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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLACKHAWK ON THE RIVER SUBDIVISION





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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BLACKHAWK COMMUNITY

Recitals

- A. The undersigned (hereafter "Grantor") is the owner of certain real estate situated in Valley County, Idaho which Grantor intends to develop as a destination resort community to be known as "Blackhawk Community" pursuant to a Master Plan prepared by Grantor and available for review at Grantor's principal office (the "Master Plan"). Grantor reserves the right to amend the Master Plan from time to time, subject to any approvals required by Valley County or any other applicable governmental authority.
- B. It is the desire and intent of Grantor to establish certain standards for Blackhawk Community for the mutual protection of all Owners and the value of property within Blackhawk Community, with due regard for the protection and preservation of the environment. The covenants, conditions, restrictions, and easements established in this Declaration are intended to serve such objectives.
- C. By adoption of this Declaration, Grantor is not committing itself to take any action for which it is not specifically obligated under the express terms of the Master Plan or this Declaration as the same may be amended from time to time. Any person who acquires a property interest in Blackhawk Community shall have no legal right to insist that there be any particular development of Blackhawk Community except as required by this Declaration, the Master Plan or any recorded instruments annexing areas to the Property.
- D. This Declaration supercedes and replaces in its entirety that certain "Declaration of Covenants, Conditions, and Restrictions for Blackhawk On The River Subdivision", recorded as Instrument Number 305030 on January 19, 2006 in the records of Valley County, Idaho (the "Prior Declaration"), which Prior Declaration is hereby terminated and released and of no further force or effect.

NOW, THEREFORE, Grantor hereby declares that the Property is and shall be held, conveyed, encumbered, leased, and used subject to this Declaration. The restrictions set forth herein shall run with such real property and shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property and any interest therein; and shall inure to the benefit of and shall be binding upon Grantor, and its successors in interest, and may be enforced by Grantor and by any Owner or such Owner's successor in interest.

ARTICLE I - DEFINITIONS

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

- **1.1** Additional Property shall mean any additional land that is made subject to this Declaration as set forth in Section 2.2 below.
- 1.2 Articles shall mean the Articles of Incorporation of the Association.
- 1.3 ARC shall mean the Architectural Review Committee for Blackhawk Community.



- 1.4 <u>Assessments</u> shall mean all assessments and other charges, fines, fees and other payments required of Owners in accordance with this Declaration, including Regular, Special, and Limited Assessments.
- **1.5** Association shall mean any Idaho nonprofit corporation, or its successors, organized by Grantor to exercise the powers and to carry out the duties set forth in this Declaration. Grantor shall have the power, in Grantor's discretion, to name the Association "Blackhawk Community Owners Association, Inc." or any similar name which fairly reflects its purpose.
- **Board** shall mean the Board of Directors of the Association.
- 1.7 Common Areas shall mean any and all real and personal property, including easements, in which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, subject to use restrictions that may be described herein or in any Supplemental Declaration. Common Areas shall be designated as such in this Declaration, any Supplemental Declaration, any plat of the Property, or any conveyance from Grantor to the Association, and no real or personal property shall be deemed to be "Common Area" unless it is expressly so designated. Without limiting the foregoing, a Privately Owned Amenity is not Common Area for purposes of this Declaration.
- 1.8 <u>Declaration</u> shall mean this instrument as it may be amended from time to time.
- 1.9 <u>Design Guidelines</u> shall mean the Blackhawk Community Design Guidelines promulgated and published by the ARC to govern the design, approval, and installation of all Improvements in the Property. To the extent not specifically set forth in this Declaration, the Design Guidelines (as they may be amended from time to time) shall be incorporated herein by reference.
- 1.10 <u>Development Period</u> means the period of time between the date this Declaration is recorded and the earliest of (a) when all of the property within the Master Plan has been developed and seventy-five percent (75%) of the Units in the last area to be annexed to this Declaration have been conveyed to persons other than Grantor or an affiliate; or (b) when, in its discretion, Grantor so determines, as evidenced by a recorded document executed by Grantor to that effect.
- 1.11 <u>Improvements</u> shall mean all structures and appurtenances thereto of all kinds and types, including, but not limited to: buildings, roads, driveways, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs, lighting and water system.
- 1.12 <u>Limited Assessment</u> shall have the meaning given that term in Section 7.7
- **1.13** <u>Limited Common Area</u> means those Common Areas that are restricted to the exclusive use of the owners or occupants of certain Units as designated in this Declaration or a Supplemental Declaration.
- 1.14 <u>Member</u> shall mean each Owner holding a membership in the Association, including Grantor.
- **1.15** Occupant shall mean any resident or occupant of a Unit other than the Owner, including, without limitation, family members, guests, invitees and/or tenants.
- 1.16 Owner shall mean the record owner, whether one or more persons, including Grantor, holding fee simple interest of record to a Unit, and buyers under executory contracts of sale, but excluding those persons having such interest merely as security for the performance of an obligation, unless and until such person has acquired fee simple title pursuant to foreclosure or other proceedings. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit



and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

- 1.17 Privately Owned Amenity shall mean certain real property and any improvements and facilities thereon located within Blackhawk Community, which are privately owned and operated by persons other than the Association for recreational and related purposes, on a club membership basis or otherwise.
- 1.18 <u>Property</u> shall mean all property now or hereafter made subject to this Declaration.
- 1.19 Regular Assessment shall have the meaning given that term in Section 7.5.
- 1.20 Special Assessment shall have the meaning given that term in Section 7.6.
- **1.21** <u>Supplemental Declaration</u> means an instrument recorded pursuant to Section 2.2.1 which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. Without limiting the foregoing, a Supplemental Declaration may also establish a plan of condominium ownership, cabin ownership, fractional ownership, shared use ownership, planned unit development, or otherwise imposing use restrictions on particular Units within the Property.
- **1.22** <u>Turnover Meeting</u> means the meeting called by Grantor pursuant to Section 5.4.5 below, at which Grantor will turn over administration responsibility for the Property to the Association.
- 1.23 <u>Unit</u> means a portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as an attached or detached residence. A Privately Owned Amenity is not a Unit for purposes of this Declaration. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. Prior to the recording of a subdivision plan, a parcel of vacant land, or land on which improvements are under construction, shall be deemed to contain the number of Units designated for residential use for such parcel by Grantor in a written notice to the Board and in conformance with the Development Plan.
- 1.24 Water System has the meaning set forth in Article IX below.

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION

- **2.1** Initial Development. The portion of the Blackhawk Community initially made subject to this Declaration is described in the attached Exhibit A.
- **2.2** Annexation of Additional Property. Grantor may from time to time and in its sole discretion annex Additional Property to the Property. The annexation of such Additional Property shall be accomplished as follows:
- **2.2.1** Grantor and, if applicable, the owner or owners of such real property, shall execute and record a Supplemental Declaration that shall, among other things, describe the real property to be annexed, establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property, and declare that such real property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to this Declaration.



- **2.2.2** The Additional Property described in any such Supplemental Declaration shall thereby become a part of the Property, shall be subject to this Declaration, and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.
- 2.2.3 Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:
 - **2.2.3.1** modify or exclude any then existing restrictions and establish such new limitations, restrictions, covenants and conditions with respect to such property as Grantor may deem to be appropriate for the development of the Additional Property; and
 - **2.2.3.2** with respect to existing land classifications, modify or exclude any then existing restrictions and establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Grantor may deem to be appropriate for the development of such Additional Property.
- **2.2.4** There is no limitation on the number of Units which Grantor may create or annex to the Property, except as may be established by a governmental authority or by any applicable agreement. Similarly, there is no limitation on the right of Grantor to annex Common Areas, except as may be established by a governmental authority.
- **2.2.5** Grantor does not agree to build any specific future Improvement, but does not choose to limit Grantor's right to add additional Improvements.
- **2.2.6** Nothing in this Declaration shall establish any duty or obligation on Grantor to annex any property to this Declaration, and no owner of property excluded from this Declaration shall have any right to have such property annexed to this Declaration or the Property.
- 2.2.7 Additional Property may include land shown on the Master Plan as part of the Blackhawk Community, as well as additional land outside the boundaries of the Master Plan in which Grantor has or subsequently acquires an interest.
- **2.2.8** Upon annexation, the Owners of such additional Units shall be entitled to Association voting rights that are consistent with the voting rights of Owners of other portions of the Property.
 - 2.2.9 The formula to be used for reallocating the Expenses shall be as set forth in Section 7.3.
- Withdrawal of Property. Grantor may withdraw property from the Property by an amendment to 2.3 this Declaration executed by Grantor and recorded. All voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Expenses shall be reallocated to the remaining Units as provided in Section 7.3. Such withdrawal may be accomplished without prior notice and without the consent of any Owner if such withdrawal (a) is of all or a portion of the Property initially subject to this Declaration or Additional Property annexed pursuant to a Supplemental Declaration at any time prior to the first sale of a Unit in the Property initially subjected to this Declaration, or in the case of Additional Property, prior to the first sale of a Unit in such property so annexed or (b) if the property to be withdrawn was originally included in error or if the withdrawal is for the purpose of making minor adjustments to boundary lines which do not materially reduce the total number of Units. In addition, Grantor may withdraw any real property then owned by Grantor or any Common Areas if such withdrawal is a result of any changes in Grantor's plans for the Property, provided that such withdrawal is approved by a majority of the voting rights in the Association. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Units being withdrawn shall be eliminated, and the Expenses shall be reallocated as provided in Section 7.3 below.



- **2.4** Annexations into Municipalities and Other Governmental Actions. Grantor reserves the right with respect to all or any portion of the Property then owned by Grantor, and from time to time, to petition for and obtain rezonings of such property; exchanges of properties; annexations to or incorporations within any boundary or jurisdiction of a governmental authority; inclusions within any urban growth area; amendments to the Master Plan; and such licenses, permits and approvals from any governmental authority as Grantor may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.
- 2.5 <u>Dedications.</u> Grantor reserves the right to dedicate any portions of the Property then owned by Grantor to any governmental authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Grantor may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as Grantor and such governmental authority or quasi-governmental entity shall determine to be appropriate from time to time. Any consideration received by Grantor as a result of such dedication, by reason of any condemnation or any conveyance in lieu of condemnation, shall belong solely to Grantor.

ARTICLE III - USE RESTRICTIONS

- **3.1** <u>Use of Units.</u> Unless otherwise set forth in a Supplemental Declaration, Owners, and their heirs, successors, and assigns, shall use their Units only for residential dwellings and/or garages. No building shall be erected or altered or placed or permitted to remain on any portion of a Unit other than residential structures and/or garage buildings and outbuildings. This covenant does not, however, restrict the rental of the premises.
- 3.2 Privately Owned Amenities. Portions of Blackhawk Community may be a Privately Owned Amenity that is privately owned and used by their respective owners for commercial or other purposes, such as, without limitation, the proposed "River Lodge", equestrian areas and stables, sports or recreational facilities, and private clubs. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Privately Owned Amenity. Rights to use the Privately Owned Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Privately Owned Amenities. The owners of the Privately Owned Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Privately Owned Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.
- 3.3 <u>Condominium Conversions</u>. Grantor reserves the right to convert any Units then owned by Grantor into a condominium or other form of ownership in any manner permitted by Idaho law and to otherwise create and terminate any condominium containing Units owned solely by Grantor and other Owners who consent thereto.
- 3.4 <u>Subdivisions</u>. Grantor reserves the right to subdivide any Units then owned by Grantor from time to time upon receiving all required approvals from any governmental authority. In the event any two or more Units are so subdivided, they shall be deemed separate Units for the purposes of allocating Assessments under this Declaration. No other Owner of any Unit may subdivide any Unit without the prior written approval of the Grantor during the Development Period and thereafter by the Architectural Review Committee, which consent may be granted or denied at the sole discretion of the Grantor or Architectural Review Committee, as applicable.



- Gonsolidations. Grantor reserves the right to consolidate any two or more Units then owned by Grantor upon receipt of any required approvals from any applicable governmental authority and recording any necessary amendment to this Declaration or the applicable Supplemental Declaration. No other Owner may consolidate any Units without the prior written approval of the Grantor during the Development Period and thereafter by the Architectural Review Committee, which may be granted or denied at the sole discretion of the Grantor or Architectural Review Committee, as applicable. An approved consolidation shall be effected by the recording of a declaration stating that the affected Units are consolidated, which declaration shall be executed by the Owner(s) of the affected Units and by the president of the Association. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked except as provided in Section 3.4 above. Any Units consolidated pursuant to this section shall be considered one Unit thereafter for the purposes of this Declaration, including voting rights and allocation of assessments.
- 3.6 Wood Burning Devices. Wood burning devices shall be limited to one (1) per household.
- 3.7 <u>Lighting</u>. All exterior lighting must comply with Valley County Lighting Ordinance and other applicable ordinances.
- 3.8 <u>Subsurface Sewage Disposal Systems and Wells</u>. Unless otherwise set forth in a Supplemental Declaration, all Owners are required to hook into community water and sewer systems. No septic tanks or private wells shall be installed on any Unit, except for temporary systems utilized by Grantor or a builder, with Grantor's approval, during the Development Period.
- 3.9 Reservation of Water Rights Appurtenant to Property. Grantor owns certain water rights which are appurtenant to the Property and which may be utilized in connection with the Water System. Grantor hereby reserves unto itself any and all water and water rights, including groundwater and groundwater rights, surface water, ditch and ditch rights, and storage and storage rights appurtenant to the Property, and accordingly, no Owner of any Unit(s) shall have any right, title or interest in any of such water and water rights, including groundwater and groundwater rights, surface water and surface water rights, ditch and ditch rights, and storage and storage rights.
- **3.10** Incorporation of Design Review Guidelines. As set forth elsewhere in this Declaration, the foregoing use restrictions are in addition to all additional use restrictions set forth in the Design Review Guidelines, the terms and conditions of which are hereby incorporated by reference.

ARTICLE IV - ARCHITECTURAL REVIEW COMMITTEE

- 4.1 Requirement of Approval. No building, fence, wall, or other Improvement shall be erected, placed or altered on any Unit until the construction plans and specifications, showing the nature, shape, heights, materials, colors and proposed location of the structure, have been submitted to and approved by the Architectural Review Committee, hereinafter designated, pursuant to the Design Guidelines. The procedure and specific requirements for review and approval of construction shall be set forth in the Design Guidelines adopted from time to time by the Architectural Review Committee.
- 4.2 General Scope of Authority. As to all Improvements, constructions, and alterations upon Units, the Architectural Review Committee shall have the right to refuse to approve any design, plan, floor area, or color for such improvements, constructions or alterations which is not suitable or desirable in the opinion of a majority of said Committee, for any reason, aesthetic or otherwise, and in so passing upon such design the Committee shall have the right to take under consideration the suitability of the proposed building or other structures, and the material of which it is to be built and to the exterior color scheme, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of the building or other structure or alterations therein as planned on the outlook of the adjacent or



neighboring property, and the effect or impairment that said structure will have on the view on surrounding building sites, and any and all factors which, in the opinion of a majority of the committee, shall affect the desirability or suitability of such proposed structure, improvement or alteration. Actual construction shall comply with the plans and specifications as approved and shall not commence prior to the receipt of the written approval by the Architectural Review Committee.

- 4.3 Members of the Committee. The Architectural Review Committee (ARC) shall be comprised of as many persons, but not less than two (2), as may from time to time be appointed as herein provided. A member of the ARC shall hold office until he or she has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ARC may be removed by the person who appointed such member at any time, with or without cause.
- **Appointment-Removal.** Prior to the Turnover Meeting, Grantor shall be empowered to appoint all members of the ARC. Following the Turnover Meeting, the Board shall elect the members of the ARC. Any member of the Board shall also be eligible to serve on the ARC. The ARC shall have the right, by a resolution in writing unanimously adopted by its members, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ARC. In the absence of such designation, the vote of a simple majority of the members of the ARC shall constitute an act of the ARC.

4.5 Design Guidelines.

- **4.5.1** Adoption of Design Guidelines. Grantor or the Architectural Review Committee shall prepare Design Guidelines, which may contain general provisions applicable to the entire Property as well as specific provisions which vary from area to area within the Property or types of use or Improvements. The Design Guidelines may establish building envelopes for each Unit and will require compliance with forest fuels management and fire prevention practices required by the applicable governmental authority. The Design Guidelines are not the exclusive basis for decisions of the Architectural Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.
- **4.5.2 Publication of Design Guidelines**. The Architectural Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property. In Grantor's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.
- 4.5.3 Amendment of Design Guidelines. Grantor shall have sole and full authority to amend the Design Guidelines during the Development Period notwithstanding a delegation of reviewing authority to the Architectural Review Committee unless Grantor. Upon termination of Grantor's right to amend, the Architectural Review Committee shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

4.6 Approval Procedures.

4.6.1 Applications. Except as otherwise stated in this Article, Owners desiring to construct, alter, repair or replace any Improvements shall apply for an approval therefor from the Architectural Review Committee. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction (the "**Work**"), as applicable. The Design



Guidelines or the Architectural Review Committee may require the submission of such additional information as may be reasonably necessary to consider any application.

- 4.6.2 Committee Discretion. The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed Work if the Architectural Review Committee finds the proposed Work would be inappropriate for the particular Unit or incompatible with the Design Guidelines. In reviewing each submission, the Architectural Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Units within Blackhawk Community or other effect on the enjoyment of other Common Areas, disturbance of existing terrain and vegetation, wildlife protection and any other factors which the Architectural Review Committee reasonably believes to be relevant, may be taken into account by the Architectural Review Committee in determining whether or not to consent to any proposed Work.
- Committee Decision. The Architectural Review Committee shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all materials required by it with respect to the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Architectural Review Committee may, but shall not be obligated to. specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. In the event the Architectural Review Committee fails to render its approval or disapproval within forty-five (45) working days after the Architectural Review Committee has received all materials required by it with respect to the proposal, or if no written notice of noncompliance has been given to the Owner within two (2) years after the completion thereof is readily apparent, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with; provided that the Owner must first issue a written notice to the Architectural Review Committee of the Owner's intent to proceed without such approval and no response from the Architectural Review Committee is forthcoming within ten (10) days after such notice is given.
- **4.6.4 Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Architectural Review Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Architectural Review Committee. The Architectural Review Committee may render its decision only by written instrument setting forth the action taken by the consenting members.
- 4.6.5 Architectural Review Committee Fees; Assistance. The Architectural Review Committee 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. Compliance fees and deposits may also be required. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Grantor and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.
- 4.6.6 Effective Period of Consent. The Architectural Review Committee's consent to any proposed Work shall automatically be revoked one year after issuance unless construction of the Work



has been commenced or the Owner has applied for and received an extension of time from the Architectural Review Committee.

- **4.7** <u>Variances.</u> The ARC may authorize variances from compliance with the requirements of any condition and restrictions contained in this Declaration or the Design Guidelines, or any prior approval when, in the sole discretion of the ARC, circumstances such as topography, natural obstruction, aesthetics or environmental consideration or hardship may so require. Such a variance must be evidenced in writing, signed by at least two (2) members of the ARC. If a variance is granted as proved herein, no violation of this Declaration or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted.
- 4.8 Other Review Requirements. The ARC will review, approve and/or disapprove submitted plans and specifications regarding style, exterior design, appearance, locations, and compliance with the provisions set forth in the Design Guidelines. The ARC has no authority to review and/or approve any improvement plans and specifications for engineering design or structural engineering and safety, nor for compliance with applicable zoning, building, or other county, state, or federal laws, ordinances, codes or policies. Along with obtaining all necessary approvals from the ARC as set forth in the Design Guidelines, each Owner is obligated to obtain all necessary governmental approvals. Plans and specifications are to be prepared in accordance with all applicable governmental laws and regulations affecting the use of the property and improvements thereon.
- 4.9 <u>Building Permits</u>. The written approval by the ARC of the final design review documents can be submitted to Valley County, along with any additional Valley County requirements, for review, comments, approval, and issuance of a building permit. NO SUBMISSION MAY BE MADE TO VALLEY COUNTY WITHOUT FIRST OBTAINING WRITTEN APPROVAL FROM THE ARC. Building permits shall be issued in accordance with the Valley County Building Code Ordinance.
- Non-Waiver. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future. Approval of applications or plans and specifications 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 applications, plans and specifications, or other matters subsequently or additionally submitted for approval. Failure to enforce any provision of the Design Guidelines shall not constitute a waiver of the same. Moreover, approval granted to a project does not constitute approval of each element within that project. If an element that does not comply with the guidelines is discovered in a future submittal, or during the construction of the same project, modification of the non-compliant element may be required. The ARC, the Grantor, or any employee or member thereof may not be held liable for any costs or inconveniences incurred to remedy such a situation. THE BURDEN SHALL BE ON THE OWNER, THE BUILDER AND THE ARCHITECT TO ENSURE THAT THEY HAVE COMPLIED WITH THE CURRENT DESIGN GUIDELINES.
- **4.11** Non-Liability. Neither the ARC, nor any member thereof, or the Grantor, shall be liable to any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ARC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ARC for approval or plan and specifications agrees by submission of such application, and every Owner or Occupant of a Unit agrees, by acquiring title thereto



or an interest therein, not to bring any action or suit against the ARC, or any member thereof, or the Grantor, to recover such damages.

4.12 Invalidation. Invalidation of any one of the covenants contained in the Declaration or the Design Guidelines by judgment or court order shall not affect any of the other covenants or provisions thereof, all of which shall remain in full force and effect.

ARTICLE V - ASSOCIATION

- **5.1** Organization of Association. The Association shall be initially organized by Grantor as an Idaho nonprofit corporation under the provisions of the Idaho Code relating to nonprofit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles and Bylaws of the Association and this Declaration. Neither the Articles nor the Bylaws of the Association shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Grantor grants to the Association a revocable, non-exclusive license to use the name "Blackhawk Community" for the sole purpose of identifying the Association.
- 5.2 <u>Members of Association</u>. Every Owner of one or more Units within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Units within the Property, be a Member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The memberships in the Association cannot be terminated and shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of an Owner's title in and to such Unit, and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and shall not be reflected on the books of the Association.
- **5.3 Voting.** The Association will have two (2) classes of memberships.
- **5.3.1** Class A Members. Class A Members shall be all Owners except for Grantor. Class A Members shall be entitled to one (1) vote (fractional votes are not allowed) for each Unit owned by each such Owner for purposes of determining the number of votes of the Class A Members. When more than one person holds an interest in any Unit, all such persons shall be Members. Except as may otherwise be specified in the Supplemental Declaration annexing such Unit to the Property, the vote for such Unit shall be exercised as they among themselves determine. In no event, however, shall more than one vote be cast with respect to any Unit.
- **5.3.2** Class B Member. Grantor shall be the Class B Member, and shall be entitled to five (5) votes for each of the Units owned by Grantor. The Class B Member shall cease to be a voting Member in the Association at the earlier of: (1) the date Grantor has deeded the last Unit in the last area to be annexed into this Declaration to an Owner other than Grantor; (b) December 31, 2025; or (c) the date on which Grantor may elect in writing to terminate the Class B membership.
- **5.4 Board of Directors and Officers.** The powers, duties and affairs of the Association shall be conducted by its Board of Directors duly appointed or elected as provided in this section, except to the extent that a vote of the Members is required by this Declaration or the Bylaws. The Board may appoint such officers as the Board determines appropriate in accordance with the Articles and Bylaws of the Association, as the same may be amended from time to time. Subject to any approval of the Owners required by law, this Declaration, or the Association's Articles of Incorporation or Bylaws, the Board may exercise any right or privilege given to the Association expressly by this Declaration, or as reasonably implied from or reasonably necessary to effectuate any such right or privilege.



- 5.4.1 <u>Initial Board</u>. Upon incorporation of the Association and until the first annual meeting after twenty-five percent (25%) of the Units reflected on the Master Plan have been sold and conveyed to individual residential purchasers (as opposed to builders), the Board shall be composed of three directors, all of whom shall be appointed by Grantor.
- 5.4.2 When Twenty-Five Percent (25%) of the Units Have Been Sold. Commencing on the first annual meeting after twenty-five percent (25%) of the Units reflected on the Master Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after fifty percent (50%) of such Units have been conveyed, the Board shall be composed of three members, two of whom shall be appointed by Grantor and one of whom shall be elected by the Class A Members.
- 5.4.3 When Fifty Percent (50%) of the Units Have Sold. Commencing on the first annual meeting after fifty percent (50%) of the Units reflected on the Master Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after ninety percent (90%) of the Units have been conveyed, the Board shall be composed of five directors, three of whom shall be appointed by Grantor and two of whom shall be elected by the Class A Members.
- 5.4.4 When Ninety Percent (90%) of the Units Have Been Sold. Commencing on the first annual meeting after ninety percent (90%) of the Units reflected on the Master Plan have been sold and conveyed to ultimate purchasers and until the first annual meeting after expiration of the Development Period, the Board shall be composed of five directors, two of whom shall be appointed by Grantor and three of whom shall be elected by the Class A Members.
- 5.4.5 <u>Turnover Meeting After Termination of Class B Membership</u>. The first annual meeting after termination of the Class B membership shall be the Turnover Meeting, at which time Grantor will turn over administrative control to the Owners. Commencing with the Turnover Meeting, the Board shall be composed of seven directors, all of whom shall be elected by the Owners. The method of election, terms of office and method of removal and filling of vacancies shall be governed by the Bylaws.

5.5 Power and Duties of the Association.

- 5.5.1 <u>Powers</u>. The Association shall have all the powers of a nonprofit corporation organized under the nonprofit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Declaration, and to do and perform any and all acts which may be necessary, proper, and/or incidental to the proper management and operation of the Association's business, Common Area and the Association's other assets, including water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights, when and if received from Grantor, and the performance of the other responsibilities herein enumerated, including, without limitation:
 - **5.5.1.1** Assessments. The power to levy Assessments on behalf of itself or any other entity providing water, sewer, or other services to Units through or on behalf of the Association, on any Owner, or any portion of the Property, pursuant to the restrictions provided in this Declaration, and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration. This power shall include the right of the Association to levy Assessments on any Owner or any portion of the Property to cover the operation and maintenance costs of Common Area.
 - **5.5.1.2** Right of Enforcement. The Association shall be the primary entity responsible for enforcement of this Declaration. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the



Declaration, and to enforce by injunction or otherwise, all provisions hereof. The Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Declaration and/or the Design Guidelines, and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred with such removal. Each violation of this Declaration and the Design Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable.

- **5.5.1.3 Delegation of Powers.** The Association shall have the authority to delegate its power and duties to committees, officers, employees, or to any person to act as manager for the maintenance, repair, replacement and operation of any Common Area. The Association and the members of the Association shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any Common Area shall be for a term not exceeding one (1) year, shall be terminable on thirty (30) days notice with or without cause, and shall be subject to review by the Board.
- 5.5.1.4 Association Rules. The Association shall be the primary entity responsible for enforcement of the Association rules and has the power to adopt, amend and repeal such rules as the Association deems reasonable by majority vote of the Board. The Association may govern the use of Common Area by Owners, their families, invitees, licensees, lessees, or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that the Association rules shall apply equally to all similarly-situated Owners and shall not be inconsistent with this Declaration. A copy of the Association rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event the Association rules are inconsistent with or less restrictive than any other provisions of this Declaration, the provisions of the Association rules shall be deemed to be superceded by the provisions of this Declaration to the extent of any such inconsistency.
- **5.5.1.5** Emergency Powers. The power, exercised by the Association or by any person authorized by the Association, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such portion of the Property as practicable, and any damage caused thereby shall be repaired by the Association.
- 5.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on, under and about Common Area as may be necessary or appropriate for the orderly construction of Improvements, maintenance, preservation and enjoyment of the same, and for the preservation of the health, safety, convenience and the welfare of Owners:
 - 5.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;



- 5.5.1.6.2 Public or private sewers, storm drains, water drains and/or pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and
- 5.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common area, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.
- 5.5.2 <u>Duties</u>. In addition to duties necessary and proper to carry out the power delegated to the Association by the Articles, Bylaws and the Declaration, without limiting the generality thereof, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:
 - **5.5.2.1 Operation and Maintenance of Common Area.** Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of Common Area, including the repair and replacement of property damaged or destroyed by casualty loss and including any signs placed at the entrances to, or otherwise in the vicinity of the Property. The Association shall, at Grantor's sole discretion, own and/or operate and/or maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association;
 - **5.5.2.2 Reserve Account.** Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of Common Area;
 - **5.5.2.3 Tax Returns.** Timely file any and all tax return(s) with the appropriate government entity;
 - 5.5.2.4 Maintenance of Berms, Retaining Walls and Fences. Maintain any berms, retaining walls and/or fences within any Common Area;
 - **5.5.2.5 Maintenance of the Water System.** The operation and maintenance of the Water System, defined below, contemplated for the Property when and if the Water System is conveyed to the Association. Notwithstanding anything to the contrary herein, the bank account established in connection with the Water System shall be dedicated to the Water System and maintained in an account separate from other Association accounts. The Association shall conduct an unreviewed audit of the Water System at least once every five (5) years;
 - **5.5.2.6 Taxes and Assessments.** Pay all real and personal property taxes and Assessments separately levied against Common Area, or against other portions of the Property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state and/or local taxes, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation and shall file all applicable federal, state and/or local tax returns whether or not the Association is deemed to be tax exempt:
 - **5.5.2.7 Water and Other Utilities**. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other



necessary services for Common Area, and to own and/or manage for the benefit of the Property all water and water rights, including groundwater and groundwater rights, ditch and ditch rights, and storage and storage rights, if any, which the Association may acquire, and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise;

- **5.5.2.8 Insurance**. Obtain insurance from any reputable insurance company authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent commercially reasonable to obtain, without limitation, the following policies of insurance:
 - 5.5.2.8.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within Common Area:
 - 5.5.2.8.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor, and their agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of Common Area and the Water System, if such has been conveyed to the Association. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to property damage;
 - 5.5.2.8.3 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000);
 - 5.5.2.8.4 Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws, and indemnity, faithful performance, fidelity and/or other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of the Association funds or other property;
 - 5.5.2.8.5 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and
 - 5.5.2.8.6 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- **5.5.2.9 Rule Making**. Make, establish, promulgate, amend and repeal the Association's rules as the Board shall deem advisable;
- **5.5.2.10 ARC.** Appoint and remove members of the ARC subject to the provisions of this Declaration; and



- **5.5.2.11 Enforcement of Restrictions and Rules**. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advised or necessary to enforce any of the provisions of the Declaration and any and all state or local laws, ordinances, rules and regulations. Also including, without limitation, the recordation of any claim of lien with the Valley County Recorder's Office, as more fully provided herein.
- 5.6 Annual Meeting. The Association shall hold an annual meeting each year and the first annual meeting shall be held during the month of April of the first calendar year following the first sale of a Unit in the Property. Subsequent regular annual meetings of the Association shall be held as provided in the Bylaws of the Association. Special meetings may be called as provided for in the Bylaws of the Association. Notice of annual or special meetings of the Association shall be delivered to all Members of the Association as provided in the Bylaws of the Association. All meetings shall be held within the Property or as close thereto as practicable at a reasonable place selected by the Board. All Members of the Association are encouraged to attend all annual and special meetings of the Association.
- **5.7** Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Association as follows:
- **5.7.1** A pro forma operating statement or budget representing the Association for each fiscal year shall be available for distribution not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.
- **5.7.2** Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available to each Owner, a balance sheet as of the last day of the Association's fiscal year for the Association and annual operating statements reflecting the income and expenditures of the Association for its fiscal last year. Copies of the balance sheet and operating statement shall be available for distribution to each Member within ninety (90) days after the end of each fiscal year.
- Manager. The Association may employ or contract for the services of a professional manager or management company, provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association up to thirty (30) days notice, with or without cause, and without payment of a termination fee. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.
- 5.9 Personal Liability. No Member of any committee of the Association, or any officer or director of the Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party including, without limitation, the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any officer, director or other representative or employee of the Association, Grantor, or the ARC, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional negligence and/or misconduct.
- **5.10** 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 otherwise might be. Neither the Association, Grantor, nor any successor of Grantor shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system 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 that the Association, Grantor, and any successor of Grantor are not insurers and that each person using the Property assumes all risks for loss or damage to persons, property, Units, to Common Area, and to the contents of Units resulting from acts of third parties.

5.11 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Grantor or a builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to Two Hundred Fifty Dollars (\$250.00). This amount shall be in addition to, not in lieu of, the annual Regular Assessment, Special Assessment, and/or Limited Assessment and shall not be considered an advance payment of such Assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration. Upon the subsequent transfer of each Unit, a transfer fee shall be paid to the Association in an amount equal to Two Hundred Fifty Dollars (\$250.00).

ARTICLE VI - RIGHTS TO COMMON AREAS

- **6.1** <u>Title to Common Area.</u> Except for the portions thereof dedicated to the public or any governmental authority, title to the Common Areas (other than easements) shall be conveyed to and shall be accepted by the Association by Grantor AS IS, but free and clear of monetary liens (except for nondelinquent taxes and assessments) on or before the Turnover Meeting.
- **6.2** <u>Use of Common Area.</u> Except as otherwise set forth in this Declaration or a Supplemental Declaration, every Owner shall have a right to use each parcel of Common Area, which right shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:
- **6.2.1** The right of the Association to levy and increase Assessments, and any and all charges in connection with the Water System, for the construction, protection, maintenance, repair, management and operation of Improvements on Common Area, including the right to Special Assessments;
- **6.2.2** The right of the Association to authorize the operation and maintenance of the Water System, and to restrict access to such systems except for authorized persons;
- **6.2.3** The right of the Association to suspend the voting rights and rights of use, or interest in Common Area by an Owner for any period during which any Assessment or charge against such Owner's Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association rules;
- **6.2.4** The right of the Association to dedicate or transfer all or any part of Common Area to any public agency, authority or utility or other person as provided further herein:
- **6.2.5** The right of the Association to prohibit the construction of Improvements on any Common Area;
- **6.2.6** The right of the Association to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area;
- **6.2.7** The right of the Association to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board. The Association may lease any Common Area to a private club



composed of such Owners who use the facility, or to a commercial operator, or to Grantor, or to a city or county parks department, or to any other appropriate body, on such terms and conditions as may be agreed to by the Association. If the Association so agrees in the lease of such facilities, the lessee shall have the right to permit public use upon payment of use fees, which shall not be less than the fees charged to Owners for such use. There is hereby reserved to all authorized users of any portion of the Common Area an easement over the remaining Common Areas of the Association for direct ingress and egress to and from such Common Area being leased, subject to Association rules; and

- **6.2.8** The Common Area cannot be mortgaged or conveyed without the approval of Owners, excluding Grantor, of at least two-thirds (2/3) of the total voting power in the Association. If ingress or egress to any Unit is through Common Area, any conveyance or encumbrance of Common Area shall be subject to an easement of Owners of such Units for the purpose of ingress and egress.
- **6.3** <u>Designation of Common Area.</u> Grantor may designate and reserve Common Area in the Declaration, Supplemental Declarations and/or recorded plats, deeds or other instruments. No real or personal property shall be deemed to be "Common Area" unless it is expressly so designated.

6.4 Limited Common Area.

- **6.4.1** Purpose. Certain portions of the Common Areas may be designated by Grantor or the Association as Limited Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Limited Common Areas may include private access roads serving certain Units. All costs associated with maintenance, repair, replacement, and insurance of Limited Common Areas shall be allocated among the Owners of the Units to which the Limited Common Areas are assigned.
- **6.4.2** <u>Initial Designation.</u> Limited Common Areas may be designated as such in the instrument by which they are conveyed to the Association or in any Supplemental Declaration annexing Additional Property to this Declaration, but any such assignment shall not preclude Grantor from later assigning use of the same Limited Common Areas to additional Units.
- **6.4.3** Subsequent Assignments. Limited Common Areas may be converted to Common Areas and Limited Common Areas may be reassigned upon (i) approval by the Board and (ii) the vote of two-thirds of the voting rights of Units to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment shall also require Grantor's written consent if made during the Development Period.
- **6.4.4** <u>Use by Others.</u> Upon approval of a majority of the voting rights of Owners of Units to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.
- 6.5 <u>Delegation of Right to Use</u>. Any Owner may delegate, in accordance with the Declaration, such Owner's right of enjoyment to Common Area to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Unit. As provided above, only the Association shall have the right to delegate the right of enjoyment to Common Area to the general public, and such delegation to the general public shall be for a fee set by the Association.
- **6.6 Damages.** Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family or guests, both minor and adult. In the case of joint ownership of a Unit the liability of such Owners shall be joint and several. The cost of correcting such



damage shall be a Limited Assessment against such Owner(s) Unit(s) and may be collected as provided herein for the collection of other Assessments.

ARTICLE VII - ASSESSMENTS

- **7.1** Covenant to Pay Assessments. By acceptance of a deed to any Unit, each Owner of such Unit thereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provision of this Declaration, or any Supplemental Declaration.
- 7.1.1 <u>Assessment Constitutes Lien</u>. Such Assessments and charges, together with late charge(s), interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a continuing lien upon the property against which each such Assessment or charge is made.
- 7.1.2 Assessment is Personal Obligation. Each such Assessment, together with late charge(s), interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner beginning with the time when the Assessment falls due. No Owner shall be exempt from such obligation by a waiver of the use and enjoyment of Common Area or by lease or abandonment of such Owner's Unit. No Owner may exempt such Owner from liability for Assessments, by nonuse of Common Area, abandonment of such Owner's Unit, or any other means. 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.
- 7.2 Apportionment of Assessments. All Units, other than Units exempted from assessment pursuant to Section 7.4, shall pay a pro rata share of the Regular Assessments and Special Assessments commencing upon the date such Units are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to such Assessment. All Regular and Special Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas shall be assessed exclusively to the Units having the right to use such Limited Common Areas. In addition, a Supplemental Declaration may (but shall not be required to) provide that certain Units that are approved for special use categories, including but not limited to fractional ownership, shall be subject to a higher rate of assessment if Grantor determines that occupants of such Units are likely to place a disproportionate burden on Common Areas.
- 7.3 Assessment of Additional Property. When Additional Property is annexed to the Property, the Units included therein shall become subject to Assessments from the date of such annexation, except for those Units exempt from assessment pursuant to Section 7.4. All such Units shall pay such Assessments in the amount then being paid by other Units subject to such Assessments. The Board, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Common Areas and recompute Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a Supplemental Declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.
- **7.4** Exempt Property. The following property shall be exempt from payment of Regular Assessments and Special Assessments:
 - 7.4.1 all Common Area;



- 7.4.2 any property dedicated to and accepted by any governmental authority or public utility;
- 7.4.3 Units owned by Grantor until such time as a dwelling has been constructed on the Unit and the Unit is occupied for residential use, except that Units owned by Grantor shall be subject to assessments for reserves for Repair Expenses under Section 7.5.1;
- **7.4.4** Units owned by any developer or builder who has purchased one or more Units from Grantor for development and resale until the earlier of (i) such time as the Unit is occupied for a residential use or (ii) six (6) months after conveyance of such parcel to the developer or builder from Grantor. The exemption contained in this Section 7.4.4 shall not apply to assessments for reserves for Repair Expenses under Section 7.5.1; and
- **7.4.5** any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to Assessment (in which case the Unit shall not be exempted from Assessment).
- **7.5** Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.
- 7.5.1 Purposes of Regular Assessments. The proceeds from Regular Assessments are to be used for all costs and expenses incurred by the Association, including attorney's fees and other professional fees, for the conduct of the Association affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of Common Areas, including all Improvements located on such areas owned and/or managed and maintained by the Association, and of providing or causing to be provided water, sewage, or other services to Owners or Units (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement to those elements of Common Area, or other property of the Association, that must be replaced and maintained on a regular basis (the "Repair Expenses"). The Operating Expenses and the Repair Expenses are collectively referred to herein as the "Expenses."
- 7.5.2 Computation of Regular Assessments. The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Unit occurs in the Property for the purposes of the Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Grantor or other entities for payment of Expenses.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Regular Assessment 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. 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 shall take into account the number of Units subject to Assessment on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to Assessment during the fiscal year.



The Board can require, in its discretion, payment of Regular Assessments to the Association in monthly, quarterly, semi-annual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its sole discretion.

- Special Assessments. In the event that the Board shall determine that the Regular Assessment 7.6 for a given calendar year is or will be inadequate to meet the Expenses for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the Owners and the Units which shall be computed in the same manner as Regular Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted Expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B Member. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.
- 7.7 <u>Limited Assessments</u>. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board shall levy a Limited Assessment against a Member in connection with charges associated with the Water System, as provided further in Article XI, or sewer or other services provided to a Unit by or on behalf of the Association, and may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Unit into compliance with the provisions of the Declaration or for damage caused by the Owner, or any of such Owner's family, representatives or invitees, to any Common Area or any other portion of the Property.
- Assessments shall be sent by the Association to the Owner of every Unit subject thereto, and to any person in possession of such Unit. The due dates for installment payments of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after due. There may accrue, solely at the Board's discretion, on each delinquent installment payment a late charge equal to up to ten percent (10%) of the delinquent installment. In addition, there may accrue, solely at the Board's discretion, on each installment payment delinquent for more than twenty (20) days, interest at a rate up to eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Unit as more fully provided herein.
- **7.9** Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of 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 budget, with respect both to amount and timing by annual Regular Assessments over the budget period.
- **7.10** Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating



whether, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates through which any Assessments have been paid by such Owner. Any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or mortgagee of Owner's Unit. Reliance on such statement may not extend to any default of such Owner of which the signor of such statement shall have had no actual knowledge.

ARTICLE VIII - ENFORCEMENT OF ASSESSMENTS; LIENS

Right to Enforce. The Association has the right to collect and enforce Association Assessments pursuant to the provisions hereof. Each Owner of a Unit, upon becoming an Owner of such Unit, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms, and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative(s) may enforce the obligations of Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

8.2 Assessment Liens.

- **8.2.1** Creation. There is hereby created a claim of lien on each and every Unit to secure payment of any and all Assessments levied against such Unit pursuant to this Declaration together with interest thereon at the rate set forth in this Declaration and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorney's fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Units upon recordation of a claim of lien with the Valley County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Unit and Assessments on any Unit in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.
- **8.2.2** Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Valley County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Unit(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.
- 8.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court.
- **8.4** Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Unit shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a First Mortgage given and made in good faith and for value that is of record as an encumbrance against such Unit prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article, with respect to a first mortgagee who acquires title to a Unit, the sale or



transfer of any Unit shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

8.5 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to, from over and across their respective Units for installation and repair of utility services (including, without limitation, in connection with the Water System), for drainage of water over, across and upon adjacent Units and Common Areas resulting from the normal use of adjoining Units and Common Areas, and for necessary construction, maintenance and repair of any Improvement including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, pathways and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonable necessary for the use and enjoyment of a Unit or Common Area.

ARTICLE IX - DOMESTIC WATER

9.1 Water System. Except as may be set forth in a Supplemental Declaration, each Unit shall have access to the Water System to be constructed by Grantor and to be owned and operated by Grantor, subject to the provisions of Section 9.11 hereunder. Such Water System may include, without limitation source(s) of water supply, well lot(s), pumps, regulators, pipes and other delivery system equipment and infrastructure, and shall provide water for culinary and other ordinary domestic household use, including irrigation of individual Units. Any and all water rights appurtenant to the Water System shall be owned by the Grantor, subject to the provisions of Section 9.11. Unit Owners shall have no right, title and/or interest in any water and water rights, including groundwater and groundwater rights, surface water and surface water rights, ditch and ditch rights, and storage and storage rights owned by Grantor.

9.2 <u>Assessments</u>.

At the beginning of each calendar year, Grantor shall establish monthly flat-rate charges for on-going Water System use, operation, maintenance and reserves, which charges may be adjusted annually based on actual operation and maintenance expenses and shall include a reasonable reserve amount for future capital expenditures related to water system facilities maintenance and replacement. The initial fee shall be \$41.00 per month per Water System connection. Such charges shall be assessed through the Association as a portion of the Regular Assessment in connection with each Unit, which Assessments shall be paid over to the Water System owner. Notwithstanding the foregoing, all Units may be metered to measure use of the Water System in connection with each Unit. Grantor may use such meters to establish a reasonable monthly maximum amount of water allowed for use in connection with each Unit. If any such meter indicates that a Unit Owner uses significantly more water, as reasonably compared to the amount of water used by other Unit Owners, Grantor reserves the right to read meters regularly and to charge the Unit Owners a Limited Assessment, which Limited Assessment shall be proportionate to the amount of water used in excess of the reasonable maximum monthly amount. Such Limited Assessment shall be in addition to the portion of the Regular Assessment associated with the Water System. Additionally, if any dispute arises between Unit Owners, which dispute alleges unreasonable water use by another Unit Owner, Grantor shall use the water meters to determine the monthly water volume consumed by such Unit Owners and, if necessary, charge a Limited Assessment to any Unit Owner consuming significantly more water as reasonably compared to the amount of water used by other Unit Owners. Any Owner's or non-Owner's use of the Water System shall constitute an agreement to pay the charges and/or Assessments for such use.



- **9.2.2** Grantor shall maintain a separate bank account in connection with the Water System and all charges and/or Assessments and reserve funds collected by Grantor relating to the Water System shall be deposited therein, and revenue in excess of paid operation and maintenance costs shall be held in reserve for future capital expenditures. When ownership of the Water System is transferred, subject to the provisions of Section 9.11, Grantor shall transfer such bank account and all funds deposited therein to the new Water System owner.
- **9.3** Financial Records and Audits. The Water System owner shall arrange a third party financial audit of the Water System financial records at least once every five years. Water System financial records shall be made available to Unit Owner(s) upon request of the Unit Owner(s).
- 9.4 <u>Liability Insurance</u>. The Water System owner shall obtain liability insurance for the Water System.
- 9.5 Backflow Systems and Assemblies. Each Unit shall be equipped with approved backflow prevention systems and assemblies. All backflow prevention assemblies installed on any Unit must be listed in the most recent edition of the University of California Foundation for Cross-Connection Control and Hydraulic Research, or any successor publication. The backflow prevention system and assembly must be installed on the residential service line after the water meter and prior to adding connections to the residential service line. It shall be the responsibility of each Unit Owner, at such Unit Owner's sole cost and expense, to promptly replace any backflow prevention system and assembly existing on any Unit that is no longer listed on the foregoing list of approved backflow prevention systems and assemblies. Each Unit Owner, at such Unit Owner's sole cost and expense, shall ensure the correct operation of the backflow prevention system and assembly on such Unit and shall test the functioning of the backflow prevention system and assembly at least annually and report the result of such testing to the Water System owner. Testing must be performed by a backflow assembly tester licensed by the State of Idaho.
- **9.6** Individual Pressure Reducing Valves. Certain Units are expected to experience pressures exceeding 80 psi at the service connection. The Owner of any such Unit shall be responsible for the costs of installing an approved type pressure regulator on the individual service connection at each of these Units to comply with Uniform Plumbing Code Section 608.2 or any successor provision.
- 9.7 <u>Easement for Maintenance</u>. The Water System owner and authorized representatives and contractors of the Water System shall have a permanent easement to go upon the Units and/or Common Area to operate and perform maintenance in connection with the Water System, which operation and maintenance is further described in that certain Operations Manual for Blackhawk Community on file with Water System owner, the Association and the Idaho Department of Environmental Quality.
- **9.8** Access to Water System Facilities. Access to Water System wells, pump houses, and other facilities shall be restricted to the Water System owner and authorized representatives and contractors of the Water System. Such facilities shall be excluded from any Common Area access rights held by Unit Owners. If the Association becomes the Water System owner, Unit Owner(s) will not have access to Water System facilities unless the governing board of the Association has designated the Unit Owner(s) as an authorized representative of the Water System.
- 9.9 No Separate Water Supply. No separate or Individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Unit unless such system is approved by the Association and all government authorities having jurisdiction including, without limitation, the Idaho Department of Environmental Quality, and designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of Water System owner. No Unit Owner may disconnect from the Water System without written approval by Water System



owner; provided, however, even if a Unit Owner receives permission to disconnect from the Water System, such Unit Owner shall remain responsible for any and all charges for the Water System in connection with such Unit.

- Protection of Water Supply. The Water System owner shall take reasonable measures to protect any and all wellheads serving the Water System, including, without limitation:
- 9.10.1 No Parking or Chemical Storage. No parking of equipment or vehicles, storage of pesticides, herbicides, fertilizers, petroleum products or other toxic or hazardous materials shall be permitted within a fifty (50) foot radius of the wellhead;
- 9.10.2 No Petroleum Products. Petroleum products and other chemicals shall not be used on roads within fifty (50) feet of the wellhead;
- 9.10.3 No Standing Water. No standing water or storm water runoff shall be permitted within a fifty (50) foot radius of the wellhead; and
- 9.10.4 Compliance of Water Facilities. Design and construction of all water facilities in the Property shall be in compliance with all Idaho Department of Environmental Quality and Idaho Department of Water Resources standards established to minimize the potential for groundwater contamination including IDAPA 37.03.09 - "Well Construction Standards," and IDAPA 58.01-08-550 -"Design Standards for Public Water Systems", or any successor provisions.
- Transfer of Water System. During the Development Period, the Water System shall be owned 9.11 by Grantor; provided, however, Grantor may convey title to the Water System to the Association or other public or private entity ("other Water Provider") following Grantor's receipt of written authorization for such transfer from the Idaho Department of Environmental Quality. Modifications to Water System facilities for the purposes of providing water service to nearby developments shall be made at the sole expense of the Grantor. If the Water System will be transferred to an entity other than the Association, documentation of the other Water Provider's technical, financial, and managerial capacity to operate the Water System must be provided to DEQ prior to the transfer. The Grantor shall transfer ownership of the Water System on or before December 31, 2025.

In the event the Water System is transferred to the Association or other Water Provider, as the case may be, Grantor shall notify the Association or other Water Provider, as the case may be, in writing of the transfer and the Association or other Water Provider, as the case may be, shall be responsible for the ownership, operation and maintenance of the Water System. When Grantor transfers the Water System to the Association or other Water Provider, as the case may be, such transfer shall be free and clear of all encumbrances and liens, except current real property taxes that shall be prorated to the date of such transfer, and reservations, covenants, conditions and restrictions then of record including those set forth in this Declaration.

When Grantor transfers the Water System to the Association or other Water Provider, as the case may be, the Association or other Water Provider, as applicable, shall contact the Idaho Department of Water Resources, Western Regional Office, to arrange for any and all water rights appurtenant to the Water System to be assigned to the Association or other Water Provider, as applicable. If any water rights appurtenant to the Water System have not been licensed, the Grantor shall contact the Idaho Department of Water Resources, Western Regional Office, to arrange for any and all permits appurtenant to the Water System to be assigned to the Association or other Water Provider, as applicable.



If the transfer of the Water System to the Association or other Water Provider, as the case may be, occurs prior to corrosion control treatment evaluation, Grantor shall be responsible for all corrosion control testing and treatment costs.

If the Water System is transferred to the Association, and if the Association is contemplating dissolution during any time that the Association owns and operates the Water System, the Association shall contact the Idaho Department of Environmental Quality. The Association shall contract with an entity approved in writing by the Idaho Department of Environmental Quality to own and operate the Water System, prior to the Association's dissolution. During any time that the Association owns and operates the Water System, the Association shall not dissolve without written approval of the Idaho Department of Environmental Quality.

If Grantor does not convey the Water System to the Association or other Water Provider, Grantor shall have the right to transfer, sell or convey the Water System to a public or private entity, conditioned only upon approval in writing by the Idaho Department of Environmental Quality and reasonable assurances that the Water System shall be owned, operated and maintained in a manner that shall provide service from the Water System to Owners on a continuing basis with good quality of service that meets all applicable governmental laws, ordinances and regulations. No transfer of the Water System shall occur until the Idaho Department of Environmental Quality has certified that the existing Water System is in substantial compliance with state laws, regulations and/or rules.

If Grantor transfers ownership of the Water System to the Association, the Association shall collect Regular Assessments, and may collect Limited Assessments, as set forth in Section 9.2.1. The amount of such Assessments shall be reviewed annually by the Association, and may be adjusted annually based on actual operation and maintenance expenses and projected future capital expenditures. Such Assessments shall include a reasonable reserve amount for future capital expenditures for facilities maintenance and replacement. If Grantor transfers ownership of the Water System to the Association, the Association shall maintain a separate bank account in connection with the Water System and all charges and/or Assessments and reserve funds collected by the Association relating to the Water System shall be deposited therein, and revenue in excess of paid operation and maintenance costs shall be held in reserve for future capital expenditures.

If Grantor transfers ownership of the Water System to another Water Provider, such other Water Provider may propose an alternative rate structure, accounting procedures, and/or auditing procedures, conditioned only upon approval in writing by the Idaho Department of Environmental Quality and reasonable assurances that the Water System shall be owned, operated and maintained in a manner that shall provide service from the Water System to Owners on a continuing basis with good quality of service that meets all applicable governmental laws, ordinances and regulations.

Notwithstanding anything in this Declaration to the contrary, to the extent consistent with the Master Plan, Grantor may modify, amend or delete this Article IX from time to time to the extent required or permitted by the Idaho Department of Environmental Quality.

ARTICLE X - AMENDMENT AND REPEAL

10.1 <u>How Proposed.</u> Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.



- **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Units, based upon one vote for each such Unit, together with the written consent of the Class B Member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Grantor rights without Grantor's written consent, or change the boundaries of any Unit or any uses to which any Unit is restricted under this Declaration or change the method of determining liability for Expenses, the method of determining the right to common profits or the method of determining voting rights of any Unit unless the Owners of the affected Units unanimously consent to the amendment. Grantor may not amend this Declaration to increase the scope of special Grantor rights reserved in this Declaration after the sale of the first Unit unless Owners representing seventy-five percent (75%) of the total vote, other than Grantor, agree to the amendment.
- **10.3** Recordation. Any such amendment or repeal shall become effective only upon recordation in the records of Valley County, Idaho of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and acknowledged in the manner provided for acknowledgment of deeds.
- 10.4 Regulatory Amendments. Notwithstanding the provisions of Section 10.2 above, until the Turnover Meeting has occurred, Grantor shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Idaho; or any corporation wholly owned, directly or indirectly, by the United States or the State of Idaho that insures, guarantees or provides financing for a residential development or lots in a residential development. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

ARTICLE XII - MISCELLANEOUS

- 11.1 <u>Conflicting Ordinances.</u> Where any restrictions, consent, or dedication herein varies from the requirements of the property or other ordinances of Valley County having jurisdiction and the requirements of the county ordinances are more restrictive, said more restrictive requirement(s) shall be deemed to be a part thereof as if set forth herein as part of these restrictive covenants. This limitation shall apply in particular to locations, public easements, and ways where the same are particularly required by such ordinance but not set forth herein.
- 11.2 <u>Binding Effect</u>. By acceptance of any conveyance of any Unit in the Property, an Owner, and the Owner's heirs, personal representatives, successors, and assigns covenant with the Grantor, and its successors and assigns, and with all other Owners or subsequent Owners of Units in the Property, that these covenants shall inure to the benefit of, and be binding upon, all such parties.
- 11.3 <u>Term.</u> This Declaration, and all covenants, conditions, restrictions, and easements contained herein, shall run with the land described herein and shall be binding upon the parties herein and all successors in title or interest to said real property or any part thereof, until December 31, 2025, unless amended as hereafter provided. After December 31, 2025, said covenants, conditions, restrictions, and easements shall automatically extend for successive periods of ten (10) years unless the Owner (s) of



legal title to a majority of Units within the Property shall terminate said restrictions upon filing of such instrument for record in the office of the Recorder of Valley County, Idaho.

- 11.4 No Implied Obligations. Nothing in this Declaration shall be construed to require Grantor or any successor to subject Additional Property to this Declaration or to improve or develop any of the Property or to do so for any particular uses.
- Right to Transfer or Assign Grantor's Rights. Any or all of Grantor's rights and related obligations under this Declaration may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Grantor then has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Grantor and recorded. The foregoing sentence shall not preclude Grantor from permitting other persons to exercise, on a one time or limited basis, any right reserved to Grantor in this Declaration where Grantor does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.
- Joint Owners. Unless otherwise provided in a Supplemental Declaration, in any case in which 11.6 two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.
- Exclusive Rights to Use Name of Development. No person shall use the name "Blackhawk Community", "Blackhawk on the River", "Blackhawk Ridge", "Blackhawk Ranch", "Blackhawk South", "Blackhawk Lake", "Blackhawk Meadow", or any derivative of such name in any printed, digital (including internet) or other promotional or commercial material without Grantor's prior written consent. However. an Owner may use the name "Blackhawk Community" where such term is used solely to specify that the Owner's property is located within the Property. In no event shall any Owner enter into an agreement with any third party for the sale, rental or management of the Owner's Unit which agreement purports to grant any right to such third party to use the name "Blackhawk Community" or any derivative of such name in violation of this provision.
- Nonwaiver. Failure by the Association or by any Owner to enforce any covenant or restriction 11.8 contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, Grantor has caused its hand to be subscribed hereunto this day of March, 2006.

ERS. an Idaho limited liability company

Sima Muroff, Manager

CC+C's Instrument & 305030 data 1-19-2006

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BLACKHAWK COMMUNITY- 27

Boise-193267.5 0063599-00002





STATE OF <u>ldaho</u>) ss.
County of <u>Vally</u>

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



Christine Wylistin

Notary Public for ___ land

Residing at MMM/
My commission expires: 10-2176



EXHIBIT A

Property Initially Subject to this Declaration

All of the real property shown on the plat of Blackhawk On The River Subdivision, Phase I,

Blackhawk Partners, LLC, did, on the 19th day of January, 2006, record with the Office of Recorder of Valley County, Idaho, as Instrument No. 305032 in Plat Book 10, on page 35, the Final Plat for Blackhawk On The River Subdivision Phase 1, which is located in the South ½ of Section 25, T 18 N., R 2 E., B.M., Valley County, Idaho.

AFTER RECORDING, RETURN TO:

Blackhawk Partners, LLC Attn: Sima Muroff 112 N Third Street McCall, ID 83638 Instrument # 312141

VALLEY COUNTY, CASCADE, IDAHO
2006-08-14 11:28:58 No. of Pages: 3

Recorded for: SECESH ENG

LELAND G. HEINRICH

EX-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

DECLARATION OF ANNEXATION
TO MASTER DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR BLACKHAWK COMMUNITY
AND
SUPPLEMENTAL DECLARATION

THIS DECLARATION OF ANNEXATION TO MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BLACKHAWK COMMUNITY ("Declaration of Annexation") AND SUPPLEMENTAL DECLARATION is made this ______ day of July, 2006, by Blackhawk Partners, LLC, an Idaho limited liability company ("Grantor").

RECITALS

- B. As contemplated in Article 2 of the Master Declaration, Grantor desires to annex the property described in Exhibit A attached hereto, all of which is currently owned by Grantor, to the Master Declaration.

NOW, THEREFORE, Grantor does hereby declare and provide as follows:

- 1. **DEFINITIONS.** As used in this Supplemental Declaration, the terms set forth below shall have the following meanings:
- 1.2 <u>Incorporation by Reference</u>. Except as otherwise specifically provided in this Supplemental Declaration, each of the terms defined in Article 1 of the Master Declaration shall have the meanings set forth in such Article.

EXHIBIT A

Additional Property Subject to Master Declaration

All of the real proper	y shown on the plat of Blackhawk On The River Subdivision, Phase 2,
recorded 8/14/0	, 2006, in the Records of Valley County, Idaho, as Instrument
No. 3/2/39	

- 2. Property Annexed. Grantor hereby declares that all of the property described on Exhibit A attached hereto (the "Additional Property") shall be annexed to Blackhawk Community as Additional Property and that such property is held and shall be held, conveyed, hypothecated, encumbered, used, leased, occupied and improved subject to the Master Declaration.
- 3. <u>Design Guidelines</u>. The "Blackhawk on the River Design Guidelines", recorded January 19, 2006 in the records of Valley County, Idaho as Instrument Number 305031, shall be the Design Guidelines applicable to the Additional Property.

IN WITNESS WHEREOF, Grantor has executed this Declaration of Annexation and Supplemental Declaration as of the day and year first set forth above.

BLACKHAWK PARTNERS, LLC
an Idaho limited liability company

By: 127/06 0 10.50 A.M.
Sima Muroff, Manager

OF IDAHO

STATE OF IDAHO) ss.
County of Ada)

On this day of July, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared SIMA MUROFF, known or identified to me to be the Manager of BLACKHAWK PARTNERS, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

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

DEBORAH MATTHEWS NOTARY PUBLIC STATE OF IDAHO

Notary Public for 1DAHO
Residing at Valley County

My commission expires: 8-3-2010

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