

(i) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "C" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Idaho. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Idaho.

**13.4 Allocation of Costs of Resolving Claims.**

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 13.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 13.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 13.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 13.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award,

such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

### **13.5 Enforcement of Resolution**

After resolution of any Claim through negotiation, mediation, or arbitration in accordance with Section 13.3, if any Party fails to abide by the terms of the agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

## **ARTICLE 14 - CONDOMINIUM**

### **14.1 General.**

Declarant declares that certain real property as will be designated on the Condominium Plat is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in Idaho Code § 55-1501, et. seq. for the subdivision, improvement, protection, maintenance, and sale of Units within the Condominium Project, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the real property. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of Idaho Code § 55-1505. This ARTICLE 14 shall only apply to the Condominium Project; however, the remainder of this Declaration shall also apply to the Condominium Project unless otherwise supplanted by this ARTICLE 14.

### **14.2 Description of Common Interests, Property Rights of Enjoyment, Easements and Use Restrictions.**

(a) **Legal Description of a Unit.** Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Condominium Plat and which shall be designated in this Declaration as each appears on the records of the Recorder's Office of Blaine County, Idaho, in the following fashion:

"Unit \_\_\_\_\_ as shown on the Plat for The Valley Club Community Condominiums Amended appearing in the records of Blaine County, Idaho, as Instrument No. 566975, and as defined and described in that Third Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Village Green At The Valley Club Subdivision recorded in the

records of Blaine County, Idaho, as Instrument No.

"

The description of the Unit shall also include reference to the recording of any amendments to the Condominium Plat or this Declaration. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Condominium Common Area as depicted on the Condominium Plat, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

In interpreting deeds and the Condominium Plat, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial conformance with the original plans shall be conclusively presumed to be its boundaries rather than the description express in the deed or plans, regardless of minor variance between boundaries shown on the plans or in the deed, and regardless of settling or lateral movement. Whenever reference is made in this Declaration, in the Condominium Plat or in any deed or elsewhere to a Unit, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements, and to any and all easements or other rights appurtenant to such Unit with respect the Condominium Common Area or the Condominium Limited Common Area. Notwithstanding anything to the contrary in this Declaration, all Units shall be deemed to exist as of the date of the recording of the Condominium Plat, and the Owners of the Units shall have the rights set forth herein, including voting rights, regardless of whether the Condominium Building has been constructed or completed. All Units shall be described with more particularity on the Condominium Plat.

(b) Estates of an Owner of a Unit. Each Unit consists of a separate interest in the Unit and appurtenant Condominium Limited Common Area. Each Unit shall also consist of an undivided interest (Unit Allocated Interest) in the Condominium Common Area depicted on the Condominium Plat in the proportions set forth in Exhibit "E".

(c) Owners' Non-Exclusive Easements of Enjoyment, Etc. Each Owner of a Unit shall have the non-exclusive right to use and enjoy the Condominium Common Area, and each Owner of a Unit to which a Condominium Limited Common Area is appurtenant shall have the right to use and enjoy such Condominium Limited Common Area to the exclusion of any Owners of Lots to which the Condominium Limited Common Area is not appurtenant, all of which rights shall pass with the title to the Units, subject to the following rights and restrictions:

(i) The right of the Association to adopt and to enforce the Use Restrictions and Rules;

(ii) The right of the Association to borrow money to improve, repair or maintain the Condominium Common Area in conformance with this Declaration.

(iii) The right of the Association or its agents, to enter any Unit and to make repairs to and remedy construction defects in the Unit or the Condominium Limited Common Area if such entry shall not interfere with the use of any Unit unless authorized by the Owner of the Unit.

(iv) The right of the Association, or its agents, to enter any Unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair of any Unit or the Condominium Limited Common Area, or to make necessary repairs that the Owner of a Unit has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Unit or other portions of the Condominium, whether or not the Owner is present.

(v) Any other rights or restrictions as set forth in this Declaration and specifically applicable to any portion of the Condominium or the Condominium Building.

(d) Unit Maintenance. Each Owner of a Unit shall be solely responsible for the maintenance of the Owner's Unit, including the Condominium Limited Common Area appurtenant thereto. To ensure that no Owner's share of Condominium Common Expenses is increased, that each Owner is responsible for the maintenance of the Owner's Unit and to ensure that no Owner's share of the Condominium Common Expenses exceeds the Owner's proportionate share of such as set forth in this Declaration, at any time that the Unit shall require maintenance, repair or replacement, the Owner of such Unit shall perform such maintenance, repair or replacement itself as is required under the Community-Wide Standard. If the Owner fails to perform such maintenance, repair or replacement itself then the Association (acting through the Condominium Directors, in their discretion) shall perform such and shall levy a Specific Assessment only against such Unit as described in Section 8.1 and Section 8.5.

(e) Maintenance of Interiors. Each Owner of a Unit shall keep the interior of such Owner's Unit, including, without limitations interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, if any, in a clean, sanitary, and attractive condition and good state of repair; shall keep the Condominium Limited Common Area designated for use in connection with such Owner's Unit; and shall keep the heating equipment and water heater servicing such Owner's Unit exclusively in a good state of maintenance and repair.

(f) Structural Alterations. No structural alterations or modification to any interior walls shall be made to any Unit and no plumbing, electrical, or similar work within the Condominium Limited Common Area shall be done by any Owner, but shall be undertaken by the Association to preserve the structural integrity of the Condominium Building.

(g) Taxes. Each Owner of a Unit shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Unit. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against such Owner's Unit or interest therein, or such Owner's interest in the Condominium Common Area or any part thereof. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Condominium Project or any part of the Condominium Common Area in proportion

to such Owner's Unit Allocated Interest as set forth in Exhibit "E" as shall be assessed by the Association as part of the General Assessment for Condominium Common Expenses.

(h) Owner's Right to Ingress, Egress and Support. Each Owner shall have the right of ingress and egress over, upon, and across the Condominium Common Area reasonably necessary for access to such Owner's Unit, any parking space or spaces and any storage space or spaces within the Condominium Common Area which such Owner has the right to use as set forth in Exhibit "F", and to the Condominium Limited Common Area designated for use in connection with such Owner's Unit and shall have the right to the horizontal and lateral support of such Owner's Unit, as applicable, and such rights shall be appurtenant to and pass with the title to each Unit.

#### **14.3 Certain Rights And Obligations Of The Association.**

(a) The Management Body. The Association, acting through the Condominium Directors, is hereby designated to be the "Management Body" as provided in Sections 55-1503 and 55-1506 of the Idaho Code and shall administer Condominium Project in accordance with the Condominium Property Act of the State of Idaho, the Idaho Code, the Articles, the Bylaws, and this Declaration.

(b) Maintenance of Condominium Common Area and. In addition to the powers delegated to it by this Declaration, the Articles or the Bylaws, and notwithstanding anything to the contrary herein, the Association, acting by and through the Board, has the obligation to operate, maintain, repair and replace the Condominium Common Area (including the Condominium parking area and all lots regardless of whether designated as Condominium Limited Common Areas). Such maintenance shall include repair and maintenance necessary to maintain the Condominium Common Area accordance with the Community-Wide Standard.

(c) Windows. The cleaning of exterior surfaces of windows (except for those windows between a Unit and that Unit's Condominium Limited Common Area) is expressly reserved to the Association, provided, however, the Association may require the Owners of all Units to clean the exterior surfaces of all windows located within their Unit regardless of the fact that such exterior surfaces are not actually part of the Unit. No Owner may, without the consent of the Association, place anything in or on the Unit windows, which is in variance with the general appearance of windows of similar Units.

#### **14.4 Assessments.**

(a) Reserve Account for Condominium Building Maintenance, Repair and Replacement. The Units may be assessed for a reserve account to be used for Condominium Building maintenance, repair and replacement.

(b) Condominium Common Area. All General and Special Assessments for Condominium Common Area shall be allocated as to each Unit in accordance with its Unit Allocated Interest as set forth in Exhibit "E" and this Declaration.

#### **14.5 Insurance.**

Notwithstanding any other obligation of the Association in this Declaration, the Association shall obtain the following insurance for the Condominium Common Area, and the Condominium Building within the Condominium Project:

(a) **Fire and Extended Coverage Insurance.** The Association also shall obtain and maintain a master or blanket policy of fire insurance for the full insurable value of all of the Condominium Project and all improvements thereon. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all first Mortgagees. If more than one first Mortgagee as a loan of record against a Unit, the policy and endorsements shall meet the maximum standards of the various first Mortgagees represented in the Condominium Project. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association and Declarant, as long as Declarant is the Owner of any Unit, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

(b) **Owner's Own Insurance.** Each Owner shall obtain insurance at the Owner's own expense providing coverage upon the Owner's Unit, the Owner's personal property located in the Owner's Unit, for the Owner's personal liability, and covering such other risks as the Owner may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, and guests of any of the Owners, Declarant, and Mortgagee. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the policies, described in this section that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner shall be liable to the Association to the extent of any such diminution. In addition, any improvements made by an Owner within such Owner's Unit may be separately insured by the Owner, but such insurance shall be limited to the type commonly known as "tenant's improvements" insurance.

(c) **Association as Trustee.** All insurance proceeds payable hereunder, subject to the rights of Mortgagees set forth herein, shall be paid to the Association, to be held and expended for the benefit of the Owners of the Units, Mortgagees and others, as their respective interests shall appear. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

(d) **Other Insurance.** The Board may and, if required by any first Mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild.



An Owner may carry whatever personal liability and property damage liability insurance with respect to his Unit that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any first Mortgagee.

The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Section. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Any Mortgagee has the option to apply insurance proceeds payable on account of a Unit in reduction of the obligation secured by the mortgage of such Mortgagee.

#### **14.6 Destruction Or Damage Of Condominium Building Or Unit.**

The provisions of this Section will control in the event of any damage or destruction to the Condominium Project or any portion thereof, notwithstanding anything to the contrary in this Declaration.

(a) Destruction; Proceeds Exceed 85% of Reconstruction Costs. If there is a total or partial destruction of a Condominium Building, and if the available proceeds of the insurance carried pursuant to this Declaration are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, of the Class C Members then holding at least seventy-five percent (75%) of the total voting power of the Class C Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the Public Records not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Class C Members to rebuild.

(b) Destruction; Proceeds Less than 85% of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of destruction, the Class C Members then holding at least fifty-one percent (51%) of the total voting power of the Class C Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the Public Records not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention of the Members to rebuild.

(c) Rebuilding Procedures. If the Class C Members determine to rebuild, pursuant to this Section, then each Owner of a Unit shall be obligated to contribute his proportionate share of the cost of reconstruction or restoration over and above the available insurance proceeds based upon the same share as set forth in Section 8.1. If any Owner fails or refuses to pay his proportionate share, the Board may levy a Specific Assessment against the Unit of such Owner which may be enforced under the lien provisions set forth herein or in any

other manner provided in this Declaration. If any Owner disputes the amount of his proportionate liability under this Section, such Owner may contest the amount of his liability by submitting to the Board within ten (10) days after notice to the Owner of his share of the liability written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which he may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners of a Unit. If such adjustments are recommended, the notice shall schedule a special meeting of Class C Members for the purpose of acting upon the Board's recommendation, including making further adjustments, if deemed by the Class C Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of the Class C Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners of a Unit, including any Owner filing objections.

(d) **Rebuilding Contract.** If the Class C Members determine to rebuild, the Board or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(e) **Rebuilding Not Authorized.** If the Class C Members determine not to rebuild, then, subject to the rights of Mortgagees, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Unit in proportion to his respective undivided interest in the Condominium Common Area. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to execute, acknowledge and record in the Public Records, a certificate declaring the intention of the Class C Members not to rebuild.

(f) **Minor Repair and Reconstruction.** The Board shall have the duty to repair and reconstruct improvements, without the consent of Class C Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Three Thousand Six Hundred Dollars (\$3,600). The Board is expressly empowered to levy a Specific Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment in proportion to his respective undivided interest in the Condominium Common Area (but without the consent or approval of Class C Members, despite any contrary provisions in this Declaration).

#### **14.7 Condemnation.**

In the event of any condemnation or other taking of all or any portion of the Condominium, the provisions of this Section will control, notwithstanding anything to the contrary in this Declaration.

(a) **Sale by Unanimous Consent.** If an action for condemnation of all or a portion of the Condominium Building constituting any Units is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners of the affected Units and after written notice to all Mortgagees, the affected Units, or a portion thereof may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners of such Units for a price deemed fair and equitable by the Board but in no event less than the aggregate unpaid balance of all mortgages encumbering Units in the Condominium Project.

(b) **Distribution of Proceeds of Sale.** On a sale occurring under Section 14.8(a), the proceeds shall be distributed to the Owner and the Mortgagees of each Unit as their respective interests may appear in proportion to each Owner's respective undivided interest in the Condominium Common Area.

(c) **Distribution of Condemnation Award.** If the Units, or a portion of thereof, are not sold but are instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners of the Units affected and their respective Mortgagees.

#### **14.8 Non-Severability Of Component Interests In A Condominium**

(a) **Prohibition Against Severance.** An Owner shall not be entitled to sever his Unit from his membership in the Association, and shall not be entitled to sever his Unit and his membership from his undivided interest in the Condominium Common Area for any purpose. None of the component interests in Unit can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void.

(b) **Conveyances.** After the initial sales of the Units, any conveyance of a Unit by an Owner shall be presumed to convey the entire Unit. However, nothing contained in this Section shall preclude the Owner of any Unit from creating a co-tenancy or joint tenancy in the ownership of the Unit with any other person or persons.

#### **14.9 Mechanic's Lien Rights**

No labor performed or services or materials furnished with the consent or at the request of an Owner of a Unit or such Owner's agent, contractor, or subcontractor shall be the basis for the filing of a lien against the Unit of any other Owner or against any part thereof or against any other property of any other Owner unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Unit in the case of

emergency repairs thereto. Labor performed or services or materials furnished for the Condominium Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner of a Unit. Any Owner may remove such Owner's Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien, which is attributable to such Unit.

#### **14.10 Indemnification**

Each Owner Unit shall be liable to the remaining Owners of Units and the Association for any damage to the Condominium Common Area or the Units of the other Owners that may be sustained by reason of the negligence or willful misconduct of the Owner, his contract purchasers, lessees or tenants, and their invitees or licensees, to the extent any such damage is not covered by insurance. Each Owner of a Unit shall indemnify each of the other Owners of Units against, and hold him harmless from, and defend him against, any claim of any person for personal injury or property damage occurring within the Unit of the indemnifying Owner, unless the injury or damage to which such indemnity would apply occurred by reason of the active negligence or willful misconduct of the party claiming indemnification.

### **ARTICLE 15 - INTENTIONALLY DELETED**

### **ARTICLE 16 - GENERAL PROVISIONS**

#### **16.1 Duration.**

(a) Unless terminated as provided in Section 16.1(b), this Declaration shall have perpetual duration. If Idaho law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Idaho law, in which case such law shall control, this Declaration may not be terminated within the first 20 years after the date of recording without the consent of all Lot and Unit Owners and the adoption of a substitute mechanism and/or organization for the operation, maintenance, repair and replacement of the Area Common of Responsibility together with the implementation and payment thereof ("Substitute Organizational Agreement"). Thereafter, it may be terminated only by an instrument signed by Owners of at least 60% of the total Lots and Units within the Property and a Substitute Organizational Agreement, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

## **16.2 Amendment**

Except as otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 60% of the total number of votes of the Lot Owners and 60% of the total number of votes of the Unit Owners. In addition, amendments regarding the assessments paid by or benefits enjoyed by a Membership Class must be approved by more than 75% of the Lots or Units within that Membership Class. Any such revocation or amendment duly adopted shall be binding upon every Owner, Lot or Unit, whether the burdens thereon are increased or decreased by any such amendment or revocation, and whether or not the Owner consents thereto.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

## **16.3 Severability**

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or application.

## **16.4 Litigation**

Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Lot Owners representing 60% of the total votes of the Lot Owners and Unit Owners representing 60% of the total votes of the Unit Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in ARTICLE 8; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article 13, if applicable.

#### **16.5 Cumulative Effect; Conflict**

The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

#### **16.6 Compliance**

Every Owner and occupant of any Lot or Unit shall comply with this Declaration, any applicable Supplemental Declaration, the Bylaws, and the Use Restrictions and Rules promulgated pursuant to this Declaration. Subject to the terms of ARTICLE 13, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Lot or Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

#### **16.7 Notice of Sale or Transfer of Title.**

Any Owner desiring to sell or otherwise transfer title to his Lot or Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot or Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

#### **16.8 Exhibits.**

Exhibits "A," "A-1", "B", "C", "D", "E" and "F" are attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 16.2.

**16.9 Integration.**

This Declaration supersedes and replaces the Original Declaration inclusive of all prior Amendments and Restatements in its entirety.

IN WITNESS WHEREOF, the Declaration is executed this 12<sup>th</sup> day of October, 2012

THE VILLAGE GREEN AT THE VALLEY CLUB HOMEOWNERS  
ASSOCIATION INC.

By: 

Name: Jack Bariteau, President

I, Tim Wolff, the Secretary of The Village Green at the Valley Club Homeowners Association Inc., hereby certify that this Declaration was approved by the requisite number of Owners of Lots and Units as required by the Original Declaration at a meeting of the Members that was duly called and held.

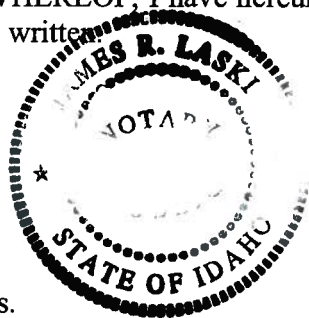
  
Tim Wolff

October 12, 2012

STATE OF IDAHO     )  
                                  )ss.  
County of Blaine     )

On this 12<sup>th</sup> day of October, 2012, before me, a Notary Public, in and for said County and State, personally appeared Jack Barriteau to me known to be the President of The Village Green at the Valley Club Homeowners Association, Inc., the entity that executed the foregoing instrument, and acknowledged that he/she executed the same as the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

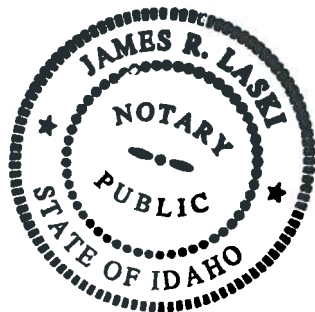


*[Signature]*  
NOTARY PUBLIC FOR IDAHO  
Residing at: Blaine County  
My commission expires: Aug 3, 2017

STATE OF IDAHO     )  
                                  )ss.  
County of Blaine     )

On this 12<sup>th</sup> day of October, 2012, before me, a Notary Public, in and for said County and State, personally appeared Tim Wolff, to me known to be the Secretary of The Village Green at the Valley Club Homeowners Association, Inc., the entity that executed the foregoing instrument, and acknowledged that he/she executed the same as the free act and deed of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



*[Signature]*  
NOTARY PUBLIC FOR IDAHO  
Residing at: Blaine County  
My commission expires: Aug 3, 2017



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF THE PROPERTY**

Block 1 (including Lots 1 through 43 of The Village Green At The Valley Club Project) and Block 2 (including the twelve Units of the Condominium Project) of The Valley Club West Nine PUD according to the official act thereof recorded Instrument No. 523431, records of Blaine County, Idaho, and all subsequent subdivision plats thereof.

All that property described in the Condominium Map of the Valley Club Community Condominiums Amended, recorded as Instrument No. 566975.

**EXHIBIT "A-1"**

**Legal Description of Property Excluded from the Declaration**

**Parcel 1:**

**LOCATED WITHIN THE COMMON AREA (PARCEL "D") OF BLOCK 1,  
THE VILLAGE GREEN AT THE VALLEY CLUB: PHASE ONE  
BLAINE COUNTY, IDAHO**

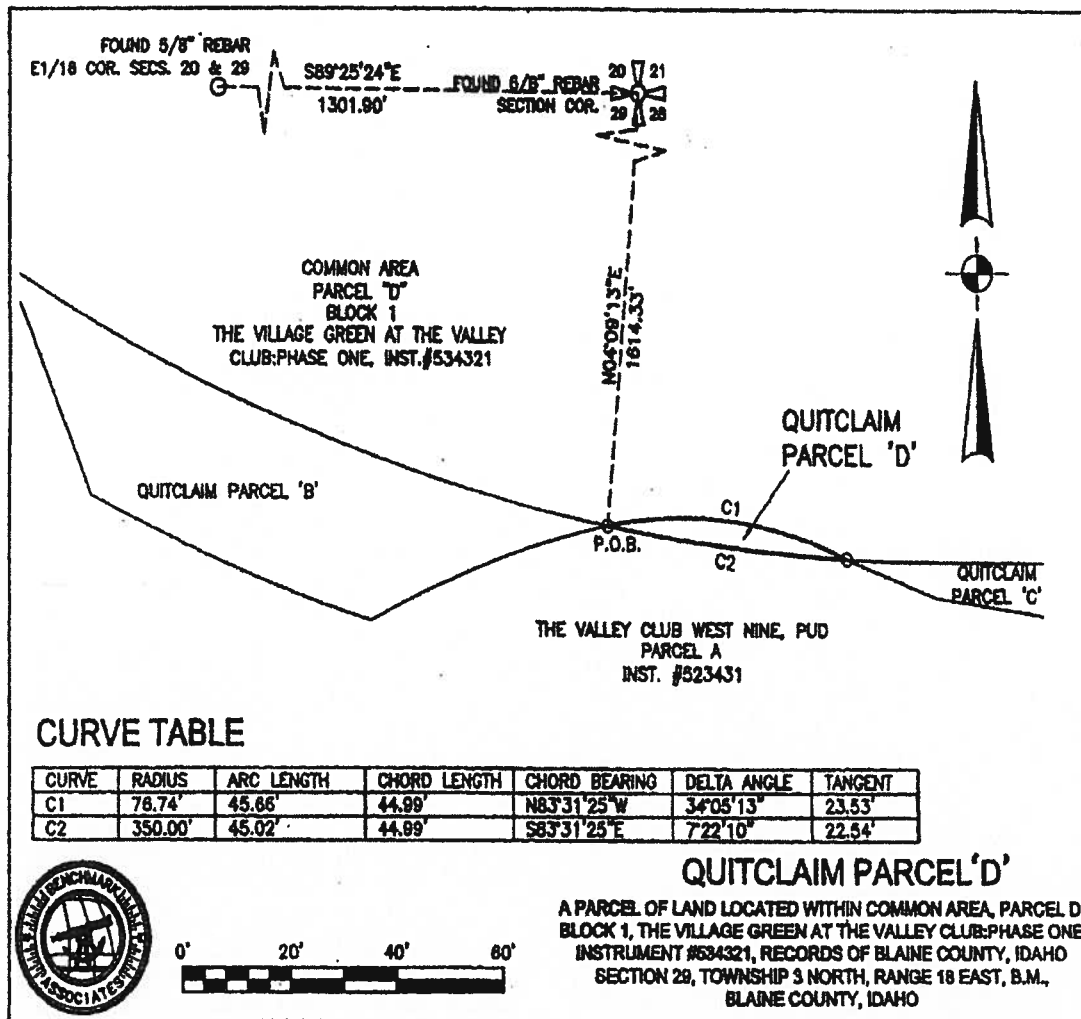
**SECTION 29, TOWNSHIP 3 NORTH, RANGE 18 EAST, B.M.,  
BLAINE COUNTY, IDAHO.**

Commencing at a 5/8" Rebar marking the Section Corner common to Sections 20, 21, 28 and 29, Township 3 North, Range 18 East, Boise Meridian, said point lies S89°25'24"E a distance of 1901.90 feet from a 5/8" Rebar marking the East 1/16 Corner common to said Sections 29 and 20 as shown on the plat of The Village Green At The Valley Club : Phase One., recorded as Instrument #534321, records of Blaine County, Idaho;  
Thence S04°09'13"W a distance of 1614.33 feet to a point on the Common Boundary to said Parcel A, The Valley Club West Nine P.U.D. Subdivision and Parcel "D", Block 1 of The Village Green at the Valley Club: Phase One, said point being the POINT OF BEGINNING;

Thence along a curve to the right 45.66 feet, said curve having a radius of 76.74 feet, a chord bearing S83°31'25"E a distance of 44.99 feet and a delta angle of 34°05'13" said curve being roughly coincident with the northern edge of a cart path;  
thence returning along said Common Boundary along a non-tangent curve to the right 45.02 feet, said curve having a radius of 350.00 feet, a chord bearing N83°31'25"W a distance of 44.99 feet and a delta angle of 7°22'10" to the POINT OF BEGINNING.

Said parcel having an approximate area of 123 square feet.

As depicted on the following page.



Parcel 2:

**LOCATED WITHIN THE COMMON AREA (PARCEL "D") OF BLOCK 1,  
THE VILLAGE GREEN AT THE VALLEY CLUB: PHASE ONE  
BLAINE COUNTY, IDAHO**

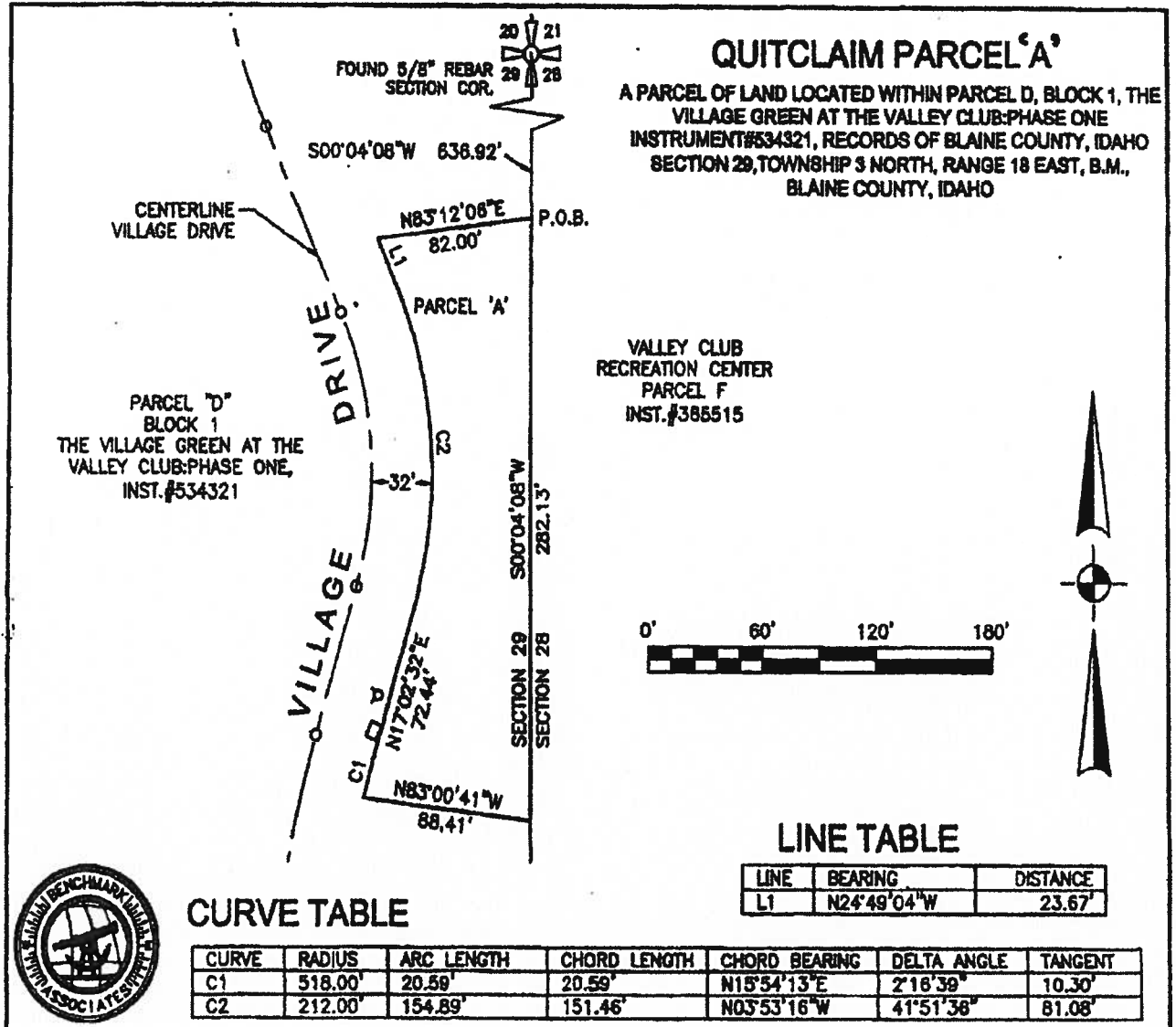
**SECTION 29, TOWNSHIP 3 NORTH, RANGE 18 EAST, B.M.,  
BLAINE COUNTY, IDAHO.**

Commencing at a 5/8" Rebar marking the Section Corner common to Sections 20, 21, 28 and 29, Township 3 North, Range 18 East, Boise Meridian, said point lies S89°25'24"E a distance of 1301.90 feet from a 5/8" Rebar marking the East 1/16 Corner common to said Sections 29 and 20 as shown on the plat of The Village Green At The Valley Club : Phase One., according to the official plat thereof, recorded as Instrument #534321, records of Blaine County, Idaho; Thence S00°04'08"W along the Section Line common to said Sections 28 & 29 a distance of 636.92 feet to a point, said point being the POINT OF BEGINNING.

Thence continuing along said Section Line S00°04'08"W a distance of 282.13 feet; thence departing said Section Line N83°00'41"W a distance of 88.41 feet to a point on a curve 32 feet easterly of the centerline of Village Drive as shown on said Instrument #534321; thence along the following courses, all lying 32.00' feet easterly of said centerline: thence along said curve to the right 20.59 feet, said curve having a radius of 518.00 feet, a chord bearing N15°54'13"E a distance of 20.59 feet and a delta angle of 2°16'39"; thence N17°02'32"E a distance of 72.44 feet; thence along a curve to the left 154.89 feet, said curve having a radius of 212.00 feet, a chord bearing N03°53'16"W a distance of 151.46 feet and a delta angle of 41°51'36"; thence N24°49'04"W a distance of 23.67 feet; thence departing said 32.00' centerline offset N83°12'06"E a distance of 82.00 feet to the POINT OF BEGINNING.

Said parcel having an approximate area of 17736 square feet, 0.41 acres.

As depicted on the following page.



## **EXHIBIT "B"**

### **Use Restrictions and Rules**

Except as otherwise set forth in this Declaration, the following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to ARTICLE 10 of the Declaration. However, any such attempt by the Association to amend, modify, repeal or limit paragraphs 2(v), 2(vi) or 2(xi) must first be approved in writing by the Valley Club Owners Association, Inc. before it becomes effective.

1. General. The Property shall be used only for residential purposes consistent with this Declaration and any Supplemental Declaration.
2. Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(i) Posting of signs of any kind except those required by law, including posters, circulars and billboards;

(ii) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages. The foregoing applies to the Streamside Project only and shall not apply to the Condominium Project or any Unit or Condominium Common Area or Condominium Limited Common Area, unless expressly decided otherwise by the Condominium Directors;

(iii) Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority or changing the boundary lines of any Lot;

(iv) Active use of lakes, ponds, streams, or other bodies of water within the Property or within any Golf Course, except that the owner of the Golf Course, and its agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Lot Common Area which are within range of golf balls hit from the Golf Course. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Property;

(v) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years; also, any lease or rental of a Lot shorter than

six (6) months. The foregoing applies to the Streamside Project only and shall not apply to the Condominium Project or any Unit or Condominium Common Area or Condominium Limited Common Area, unless expressly decided otherwise by the Condominium Directors;

(vi) Occupancy of a Lot or Unit by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household unit, or no more than three persons who are not so related living together as a single household unit, and the household employees of either such household unit;

(vii) Capturing, trapping or killing wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons using the Property, and raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Lot or Unit provided they are not kept, bred, or maintained for any commercial purpose and not allowed outside a Unit or Unit except when leashed or otherwise under someone's direct personal control. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. No outdoor dog kennels or other animal shelters or pens are permitted, and no dogs shall be kept outside on a leash or other restraint. All pet food shall be stored and pets shall be fed in a manner that does not attract "nuisance" wildlife (e.g. skunks, raccoons, magpies, red fox, etc.). Owners shall comply with all Plat Notes set forth on any subdivision plat of the Property regarding wildlife and pets.

Feeding of game species or predatory wildlife is prohibited. ANY FORM OF WILDLIFE HARASSMENT IS PROHIBITED;

(viii) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(ix) Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Lot or Unit, whether such portion is improved or unimproved;

(x) The discharge of firearms within the Property is prohibited. The term firearms includes BB guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein, or in the Bylaws, the Association shall not be obligated to take action to enforce this provision; and

(xi) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Lot Unit may conduct business activities within the Lot or Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot Unit; (B) the business activity conforms to all zoning requirements for the Property; (C) the business

activity does not involve regular visitation of the Lot or Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (D) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The leasing of a Lot or Unit shall not be considered a business or trade within the meaning of this subsection. Leasing, for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot or Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Lots or Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes. There shall be no subleasing of Lots or Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing.

(xii) Clotheslines. No outside clotheslines shall be permitted, and all garbage cans, equipment, maintenance tools, and similar items shall be kept screened or enclosed to conceal them from the view of neighboring Lots or Units.

(xiii) Exterior Antennas and dishes. No exterior television, telecommunication or radio antennas, discs, dishes or similar communication installations shall be placed on any Lot without prior written approval from the Architectural Design Committee or on the Condominium Building or any portion thereof without the approval of the Condominium Directors.

(xiv) Nuisances. No rubbish, waste or debris of any kind shall be placed or permitted to accumulate upon any Lot or within any Unit, and no odor shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or Unit. No noise, including but not limited to, noise created by people, animals, equipment and/or machinery, shall not be permitted to exist or operate upon any Lot, Lot Common Area, Condominium Common Area, or within in a Unit to be offensive or detrimental to any other Lot or Unit or its occupants.

(xv) Hazardous Activities. No activities shall be conducted, and no improvements shall be constructed, within the Property on any Lot, Lot Common Area, Unit or Condominium Common Area, which are or might be unsafe or hazardous to any person or property.

(xvi) Unsightly Articles. No unsightly articles shall be permitted to remain on any Lot, Lot Common Area, Unit or Condominium Common Area, unless completely stored within a unit, including, without limitation, trailers, campers, motor homes, boats, tractors, snowmobiles, and snow removal and maintenance equipment.

(xvii). Exterior Appearance. Every Owner of a Unit subject to this Declaration shall at all times keep the exterior thereof, including appurtenant decks, sidewalks, driveways and patios clean and free of debris and unsightly personal property.

(xviii) Dogs. All dogs must be under the control, either leashed or under verbal control, so as not to create a nuisance to others.



## **EXHIBIT “C”**

### **Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration (“Arbitration Notice”).

2. Each Party shall select an arbitrator (“Party Appointed Arbitrator”). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators (“Neutral(s)”) so that the total arbitration panel (“Panel”) has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson (“Chair”).

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Idaho chapter of The Community Associations Institute, which shall appoint one Neutral (“Appointed Neutral”), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator (“Arbitrator”), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“Bias Disclosure”). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be (“Arbitrator”) shall fix the date, time and place for the hearing. The place of the hearing shall be within the Property unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no post hearing briefs unless specifically requested by the Arbitrator.

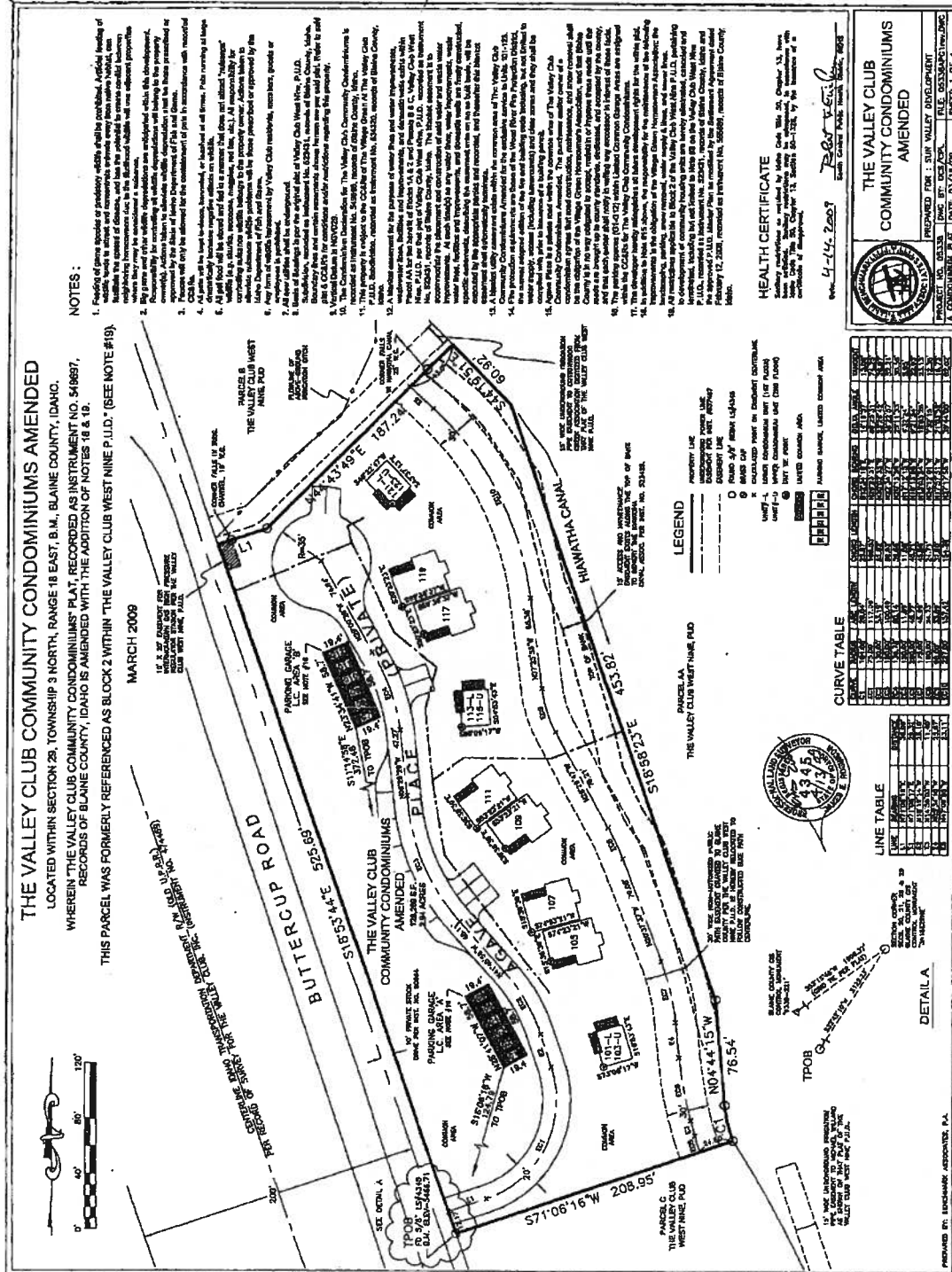
13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

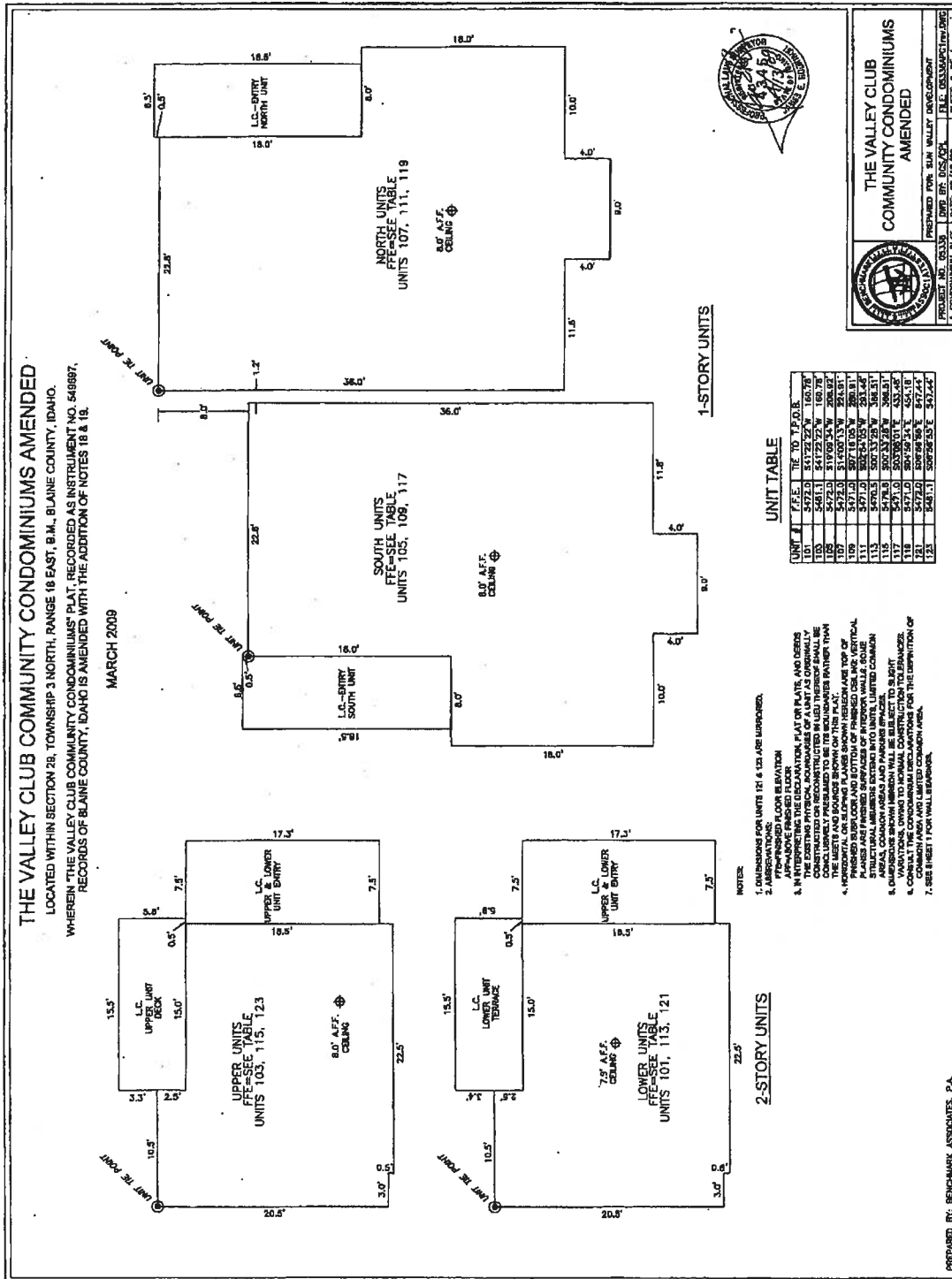
14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

# EXHIBIT "D"

## Condominium Plat Depiction





# THE VALLEY CLUB COMMUNITY CONDOMINIUMS AMENDED

## OWNER'S CERTIFICATE

THIS IS TO CERTIFY that BUTTERCUP COMMUNITY HOMES, LLC, an Idaho Limited Liability Company is the owner in fee simple of Real Property described as follows:

A parcel of land within Section 28, Township 3 North, Range 18 East, Boise Meridian, more particularly described as follows:

Condominium Units 101-L, 102-L, 105, 107, 108, 111, 113-L, 115-L, 117, 119 & 121-L, as shown on the Condominium Map of THE VALLEY CLUB COMMUNITY CONDOMINIUMS, recorded in the Boise County Clerk's Office, Book 54887, records of Boise County, Idaho.

The covenants shown herein are not dedicated to the public, but the right to use the common areas and structures thereon is dedicated to the public, and the right to use the structures after that for each utility and other designated uses are to be created within the time of said easement.

It is their intention to create a pooled building and land property in this association plat. The Owners also hereby certify that they intend to file the recordation of documents pursuant to Chapter 15, Title 25 of Idaho Code and that they intend to file the recordation of documents pursuant to Chapter 15, Title 25 of Idaho Code and that the recordation project described in this plat will be eligible to receive domestic water service from an existing water distribution system.

BUTTERCUP COMMUNITY HOMES, LLC, an Idaho limited liability company

By: SUN VALLEY DEVELOPMENT, LLC, an Idaho limited liability company, Member

By: MONTY W. GILK, Managing Member

Signed this 16th day of April, 2009

FOR SECURITY INTEREST:

CONSENT OF LENDER:

FIRST BANK OF IDAHO, FSB

By: BOB GOLDMAN, Senior Vice President

Signed this 15 day of April, 2009

## ACKNOWLEDGEMENT

COUNTY OF BLAINE

STATE OF IDAHO

On this 10th day of April, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Henry W. Olsen, known or identified to me, as the holder of satisfactory evidence, to be the Managing Member of SUN VALLEY DEVELOPMENT, LLC, an Idaho limited liability company, Member of BUTTERCUP COMMUNITY HOMES, LLC, an Idaho limited liability company, and acknowledged that he executed the same as the free act and deed of such entity.

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

My commission expires: 10/01/09

Notary at: Ketchum, IDAHO

Henry W. Olsen  
Notary Public



## ACKNOWLEDGEMENT

COUNTY OF BLAINE

STATE OF IDAHO

On this 15th day of April, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Dick Coleman, known or identified to me, as the holder of satisfactory evidence, to be the Senior Vice President of FIRST BANK OF IDAHO, FSB, and acknowledged that he executed the same as the free act and deed of such entity.

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

My commission expires: 9/10/2014

Notary at: Ketchum, IDAHO

Dick P. Coleman  
Notary Public



<p>THE VALLEY CLUB COMMUNITY CONDOMINIUMS AMENDED</p>	
<p>PREPARED FOR: SUN VALLEY DEVELOPMENT</p>	<p>FILE: 053387A.DWG</p>
<p>PROJECT NO. 053387</p>	<p>DRAWN BY: CPL</p>
<p>A CONDOMINIUM PLAT DATE: 04/29/09</p>	<p>SHEET: 3 OF 4</p>

# THE VALLEY CLUB COMMUNITY CONDOMINIUMS AMENDED

## OWNER'S CERTIFICATE

THIS IS TO CERTIFY that MICHAEL BONDS JENSEN, a single man, is the owner in fee simple of the Real Property described as follows:

A parcel of land within Section 25, Township 3 North, Range 18 East, Idaho Meridian, more particularly described as follows:

Condominium Unit 123-J, as shown on the Condominium Map of THE VALLEY CLUB COMMUNITY CONDOMINIUMS, according to the official plat (herein), recorded as Instrument No. 548957, records of Blaine County, Idaho.

The easements shown hereon are not dedicated to the public, but the right to use said easements for the intended purposes is hereby reserved. No structures other than for such utility and other designated uses are to be erected within the limits of said easements.

It is hereby declared to be a public utility and shall remain so in perpetuity. The Owners agree to pay the cost of the water service to the water main at the point of connection to the water main. The cost of the water service to the water main shall be the responsibility of the Owner. The cost of the water service to the water main shall be the responsibility of the Owner. The cost of the water service to the water main shall be the responsibility of the Owner.

*[Signature]*  
MICHAEL BONDS JENSEN  
Signed this 22 day of April, 2009

## ACKNOWLEDGEMENT

COUNTY OF IDAHO }

STATE OF IDAHO }

On this 22 day of April, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL BONDS JENSEN, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

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

My commission expires 09/20/2014

Notary Public



## SURVEYOR'S CERTIFICATE

I, James E. Robinson, a duly Registered Professional Land Surveyor in the State of Idaho, do hereby certify that the foregoing plat and map were prepared by me or under my direct supervision in strict accordance with the Idaho State Code relating to the Surveying Profession, and the Corner Registration and Filing Act 25-1101, through 25-1602.

*[Signature]*  
JAMES E. ROBINSON, P.L.S.  
4/02/09  
4345  
SUN VALLEY, IDAHO

## COUNTY SURVEYOR'S APPROVAL

This is to certify that I, Jim W. Koonce, County Surveyor for Blaine County, Idaho, have checked the foregoing plat and map and am satisfied that the same are correct and true to the facts and conditions of the State of Idaho relating to plats, surveys and subdivisions.

*[Signature]*  
JIM W. KOONCE  
4/16/09  
MAY

## COUNTY PLANNING & ZONING APPROVAL

The foregoing plat was approved and accepted this 15<sup>th</sup> day of APRIL, 2009, by the Blaine County Planning & Zoning Administrator.

*[Signature]*  
JIM W. KOONCE

## COUNTY COMMISSIONER'S APPROVAL

The foregoing plat was approved and accepted this 15<sup>th</sup> day of APRIL, 2009, by the County Commissioners, Blaine County, Idaho.

*[Signature]*

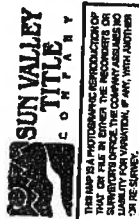
## BLAINE COUNTY TREASURER'S CERTIFICATE

I, the undersigned, County Treasurer in and for Blaine County, State of Idaho, per the requirements of Idaho Code 50-1504, do hereby certify that any and all current and/or delinquent taxes and assessments for the year 2008, for the property described in this plat on this 22<sup>nd</sup> day of April, 2009. This certification is valid for the next sixty (60) days only.

*[Signature]*  
BLAINE COUNTY TREASURER

Instrument # 548957  
Recorded in Book 10, Page 4  
Blaine County, Idaho  
4/16/09  
James E. Robinson, P.L.S.

THE VALLEY CLUB COMMUNITY CONDOMINIUMS AMENDED	
PREPARED FOR: SUN VALLEY DEVELOPMENT	FILE ORIGINATOR: ONE
PROJECT NO. 05534	DATE BY: 04/02/09
A CONDOMINIAL PLAT	DATE: 04/02/09
SHEET 4 OF 4	



**EXHIBIT “E”**

**List of Unit Ownership**

<u>Unit</u>	<u>Building Area</u>	<u>Unit Percentage</u>
Unit 101	498	5.5370%
Unit 103	498	5.5370%
Unit 105	1001	11.1296%
Unit 107	1001	11.1296%
Unit 109	1001	11.1296%
Unit 111	1001	11.1296%
Unit 113	498	5.5370%
Unit 115	498	5.5370%
Unit 117	1001	11.1296%
Unit 119	1001	11.1296%
Unit 121	498	5.5370%
Unit 123	498	5.5370%
TOTALS	8994	100.00%

**EXHIBIT “F”**

**Assignment of Unit to Parking Space**  
**in Condominium Common Area as Condominium Limited Common Area**

<u>Unit</u>	<u>Parking Space</u>
Unit 101	G1
Unit 103	G2
Unit 105	G3
Unit 107	G4
Unit 109	G5
Unit 111	G6
Unit 113	G7
Unit 115	G8
Unit 117	G9
Unit 119	G10
Unit 121	G11
Unit 123	G12