

*James Shalkill*  
ADA COUNTY RECORDER  
J. DAVID NAVARRO  
CLERK, IDAHO

1998 DE 22 PM 4:02

RECORDED - REQUEST OF

FEE 72<sup>00</sup> DEPUTY *Quinn*

98123295

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE LAKE AT CHERRY LANE NO. 7 SUBDIVISION

\* \* \* \* \*

THIS DECLARATION is made on the date hereinafter set forth by Steiner Development, L.L.C., an Idaho limited liability company, hereafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as "the Properties," more particularly described as follows:

The Lake at Cherry Lane No. 7 Subdivision, according to the official plat thereof, recorded in Book 77 of Plats at Pages 8068 and 8069, as Instrument No. 98094556, recorded on the 1<sup>st</sup> day of October, 1998, records of Ada County, Idaho; and

WHEREAS, Declarant desires to subject the above described Properties to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Properties and their present and subsequent Owners as hereinafter specified, and will convey the Properties subject thereto;

NOW, THEREFORE, Declarant hereby declares that all of the Properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the Properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following terms shall have the following meanings:

Section 1. "ASSOCIATION" shall mean and refer to Fairway Townhome Owners Association, Inc. a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinabove described.

Section 3. "COMMON AREA" shall mean all real property and improvements thereon (including private streets, drives, parking areas and recreational facilities) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Lot 52, Block 8, The Lake at Cherry Lane No. 7, and Lot 33, Block 8, The Lake at Cherry Lane Subdivision No. 5, according to the official plats thereof.

Section 4. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Areas.

Section 5. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "DECLARANT" shall mean and refer to Steiner Development, L.L.C., an Idaho limited liability company, its successors, and subject to the provisions of Article XIV, Section 4, below, their assigns.

Section 7. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the County Recorder of Ada County, State of Idaho.

Section 8. "DWELLING UNIT" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling unit, together with the vehicular parking garage next thereto, and all projections therefrom.

Section 9. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

Section 10. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Section 9.

Section 11. "FIRST MORTGAGEE" shall mean any Mortgagee, as defined in Section 10, possessing a lien on any Dwelling Unit first and prior to any other Mortgagee, as that term is defined in Section 8.

Section 12. "INSTITUTIONAL HOLDER" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 13. "PLAT" shall mean a final subdivision plat covering any real property in The Lake at Cherry Lane No. 7 Subdivision as recorded in the office of the counter recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 14. "RECREATIONAL FACILITIES" shall mean the improvements and facilities to be constructed and maintained on the Common Area.

## ARTICLE II: PROPERTY RIGHTS

Section 1. Enjoyment of Common Area: Each Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of the Association to levy reasonable assessments for the maintenance of any landscaping improvement or other facilities situated upon the Common Area.
- B. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C. The right of the Association to limit the number of members permitted to use the Common Area.
- D. The right of the Association to charge reasonable admission fees for the use of any recreational facility situated upon the Common Area or otherwise controlled by the Association, including, particularly, the right to charge a special use fee for members who desire exclusive short-term use of such facility and who are willing to pay a special fee or assessment for such use.

- E. The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien thereagainst; provided that the Common Area may not be mortgaged or conveyed without the consent of at least 66-2/3% of the Owners (excluding Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.
- F. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the written approval of all First Mortgagees and two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.
- G. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of the Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including without being limited thereto, rules restricting persons under or over designated ages from using certain portions of the Common Area during certain times and reasonable regulations and restrictions regarding vehicle parking.

Section 2. Delegation of Use: Any member may delegate, in accordance with the rules and regulations adopted from time to time by the directors, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, provided they reside on the property at the time of use.

### ARTICLE III: HOMEOWNERS ASSOCIATION

Section 1. Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Homeowner Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred. Absolute liability is not imposed on Owners/members for damage to Common Areas or Lots in the subdivision.

Section 2. Voting Rights: The Homeowner Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional votes shall not be allowed. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B member(s) shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On December 31, 2008.

Section 3. Assessments:

- A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Homeowners Association:
  - 1. Regular annual or other regular periodic assessments or charges; and

2. Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular and special assessments, together with interest, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

- B. Purpose of Assessments: The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties, for the operation, maintenance, repair and improvement of the Common Areas and the Recreational Facilities and other improvements located thereon, for the reasonable expenses incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration or in the Bylaws of the Association, and for any other purpose reasonably authorized by the Directors of the Association.
- C. Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$1,200.00.
  1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%), or the maximum percentage increase allowable by Federal National Mortgage Association (whichever is greater), above the maximum assessment as set forth above.
  2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount set forth in the preceding paragraph by a vote of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

3. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum; and said assessments shall be payable to the Homeowners Association in regular monthly or quarterly installments as may be determined by the Board of Directors.
- D. Initiation Assessment: Upon the initial conveyance of each lot, the purchaser thereof shall pay an initiation assessment in the amount of \$100.00.
- E. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be payable over such a period as the Homeowner Association shall determine.
- F. Notice and Quorum for Any Action Authorized Under Sections 3C and 3E: Written notice of any meeting called for the purpose of taking any action authorized under Section 3C or 3E, above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- G. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for non-exempt Lots.
- H. Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day of the month following the earlier of substantial completion or occupancy of the Dwelling Unit constructed on the said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual

assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Homeowners Association as to the status of assessments on a Lot is binding upon the Homeowners Association as of the date of its issuance.

- I. Effect of Nonpayment of Assessments; Remedies of Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
  
- J. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
  
- K. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:
  1. All property expressly dedicated to and accepted by a Local public authority;
  2. All other Properties owned by Declarant or the Association; and
  3. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.



Section 4. Management. The business and affairs of the Association shall be managed by a professional management company unless at least 66 2/3% of the Members shall agree otherwise. Nothing in this Section 4 shall be construed to limit the power of the Association to terminate any management agreement, with or without cause, provided that a replacement management agreement is made and entered into within a reasonable period of time thereafter.

#### ARTICLE IV: PRIVATE STREETS

Access to each Lot is provided by a system of private streets to be constructed by Declarant and owned and operated by the Association as a part of the Common Area. Said private streets are designated on the plat as Lot 52, Block 8, which Lot is dedicated and restricted to the perpetual and indefeasible right of ingress and egress over and across said Lot for the exclusive use and benefit of the Owners and residents of the Properties their guests and invitees. The perpetual right of ingress and egress over and upon said Lot 52, Block 8 may not be terminated or extinguished without the written consent of all Owners, the Association, and any and all parties having any interest in the Properties.

#### ARTICLE V. IRRIGATION WATER SUPPLY SYSTEM

Section 1. Irrigation Water Supply: Each Lot shall have access to an Irrigation Water Supply System to be constructed by Declarant and owned and operated by the Nampa Meridian Irrigation District. All Owners to which the system has been extended shall be required to pay any assessment therefore levied by Nampa Meridian Irrigation District.

Section 2. Easement For Irrigation Water Supply System: Declarant and the Nampa Meridian Irrigation District shall have a permanent easement for the construction, maintenance and repair of the irrigation water supply system and related wells, pumps, pipes, and any other conveyancing apparatus in the utility easement areas as are depicted on the Plat, together with the right of ingress to and egress from the easement premises over and across the privately owned property of Owners to perform maintenance upon the well, pump, pipes and other conveyancing apparatus comprising the irrigation water supply system together with all rights necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement.

## ARTICLE VI. EASEMENTS

Section 1. Future Easements: The Association shall have the future right to provide for such easements across, upon and under the surface of its Common Area as platted herein as may be reasonably necessary to serve the interests and convenience of the property Owners of this subdivision for public or private ways, public utilities (including cable television), drainage, access, subterranean irrigation lines, eave and balcony overhangs.

Section 2. Encroachments: In the event that, by reason of the construction, settlement or shifting of the building, any part of any Dwelling Unit or drainage water from any Lot or Dwelling Unit encroaches or shall hereafter encroach upon any part of the Common Area or any adjacent Lot, easements for the maintenance of such encroachment and for such use of the areas encroached upon are hereby established and shall exist for the benefit of said Dwelling Unit, so long as all or any part of the buildings shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Area or adjacent Dwelling Units be created in favor of any Owner of such encroachment or use if it is detrimental to or interferes with the reasonable use and enjoyment of the property by other Owners and if it occurred due to the willful conduct of any Owner.

Section 3. Easement for Maintenance: Declarant and the Association shall have a permanent easement to go upon the privately owned property of Owners in this subdivision to perform maintenance upon the Properties and the Common Area, including, but not limited to, snow removal, lawn maintenance, utility service and drainage system maintenance, subterranean irrigation water system maintenance and perimeter fence maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems.

## ARTICLE VII: MAINTENANCE RESPONSIBILITY

Section 1. Association Responsibilities. The Association shall have the responsibility to repair and maintain the following elements of the Properties: (a) the Common Areas and improvements thereon, including the recreational facilities, the private street and private street signs, the storm drainage facilities on the Properties, any landscaping improvements, and any Association-owned street lights; (b) the exterior landscaping improvements located on each and every Lot in the subdivision; (c) the exterior paint and the roofs on the dwelling units located in the subdivision; and (d) the perimeter fence installed by the Declarant. In the event the need for

maintenance and repair is caused through the willful or negligent act of an Owner, his family guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject.

Section 2. Owner's Responsibility: Each Owner shall maintain and keep in good order and repair the exterior of his Dwelling Unit, except the exterior painting and roofs thereof, and any private decks, fences, and courtyards contiguous to his Unit. In the event any Owner fails to comply with its duties as set forth herein, the Association shall have the right to take such legal action as may be necessary in order to compel such compliance. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within ninety (90) days of the damage or destruction.

Section 3. Maintenance of Private Road: In order to meet its maintenance requirements as contained herein, the Association shall, pursuant to the provisions of Article III, Section 3, above, collect each year a sum sufficient to create and maintain a capital improvement and maintenance fund for the purpose of providing for the maintenance of the private streets and sidewalks described in Article IV, above, at any and all times of the year such maintenance is required and to totally reconstruct the said private streets and sidewalks, if necessary, within 20 years of the date of recording hereof.

Section 4. Shared Maintenance of Off Site Common Area. The Properties which are subject to this Declaration are part of a larger residential subdivision consisting of The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, developed by Declarant, which contain landscape and drainage areas to be owned and maintained by The Lake at Cherry Lane Homeowners Association, Inc. It being recognized by Declarant that the Properties subject to this Declaration will be benefited by the existence and maintenance of the said landscape and drainage areas within The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, Declarant desires that the Association share in the cost of the upkeep, maintenance and repair of the said landscape and drainage areas. The Association shall, therefore, be responsible to pay 18% of the total cost of the upkeep, maintenance and repair of all of the common areas located at The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5. As used in this Section 4, the term "Common Areas" shall mean and refer to any Common Area Lots designated as such on any of the subdivision plats for The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, together with any Common Areas defined and designated as such in any Declaration of Covenants, Conditions and Restrictions, or amendments or supplements thereto, recorded and made applicable to any real property located within The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5. The Association's obligations hereunder shall be contingent upon The Lake at Cherry Lane Homeowners Association, Inc., delivering to the Association, within a reasonable time after the end of each calendar year, a statement setting forth the dollar amount of the Association's share of the costs for the upkeep, maintenance and repair of the

said Common Areas together with documents supporting the same, if requested, and the Association shall pay the same within thirty (30) days after receipt of the statement and any requested supporting documentation. Any amounts which remain unpaid after the due date thereof, shall bear interest in the amount of 12% per annum.

ARTICLE VIII:        PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the Properties and shall be for the benefit of and limitations upon all present and future Owners of said property, or of any interest therein:

- A.    Lot Use: No Lot, with the exception of the Common Area shall be used except for single-family residential purpose. No Lot or the Common Area shall be used for the conduct of any trade, business or professional activity. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations. The Owner of each Lot shall complete construction of a Dwelling Unit as permitted herein within one (1) years after the date of the first conveyance of the Lot to an Owner by Declarant.
  
- B.    Occupancy Requirements: To the extent permitted by law, no person under 18 years of age may regularly reside upon or occupy a Lot at any time. As used in this subparagraph, the term "regularly reside" is defined to mean any period of time in excess of 21 calendar days during any calendar year, provided that the Board of Directors of the Association may grant temporary and reasonable extensions of the said time limit where extenuating circumstances are found to exist. In addition, at least 80% of the occupied Lots must be occupied by at least one person 55 years of age or older, provided, however, that this requirement shall not apply until 25% of the Lots are occupied. The Board of Directors of the Association shall publish and adhere to policies and procedures providing for the verification of compliance with the occupancy requirements contained herein, which such policies and procedures shall comply with any rules issued from time to time by the Secretary of the Department of Housing and Urban Development.
  
- C.    Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said Properties, except that two dogs, cats or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling Unit or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to

include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee pursuant to the provisions of Article IX below and that in no event shall the said boundary extend beyond the front plane of the Dwelling Unit constructed on said Lot.

- D. Garbage and Refuse Disposal: No part of said Properties shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said Properties except in a sanitary container. Any incinerators or other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee and shall be kept in a clean and sanitary condition.
- E. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No exposed antennae or satellite dishes shall be erected on the Properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion.
- F. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Properties.
- G. Parking and Storage of Vehicles and Equipment: Parking of boats, trailers, motorcycles, trucks, truck campers, motorhomes, recreational vehicles, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any Lot nor on the Common Area, including but not limited to the Private Streets, except in fully enclosed buildings or under such circumstances, if any, as may be prescribed in writing by, and in the sole discretion of the Board of Directors of the Homeowners Association, which discretion may not be challenged for having been exercised unreasonably. All other parking or storage of any other equipment shall be prohibited, except as approved in writing by the Board of Directors of the Homeowners Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.
- H. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the

intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement.

- I. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall mean any agreement for the leasing or rental of a Dwelling Unit (including a month-to-month rental agreement); and all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling Unit.
- J. Sewer Restrictions: All bathroom, sink and toilet facilities shall be located inside the Dwelling Unit or other suitable appurtenant building, and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot.
- K. Fences: All fences, including fences around swimming pools, dog runs or other uses, must be approved, in advance, by the Architectural Control Committee as to design, materials and location. No fence shall extend beyond the front plane of the Dwelling Unit constructed or to be constructed on the Lot.
- L. Parking Rights: Subject to the provisions of paragraph G above, any automobile or other vehicle used by any Owner shall be parked in the driveway or garage which is a part of his Dwelling Unit. Parking by guests and invitees shall be permitted on one side of the street only, in accordance with such regulations as the Association may adopt in consultation with the City of Meridian Fire Department.
- M. Mail Boxes: All mail boxes will be provided by Declarant and shall be of consistent design, material and coloration and shall be located on or adjoining building Lot lines and places designated by Declarant or the Architectural Control Committee.
- N. Party Walls: The Dwelling Units constructed upon the Lots will include party walls, being the common walls between two Dwelling Units, separating the units. Such party walls are intended to be constructed upon the Lot boundary lines separating adjoining Lots. To the extent any party wall exists, encroaches or overlaps upon a Lot, there is hereby

created a common reciprocal easement for the location of such party wall. Each Owner shall have the right to use the surface of any party wall contained within the interior of the Owner's Dwelling Unit, provided that an Owner shall not drive, place or cause to be driven or placed any nail, bolt, screw or other object into a party wall which penetrates the surface of such party wall more than one inch. The Owner shall respectively own to the centerline of any party wall. Such party wall shall be maintained in good condition by the Owners thereof, free of structural defects and using reasonable care to avoid injury to the adjoining property. Notwithstanding any other provisions of this paragraph, an Owner who by negligent or willful act or acts causes a party wall to be damaged and/or exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and/or repair to such party wall. If such party wall is destroyed or damaged by fire or other casualty, either Owner may restore such party wall and if the other Owner thereafter make use of such party wall, such Owner shall contribute one-half (1/2) of the cost of such restoration. This right of contribution shall be without prejudice to any right to call for a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions.

#### ARTICLE IX. BUILDING RESTRICTIONS

Section 1. Building Restrictions: With the exception of Common Area Lots, no buildings shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling which may not exceed thirty feet (30') in height, and a private garage for two (2) or more motor vehicles. Each dwelling unit may not be occupied by more than one (1) family. The minimum square footage of living space (excluding the garage) of each dwelling unit shall be 1160 square feet.

Section 2. Setbacks: No building shall be located on any Lot nearer than 18 feet to the front Lot line; nearer than 15 feet to the rear Lot line; or nearer than five feet per story to a side Lot line. On corner Lots, the side yards shall be a minimum of 15 feet on the side abutting the street.

Section 3. Construction Requirements: Each Dwelling Unit may have wood siding (redwood, cedar or spruce which may be stained or painted) or a combination of wood, stone, manufactured or synthetic stone, stucco, masonry or masonite siding. Each Dwelling Unit must have exterior brick, stone, manufactured or synthetic stone or stucco on the front elevation as may be approved by the Architectural Control Committee, however, masonry wainscoting is discouraged. All roofs shall be comprised of 25-year architectural shingles, gray in color, with Duraridge caps or equivalent (as may be approved by the Architectural Control Committee) or tile with a minimum 5/12 pitch. The exterior surfaces of each Dwelling Unit shall have such colors as may be approved by the Architectural Control

Committee. All windows shall be of the anodized type or better (no raw aluminum frames). All fireplace chimneys must be of masonry or metal and, if metal, shall be wrapped with the same materials as exist on other areas of the exterior of the Unit to within one foot of the top cap. Each Dwelling Unit must have at least two exterior lights illuminating the garage door openings and one exterior light for the front entryway(s). All driveways must be concrete.

Section 4. Landscaping: Prior to occupancy of the Dwelling Unit located thereon, each Lot shall be fully landscaped in the front yard with grass (seeded or rolled sod), at least two (2) deciduous trees of at least one and one-half (1-1/2) inches in diameter or conifer trees at least six feet in height and ten (10) 1 gallon and five (5) 5 gallon shrubs or bushes; in the rear yard with grass (seeded or rolled sod), at least two deciduous trees at least one and one-half (1-1/2) inches in diameter or conifer trees at least six (6) feet in height and five (5) 1 gallon and five (5) 5 gallon shrubs or bushes; and in the street side yard, if any, with at least two (2) deciduous trees at least one and one half (1-1/2) inches in diameter or conifer trees at least six (6) feet in height and ten (10) 1 gallon and five (5) 5 gallon shrubs or bushes, all as has been approved by the Architectural Control Committee. As used herein, the front yard shall include that portion of each Lot to the side of the Dwelling Unit constructed thereon which is between the public right of way and the rear plane of the Dwelling Unit or a fence which extends from the side of the Dwelling Unit to the side lot line. During construction of the Dwelling Unit, there shall be installed in the front yard within ten feet (10') of the front boundary line, a photosensitive pole light designed to switch on automatically at sunset and off at sunrise with a minimum bulb power of 60 watts, including a minimum sixteen (16) inch diameter masonry or stucco base to match the Dwelling Unit.

Section 5. Job Site Maintenance: Job sites are to be kept as clean as possible during construction. All dirt, nails, gravel and other building materials must be removed from the street and sidewalk daily. Work vehicles shall not be parked in front of occupied houses, nor shall they block streets. Power and water must not be used from existing dwellings without the prior permission of the Owner. Dumpsters and portable toilets are the responsibility of the Owner or his contractor and shall be kept orderly at all times and emptied on a timely basis. All contractors and subcontractors shall be prohibited from keeping dogs at the job site.

#### ARTICLE X. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Board of Directors of the Homeowners Association. The Board of Directors of the Homeowners Association shall appoint members to the Architectural Control Committee at each annual meeting of the Board.



Section 2. Approvals Required: No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing in such design, the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement, structure or alteration. Actual construction shall comply substantially with the plans and specifications approved.

Section 3. Submissions: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee including, without limitation, the following:

- A. Site Plan. A site plan showing the location of buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all setbacks and other pertinent information related to the improvements.
- B. Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicate, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used. Garage, accessory

and outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to style and exterior colors and shall not be higher than ten feet above the roof line of the principal building on the Lot.

- C. Landscape Plan. A landscape plan for that portion of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, free standing exterior lights, driveways, parking areas and walk ways.

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

Section 6. Waivers: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 7. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Homeowners Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 8. Certification by Secretary: The records of the Secretary of the Homeowners Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Homeowners Association showing that the plans and specifications for the improvement or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Homeowners Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Homeowners Association shall have appeared of record in the office of the County Recorder of Canyon County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

Section 9. Construction and Sales Period Exception: During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwelling Units; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarant shall have the right to select and use any individual Dwelling Units owned by it as models for sales purposes.

#### ARTICLE X: INSURANCE AND BOND

Section 1. Required Insurance: The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such

amounts and in such forms as the Association may deem appropriate from time to time.

- A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).
- B. A comprehensive policy of public liability insurance covering all of the common areas, commercial spaces and public ways in the properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Dwelling Unit Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the properties contain more than one hundred (100) Units, coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.
- C. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

Section 2. Optional Insurance: The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho.

- A. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.
- B. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

Section 3. Additional Provisions: The following additional provisions shall apply with respect to insurance:

- A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.
- B. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
- C. All policies shall be written by a company licensed to write insurance in the state of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.
- D. Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal Home Loan Mortgage Corporation.

#### ARTICLE XI: CONDEMNATION

Section 1. Consequences of Condemnation: If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association owing the condemned Common Area.

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the appropriate Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

## ARTICLE XII: MORTGAGEE PROTECTION

Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws of the Association:

- A. The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.
- B. The holders of First Mortgages shall have the right to examine the books and records of any Association and to require annual reports or other appropriate financial data.
- C. Any management agreement for the Properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the contracting Association for cause upon thirty (30) days' written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.
- D. Any lien which the Association may have on any Dwelling Unit for the payment of assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date notice of such assessment lien is duly recorded.
- E. Unless all institutional holders of First Mortgages have given their prior written approval, the Association shall not:
  - 1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
  - 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
  - 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the

maintenance of the Common Area property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.

4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.
7. Terminate professional management and assume self-management of the Properties.

#### ARTICLE XIII: GENERAL PROVISIONS

Section 1. Enforcement: The Homeowners Association or any Owner or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of membership. Any amendment must be recorded.

Section 4. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned, and upon any such corporation or association evidencing its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of said property.

IN WITNESS WHEREOF, Declarant has caused its name to be hereunto subscribed this 15 day of December, 1998.

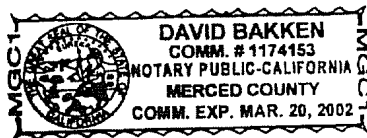
DECLARANT: STEINER DEVELOPMENT, L.L.C.

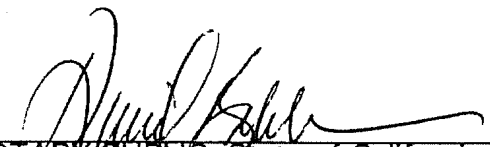
By   
LOUIS J. STEINER, Managing Member

STATE OF CALIFORNIA )  
  : ss.  
County of Merced      )

On this 15 day of December, 1998, before me, the undersigned Notary Public in and for said State, personally appeared Louis J. Steiner, known or identified to me to be the person who executed the within instrument and acknowledged to me he executed the same in his capacity as Managing Member of Steiner Development, L.L.C.

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



  
NOTARY PUBLIC, State of California  
Residing at Merced County  
My Commission Expires: 3/20/02



*Cherry Lane Sub #7*  
ADA COUNTY RECORDER  
J. DAVID NAVARRO  
BOISE, IDAHO

RECORDED - REQUEST OF

FEE 129 DEPUTY B. Oberbillig

2002 MAY 28 PM 4:13

102060019

ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 08/22/03 03:57 PM  
DEPUTY Bonnie Oberbillig  
RECORDED - REQUEST OF  
Lake at Cherry Lane No. 7 Sub  
AMOUNT 129.00

43

*Re-visit*



Recorders Use Only.

## AMENDMENT

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE LAKE AT CHERRY LANE NO. 7 SUBDIVISION

This Amendment is made this 14 day of MAY, 2002 pursuant to Article XIII, Section 3, of the Declaration of Covenants, Conditions and Restrictions of The Lake at Cherry Lane No. 7 Subdivision recorded on December 22, 1998 as Instrument No. 98123295, records of Ada County, Idaho.

Now, therefore this Amendment shall amend and does amend Article VII, Section 4 of the Declaration of Covenants, Conditions and Restrictions of The Lake at Cherry Lane No. 7 Subdivision, which shall hereafter provide as follows:

Section 4. Shared Maintenance of Off Site Common Area. The Properties which are subject to this Declaration are part of a larger residential subdivision consisting of The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, developed by Declarant, which contain landscape and drainage areas to be owned and maintained by The Lake at Cherry Lane Homeowners Association, Inc. It being recognized that the Properties subject to this Declaration will be benefitted by the existence and maintenance of the said landscape and drainage areas within The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, the Association shall share in the cost of the upkeep, maintenance and repair of the said landscape and drainage areas. The Association shall, therefore, be responsible to pay up to \$2,500.00 toward the cost of the upkeep, maintenance and repair of all of the commons areas located at The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, together with any Common Areas defined and designated as such in any Declaration of Covenants, Conditions and Restrictions, or amendments or supplements thereto, recorded and made applicable to any real property located within The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5. The Association may choose to pay additional sums for capital improvements and/or emergency expenditures, not to exceed eighteen percent

AMENDMENT - 1

R:\Fairways EIOA.001\Fairway.Amendment.wpd

(18%) of the capital improvement or emergency expenditure, for the upkeep, maintenance and repair of all of the commons areas located at The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5, together with any Common Areas defined and designated as such in any Declaration of Covenants, Conditions and Restrictions, or amendments or supplements thereto, recorded and made applicable to any real property located within The Lake at Cherry Lane Subdivision Nos. 3, 4 and 5. The Association's obligations hereunder shall be contingent upon The Lake at Cherry Lane Homeowners Association, Inc., delivering to the Association, within a reasonable time after the end of each calendar year, a statement setting forth the dollar amount of the Association's share of the costs for the upkeep, maintenance and repair of the said Common Areas together with documents supporting the same, if requested, and the Association shall pay the same within a reasonable time after receipt of the statement and any requested supporting documentation.

Attached to this Amendment and incorporated herein by this reference are the notarized signatures of at least sixty-six and two-thirds percent (66-2/3 %) of the members of the Association entitled to cast votes.

AMENDMENT - 2

R:\Fairways HOA.001\Fairway Amendment.wpd

---