

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BILTMORE ESTATES SUBDIVISION

THIS DECLARATION is made as of the ____ day of _____, 2015, Oakwood Estates, LLC, hereinafter referred to as "Declarant."

RECITALS:

A. Declarant, Oakwood Estates, LLC, is the owner of certain real property in Ada County, State of Idaho, more particularly described on **Exhibit A** attached hereto and by this reference incorporated herein, which real property shall be platted as Biltmore Estates Subdivision No. 1 by recording the **plat** thereof in the office of the Ada County Recorder's Office. The described parcel of real property is hereinafter referred to as the "**Subject Property**."

B. Declarant desires to impose upon Subject Property certain protective covenants, conditions, restrictions, reservations, easements, liens and charges for the benefit of Subject Property and all present and subsequent owners thereof, and all conveyances of Subject Property or any part thereof shall be subject to this Declaration;

NOW, THEREFORE, Declarant hereby imposes upon Subject Property the following easements, conditions, covenants, restrictions and reservations which shall run with Subject Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1: DEFINITIONS.

The following capitalized terms shall, as used in this Declaration, have the following meanings:

1.1 "ACC" shall mean the Architectural Control Committee.

1.2 "ACC Design Standards" shall mean such standards promulgated by the *Declarant* and/or the ACC as authorized by **Section 10.3** below.

1.3 "ACHD" shall mean Ada County Highway District.

1.4 "Annexed Property" shall mean and refer to any real property made subject to this *Declaration* by Supplemental Declaration pursuant to the provisions hereof for the annexation of additional parcels of real property.

1.5 "Assessment" shall mean a payment required of *Association* members, including *Regular, Special or Limited Assessments* as provided in this *Declaration*.

1.6 "Association" shall mean and refer to Biltmore Estates Homeowners' Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.

1.7 "Association Rules" shall mean such rules promulgated by the *Declarant* and/or the *Association* pursuant to **Section 6.4(e)**.

1.8 "Board" shall mean the duly elected and qualified Board of Directors of the *Association*.

1.9 "Builder" shall mean the general contractor who constructs the *Dwelling* on a *Lot* for an *Owner*, or as a spec house for ultimate sale to an *Owner*.

1.10 "Building" includes any *Dwelling*, house, garage, or any other partially or fully enclosed building, shed or other structure, consisting of one or more walls or roof. A building includes sheds, pet enclosures which have a partial or full roof impervious to water in whole or in part, and similar structures.

1.11 "Common Lots" shall mean and refer to Lot 1, Block 1; Lot 12, Block 3; Lot 11, Block 4; Lot 1, Block 5; Lot 1, Block 6; and Lot 1, Block 7 of Biltmore Estates Subdivision No. 1, and to any lot or parcel designated as Common Lots in the final *Plat* of the *Subdivision* or in a Supplemental Declaration subjecting additional real property to this *Declaration*, which parcels' owners may or may not have access to depending upon the purpose of the particular *Common Lots*. Said areas are intended to be devoted to the common benefit and enjoyment of the *Owners* (subject to the provisions hereof) and are not dedicated to the public.

1.12 "Common Facilities" shall mean and refer to those physical improvements constructed by *Declarant* upon *Common Lots* or upon the utility easements over each *Lot*, and may include, without limitation, benches, bridges, walkways, drainage facilities, and streams. Common facilities shall include the *Pressurized Irrigation System*.

1.13 "Declarant" shall mean the undersigned owner of the *Subject Property* at the time of the recordation of this *Declaration*, including any successor to the *Declarant*, who succeeds to the ownership of substantially all of *Declarant's* interest in the whole of the *Property*.

1.14 "Declaration" shall mean this Declaration, as it may be amended from time to time.

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

1.16 “*Drainage Lots*” shall mean Lot 1, Block 1 of Biltmore Estates Subdivision No. 1, which Lot shall be used primarily for retention pond/drainage basins. Said *Lot*, together with any other *Lots* so designated in a Supplemental Declaration, shall be referred to as “Drainage Lots.” The Drainage Lots are covered by a blanket storm drain easement in favor of ACHD for the purpose of maintaining the drainage facilities, and the *Drainage Lots* shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect drainage or the maintenance of the storm water facilities. *Drainage Lots* shall be considered *Common Lots*.

1.17 “*Irrigation District*” shall mean the Boise – Kuna/New York Irrigation District.

1.18 “*Exempt Property*” shall mean all portions of the *Subject Property* which have been dedicated to, and accepted by, a local public authority and/or owned by a charitable or nonprofit corporation exempt from taxation, all of which properties, including the *Common Lots*, shall be exempt from *Assessments* created herein.

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

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

1.21 “*Lot(s)*” shall mean and refer to the plots or tracts of land comprising the *Subject Property*, designated by lot numbers on the *Plat*, or any resubdivision thereby excluding the *Common Lots*.

1.22 “*Member*” shall mean any person who is an *Owner* of a *Lot* within the *Subject Property*.

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

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

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

1.26 "Owner" shall mean and refer to the record owner of fee simple title to any *Lot*, excluding those record owners having title merely for security for the performance of an obligation.

1.27 "*Plat*" shall mean and refer to those certain plats of phases of Biltmore Estates Subdivision to be recorded in the Ada County Recorder's office, which plats cover and subdivide all of the *Property*.

1.28 "*Pressurized Irrigation System*" shall mean the physical infrastructure that delivers irrigation water to each *Lot* and *Common Lot*, including the underground irrigation main pipes and valves located in the irrigation easements noted on the *Plat*; the user service connections, including valve boxes and service boxes, delivering the irrigation water to the *Lots*; and the underground sprinkler system on the *Common Lots*, and all related equipment, parts and materials; excluding, however, the *Lot*'s individual buried sprinkler lines, heads and valves installed on the individual *Lots* by the *Dwelling* builder.

1.29 "*Property*" shall mean the property defined as *Subject Property* in the recitals above, and shall further mean and refer to such additional real property as may hereafter be made subject to this *Declaration* by Supplemental Declaration pursuant to the provisions hereof for annexation of additional parcels of real property.

1.30 "*Regular Assessment*" shall mean an *Assessment* levied by the *Association* to provide funds to pay the ordinary estimated expenses of the *Association*.

1.31 "*Special Assessment*" shall mean an *Assessment* levied by the *Association* other than a *Regular* or *Limited Assessment*.

1.32 "*Subdivision*" shall mean Biltmore Estates Subdivision No. 1 and any future phases of Biltmore Estates Subdivision.

1.33 "*Supplemental Declaration*" shall mean an amendment to this *Declaration* in which additional property shall, for the purposes of this Agreement, be made subject to this *Declaration* all in accordance with **ARTICLE 11** herein.

1.34 "*Transition Date*" shall mean the latter of the date the *Declarant* certifies in writing to the *Association* that no additional real property shall be made subject to this *Declaration*, or the date when the *Declarant* owns five percent (5%) or less of all of the *Lots*, which are part of the *Subject Property* and any additional property annexed thereto.

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

ARTICLE 2: PURPOSE

2.1 The Subject Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Subject Property for the purpose of:

(a) Insuring Owners and Occupants of Dwellings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Buildings.

(b) The prevention of the erection within the Subject Property and Buildings of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.

(c) Encouraging and insuring the erection of quality and attractive improvements appropriately located within the Subject Property to assure visual quality and harmonious appearance and function.

(d) Securing and maintaining proper set-backs from streets and open areas within the Subject Property and adequate open spaces.

(e) The integration of development of the different Lots by setting common general standards consistent with the ACC Design Standards from time to time.

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

ARTICLE 3: PROPERTY USE RESTRICTIONS

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

3.1 Use. Each Lot shall be used only for residential purposes. As used herein “residential” shall mean the use of the Dwelling on a Lot for living accommodations for not more than two (2) unrelated persons, excluding guests of the principal occupants, which guests may reside therein on a temporary basis. “Residential” is not intended, nor shall the same be construed to include the use of the Lot for the home for persons unrelated to each other or unrelated to the Owner or Occupant.

3.2 Easements. The Lots and Common Lots, or some of them as the case may be, are hereby burdened with easements and related restrictions that are designated on the Plat, or set forth in the Plat notes and/or set forth in this section of the Declaration. Any easements designated on the Plat shall be deemed to be expressly dedicated, reserved or granted easements. Such easements include the easements identified on the Plat in its notes numbers 1, 2 and 12, and the easements encumbering Lot 1, Block 1, and noted thereon as Ada County Instrument Nos. 113135116, 113135119, and 2014-102387

3.3 Subdivision. No Lot may be further subdivided, unless otherwise authorized herein.

3.4 Pets. No animals, livestock, birds, insect or poultry of any kind shall be raised, bred, or kept on any Lot, except that no more than two (2) domesticated dogs and/or cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.

3.5 Trash. All garbage, refuse and animal waste shall be properly and promptly cleaned and stored and appropriately removed from each Lot so as to prevent unsightliness, or unnecessary or unreasonable odors.

3.6 Equipment and Vehicles.

(a) No motor homes, trailers, boats, camper, recreational vehicles, and other mobile equipment, trailers, implements, and vehicles (excluding automobiles) of all kinds or nature shall be parked or stored on any Lot, unless such items are fully screened or enclosed from view, and unless the ACC has otherwise approved the location and/or screening of said items. No vehicle should be parked or stored for a period in excess of seventy-two (72) consecutive hours on any street or on any portion of a Lot, including driveways. Each Dwelling shall include an attached garage that is sufficient in size to park at least three (3) but no more than five (5) automobiles or other vehicles; provided, however, the attached garage shall be limited to three (3) garage doors. Garage doors will be contemporary in design. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. The Owner shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Lot, which vehicles shall be kept within the garage other than for temporary purposes (as determined by the ACC). No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored upon any Lot or street within the subdivision. RV garages may be approved by the ACC if in the discretion of the ACC, the proposed RV garage bay is unobtrusive and otherwise does not interfere with the clean, contemporary lines of the Dwellings. Garage interiors are to be taped and painted at a minimum.

(b) No truck, truck camper, tent, garage, barn, shack or other outbuilding or vehicle shall at any time be used as a residence or living place on any part of Subject Property.

(c) The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to Association Rules or ACC Design Standards, which may prohibit or limit the use thereof within the subject property, provide parking regulations and other rules regulating the same.

3.7 Commercial Use Prohibited. Unless specifically admitted in a supplemental Declaration, no Lot shall be used at any time for commercial or business activity; provided, however, that the Declarant or other persons authorized by the Declarant may use Lot(s) for development and sales activities related to the Subject Property. Any Owner shall be permitted to rent the Owner's Lot and Improvements thereon for residential purposes, provided the use is limited to **Section 3.1** herein and otherwise in compliance with this Declaration. Any lease allowing occupancy or residence of any Lot, or use of any portion of any Lot within the Subject Property, shall be subject in all respects to this Declaration.

3.8 No Offensive Use. No noxious, offensive or unsightly conditions, as determined by the ACC, shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

3.9 Agricultural Uses. The Owners have been made aware that the Subject Property has been developed in an agricultural community and that there will continue to be agricultural uses of some of the surrounding properties. The agricultural uses of the surrounding properties, including the use of agricultural machinery, burning and chemical weed control and fertilization, and the raising of livestock, although restricted from the Subject Property are not necessarily restricted from neighboring properties. This provision specifically puts the Owners on notice of such potential conditions.

ARTICLE 4. BUILDING RESTRICTIONS

4.1 Plans. No Dwelling, building, fence, wall or other structure or substantial landscaping or screening planting shall be undertaken, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ACC.

4.2 Mobile Homes. No mobile home, prefabricated home, trailer, modular home, or other pre-built or premanufactured home shall be allowed on any Lot.

4.3 Set Backs. The Subdivision has been improved with detached sidewalks, which creates a parkway strip in front of each Lot. It is a specific requirement of the City of Meridian and a specific building restriction herein that the attached garage of the Dwelling be set back twenty feet from the back (Lot side) of the sidewalk. The non garage front or side of a single floor Dwelling facing a street shall set back fifteen feet (15') or more from the back (Lot Side) of the sidewalk. All two story Dwellings shall be set back 20 feet from the back (Lot Side) of the sidewalk. Non street

side set backs shall be 5 feet from the Lot line for single story Dwellings and 5 feet from the Lot line for two story Dwellings. Notwithstanding the foregoing, the ACC shall have the right to require greater front set backs on certain Lots in order to create a staggered block building line. All building setbacks shall further comply with the Meridian City Code, Zoning Regulations.

4.4 Dwelling Size. No Dwelling shall be constructed containing a total floor area suitable for use as living area, excluding the garage, of less than 2,000 square feet for single story Dwellings and no less than 2,200 square feet for two story Dwellings, with a minimum of 1,500 square feet on the ground floor of two story Dwellings. The foregoing size limitations are absolute minimums but shall not be construed to permit Dwellings meeting these minimum sizes. THE OWNER (OR HIS/HER BUILDER) SHOULD REVIEW THE ACC DESIGN STANDARDS. THE ACC SHALL CONSIDER THE ADVERSE AFFECT OF DWELLING SIZE MINIMUMS AND HEIGHT RESTRICTIONS ON OTHER LOTS WITHIN A PARTICULAR PHASE OF THE SUBDIVISION IN GRANTING OR WITHHOLDING ITS APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE PROPOSED IMPROVEMENTS TO A LOT.

4.5 Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot.

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

4.7 Lighting. If required or permitted by the ACC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be set forth in the ACC Design Standards.

4.8 Roofs. The type, pitch and roof covering materials(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Design Standards. No gravel roofs shall be permitted.

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

(a) Each Owner of a Lot shall maintain all Buildings and improvements located thereon in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds controlled and otherwise maintain the same in a neat and aesthetically pleasing conditions.

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

(c) A Dwelling which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Dwellings and unimproved Lots shall not be exempt from the provisions of this Declaration.

(d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.

(e) No machinery, materials or similar items shall be stored on a Lot in any area exposed to public view.

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

(g) In the event that any Owner shall permit any Building or improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Declarant or the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in **Article 9** of this Declaration.

4.10 Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Design Standards.

4.11 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Buildings. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special

instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Design Standards with respect to signs allowed within the Subject Property, which ACC Design Standards, if adopted, shall regulate signs within the Subject Property and shall control over the specific provisions of this Section.

4.12 Construction Time Frame. All construction work on Dwellings shall be diligently and continuously pursued, and shall be completed within nine (9) months from the date construction started, and in no event later than twelve (12) months from the date of the first sale of the Lot to a Builder.

4.13 Outbuildings. Outbuildings, separate garages, sheds and shelters may be constructed only simultaneously with or after a Dwelling has been constructed on the Owner's Lot. All such buildings shall be constructed only after written approval thereof by the ACC. All outbuildings shall be constructed of similar or compatible exterior materials with the Dwelling so as to be aesthetically compatible therewith.

4.14 Fences. A Lot may have an enclosed fenced backyard, however, no fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefore, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. No fencing other than tan vinyl fencing will be permitted with the exception, on a case by case basis, of wrought iron fencing. All fences and/or walls constructed on a Lot shall be in compliance with the applicable ordinance of the City of Meridian, Idaho.

In addition to the requirements of the ACC Design Standards applicable to fences, all fences and walls shall be subject to the following restrictions:

(a) Fences and walls shall not extend closer to any sidewalk than twenty five feet (25') nor project beyond the back plane of the Dwelling. No fence higher than five feet (5') shall be allowed without the prior written approval of the City of Meridian (if required) and the ACC.

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

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

(d) Any Owner who constructs a fence on the common lot line without procuring the consent and agreement of the neighboring Lot Owner shall not be entitled to reimbursement for any portion of the cost of construction.

4.15 Detached Sidewalks. The Subdivision has been designed with sidewalks set back from the street curbs by approximately **five feet (5')** in width, creating a parkway strip (the “**Parkway Strip**”) in front of each Lot. Landscaping and maintenance of the Parkway Strip in front of each owner’s Lot shall be the responsibility of the Owner. Although the Association shall not be responsible for maintaining the Parkway Strip, it shall have the authority to do so in the event an Owner fails to do so. In the event the Association provides any of the landscaping or elects to maintain any of the Parkway Strip, the Owner(s) of the Lot contiguous to such portion of the Parkway Strip shall reimburse the Association or Declarant for the costs of such landscaping and/or maintenance for the portion of the Parkway Strip in front of the Owner’s Lot. The Association shall have the right to levy a Limited Assessment against the responsible Owner for the costs of landscaping and/or maintenance all in accordance with **Article 9**.

4.16 Landscaping. The following provisions shall govern the landscaping of Lots within the Subdivision:

(a) The Owner shall prepare a landscape plan and shall submit the same to the ACC. The installation and/or construction of the landscaping shall not commence without the prior approval of the ACC of the Owner’s Landscape Plan. The use of mounds and sculptures in planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan.

(b) The initial landscaping shall include, as a minimum, sod in the front and side yards, sod or hydroseeded grass in the rear yards; and one (1) coniferous tree and one (1) deciduous tree each of at least 8' in height, five (5) ten gallon plants, ten (10) five gallon plants and ten (10) two gallon plants in the front yard, which plants shall be selected from the ACC’s approved plant list.

(c) The above-referenced required landscaping shall be installed within forty-five (45) days after substantial completion of the Dwelling on the Lot, with a reasonable extension allowed for weather.

(d) An underground automatic sprinkler system shall be installed sufficient to irrigate the entire Lot.

(e) The **five feet (5') wide** Parkway Strip between sidewalk and curb of each Lot shall be landscaped by the Lot Owner with trees, sod, and sprinklers as more particularly required by those certain Biltmore Estates Subdivision – Phase 1 Final Plat Landscape plans approved by the City of Meridian.

4.17 Mailboxes. All mailboxes shall be constructed or installed on any Lot only if in compliance with the ACC Design Standards.

4.18 Basements. No basements shall be permitted.

ARTICLE 5: WATER SYSTEMS

5.1 Domestic Water. Each Lot shall have access to a domestic water system to be owned and operated by the City of Meridian. The domestic water system will provide water for culinary and other ordinary domestic household use and is not to be used to water a lawn, pasture, landscaped area or other similar areas except when water is not being supplied by the irrigation system, provided however, water from the domestic water system for irrigation purposes will be subject to rules of the City of Meridian and, in any event, is subject to availability. Water from the domestic water system shall not be used for any swimming pool or to supply any exterior decorative pond, or any other similar use or system without the prior written approval of each such use by the City of Meridian. The Association may elect to receive water for irrigation of the Common Lots from the City of Meridian when water is not being supplied by the irrigation system, which use shall be paid by the Association from its Assessments. Any Owner's use of water from the domestic water system shall constitute an agreement to pay the charges therefore by the City of Meridian.

5.2 Pressurized Irrigation System. All Lots, including the Common Lots, shall have access to the Pressurized Irrigation System to be constructed by Declarant and owned and operated by the Association. Owners of Lots to which the system has been extended shall be required to pay as part of the Lot's regular assessments if the Irrigation District invoices the Association for irrigation water, maintenance and operation expenses associated with the Subdivision's use of the Irrigation District's water. Payment of such fees shall be required, regardless of actual use or nonuse of water from the Irrigation System. Use of the irrigation system shall be subject to such rules and regulations of the Association. **THE AVAILABILITY OF PRESSURIZED IRRIGATION WATER FOR ANY LOT MAY BE CONTROLLED BY A MASTER COMPUTERIZED CONTROLLER THAT WILL OPERATE WATER VALVES REGULATING THE TIME AVAILABLE TO INDIVIDUAL LOTS OR GROUPS OF LOTS FOR WATERING. THE INDIVIDUAL OWNERS MAY INSTALL VALVE CONTROLLERS FOR THEIR INDIVIDUAL LOTS, AND THEREBY REGULATE THE AVAILABILITY OF PRESSURIZED IRRIGATION WATER AT ANY TIME WITHIN THE TIME FRAME ALLOCATED TO THAT LOT BY THE MASTER CONTROLLER.** Each Owner is prohibited from making any cross connection or tie in between the irrigation water system and the domestic water system. The repair and maintenance of the individual Lot's sprinkler system is the responsibility of the Lots' Owner. **WATER FROM THE IRRIGATION SYSTEM IS NOT DRINKABLE; EACH LOT OWNER SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF HIS LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES.**

ARTICLE 6: HOMEOWNERS ASSOCIATION

6.1 Formation. The Association shall be organized by the Declarant as an Idaho nonprofit corporation. The Association will be incorporated and will adopt By-Laws for its governance. To

the extent the Articles of Incorporation or By-Laws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

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

6.3 Association Control. Until the Transition Date, the Declarant, or the Declarant's successor or assignee, shall have the exclusive control of the Association and the Owners, excluding the Declarant, shall not have the right to vote on any matters involving the operation of the Association or the Association's exercise of its authority. On and after the Transition Date, the membership shall be franchised and each Member shall be entitled to one vote for each Lot owned.

6.4 Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Lots and Common Facilities, and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

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

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

(c) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.

(d) Liability of Board Members and Officers. No member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association,

the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager, or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

(e) Association Rules. The power to adopt, amend and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Lots, Common Facilities and other property owned or controlled by the Association; provided, however, Association Rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association Rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.

(f) Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any Building in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.

(g) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Lots as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

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

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

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

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

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

(a) Operation and Maintenance of Common Lots and Common Facilities. Perform, or provide for the performance of, the operation, maintenance and management of the Common Lots, Common Facilities and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant and/or an irrigation district for the delivery of irrigation water to the Lots, and the maintenance, management, repair or replacement all other property owned or controlled by the Association.

(b) Maintenance of Landscaped Parkway. Maintaining the Parkway in front of each Lot is the responsibility of the Owner of each Lot. The Association shall have the authority to prune the trees planted in the Parkway between the subdivision sidewalks and curbs such that there is maintained **five feet (5')** of clearance between the tree limbs and both the sidewalk and street surfaces and so that all suckers growing from the base of such trees are removed.

(c) Maintenance of Pressurized Irrigation System. Maintain, replace and repair any portions of the Pressurized Irrigation System, including the system's master valve controller, pumps, wet wells, and main irrigation lines to the extent that the Pressurized Irrigation System or any of its component parts are not accepted for ownership or maintenance by the Irrigation District.

(d) Maintenance of Drainage Lots.

(i) Heavy Maintenance of Drainage Lots. Heavy maintenance consists of periodically inspecting the Drainage Lots to insure they are functioning properly; cleaning out the piping and mucking out the Drainage Lots when the sediment level exceeds the designated storage level. All other maintenance of the drainage Lots shall be referred to herein as "light maintenance." ACHD has opted to perform this heavy maintenance and shall be allowed, by the Association, to perform this maintenance work. In the event ACHD shall decide not to do such "heavy maintenance" then the Association shall do it.

(ii) Easement to ACHD for Heavy Maintenance. Each Drainage Lot shall be accessible from the adjacent subdivision street. ACHD is hereby granted an easement along one side of each Drainage Lot for the purpose of access to perform this heavy maintenance. Each Drainage Lot, including Lot 1, Block 1 of Biltmore Estates Subdivision No. 1, is subject to that certain Master Perpetual Storm Water Drainage Easement in favor of ACHD, recorded May 8, 2009, Instrument No. 109053259, records Ada County, Idaho. An easement is granted across each entire drainage lot as needed for maintenance of the retention ponds by ACHD, and no landscaping or other obstruction shall be placed on the Drainage Lots in a manner that would interfere with the heavy

maintenance. In the event that it is necessary to replace any improvements to the Drainage Lots such as fences, trees and/or sod, the removal of which has been necessary to perform maintenance, such replacement shall be the responsibility of the Association.

(iii) Light Maintenance of Drainage Lots. The Association shall perform all "light maintenance" of the Drainage Lots pursuant to that certain *Maintenance and Operation Manual*, the original of which shall be kept on file with the Association with copies made available to any interested party upon request. Said *Maintenance and Operation Manual* is incorporated herein by this reference.

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

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

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

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

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

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

6.7 Improvements. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Lots and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this declaration.

6.8 Enforcement of Common Lots Maintenance. Notwithstanding that the Association is obligated to maintain the Common Lots and Common Facilities, it is hereby provided that Meridian City and/or ACHD and/or the Irrigation District (collectively the “Agencies”) may elect to maintain any part or facility of the Common Lots defined herein should the Association or the Declarant fail to maintain the same. In the event an Agency determines, in its sole discretion, that the Association is not adequately maintaining the defined Common Lots or Common Facilities, the Agency shall, before undertaking maintenance of said Common Lots, provide written notice of its and/or their intention to begin maintenance of the defined Common Lots or Common Facilities within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by the Agency. In the event that the Association shall fail to commence and conclude maintenance of the defined Common Lots or Common Facilities, the Agency is hereby granted an irrevocable license and easement to enter upon any portion of the Common Lots to perform inspection and maintenance. Should the Agency engage in maintenance of the defined Common Lots or Common Facilities after having provided notice to the Association having provided the Association an opportunity to undertake said maintenance, the Agency shall be entitled to and empowered to file a ratable lien against all Lots within the Subject Property with power of sale as to each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subject Property pursuant to this Declaration, together with interest at the rate which accrues on judgments and all costs of collection which may be paid or incurred by the Agency in connection therewith. The Agency may exercise their rights under Idaho Code by assessing the Lot Owners and certifying those Assessments in the same manner as real property tax. This section shall not be amended without prior written approval from the Agency. The Association shall not be dissolved or relieved of its responsibility to maintain the defined Common Lots and Common Facilities contained therein without the prior written approval from the Agency. The Association and all Lots Owners, by accepting title to a Lot, agree that all Lot Owners within the Subject Property are benefited property Owners for purposes of this section.

ARTICLE 7 – HOMEOWNERS ASSOCIATION PROPERTIES

7.1 Benefit. Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to the benefit of the Subdivision’s Common Lot and Common Facilities, and be entitled to use any such properties that are designated in this Declaration, or any supplement thereto, as recreational Common Lots; provided such benefits and use are subject to the following:

(a) Articles, Etc. The provisions of the Articles and By-Laws of the Association applicable to the Lot, this Declaration and applicable Supplemental Declarations and the rules, regulation and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.

(b) Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner), for any period

during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of the Association Rules or the Association Rules and Standards.

(c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot.

7.2 Damages. An Owner shall be liable for any damages to the Common Lots which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in **Article 9**.

ARTICLE 8: RIGHTS RESERVED BY DECLARANT

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

(a) Itself, its successors and representatives, contractors and their subcontractors easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by Declarant, or its successors or assigns;

(b) Itself, its successors and representatives, contractors and their subcontractors (including any district, company, unit of local government, Association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, irrigation water, or other similar services), easements, access and rights-of-way on, over, under and across all or part of the Common Lots and utility easements on, over and under all Lots and Common Lots as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(c) Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof, and a nonexclusive easement on, over, under and across any utility easements as provided or created on any recorded subdivision plat for the construction and maintenance of a pressurized pipe irrigation system.

ARTICLE 9: ASSESSMENTS

9.1 Agreement to Pay Assessments.

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

(a) **Regular Assessments:** An annual Regular Assessment shall be made by the Association in such amounts deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Lots, Common Facilities, and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s). The initial annual Regular Assessment shall be the amount of \$485.00 per Lot, until changed by the Association.

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

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

(i) To defray, in whole or in part, the cost of any construction or reconstruction of Common Lots or Facility, unexpected repair or replacement of a Common Lots or any Facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.

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

(d) Irrigation Water Assessment: The Irrigation District shall provide pressurized irrigation water services to all Lots. In addition to any Assessments made by the Irrigation District for irrigation water, Owners may be required to pay an additional Assessment to the Association, or in the event the pressurized irrigation system is conveyed to the Irrigation District, then to the Irrigation District, an additional Assessment under Idaho Code '43-330(f) for the operation, maintenance and repair of the pressurized irrigation water system.

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

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

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

9.4 Set up and Initial Regular Assessment. Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Declarant, or as to the remaining Lots owned

by Declarant, when such Lots are no longer offered for sale to the general public. At each such closing, the Owner thereof shall pay the sum of \$300.00 and also such portion of the existing Regular Assessment pro rated for the remainder of the calendar year. These initial Assessments shall be paid to the Declarant to reimburse the Declarant the set up cost and the maintenance of the Common Lots and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment will be paid to the Declarant for each Closing that occurs prior to the Transition Date and only paid to the Association if the Association has conducted its first annual meeting, elected a board of directors and assumed the obligations and expenses of the Association. Until the Association has conducted its first meeting, the Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Association. The Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this Declaration. The Association shall, upon its first meeting, initiate Assessments in accordance with this **Article 9**, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant. Until the Transition Date, the Declarant or its successor shall be responsible for the difference between the total revenue generated by Assessments or other Association dues and fees that are insufficient to pay the total expenses of the Association (the “**Shortfall**”). The Declarant pays agree to pay the Shortfall from time to time by payment to the Association or by paying directly invoices or other obligations of the Association.

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

9.6 Interest and Penalties. Any Regular, Special, Limited or Irrigation Assessments levied on Lots if not paid when due, shall bear interest at an annual rate as shall be set by the board from time to time, or if none is so set, at an annual rate of 7%. Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charged, the board may, in accordance with Association Rules promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non payment of an Assessment.

9.7 Billing for Annual Assessment. The Regular Assessment may be billed on a monthly basis, 1/12th per month on a quarterly basis, 1/4th per quarter, or annually, in advance.

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

9.9 Uniform Rate of Assessment. Special Assessments must be fixed in an equal amount for each Lot that has been sold by the Declarant. All Special Assessments shall equally apply to all Lots, and no special rate or reduction in Assessment rate shall be allowed because any Lot is unimproved or does not have a Dwelling thereon, except that any Lots owned by the Declarant that are still offered for sale to the general public shall not be subject to any Assessments.

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

ARTICLE 10: ARCHITECTURAL CONTROL COMMITTEE.

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

10.2 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

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

10.4 Interpretation and Enforcement. The ACC shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lots

improvements. The ACC shall have the authority to pursue whatever action or litigation required to cause any Owner to remove and replace any element that the ACC interprets as deficient or outside of this Declaration or the ACC Design Standards. This right of enforcement can include the ACC hiring any or all of such work to be done and encumbering the Lot on which said work takes place with a lien for the full amount of the cost of said work plus any other costs ACC may incur in such enforcement.

10.5 Certification by Secretary. The ACC shall, upon written request, certify that improvements upon any Lot comply with this Declaration and have been duly approved by the ACC, or in the event said building or other improvements do not so comply, specifying the extent of noncompliance.

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

If a variance is granted as provided herein, no violation of this Declaration, ACC Design Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Design Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

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

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with applicable ordinances of the City of Meridian, Idaho.

10.7 Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within the Subdivision, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "Plans and Specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

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

(b) Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall include, by sample if required by the ACC, all exterior colors, materials and finishes, including roof shingles, proposed to be used.

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

10.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Property as a quality residential development. The ACC may, in its discretion, require the Owner to furnish additional materials beyond those required herein.

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

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

10.09 Inspection and Complaints. The ACC is empowered to inspect all work in progression on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ACC Design Standards or the approved plans and specifications.

Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

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

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

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner.

10.10 Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Design Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by said Owner, which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said Assessments, or any installment thereof when due, shall be enforceable in the manner provided in **Article 9** above.

10.11 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in **Article 9** above.

10.12 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in **Section 10.10 and 10.11** above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver or any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

ARTICLE 11:ANNEXATION

11.1 Procedure. Additional land contiguous to the subject property may be annexed by Declarant without the consent of the Owners or the Association at any time. Upon the earlier of recordation of a final plat of such additional land, or the certification by the Declarant describing additional land that the Declarant intends to plat, such additional property shall, for the purposes of this Agreement, be deemed Annexed Property. Amendment of the Declaration to include such Annexed Property, and to subject such Annexed Property to the rights, privileges, restrictions, covenants and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the additional property being annexed, and any supplemental or different covenants, conditions and restrictions applicable thereto, and any deletions or modifications to these covenants, conditions and restrictions as the Declarant may deem appropriate, and shall describe the Common Lots and Common Facilities thereof. Upon the recordation of the Supplemental Declaration, the Annexed Property described therein, shall be subject to the term and provisions of this Declaration as though included originally in this Declaration, and the definitions of Property, Common Lots and Common Facilities shall automatically be amended to conform to such supplement or supplements, as shall all the other definitions herein, including the definitions of Lot and Owner. All Owners of Lots located within the expanded Property shall be subject to all easements, restrictions and reservations set forth in this Declaration and shall have the privileges of use of Common Lots and Common Facilities, except as otherwise provided herein and subject to the restrictions and reservations set forth in the Declaration as amended and supplemented from time to time. Upon such annexation, the Owners of the Lots within the Annexed Property, shall be come Members of the Association with all rights, privileges, and obligations as all other Members

11.2 Designation of Common Lots. Any Common Lots and Common Facilities designated by Declarant as such on the plat of the newly annexed additional property or in the Supplement Declaration or conveyed to the Association by Declarant shall be subject to the same easements and other rights for the use and enjoyment of the Owners as for the other Owners of Lots subject to this Declaration.

ARTICLE 12: GENERAL PROVISION

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

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

12.3 Term. This Declaration shall run with the land and shall inure to the benefit of the Association, the Owner of any Lot, and any First Mortgagee as provided herein, and their respective legal representatives, heirs, successors, grantees, and assigns, for a term of forty (40) years from the date of this Declaration.

12.4 Amendments. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted for utilities and water distribution facilities, may be amended by an instrument signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment was approved by the vote or written consent of Owners representing more than 66-2/3 of the votes of the membership. Any amendment must be recorded. Any amendment of this Declaration approved in the manner specified shall be binding on and effective as to all Owners, notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to or further restrict the provisions of this Declaration, but shall not prohibit or unreasonably interfere with the allowed uses of the Lots, which existed prior to any such amendment.

12.5 Conveyance of Common Lots. The Common Lots and Common Facilities in each phase of development of the Project may be conveyed to the Association by Declarant, free and clear of all encumbrances, prior to the first mortgage in that phase being insured by HUD. Until conveyed, Declarant shall be solely responsible for the maintenance and management of Common Lots and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided for herein.

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

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

[SIGNATURE ON FOLLOWING PAGE]

