

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
QUIGLEY FARM PLANNED UNIT DEVELOPMENT, PHASE I

ARTICLE I

RECITALS

WHEREAS, the undersigned (hereafter “Grantor”) is the owner of certain land in Blaine County, Idaho, more particularly described as follows (hereafter “Property” or “Subdivision”) and as shown on Exhibit A attached hereto:

Lots 1 through 12, Block 2; Lots 1 through 7, Block 3; Lots 1 through 15, Block 4; and Parcels A through K; QUIGLEY FARM P.U.D. NO. 1, according to the official plat thereof filed In Book _____ of Plats at Pages _____, records of Blaine County, Idaho.

WHEREAS, the Grantor desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i) ensure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Grantor and all other persons or entities who may subsequently acquire an interest in the Property and (iii) create a residential development of very high quality;

WHEREAS, in order to achieve the objectives and desires of the Grantor, the Grantor will control the management and government of the Property and the non-profit association of Owners to be created until such time as the homeowners take over the management functions through the Association upon substantial completion of the development process.

ARTICLE II

DECLARATION

The Grantor hereby declares that the Property and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein; shall inure to the benefit of every Lot in the Property and any interest therein; and shall inure to benefit of and binding upon the Grantor and each Owner, and each successor in interest of each, and may be enforced by the Grantor by and any Owner, or by the Owner's Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor's right to complete development of the Property in accordance with the plan therefore as the same exists or may be modified from time to time by the Grantor nor prevent normal construction activities during the construction of improvements upon any Lot in the Property. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Architectural Control committee provided that such waiver shall be for a reasonable period of time and shall not be volatile of the ordinances applicable to the Property. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

In the event of a conflict between the provisions of this Declaration and the requirements of the ordinances applicable to the Property, the more restrictive shall control.

ARTICLE III

DEFINITIONS

AS USED IN THIS Declaration, unless the context otherwise specifies or requires the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee **Error! Bookmark not defined.** created or formed by the Grantor pursuant to the terms hereof.

ACC Rules/ACC Standards: Such rules or standards promulgated by the Grantor and /or the ACC as authorized by this Declaration.

Annexation: The Process by which additional tracts or parcels of land not initially a part of the Property are made subject to this Declaration and a part of the Quigley Farm Subdivision as a whole.

Assessment: A payment required of Association members, including Regular, Special, or Limited Assessments as provided in this Declaration.

Association: Quigley Farm Homeowners Association, Inc., an Idaho non-profit corporation, organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Property.

Board: The duly elected and qualified Board of Directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

Common Area: All real property, including easements or other interests therein, located within or outside of the boundaries of the Property in which the Association owns an interest or controls or which the Association is obligated to maintain, including, but not limited to, alley ways, water infrastructure, the common irrigation system, geothermal system, and all associated pumps and wells within the Property as shown on the Plat, and which are owned, held, controlled or maintained for the betterment of the Owners and Occupants of the Property. Specifically, the Common Areas of the Association are Parcel A, Block 1, Parcel B, Parcel C, Parcel D, Parcel E, Parcel F, Parcel G, Parcel H, Parcel I, Parcel J, and Parcel K of the Quigley Farm P.U.D. plat map.

Declaration: This instrument as it may be amended from time to time.

Development: The project to be undertaken by the Grantor resulting in the improvement of the Property, or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other improvements.

Grantor: Quigley Farm and Conservation Community LLC, the undersigned owner of the land comprising the Property, or a successor of the undersigned Grantor, which successor succeeds to the ownership of all the Grantor's interest in the whole of the property.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs, and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent improvements on a Lot following the sale of that Lot by the Grantor to an Owner, and intended for residential occupancy.

Limited Assessment: An Assessment levied by the association upon one or more Lots, but not upon all Lots within the Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Property or church designated as a Lot on any recorded subdivision plat relating to the Property.

Plan: The overall development plan prepared by the Grantor for the whole of the Property, as the same exists from time-to-time and which illustrates the proposed total development contemplated by the Grantor and the nature and location of each of the uses intended to be allowed within the Property. Provided, that no use shall be allowed within the Property unless the same is in accordance with applicable zoning ordinances.

Member: Any person(s) who is an Owner of a Lot within the Property.

Mortgage: Any mortgage or deed of trust or other hypothecation of the land located in the Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a "first Mortgage," in this Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, or is otherwise legally entitled to occupy and use any Building or improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities including the Grantor, holding fee simple title to a Lot within the property, including contract sellers, but excluding those having such interest merely as security for performance of an obligation, but including any Mortgage (of any priority) or other security holder otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any portion of the Property, as recorded in the office of the County Recorder, Blaine County, Idaho, as the same may be amended by duly recorded amendments thereto.

Property: The whole of the Property described in Article I, above, and any additional land annexed thereto pursuant to Article XII, below.

Quigley Farm Homeowners Association, Inc.: The Idaho non-profit corporation organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Property.

Quigley Farm PUD: The whole of the Property described above (subdivided under the name “Quigley Farm Planned Unit Development”) and any additional land annexed thereto as provided herein.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the association other than a Regular or Limited Assessment.

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Property promulgated by the Grantor and recorded in the official records of Blaine County, Idaho. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to “Declaration” shall include any and all later adopted “Supplemental Declarations.”

ARTICLE IV.

PURPOSE

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

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and improvements.
- (b) The prevention of the erection within the Property of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.

- (c) Encouraging and insuring the erection of quality and attractive improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas within the property and adequate free spaces between improvements.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes.

ARTICLE V.

PERMITTED USES AND PERFORMANCE STANDARDS

Section 5.01. Use. Unless as otherwise designated on the Plat Map for the Property, or unless otherwise specified in a Supplemental Declaration covering a particular Lot(s) or parcel(s), Lots shall be used only for residential purposes and such uses as are customarily incidental thereto, including, but not limited to, a home office provided that such incidental uses does not result in a consistent increase in traffic and demand for parking, and Common Area.

Section 5.02. Buildings. Except as (i) otherwise designated on the Plan for the Property, (ii) otherwise specified for a particular Lot, tract or parcel in a Supplemental Declaration, or (iii) allowed by zoning ordinance applicable to the Lot, no Lot shall be improved except with one (1) dwelling unit. Each dwelling unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) and a maximum of four (4) standard size automobiles. The minimum square footage of living area shall be based on the finished interior living space at or above the grade of the Lot, exclusive of, porches, patios, and garage.

Section 5.03. Approval of Use of Plans. No improvements shall be built, constructed, erected, placed, or materially altered within the Property unless and until the plans, specifications and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article XII, below.

Section 5.04. Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack, or garage shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of

the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

Section 5.05. Set-Backs. No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to a Lot line than the distance permitted by (i) the ordinances of Blaine County applicable to the Property except as may be modified by a Conditional Use Permit issued by Blaine County, or (ii) the ACC Rules/ACC Standards, whichever requires the greater distance. The ACC shall have the right to stagger the front setbacks of the Lots in order to create a more pleasing appearance and to minimize the negative visual appearance of a uniform building line.

Section 5.06. Easements. There is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements.

- (a) **Public Utilities.** For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for a portion of the Property.
- (b) **Water.** For water drainage, irrigation, retention, recreation or amenity purposes.
- (c) **Access to Common Areas.** For the purpose of permitting the Grantor or the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Common Area to maintain, repair, replace and restore landscaping and other improvements within the Common Area, including, but not limited to, a sprinkler irrigation system which may be installed to irrigate any landscaping located on a Common Area easement for landscaping as shown on the recorded Plat for the Subdivision.
- (d) **Encroachment.** Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.
- (e) **Plat.** Any additional easements, if any, as shown and designated on the recorded Plat for the Subdivision.

The easement areas (excluding any equipment or appurtenances owned by the Grantor, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

SECTION 5.07. Lighting. If required by the ACC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be provided in the ACC Rules/ACC Standards.

SECTION 5.08. Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Rules/ACC Standards. No gravel roofs shall be permitted.

SECTION 5.09. Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred or kept on any Lot, except that not more than two (2) domesticated dogs and/or cats, or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined in an Owner's Lot.

SECTION 5.10. Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Property.

SECTION 5.11. Grading and Drainage. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be allowed to drain or flow upon, across or under adjoining Lots or Common Area, unless an express written easement for such purpose exists. The Owner of a Lot which drains upon, across or under an adjoining Lot(s) or Common Area shall be liable for any damage caused thereby and shall promptly take action and make all modifications necessary to correct such non-permitted drainage.

SECTION 5.12. Commercial Use Prohibited. Unless otherwise shown on the Plan for the Property and specifically permitted in a Supplemental Declaration, no residential Lot shall be used at any time for commercial or business activity, provided, however, that the Grantor or persons authorized by the Grantor may use a residential Lot(s) for development and sales activities relating to the Property, model homes or real estate sales. As used herein, "commercial or business activity" shall not include the use of a residential Lot for an incidental use as described in Section 5.01, above, or the rental by an Owner of a Lot and the improvements thereon for residential purposes.

SECTION 5.13. Maintenance. The following provisions shall govern the maintenance of Lots and all improvements thereon:

- (a) Each Owner of a Lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any improvements shall be repaired as promptly as is reasonably possible.
- (c) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Declaration.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view, except on regularly scheduled trash pickup days.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot or adjacent to a Lot if under the control of the Owner, which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration. If such event or condition is not promptly corrected by the Owner, the Association shall have the right to correct the same pursuant to subsection (g), below.
- (g) In the event that any Owner shall permit any improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if

necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article X of this Declaration.

SECTION 5.14. Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Grantor or the Association may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

SECTION 5.15. Boats, Campers and Other Vehicles. Trailers, mobile homes, trucks larger than standard-size pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles (hereafter "Vehicles and Equipment"), when not in actual use, shall be kept at all times in an enclosed structure and, except for a temporary period not to exceed twenty-four (24) hours, at no time shall any such Vehicles or Equipment be parked or stored on a Lot in Public view or on a public or private right-of-way within the Property. No operative automobile (which, as used herein shall include a standard or smaller pickup) shall be parked or stored for a period in excess of seventy-two (72) consecutive hours on any portion of a Lot between the front of a building and the abutting public right-of-way. No inoperative automobile shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of two (2) off-street parking spaces for automobiles shall be provided on each Lot. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles. No other use of a garage which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed shall be permitted. The Owner shall provide the sufficient garage space or other enclosed parking approved by the ACC for all automobiles used by the Occupants of a Lot, which automobiles shall be kept within the garage, and the parking thereof in the driveway on the Lot or in a public right-of-way within the subdivision, other than for temporary purposes (as determined by the ACC), is prohibited.

SECTION 5.16. Garage Doors. Garage doors shall be closed except when open for a temporary purpose.

SECTION 5.17. Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on Lot and on Neighboring Lots to the end that all such buildings will present a unified and coordinated appearance. All exterior finishes and/or

colors shall be approved by the ACC and shall be in accordance with the ACC Rules/ACC Standards.

SECTION 5.18. Vehicles. The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC Rules/ACC Standards, which may prohibit or limit the use thereof within the Property, provide parking regulations and other rules regulation the same.

SECTION 5.19. Exterior Energy Devices. No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

SECTION 5.20. Mailboxes. No free-standing mailbox shall be constructed or installed on any Lot without the prior written approval of the plans therefore by the ACC. Mailboxes and posts will be provided by the Developer. Owners are responsible for keeping their mailboxes and stands in good condition and repair.

SECTION 5.21. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefore may be displayed on a Lot during construction of the improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Rules/ACC Standards with respect to signs allowed within the Subdivision, which ACC Rules/ACC Standards, if adopted, shall regulate signs within the Subdivision and shall control over the specific provisions of this Section.

SECTION 5.22. Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefore. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.23. Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefore, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the

construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the ACC Rules/ACC Standards, it being the intent of the Grantor that all such privacy fencing shall present, to the extent reasonably practicable, a uniform appearance throughout the Property. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of Blaine County applicable to the Property.

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

- (a) No fence or wall shall be permitted to be constructed or installed on the Common Area or any portion of a berm constructed by the Grantor within the Property; provided, that if the Grantor constructs or installs a fence in a Common Area or on a berm, the ACC may allow fences on the adjacent Lot(s) to be attached thereto so long as such attachment does not impeded the maintenance, repair or replacement of the Common Area or berm, (ii) alter the visual theme established by the fence constructed or installed by the Grantor, and (iii) does not project above the top of the fence constructed or installed by the Grantor.
- (b) Fences and walls shall not extend closer to any street than twenty feet (20') nor project beyond the setback of the principal Building on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of Blaine County applicable to the Property (if required) and the ACC.
- (c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat(s) of the Property.
- (e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the ACC. It is not the intent of this subsection (e) to create a view easement on or across any Lot ("Affected Lot") in favor of any Lot which is adjacent to or in the vicinity of the Affected Lot.

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

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in this Declaration. The ACC shall approve the said landscape plan prior to the installation and/or construction of landscaping on a Lot. The use of berms and sculptures planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan.
- (b) All required landscaping on a Lot shall be installed within thirty (30) days after substantial completion of the building on the Lot, with a reasonable extension allowed for weather.
- (c) The ACC Rules/ACC Standards shall set forth the initial minimum landscaping required on each Lot.

SECTION 5.25. Irrigation Water. There shall be located on the Quigley Farms PUD Property, a pressurized irrigation system (“Irrigation System”) which serves each Lot in Quigley Farms, which said Irrigation System shall be maintained by the Association. The Association shall, if necessary, adopt rules and regulations concerning the operation of the Irrigation System (“Irrigation Rules”), including, but not limited to, the allocation of water to each Lot, the time(s) of delivery and/or diversion of irrigation water to each Lot, and the penalties for violation of the Irrigation Rules, which may include the termination of delivery to a Lot following violation. The Irrigation Rules shall be binding upon each Owner and Occupant. The costs and expenses of the Irrigation System shall be paid from the assessments levied by the Association under Article VIII and Article IX of this Declaration.

SECTION 5.26. Adoption of ACC Rules/ACC Standards. The Grantor, or in the event of the Grantor’s failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of improvements within the Property deemed necessary or desirable by the Grantor, or the ACC, as the case may be, to carry out the purposes of this Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Declaration.

SECTION 5.27. Exemption of Grantor. Nothing herein contained shall limit the right of the Grantor to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Grantor, or to alter the foregoing and its Development plans and designs, or construct additional improvements as the Grantor deems advisable in the course of Development of the Property. This Declaration shall not limit the right of the Grantor at any time prior to acquisition of title to a Lot by an owner to establish on that Lot additional license, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Grantor need not seek or obtain ACC approval of any improvements constructed or placed within the Property by the Grantor in connection with the Development of the

Property, but this exemption shall not apply to a Building(s) constructed by the Grantor on a Lot owned by the Grantor. The Grantor shall be entitled to the non-exclusive use, without charge, of any Common Area within the Property in connection with the marketing of the Lots therein. In addition, the Grantor shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas on and the Lot(s) owned by the Grantor for such a period of time as is reasonably deemed by the Grantor to be necessary.

SECTION 5.28 **Party or Contiguous Walls (“Party Walls”)**. Each wall which built as a part of the original construction of the units upon the property and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- (a) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (b) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damages by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.
- (c) **Weatherproofing.** Notwithstanding any other provision of this Article, an owner who, by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (d) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owners, successors entitled.

ARTICLE VI.

QUIGLEY FARM HOMEOWNERS ASSOCIATION, INC.

SECITON 6.01. **Organization of Association.** Quigley Farm Homeowners Association, Inc. shall be organized by the Grantor as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws, and this Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

SECTION 6.02. Members. Each Owner (including the Grantor) of a Lot, by virtue of being such an Owner and for so long as such ownership is maintained, shall be a Member of the Association and no Owner shall have more than one membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the owner and a membership in the Association shall be appurtenant to and inseparable from upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 6.03. Voting - Classes of Membership. The Association shall have two (2) classes of membership:

CLASS A. Class A Members shall be all Owners of Lots within the Property, with the exception of the Grantor, shall be entitled to one (1) vote for each lot owned.

CLASS B. Class B Members shall be the Grantor, and its successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Grantor has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be entitled to the voting rights of a Class A Member with respect to each lot owned. Upon the first sale of a Lot to an Owner, the Grantor shall thereupon be entitled to five (5) votes for each lot owned by the grantor. The Class B Membership shall cease and be converted to Class A membership when (i) at least ninety percent (90%) of the Lots have been sold to Owners, or (ii) four (4) years after the recordation of this Declaration, whichever shall first occur.

SECTION 6.04. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time.

SECTION 6.05. Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

- (a) **Assessments.** The power to determine the amount of and levy Regular, Special, and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (b) **Right to Enforcement.** The power and authority from time to time in time in its own name, on its own behalf, or on behalf of any Owner(s) who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof. In addition to the foregoing, the Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$50.00 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions, or covenants contained herein, or any of the Association's properly adopted rules and regulations. Any monetary penalty imposed as provided herein shall become a part of the assessment to which such Owner's Lot is subject, shall be in addition to any assessments levied by the Association pursuant to the provisions of this Declaration, and shall not be subject to any of the requirements, limitations, or restrictions on the amount or uniformity of assessments contained herein. Failure by the association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (c) **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.
- (d) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- (e) **Association Rules.** The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property owned or controlled by the Association, the imposition of fines and pursuit of enforcement actions against violating Owners, and procedural matters for use in the conduct of the business of the Association. The Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this

Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

- (f) **Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (g) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
 - (iii) Any similar public or quasi-public improvements or facilities.
- (h) **Fiscal Year.** The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 6.06. Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) **Operation and Maintenance of Common Area.** Perform, or provide for the performance of, the operation, maintenance and management of the Common Area and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Grantor and/or an irrigation district for the delivery of irrigation water to the Lots, the repair and replacement of the geothermal system, the use, installation, repair, and maintenance of any wells or pumps owned and operated by the Association, and the maintenance, management, repair or replacement all other property owned or controlled by the Association.
- (b) **Taxes and Assessments.** Pay all real and personal property taxes and assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (c) **Utilities.** Acquire, provide and/or pay for water, sewer, refuse collection, snow removal, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- (d) **Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:
- (i) Fire insurance, including those risks embraced by coverage of the type now known as the broad form “All Risk” or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all improvements, equipment, fixtures and other property located within the Common Area owned or controlled by the Association, including such equipment, fixtures, Landscaping and other property not located in the Common Area, if the same are used or necessary for the use of the common Area or easement areas under the control of the Association.
 - (ii) Comprehensive public liability insurance insuring the Association, the Board, officers, the Grantor and the individual Owners and the agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area owned by the Association or easement areas under the control of the

Association. The limits of liability of such coverage shall be as determined by the Board of Directors.

- (iii) Full coverage directors and officers liability insurance in an amount determined by the Board.
 - (iv) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
 - (v) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
 - (vi) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
 - (vii) Notwithstanding any other provision herein to the contrary, the Association shall continuously maintain in effect such casualty, liability and other insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association ("FNMA"), the Government Corporation ("FHLMC"), so long as any of which is a Mortgagee Owner of a Lot within the Property, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA or FHLMC, as applicable.
- (e) **Identification Signs.** Maintain, repair and replace all permanent entry and special identification signs for the Property, whether the same be located within or without the boundaries of the Property.
 - (f) **Irrigation and Geothermal System.** Maintain, repair or replace all or any portion of the Irrigation System and Geothermal System owned and operated by the Association, including all associated wells, pumps, and equipment.
 - (g) **Rule Making.** Make, establish, promulgate, amend and repeal Association rules.

- (h) **Architectural Control Committee.** Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration.
- (i) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

SECTION 6.07. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

- (a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

ARTICLE VII.

ASSOCIATION PROPERTIES

SECTION 7.01. Use. Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties and the properties of any Sub-Association of which the Owner is a Member, subject to the following:

- (a) **Articles, Etc.** The provisions of the Articles and By-Laws of the Association and any Sub-Association applicable to the Lot, this Declaration and applicable Supplemental Declaration and the rules, regulations and standards promulgated there under. Each Owner, in using the Association's properties, shall comply with the same.
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association.
- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for

such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision.

- (d) **Conveyance of Common Area.** Except as provided in subsection (c), above, no portion of the Common Area shall be conveyed by the Association unless the Board of Directors of the Association determines that such conveyance is in the best interests of the Subdivision, which determination shall be made following a regular or special meeting of the Members of the Association at which meeting the proposed conveyance is presented by the Board of Directors and the Members have the opportunity to present testimony in support of or against such proposed conveyance.
- (e) **Mortgage of Common Area.** After the Class A members become entitled to voting rights, no portion of the Common Area shall be mortgaged by the Association without the prior approval of at least two-thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 9.10, below, shall apply.

SECTION 7.02. Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article IX, below.

SECTION 7.03. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the association or any Sub-Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association or the Sub-Association, as the case may be, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 7.04. Condemnation. If at any time any part of a common area or other property owned by the Association or any Sub-Association be taken or condemned by any public entity or said or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association or the Sub-Association, whichever entity owns said property. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE VIII.

MAINTENANCE OF IRRIGATION SYSTEM

SECTION 8.01. Ownership/Control of Irrigation System. It is acknowledged that a pressurized irrigation system is to be constructed by the Grantor to serve each Lot within the Subdivision. At a date not later than the date that a Lot within the Subdivision is improved with a dwelling unit and occupied, the Grantor shall convey and transfer, or cause to be conveyed and transferred, to the Association all easements, equipment and facilities which comprise the Irrigation System.

SECTION 8.02. Duty to Maintain Irrigation System. The Association shall be responsible for maintaining, repairing, servicing and replacing, if necessary, the Irrigation System which shall serve the Lots within the Subdivision.

SECTION 8.03. Liability for Damage. In the event that any maintenance, repair or replacement of all or any portion of the Irrigation System is performed by the Association as a result of the negligent or willful act of an owner or Occupant, or an Owner's or Occupant's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by the Owner or the Occupant to the Association and/or the Association may assess the cost of the same against the Lot owned or occupied by said the Owner or Occupant, as the case may be, as a Limited Assessment, as provided in this Declaration.

SECTION 8.04. Cost of Maintenance, Repairs, Replacement and Insurance. The cost of the maintenance, repairs, replacement and insurance of the Irrigation System and the continuing operational expenses, if any, including taxes (hereafter "irrigation System Expenses"), shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within the Subdivision. Such Irrigation System Expenses shall be apportioned among the Lots within the Subdivision on an equal basis as a portion of each Owner's Regular Assessment obligation. In the event the Association does not have adequate funds to pay the irrigation System Expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot on an equal basis, as a Special Assessment..

SECTION 8.05. Easement for Maintenance. There is hereby reserved to the Association, its contractors and agents, an easement to enter upon the Lot within the Subdivision for the purpose of accomplishing all maintenance, repair and replacement rights and duties with respect to the Irrigation System as set forth in this Article.

SECTION 8.06. Reserves. The Association shall have the right to establish a reserve account for the payment of the Irrigation System Expenses and, for the purpose of funding the same, the Board shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment so determined for the purpose of funding the Irrigation System Expenses and a reserve account relating thereto shall be determined by the Board. The Board shall

have the right to place all funds collected for the Irrigation System Expenses in an interest-bearing account in an appropriate financial institution.

ARTICLE IX.

ASSESSMENTS

SECTION 9.01. Covenant to Pay Assessments. Each owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special, and Limited Assessments or charges made by the Association of which the Owner is a Member.

All such Assessments, together with interest, late fees, costs, and reasonable attorneys fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the common Area or by abandonment of his Lot.

SECTION 9.02. Regular Assessments. Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

SECTION 9.03. Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross expenses of such Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the members present, either in person, or by proxy, at a meeting called in accordance with Section 9.10, below. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid. Special Assessments may be imposed for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of improvements on a Common Area, unexpected repair or

replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.

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

At the closing of the sale of each Lot by the Grantor, a special assessment of \$450.00 shall be collected from the purchaser of the Lot as payment to the Association for the set-up costs and the maintenance of the Common Area and landscape easements to be maintained by the Association. Upon the transfer of ownership of a Lot by an owner to a third party, a transfer fee in the amount of \$250.00 shall be payable by the owner to the Association, provided, that no transfer fee shall be payable if the Lot was purchased by a builder from the Grantor and within one (1) year thereafter sold and transferred to a third Party.

SECTION 9.04. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any improvements on a Lot, upon ten (10) days' written notice to the Owner, if such maintenance and repair is necessary, in the opinion of the Board, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefore.
- (b) **Correction of Violations.** In addition to maintenance and repair, the Board, upon the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in this Article IX and Article X of this Declaration.
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any special purpose which the Board believes necessary with respect to certain Lots but not an

appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 9.05. Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence the date of the closing of the first sale of a Lot to an Owner. If the Grantor pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Grantor, such excess amounts so paid shall constitute either (i) a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Grantor within the property, or (ii) a loan by the Grantor to the Association, which loan, without interest, shall be repaid by the Association to the Grantor from the funds of the Association which are available to make such repayment. Nothing herein contained shall obligate the Grantor to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within the Property in which the Grantor owns all of the Lots.

SECTION 9.06. Uniform Rate of Assessment. Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

SECTION 9.07. Assessment Due Date. The due dates for Regular, Special, and Limited Assessments shall be as established by the Board. Each assessment shall be delinquent if not paid within thirty (30) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 9.08. Interest and Penalties. Any Regular, Special, or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional late fees or charges for the failure of an owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

SECTION 9.09. Estoppel Certificate. The Association, upon not less than twenty (20) days prior to written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on

such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

SECTION 9.10. Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 9.03, above, must be sent not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of sixty percent (60%) of the Owners, who have voting rights in the Association, either in person or by proxy, shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of ten percent (10%) of the Owners who have voting rights in the Association, either in person or by proxy, shall constitute a quorum. No written notice of the rescheduled meeting shall be required.

ARTICLE X.

ENFORCEMENT OF ASSESSMENTS

SECTION 10.01. Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested solely in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay all attorneys' fees incurred, in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to Section 10.03 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.

SECTION 10.02. Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Property pursuant to this Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Blaine County, Idaho, including all unpaid obligatory advances to be made pursuant thereto: and

(iii) labor or material man's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent is specifically set forth in the instruments creating such other liens.

- (a) **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 office of the Blaine County Recorder 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 Lot(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 release of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

SECTION 10.03. Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with these terms, the Association shall have the right to bring an action at law against the Owner personally obligated to pay the same, or the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all attorneys fees incurred. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

SECTION 10.04. Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the

Owner of the Lot described in such notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 10.05. Reporting. The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 10.05, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Blaine County, Idaho, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$50.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 9.02, above. The charge for such notification shall be subject to change by the Board.

SECTION 10.06. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, not release an Owner from the personal obligation to pay any Assessment.

SECTION 10.07. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

ARTICLE XI.

ARCHITECTURAL CONTROL COMMITTEE

SECTION 11.01. Formation and Members of the ACC Committee. The Architectural Control Committee (“ACC”) shall be created or formed by the Grantor within thirty (30) days of Grantor conveying or transferring title of record to a buyer of any buildable Lot on the Property and the ACC shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member’s successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

SECTION 11.02. Appointment. So long as the Grantor owns any Lot or parcel within or adjacent to the Property, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

SECTION 11.03. Compensation. The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the plans and specifications described in Section 12.07, below.

SECTION 11.04. Non-Liability. Neither the ACC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve and application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

SECTION 11.05. Approval Required. No construction, alteration, modification, removal or destruction of any improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Property without the prior express written approval of the ACC.

SECTION 11.06. Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

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

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

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the ordinances of Blaine County applicable to the Property.

SECTION 11.07. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within the Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called “plans and specifications”) prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC;

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements.
- (b) **Building Plans.** A building plan which shall consist of preliminary of final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped, which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.
- (d) **Grading and Drainage Plan.** A grading and drainage plan which shall show the final grading of the lot and how all drainage will be contained on site or transmitted off-site with the acceptance of a drainage authority such as the applicable irrigation district or Blaine County. This plan must be drawn to scale. This plan must be approved and stamped by an Idaho licensed engineer or approved and signed by a member of the American

Institute of Certified Planners, or approved and signed by a member of the American Institute of Architects.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

SECTION 11.08. Completion Security Deposit. At the time of the submission of the application under Section 11.07, above, the Owner shall deposit with the ACC, as a completion security deposit (hereafter “Completion Deposit”), the amount of \$3,000.00, or such other amount as shall be determined by the ACC. The Completion Deposit shall be held by the ACC as security for the timely completion by the Owner of the improvements of the Lot as approved by the ACC, including but not limited to the landscaping as provided in Section 5.24, above, and upon such timely completion shall be returned to the Owner without interest. If the Owner fails to timely complete such improvements, the ACC shall have the right to deduct from such Completion Deposit the amount of any penalties, off-sets and costs as set forth in this Declaration or the ACC Rules/ACC Standards, including any costs which may be paid or incurred by the Association or a third party to complete such improvements.

SECTION 11.09. Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance and be of the quality required to maintain the Power as a quality residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a property submitted allocation. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

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

A denial of an application shall state with particularity the reasons for such denial.

SECTION 11.10. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating wherefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specification.

The ACC is empowered to receive from other Owners (“Complainant”) complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

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

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in into written notice.

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

SECTION 11.11. Hearing. An Owner submitting an application under Section 11.07, above, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC the hearing shall be held within ten (10) days following the receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or if it receives additional evidence. Upon completion of the hearing the ACC shall issue a written opinion to the included parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify, or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 11.13., below.

SECTION 11.12. Appeal. Either and Owner or a Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.11. above, provided however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. the failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than then (10) days from date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

The Board may require the Owner of Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

At the hearing the Owner, Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and property addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 11.13 below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

SECTION 11.13. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Rules/ACC Standards or the approval plans and specifications.

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

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

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

SECTION 11.14. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article X, above.

SECTION 11.15. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 11.13 and 11.14 above shall not be deemed to be an exclusive remedy of the Association and it may, in its safe discretion,

without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s) proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 11.16. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

ARTICLE XII.

ANNEXATION

SECTION 12.01. Annexation. Additional property may be annexed to the Subdivision and brought within the provisions of this Declaration, by the Grantor, at any time, without the approval of any Owner or the Association. To annex additional property to the Subdivision, the Grantor, at any time, without the approval of any Owner or the Association, shall record a supplement to this Declaration, which shall specify the annexation of the additional property to the Subdivision and which may supplement this Declaration with addition or different covenants and restrictions applicable to the annexed property, as the Grantor may deem appropriate, and may decide or modify as to such annexed property such covenants as are contained herein which the Grantor deems not appropriate for the annexed property, so long as the additional, different deleted or modified covenants or restrictions are not prohibited by the regulations and requirements of HUD for residential subdivisions of the nature and type as the Subdivision. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all rights, privileges and obligations as all other members. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 14.02 of this Declaration.

SECTION 12.02. De-Annexation. The Grantor shall have the right to delete all or a portion of the property from the coverage of this Declaration and the jurisdiction of the Association, so long as the Grantor is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Declaration is recorded in the office of the Blaine County Recorder.

ARTICLE XIII.

PROTECTION OF MORTGAGEES

SECTION 13.01. Purpose. Notwithstanding any and all provisions of this Declaration to the contrary, to induce the Federal Home Loan Mortgage Corporation (FHLMC) the Government National Mortgage Association (GNMA) the Federal National Mortgage Association (FNMA) the Federal Housing Administration (FHA) and

the Veterans Administration (VA) to participate in the financing of the purchase of Lots within the Property, the provisions of this Article are added thereto. To the extent the following Sections of this Article conflict with any other provisions of this Declaration or the provisions of any Supplemental Declaration, this Article shall control.

SECTION 13.02. Restrictions on Amendments. No amendments of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Declaration, as amended.

SECTION 13.03. Mortgagee Defined. For the purposes of this Article only, a Mortgagee shall refer only to FHLMC, GNMA, FNMA, FHA and VA as described in section 14.01, above.

SECTION 13.04. Right to Notice. Each Mortgagee, upon filing a written request for notification with the Board in accordance with Section 10.06 above, shall be given written notice by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Declaration and under any Supplemental Declaration applicable to the Lot, the Articles or the By-Laws of the Association (hereafter collectively referred to as "Project Documents") which default is not cured within thirty (30) days after the Association has notice of such default.

SECTION 13.05. Exemption From Prior Assessments. Each Mortgagee which comes into possession of a Lot by virtue of foreclosure or otherwise shall take title to such Lot free from any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation thereof to all Lots, including the mortgaged Lot.

SECTION 13.06. Changes Requiring Unanimous Approval. Without the proper unanimous approval of all Mortgagees of Lots within the Property, neither the Association nor the Owners shall:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area which is owned, directly or indirectly, by the Association, provided however that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this Section.
- (b) Change the ratio of Assessments or method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner or the method of allocation distributions of hazard insurance proceeds or condemnation awards.

SECTION 13.07. Changes Requiring Unanimous Approval. Without the prior unanimous approval of all Mortgagees of Lots within the Property, neither the Association nor the Owners shall:

- (a) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design of the exterior appearance of improvements on Lots within the Property, the exterior maintenance of said improvements, or the maintenance and upkeep of landscaping within the Property.
- (b) Fail to maintain fire and extended coverage insurance on insurable improvements and Landscaping within the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of insurable value (based on current replacement cost):
- (c) Use hazard insurance proceeds for losses occurring within the Common Area for any purpose other than the repair, replacement or reconstruction thereof.
- (d) Abandon or terminate the covenants, conditions, restrictions and easements of this Declaration or any Supplemental Declaration.
- (e) Make any material amendment to this Declaration or any Supplemental Declaration or to the Articles or By-Laws of the Association or any Sub-Association.

SECTION 13.08. Right to Inspect Books, Etc. Mortgagees, upon written request shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financing reports and other financial data; (iii) receive written notice of all meeting of Owners; and (iv) designate in writing a representative to attend all such meetings.

SECTION 13.09. Notification of Damage. Upon the board receiving notice of any damage to the Common Area or any Lot wherein the cost of repair, replacement or reconstruction exceeds Ten Thousand Dollars (\$10,000.00) or notice of any condemnation or eminent domain proceedings or other similar involuntary acquisition of any portion of the Property, the Board shall give to each Mortgagee which has filed with the Board a written request for notice, prompt written notice of said damage or condemnation.

SECTION 13.10. Right to Pay Charges. Mortgagees may pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies covering said Common Area and said Mortgagees making such payments shall be entitled to immediate reimbursement therefore from the Association.

SECTION 13.11. Lessee's Obligations. Any agreement for the leasing or rental of a Lot, including a month-to-month rental agreement, shall provide that the terms

of such agreement shall be subject to the provisions of the Project Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the leasing or rental agreement.

SECTION 13.12. Liability for Taxes. All taxes levied and assessed on the Common Area must be assessable against that Common Area only and the Association and/or any Sub-Association shall be solely responsible for the payment thereof.

SECTION 13.13. Waiver of Liability and Subrogation. Any provision in this Declaration which requires Owners to indemnify the Association, a Sub-Association, the Board or the Sub-Association Board, or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

SECTION 13.14. FNMA and GNMA Insurance Requirements. Notwithstanding any other provisions contained in this Declaration, the Association or a Sub-Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FNMA and GNMA, so long as either is a Mortgagee or Owner of a Lot within the Property, except to the extent such coverage is not available or has been waived in writing by FNMA or GNMA.

SECTION 13.15. Additional Contracts. IN addition to the foregoing provisions of this Article, the Board may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, FHA, VA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots within improvements thereon. Each Owner hereby agrees that it will benefit the Association and each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots, if such agencies approve the Property as a qualifying subdivision under applicable policies, rules and regulations as adopted from time-to-time.

SECTION 13.16. Consent to Release of Information by Mortgagees. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot and each Owner of a Lot encumbered by such a Mortgage hereby consent thereto.

SECTION 13.17. Restricted Application. It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA, GNMA, FHA, or VA purchases, grantees or insures a Mortgage on a Lot within the Property and then only to the extent the same are required by said purchaser, grantor or insurer. In the event the standards and guidelines of FHLMC, FNMA, GNMA, FHA, or VA do not require, as a condition of approval of

the Property as a qualifying subdivision, the inclusion of one or more of the provisions of this Article, said non-required provisions shall be of no further force or effect.

ARTICLE XIV.

MISCELLANEOUS

SECTION 14.01. Term. This Declaration, and all covenants, conditions, restrictions and easements contained herein, shall run until December 31, 2046. After December 31, 2046, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of (10) years, each unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Blaine County Recorder.

SECTION 14.02. Amendment. This Declaration may be amended as follows:

- (a) **By Grantor.** Until title to a Lot within the Property is conveyed by the Grantor to and Owner, this Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination.
- (b) **By Owners.** Except where a greater percentage is required by express provision in this Declaration, any amendment to the provisions of this Declaration shall be by an instrument in writing signed and acknowledged by the President and Secretary of the Association, certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than sixty-six and two-thirds percent (66 2/3%) of the votes in the Association, and such amendment shall be effective upon its recordation with the Blaine County Recorder.

SECTION 14.03. Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 14.04. Non-Waiver. The failure often Grantor, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration onto exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 14.05. Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

SECTION 14.06. Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the initial period of operation of the Association or prior thereto during the period the Grantor is exercising the powers of the Association,

SECTION 14.07. Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed. Unless an Owner affirmatively provides the Association with an updated mailing address, the Association shall send all notices to the mailing address of the Owner's Lot.

SECTION 14.08. Interpretation. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and title used in this Declaration are intend solely for convenience of reference and shall not affect that which is set forth in any of this provisions hereof.

SECTION 14.09. Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF the Grantor has executed this Declaration on this ____ day of _____, 2016.

Quigley Farm and Conservation Community LLC

By _____
Its:

By _____
Its:

STATE OF IDAHO)
County of Blaine) ss:

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, known or identified to me to be the managers of Quigley Farm and Conservation Community LLC, the limited liability company that executed the foregoing instrument or the person who executed the foregoing instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

(SEAL)

Notary Public for Idaho
Residing at _____,
Idaho, My Commission Expires: _____