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Goose Creek Condominiums

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**CONDOMINIUM DECLARATION**  
**FOR THE**  
**GOOSE CREEK CONDOMINIUMS**

**GOOSE CREEK CONDOMINIUMS**

**TABLE OF CONTENTS**

	Page
<b>Legal Description .....</b>	<b>1</b>
<b>ARTICLE I – Declaration.....</b>	<b>2</b>
<b>ARTICLE II – Definitions .....</b>	<b>2</b>
Section 2.1 “Articles” .....	2
Section 2.2 “Assessment” .....	2
Section 2.3 “Association” .....	2
Section 2.4 “Association Rules” .....	2
Section 2.5 “Beneficiary” .....	2
Section 2.6 “Board” .....	2
Section 2.7 “Building” .....	3
Section 2.8 “Bylaws” .....	3
Section 2.9 “Common Area” .....	3
Section 2.10 “Condominium” .....	3
Section 2.11 “Condominium Act” .....	3
Section 2.12 “Condominium Documents” .....	3
Section 2.13 “Declaration” .....	3
Section 2.14 “Declarant” .....	3
Section 2.15 “Grantor” .....	3
Section 2.16 “Improvement” .....	3
Section 2.17 “Limited Assessment” .....	3
Section 2.18 “Limited Common Areas” .....	4
Section 2.19 “Management Agreement” .....	4
Section 2.20 “Management Company” .....	4
Section 2.21 “Member” .....	4
Section 2.22 “Mortgage” .....	4
Section 2.23 “Mortgagee” .....	4
Section 2.24 “Owner” .....	4
Section 2.25 “Parking Spaces” .....	4
Section 2.26 “Patio/Deck Space” .....	5
Section 2.27 “Person” .....	4
Section 2.28 “Plat” .....	5
Section 2.29 “Project” .....	5
Section 2.30 “Property” .....	5
Section 2.31 “Regular Assessment” .....	5
Section 2.32 “Special Assessment” .....	5
Section 2.33 “Unit” .....	5

<b>ARTICLE III – Nature and Incidents of Condominium Ownership .....</b>	<b>6</b>
Section 3.1 Estates of an Owner of a Condominium .....	6
Section 3.2 Title .....	6
Section 3.3 Inseparability.....	6
Section 3.4 Partition of Common Area Not Permitted .....	6
Section 3.5 Taxes and Assessments.....	6
Section 3.6 Owner’s Rights with Respect to Interiors.....	7
<b>ARTICLE IV – Description of a Condominium .....</b>	<b>7</b>
Section 4.1 Units.....	7
Section 4.2 Parking Spaces .....	7
<b>ARTICLE V – Easements .....</b>	<b>8</b>
Section 5.1 Easements for Encroachments .....	8
Section 5.2 Easements of Access for Repair, Maintenance and Emergencies ...	8
Section 5.3 Owner’s Right to Ingress, Egress and Support .....	9
Section 5.4 Association’s Right to Use of Common Area.....	9
Section 5.5 Declarant’s Right Incident to Construction .....	9
Section 5.6 Easements Deemed Created.....	9
Section 5.7 Emergency Easement.....	9
Section 5.8 Recorded Easements .....	10
Section 5.9 Drainage Facilities and Easements .....	10
<b>ARTICLE VI – General Covenants, Conditions and Property Use</b>	
<b>Restrictions .....</b>	<b>10</b>
Section 6.1 Obstructions of Common Area .....	10
Section 6.2 Maintenance of Interiors and Limited Common Area.....	10
Section 6.3 Prohibition of damage and Certain Activities.....	10
Section 6.4 Unlawful Activities .....	11
Section 6.5 Insurance Restrictions .....	11
Section 6.6 Nuisances .....	11
Section 6.7 Signs.....	11
Section 6.8 Animals/Pets .....	12
Section 6.9 Sewer Covenants.....	12
Section 6.10 Boats, Campers, Vehicles and Equipment.....	13
Section 6.11 Parking .....	14
Section 6.12 No Temporary Structures.....	14
Section 6.13 Over the Air Reception Devices .....	14
Section 6.14 Hazardous Activities .....	14
Section 6.15 Unsightly Articles .....	14

Section 6.16 Reconstruction .....	15
Section 6.17 Maintenance and Repair .....	15
Section 6.18 Limited Common Area .....	15
Section 6.19 Window Treatments.....	15
Section 6.20 Structural Alterations.....	15
Section 6.21 Deed Restrictions .....	15
Section 6.22 Right to Use and Enjoy Units .....	15
Section 6.23 Plat Conditions.....	16
<b>ARTICLE VII – Goose Creek Condominium Owners’ Association, Inc.....</b>	<b>16</b>
Section 7.1 Creation.....	16
Section 7.2 Membership .....	16
Section 7.3 Voting Rights in the Association .....	16
Section 7.4 Transfer .....	17
<b>ARTICLE VIII – Powers and Duties of the Association.....</b>	<b>17</b>
Section 8.1 Powers of the Association.....	17
Section 8.2 Duties of the Association.....	20
Section 8.3 Maintenance of Records and Right of Inspection.....	21
Section 8.4 Amplification .....	22
Section 8.5 Use of Association Powers .....	22
<b>ARTICLE IX – Assessments.....</b>	<b>22</b>
Section 9.1 Covenant to Pay Assessments.....	22
Section 9.2 Initial Assessments.....	22
Section 9.3 Rate of Assessments .....	22
Section 9.4 Assessment Constitutes Lien .....	22
Section 9.5 Assessment is Personal Obligation .....	22
Section 9.6 Regular Assessments .....	23
Section 9.7 Special Assessments .....	23
Section 9.8 Limited Assessments .....	24
Section 9.9 Notice and Assessment Due Date .....	24
Section 9.10 Estoppel Certificate.....	24
Section 9.11 No Reserves Provided by Grantor .....	25
Section 9.12 Grantor’s Assessment Obligations.....	25
<b>ARTICLE X – Enforcement of Assessment; Liens.....</b>	<b>25</b>
Section 10.1 Right to Enforce .....	25
Section 10.2 Assessment Liens.....	25
Section 10.3 Method of Foreclosure.....	26
Section 10.4 Required Notice .....	26
Section 10.5 No Subordination.....	26

Section 10.6 Rights of Mortgagees.....	27
<b>ARTICLE XI – Rights to Common Areas.....</b>	<b>27</b>
Section 11.1 Use of Common Area .....	27
Section 11.2 Delegation of Right to Use .....	28
Section 11.3 Damages.....	28
<b>ARTICLE XII – Mechanic’s Lien Rights.....</b>	<b>28</b>
<b>ARTICLE XIII – Insurance.....</b>	<b>29</b>
Section 13.1 Types of Insurance.....	29
Section 13.2 Insurance Proceeds.....	31
Section 13.3 Owner’s Own Insurance .....	31
<b>ARTICLE XIV – Casualty, Damage or Destruction .....</b>	<b>31</b>
Section 14.1 Affects Title .....	31
Section 14.2 Association as Agent.....	31
Section 14.3 General Authority of Association .....	32
Section 14.4 Estimate of Costs .....	32
Section 14.5 Repair of Reconstruction .....	32
Section 14.6 Funds of Reconstruction .....	32
Section 14.7 Disbursement of Funds for Repair or Reconstruction .....	33
<b>ARTICLE XV – Condemnation .....</b>	<b>33</b>
Section 15.1 Consequences of Condemnation.....	33
Section 15.2 Proceeds .....	33
Section 15.3 Complete Taking.....	33
Section 15.4 Partial Taking.....	33
Section 15.5 Reorganization .....	34
Section 15.6 Reconstruction and Repair.....	34
<b>ARTICLE XVI – Miscellaneous .....</b>	<b>34</b>
Section 16.1 Amendment.....	34
Section 16.2 Mortgage Protection.....	35
Section 16.3 Enforcement and Non-Waiver .....	36
Section 16.4 Registration of Mailing Address.....	36
Section 16.5 Interpretation.....	36
Section 16.6 Owner’s Obligations Continue .....	37
Section 16.7 Exhibits .....	37
Section 16.8 Acknowledgement and Waivers .....	37

**CONDOMINIUM DECLARATION  
FOR THE  
GOOSE CREEK CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION Is made on the 25<sup>th</sup> day of September, 2006, by **Robert D. Erland and Sharon N. Erland**, husband and wife, hereinafter referred to as "Declarant".

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

GOOSE CREEK CONDOMINIUMS according to the official plat thereof filed in Book 96 of Plats at Pages 11896 through 11907, Instrument No.106148166, Records of Ada County, Idaho.

The property is further defined and described on Exhibit "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that the Property, and each unit, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and attractiveness of the Property. The terms, covenants, conditions, reservations, easements and restrictions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any unit, parcel or portion thereof; shall inure to the benefit of every unit, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and shall be binding upon Declarant, its successors in interest and each grantee or owner and his respective successors in interest; and may be enforced by Declarant or by any owner or his successors in interest. Grantor has developed the Property as a residential condominium development in accordance with the Plat, this Declaration, and the existing developmental approvals obtained from Boise City. The purpose of this Declaration is to provide for condominium ownership of the Project pursuant to the Condominium Act, designate Common Area and Limited Common Area, create the **Goose Creek Condominium Owners' Association, Inc.**, and set forth the terms, restrictions, covenants, limitations, easements, conditions and equitable servitudes that shall apply to the Project and this condominium ownership regime (collectively "Restrictions") that are unique to the Property and the condominium ownership regime.

## ARTICLE I

### Declaration

Grantor hereby declares that the Property and every parcel or portion thereof shall be held, sold, conveyed, encumbered, hypothecated, used, occupied and improved subject to the provisions of this Declaration, each and all of which are hereby declared to be in furtherance of a general plan for the creation, maintenance and sale of an ownership in fee simple of separate interests in Units and for co-ownership with others, as tenants-in-common, of the Common Area, all pursuant to the Condominium Act. All provisions hereof shall be deemed covenants running with the land or as equitable servitudes, and shall constitute benefits and burdens to the Owners and all persons hereafter acquiring or owning any interest in the Project, however such interests may be obtained. Each Owner of a Condominium, including Grantor, is subject to all of the rights and duties contained within the Condominium Documents.

## ARTICLE II

### Definitions

**2.1 "Articles"** shall mean the Articles of Incorporation of the Goose Creek Condominiums Owners' Association, Inc., as the same may be amended from time to time. A copy of the Articles is attached hereto as Exhibit "C" and incorporated herein by reference.

**2.2 "Assessment"** shall mean a share of the funds required for the payment of common expenses, including those expenses attributable to less than all Owners in the case of Limited Assessments, which, from time to time, are assessed against the Owners, and shall include Regular, Special and Limited Assessments, as more fully described herein.

**2.3 "Association"** shall mean the Goose Creek Condominium Owners' Association, Inc., an Idaho non-profit corporation, its successors and assigns.

**2.4 "Association Rules"** shall mean the rules and regulations which may be adopted, amended, or repealed from time to time by the Board.

**2.5 "Beneficiary"** shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property in the Subdivision.

**2.6 "Board"** shall mean the duly elected Board of Directors of the Association.

**2.7 "Building"** shall mean the buildings constructed on the Property as shown on the Plat.

**2.8 "Bylaws"** shall mean the Bylaws of the Association as they may exist from time to time.

**2.9 "Common Area"** shall mean the entire Project excepting all units.

**2.10 "Condominium"** means a separate interest in a Unit together with an undivided interest in common in the Common Area, expressed as percentages of the entire ownership interest in the Common Area and attached hereto and incorporated herein as Exhibit "D."

**2.11 "Condominium Act"** means the "Condominium Property Act" of the State of Idaho, Idaho Code, Section 55-1501 et seq.

**2.12 "Condominium Documents"** means this Declaration, the Articles, Bylaws, the Plat, Association Rules, any service agreements entered into by the Association, and any and all other related documents and instruments as the same may be amended from time to time.

**2.13 "Declaration" or "Supplemental Declaration"** shall refer to this Declaration as hereafter amended and supplemented from time to time.

**2.14 "Declarant"** shall mean and refer to Robert D. Erland and Sharon N. Erland, husband and wife, Daniel A. Erland and Ginger L. Erland, husband and wife, and Kerilynn Erland, a single person, their successors and assigns.

**2.15 "Grantor"** shall mean and refer to Robert D. Erland and Sharon N. Erland, husband and wife, Daniel A. Erland and Ginger L. Erland, husband and wife, and Kerilynn Erland, a single person, their successors and assigns.

**2.16 "Improvement"** shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Project, including, but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, and fixtures of any kind whatsoever.

**2.17 "Limited Assessment"** means an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for the construction, installation, maintenance, repair and replacement of the Common Area, and equipment and facilities located thereon, including any corrective action necessitated due to damage by the acts of any Owner or occupant of a Unit who is occupying a Unit with the consent,



either express or implied, of such Owner, as more particularly described in Section 9.8 herein.

**2.18 "Limited Common Areas"** mean those common areas and facilities designated in the Declaration for use of a certain Condominium Owner to the exclusion, limitation or restriction of others. Limited Common Area may be established from time to time by Grantor or the Association on any portion of the Property by describing such area on a recorded plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration. Limited Common Areas shall include, without limitation, Patio/Deck Spaces. For purposes of applying this Declaration to the Property, the term Common Area as used in this Declaration shall include the Limited Common Area.

**2.19 "Management Agreement"** shall mean any agreement or amendments thereto entered into by the Association, which provides for the management, maintenance and operation of the Project, including, without limitation, the Common Area, by a management individual or entity.

**2.20 "Management Company"** means the person or entity hired by the Association to manage the Project, as defined in the Management Agreement, and act as the Management Body, as such power is delegated pursuant to Section 8.1.4.

**2.21 "Member"** means each person or entity holding a membership in the Association.

**2.22 "Mortgage"** shall mean and refer to any mortgage or deed of trust.

**2.23 "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 under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

**2.24 "Owner"** shall mean and refer to any persons or entity, including Declarant, at any time owning a Condominium. The term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

**2.25 "Parking Spaces"** means collectively those sixty-two (62) non-handicapped parking spaces, located in the Project, as shown on Exhibit "E." The term "Parking Spaces" specifically excludes the four (4) designated handicapped stalls located in the parking area. A total of sixty-two (62) Parking Spaces are initially assigned to a specific Unit, as shown on Exhibit "E." Parking Spaces shall be Common Area.

**2.26 "Patio/Deck Space"** means that outdoor space attached to the Units, as shown on the Plat. Patio/Deck Space, including, without limitation, any railing or fences surrounding the Patio/Deck Space, shall be Limited Common Area.

**2.27 "Person"** means any individual or any corporation, joint venture, limited partnership, partnership, firm, association, trustee or other similar entity or organization.

**2.28 "Plat"** shall mean the recorded plat of Goose Creek Condominiums, a copy of which is attached hereto as Exhibit "B."

**2.29 "Project"** shall mean and refer to that certain condominium development, as shown on the Plat, which shall include, but shall not be limited to residential and parking uses, in accordance with the Plat, the Declaration and the existing development approvals obtained from Boise City, all of which is located on the Property.

**2.30 "Property"** means the land described in this Declaration, together with every building, improvement or structure thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the condominium owners.

**2.31 "Regular Assessment"** means an assessment by the Association to provide for the payment of all estimated expenses or reserves growing out of or connected with the Project as a whole, as more particularly described in Section 9.6 herein.

**2.32 "Special Assessment"** means an assessment by the Association for the purpose of defraying, in whole or in part, the costs of any new acquisition and/or new capital improvement, construction or reconstruction or unexpected or extraordinary repair, maintenance or replacement of the Project or any part thereof, including, without limitation, snow and ice removal, or for any expense incurred or to be incurred as provided in this Declaration, or in the event that the Assessment assessed for any particular year is or will become inadequate to meet the expenses of the Association such assessment being authorized pursuant to the terms and conditions provide herein, as more particularly described in Section 9.7 herein.

**2.33 "Unit"** shall mean and refer to the separate interest in a Condominium as depicted on the Plat and which is bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, skylights, if any, and doors thereof, together with all fixtures and improvements therein contained, including, without limitation, all pipes, wires, conduits and other utility lines and heating, ventilation and air conditioning systems serving the particular Unit and including both the portions of the Building so described and the airspace so encompassed. The following are not part of the Unit: bearing walls, columns, floors, roofs, (except for the interior surface thereof, if a perimeter wall, floor or ceiling), foundations, elevator equipment and shafts, central heating serving more than one Unit, reservoirs, tanks, pumps, and other central services, pipes, ducts, flues, chutes, conduits, wire and other utility installations (other than those specified above), wherever

located, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window, skylight or door means the points at which such surfaces are located when such window, skylight or door is closed. The physical windows, skylights or doors themselves are part of the Limited Common Area as defined herein.

### ARTICLE III

#### Nature and Incidents of Condominium Ownership

**3.1 Estates of an Owner of a Condominium.** The Property is hereby divided into Condominiums, each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area. The percentage of ownership interest in the Common Area which is to be allocated to each Condominium as a whole for purposes of Assessments, tax assessment under Section 55-1514 of the Condominium Act and liability as provided by Section 55-1515 of the Condominium Act, is set forth on the attached Exhibit "D."

**3.2 Title.** Title to a Condominium may be held or owned by any individual or entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

**3.3 Inseparability.** No part of a Condominium or of the legal rights comprising ownership of a Condominium, including any Limited Common Area associated with the Condominium, may be separated from any other part thereof during the period of Condominium ownership prescribed herein, except as otherwise provided in Section 4.2, so that each Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, devised, encumbered, transferred and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Condominium together with all appurtenant rights, created by law or this Declaration.

**3.4 Partition of Common Area Not Permitted.** The Common Area shall be owned in common by all of the Owners of Units, and no Owner may bring any action for partition thereof.

**3.5 Taxes and Assessments.** Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless, be a lien on the Property or any part thereof, the Association shall pay the same and assess the same to the responsible Owner or Owners. Each Owner shall pay the taxes and assessments assessed against such Owner's Condominium, or interest therein, and such Owner's interest in the Common Area, or any part of any or all of the foregoing.

The Association reserves the right to protest any tax valuation or assessment by any government agency and to pay for any costs associated with such protests. Each Owner agrees to reimburse the Association for any costs associated with such protests as related to that Owner's Unit.

**3.6 Owner's Rights with Respect to Interiors.** Each Owner shall have the exclusive right to maintain, finish, refinish and decorate the interior surfaces of the walls, ceiling, floors, windows and doors forming and within the interior boundaries of the Owner's Unit, including but not limited to the installation of carpet or other floor coverings and paint or wallpaper, subject to the reasonable rules and regulations adopted by the Association and, with respect to window treatments, Section 6.19 of the Declaration and amended or repealed from time to time, and provided that no action described herein shall require access through another Unit to be completed.

## ARTICLE IV

### Description of a Condominium

**4.1 Units.** Every contract for the sale of a Condominium and every other instrument affecting title to such Condominium shall describe that Condominium by the Unit number shown on the Plat as set forth on Exhibit "B," with appropriate reference to the Plat and to this Declaration as such appear in the official records of Ada County, Idaho, in the following manner:

Condominium Unit \_\_\_\_, as shown on the Plat of the Goose Creek Condominiums filed on \_\_\_\_\_, 2006 in Book \_\_\_\_ of Plats at Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, Official records of Ada County, Idaho, as said Plat may be amended or supplemented from time to time, and as defined in the Condominium Declaration for the Goose Creek Condominiums, recorded as Instrument No. \_\_\_\_\_, official records of Ada County, Idaho, as said Declaration may be amended or supplemented from time to time.

Any Condominium deed may include a designation of Limited Common Area associated with the Unit. Such description shall be construed to describe the Unit, together with an appurtenant undivided ownership interest as tenants-in-common in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in the Condominium Documents or any amendments or supplements thereto, whether or not so specified in the instrument.

**4.2 Parking Spaces.** All Parking Spaces shall initially be assigned to an owner as shown on Exhibit "E," and all proceeds therefrom shall be vested in the Grantor. Sixty-two (62) Parking Spaces are initially assigned to a specific Unit, as shown on

Exhibit "E," while the Grantor will assign the remaining Parking Spaces as handicapped parking.

After their initial assignment, Parking Spaces shall be assigned either in conjunction with the conveyance of a Condominium pursuant to the following terms and limitations. After the initial assignment of parking spaces, the Association may change the assignments, provided, however, that an Owner shall not have the number of spaces assigned to that Owner reduced without the written consent of the Owner. An Owner who does not utilize the Owner's parking spaces may allow another Owner or the Association to use the same upon such terms and conditions as the Owner may deem appropriate. Such terms and conditions must provide, however, that the use of a parking space by another Owner shall terminate upon the sale of the unit to which the space is assigned.

## **ARTICLE V**

### **Easements**

**5.1 Easements for Encroachments.** If any part of the Common Area encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered encumbrances on the Common Area or the Units. Encroachments referred to herein include, but are not limited to encroachments caused by settling, rising or shifting of the earth under a Building, or by changes in position caused by repair or reconstruction of a Building or any part thereof.

**5.2 Easements of Access for Repair, Maintenance and Emergencies.** The Owners shall have the irrevocable right, to be exercised by the Association, as their agent, to have access to each Unit and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units or to correct a violation of any Restriction set forth in this Declaration when, after reasonable efforts by the Association, the Owner fails to do so. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of the negligence of an Owner or such Owner's invitees, licensees or lessees of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the Unit shall be restored substantially to the same condition as existed prior to damage.

Amounts owing by Owners pursuant hereto shall be collected by the Association as an Assessment pursuant to Article IX herein.

**5.3 Owner's Right to Ingress, Egress and Support.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to the Owner's Condominium, and shall have the right to the horizontal and lateral support of such Owner's Condominium, and such rights shall be appurtenant to and pass with the title to each Condominium. In exercising the rights granted in this Section, each Owner agrees to use commercially reasonable efforts to avoid interference with the access to other condominiums.

**5.4 Association's Right to Use of Common Area.** The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to grant access easements, utility easements, alter the Common Areas, and construct and maintain maintenance and storage facilities in the Common Area for use by the Association.

**5.5 Declarant's Right Incident to Construction.** Declarant and persons it shall select shall have the express and unconditional right to ingress and egress over, upon and across the Project, including the Common Area, the right to store materials thereon and to make other use thereof as may be reasonably necessary or incident to completion of development and construction of the Buildings and Units shown on the Plat and the completion of all Units for use and occupancy; provided, however, neither Declarant nor any Owner shall construct any additional separate principal buildings on the Property without the express written consent of Boise City.

**5.6 Easements Deemed Created.** All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 5.1, 5.2, 5.3, 5.4, and 5.5 above, even though no specific reference to such easements or to those Sections appear in any such conveyance.

**5.7 Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and property within the Project in the proper performance of their duties. The easement granted herein is recognized to be a condition of platting the Property imposed by Boise City. Such easement shall not be dissolved or altered in any material way which would prevent its beneficial use for its intended purpose without the written consent of Boise City. Owners expressly acknowledge that the Association and the Boise City Fire Department shall each have one master key capable of accessing all doors, whether or not such door is connected to any common security system. The Owners expressly agree to notify the Association prior to re-keying any lock in the Buildings and agree to use a locksmith approved by the Board.

**5.8 Recorded Easements.** The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use, including, without limitation, any storm drainage easements, street light easements, sanitary sewer easements, or any other public utility easement shown on the Plat.

**5.9 Drainage Facilities and Easements.** A drainage easement is reserved upon all of the Common Area. The primary purpose of the drainage easement shall be for the drainage of storm water. The association is specifically obligated to maintain and operate any drainage swales or other drainage facilities upon the Property and shall include the cost thereof in the Association's regular assessments.

## **ARTICLE VI**

### **General Covenants, Conditions and Property Use Restrictions**

**6.1 Obstructions of Common Area.** There shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent of the Association. Nothing shall be altered on, planted in, constructed on, or removed from the Common Area except upon the prior written consent of the Association.

**6.2 Maintenance of Interiors and Limited Common Area.** Each Owner shall keep the interior of such Owner's Unit, including, without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean, sanitary, and attractive condition, and good state of repair and shall keep the heating and air conditioning equipment, water heater and related devices exclusively serving the Owner's Unit in a good state of maintenance. Further, each Owner agrees that such Owner's Unit will be used exclusively for single-family residential purposes and home office use solely by persons residing in the Unit. Each Owner shall keep the Limited Common Area, designated for the exclusive use of such Owner in connection with the Unit, in a clean, sanitary and attractive condition, including removal of snow and ice on Limited Common Area. Each Owner shall notify the Association of any unsafe condition existing in, or around the Limited Common Area. In addition, nothing unsightly, in the reasonable discretion of the Board, shall be kept on the Patio/Deck Space.

**6.3 Prohibition of Damage and Certain Activities.** Nothing shall be done or kept in any Unit or in the Common Area or any part thereof which would result in the cancellation of or increase in the rate of the insurance on the Project or any part thereof over what the Association, but for the activity, would pay, without the prior written consent of the Association or which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste on, the Common Area or any part thereof shall be committed by any Owner, licensee, guest, or other occupant, or any invitee of any Owner, and each Owner

shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by Owner, Owner's invitee, licensees, or guests, provided, however, that any invitee, licensee or guest of an Owner shall not under any circumstances be deemed to be an invitee of any other owner. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Area or any part thereof and nothing shall be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing or working in a Unit. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices which have been approved by the Board), flashing lights or search lights, shall be located, used or placed on the Common Area or in a Unit, if such placement of such item in a Unit will unreasonably bother or constitute a nuisance to others. No unsightly articles shall be permitted to remain on any portion of the Property so as to be visible from any other portion of the Project, including, but not limited to, flags and political signs. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers (or otherwise screened) and in areas approved by the Board. No clothing or fabric shall be hung, dried or aired in a manner inconsistent with the Association Rules.

**6.4 Unlawful Activities.** Owners shall not use nor permit any person or persons to use the Units or any part thereof for any use or purpose in violation of the laws of the United States of America, the State of Idaho, Ada County, Idaho or Boise City, Idaho, or the ordinances, regulations and requirements of such governmental (public or quasi-public entities) or other lawful authorities.

**6.5 Insurance Restrictions.** Owners shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Premises or any of its contents (unless the Association has consented in writing to such use and such Owner pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Premises, or any of its contents, nor shall Owners sell or permit to be kept, used or sold in or about said Building any articles which may be prohibited by an extended coverage policy of fire and other casualty insurance.

**6.6 Nuisances.** No noxious or offensive activity, including without limitation, those creating an offensive odor, shall be carried on upon any unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**6.7 Signs.** No signs of any kind, including, without limitation, "for sale," "for rent" and "open house" signs or political or commercial signs, shall be displayed on or from any portion of the Property except as required by law.



**6.8 Animals/ Pets.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any unit or upon the Project, except that no more than one (1) dog, two (2) cats or one (1) dog and one (1) cat may be kept provided that they are not kept, bred, or maintained for any commercial purpose and provided that the keeper of such pets complies with all city and county laws, rules and regulations and rules and regulations of the Association. No snakes shall be allowed and only small animals and reptiles which may be kept in a cage or pen not larger than five (5) cubic feet in size. No Owner shall permit any pet to be a nuisance, as determined in the sole discretion of the Board, and which shall include, without limitation, objectionable odors, excessive barking, biting or growling, and an Owner shall immediately remove such Owner's pet's excrement from public or private property including the Common Area. These restrictions shall not apply to any service animals, including, without limitation, guide animals. Each Owner of an approved pet agrees to execute a Pet Agreement, as developed and amended from time to time by the Association, which shall include a limitation on the number of pets one Owner may have residing in that Owner's Unit. The Association expressly reserves the right to require any Owner to immediately remove any animal exhibiting signs of aggressive behavior, including, without limitation, biting, growling and lunging toward any other Owner, guest, invitee or licensee of an Owner. The Association further expressly reserves the right to prohibit certain breeds or types of animals, which in the Board's sole discretion, are classified as viscous or unreasonably aggressive. All animals shall be kept in accordance with all of the laws and regulations of Boise City, including, without limitation, all "leash laws." Without limiting the generality of the foregoing, domesticated dogs, domesticated cats and other household pets discovered in the Limited Common Area of an Owner, without that Owner's permission or direct supervision by the Owner of the pet, shall be considered a nuisance.

**6.9 Sewer Covenants.** The following covenants shall run with each Unit and any portions of the Common Area affected thereby and shall be binding upon each Owner of a unit and all occupants of any unit:

(a) No unit or other property, including Common Area, may be used or occupied for residential or other purposes unless the same is connected to the public sewerage collection system constructed and installed within the property.

(b) All sewer hook-up fees charged by the municipality having jurisdiction and control over the unit shall be paid at such time and in such amount as shall be required by the ordinances and regulations of the municipal entity having jurisdiction thereof.

(c) A monthly sewerage charge shall be paid to the municipal entity having jurisdiction thereof, or its designee, after connection to the public sewerage collection system in accordance with the ordinances and regulations of said municipal entity.

(d) All sewer service lines connected to the sewerage collection system constructed and installed by the Grantor in the property shall be constructed in accordance with all applicable codes and regulations and shall be inspected as required by the

governmental entity having jurisdiction thereof to assure a minimum of infiltration from said service line into the sewerage collection system.

(e) The Grantor shall provide access, satisfactory to the Boise City Public Works Department, for City Sewer cleaning equipment to all sanitary sewer manholes located outside of public right-of-way and an accessible means of traversing over said sewer easement to said manholes shall be shown on the face of the final condominium plat.

(f) The Grantor and each Owner of a unit hereby authorizes the municipal entity having jurisdiction thereof, or its designee, to bring any action it deems necessary or required for the collection of any fees or charges due said municipal entity for sewer service connection or monthly sewer charges and/or to otherwise enforce any of the obligations respecting the connection to the public sewerage collection system or use thereof as provided in this Section.

(g) No Owner or other Person shall deposit any glass, metal, seafood shells, diapers, clothing, rags, plastic, sanitary napkins, tampons, flammable material, oil, gas, grease, chemicals or other objects or materials other than natural human waste into the sewer system either directly or through an Owner's kitchen waste disposal unit. The cost of any and all damage sustained by the sewer system caused by an Owner's deposit in the sewer system of any of the items listed herein shall be the sole responsibility of said Owner.

(h) The Association shall own and maintain all portions of the public sewer system which are constructed or located within the Common Area. The costs and expenses of all maintenance and repairs shall be part of the Assessments levied by the Association pursuant to Article IX herein.

**6.10 Boats, Campers, Vehicles and Equipment.** The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to any portion of the Condominium Documents which prohibit or limit the use thereof within the Property. Without limiting the foregoing, the following specific restrictions apply: (1) all on-street parking shall be limited to those specific areas where on-street parking is not expressly prohibited; (2) vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, or pedestrian path, unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Condominium Documents; and (3) no motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, flat bed trucks or trailers, unlicensed, dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, construction equipment (except for short-term construction purposes upon the Project), garden or lawn care maintenance equipment and all other unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, interior or exterior parking areas and driveways, unless the same are enclosed by a structure concealing them

form view in a manner approved by the Board (provided, however, that mobile homes, motor homes, motor coaches and trailers may be parked for a limited period in accordance with such rules and regulations as the Association may impose, provided: (a) the vehicle is owned by a visiting guest or relative of an Owner, (b) the Owner obtains the prior written approval of the Association and (c) such vehicle is not occupied during the time in which it is parked). The Association retains the right, in its sole discretion, to limit the size of any vehicle that may be parked in the parking facilities associated with the Project or to construct any additional barrier for appropriate parking use.

**6.11 Parking.** The Association may allocate or designate parking areas or spaces from time to time as authorized in this Declaration, and develop any and all necessary regulations for the use to the Parking Spaces, as defined herein, by the Owners and their guests. Parking assignments shall be subject to Section 4.2 herein.

**6.12 No Temporary Structures.** No house trailer, tent (other than for short term recreational use), or other temporary building or structure shall be placed upon any portion of the property, except by the Declarant during any construction of the project.

**6.13 Over the Air Reception Devices.** All Owners who desire to use any device or antenna to receive over the air transmissions shall be required to use one or more common antennae which may be located on the Project in the discretion of the Grantor or the Board and shall be subject to any other reasonable restrictions established by the Board. Notwithstanding the foregoing, no portion of this restriction shall apply to the extent it conflicts with any federal or state law governing such devices. Notwithstanding the foregoing, subject to the approval of the Board and in accordance with all rules of the Association, Owners shall be permitted to install small satellite dishes, not to exceed nineteen (19) inches in diameter, within the service areas located on the roofs of the Buildings, as the same may be approved and determined by the Board, for cable services using the electrical conduit system located in the Buildings, if and only if, the service provided by the common antennae is not adequate to meet the Owners' needs.

**6.14 Hazardous Activities.** No activity shall be conducted on or in any unit which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon said property; no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed interior fireplace.

**6.15 Unsightly Articles.** No unsightly articles shall be permitted to remain on any unit as to be visible from any other portion of the property. Without limiting the foregoing, no clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other portion of the property. No lumber, grass, shrub or tree clippings or plant waste, compost piles, metals, building or other materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the property except within an enclosed structure or appropriately screened from

view. "Screened" is defined as being concealed or made non-visible from eye level, at grade, at all points within the property.

**6.16 Reconstruction.** In any case where it is necessary to reconstruct a unit said reconstruction shall be prosecuted diligently, continuously and without delays from time of commencement thereof until such structure is fully completed and painted, unless prevented by causes beyond control and only for such time that such cause continues.

**6.17 Maintenance and Repair.** In the event the improvements on any unit shall suffer damage or destruction from any cause, the owner thereof shall undertake the repair, restoration or reconstruction thereof within ninety (90) days of such damage or destruction.

**6.18 Limited Common Areas.** Each Owner of a Unit is hereby granted the exclusive use of the Limited Common Area contiguous to and associated with said Unit. No Owner shall, or shall permit anyone else to, paint, stain, repair, replace, add to or otherwise alter any Limited Common Area without the written consent of the board. Additionally, nothing shall be stored in or placed on any Limited Common Area except upon the written consent of the board. Further, except for the Units shown on the Plat, no Owner shall construct a building in the Project for residential purposes or otherwise without the prior written approval of the City of Boise City and the Association. The use of any and all Patio/Deck Spaces attached to a Unit shall be governed by those standards and rules that may be adopted and approved by the Board. All maintenance and repair in the limited common Area shall be conducted through the Association. The Owner shall be responsible for all costs associated with such maintenance and repair, including a reasonable supervisory fee.

**6.19 Window Treatments.** All window treatments which are visible from the exterior of the Unit shall not cause the exterior of the building to be unsightly, which shall be determined in the sole discretion of the Board. All window treatments shall be in compliance with and subject to Association Rules, as amended from time to time.

**6.20 Structural Alterations.** No Owner shall make any alterations to any Unit that would cause structural weakness or damage, and no architectural changes, plumbing, electrical or similar work within the Common Area shall be performed without the prior written consent of the Board. All such approved work shall comply with all applicable laws.

**6.21 Deed Restrictions.** No Owner may divide or adjust such Owner's Unit without the prior written approval of the Association and the City of Boise.

**6.22 Right to Use and Enjoy Units.** Each Owner shall be entitled to use and enjoy his/her Unit for its intended purpose and nothing herein is intended to impose or grant the authority to impose any restrictions, limitations or prohibitions which would deprive an Owner of the reasonable use and enjoyment of his/her Unit. Notwithstanding the foregoing, no Owner shall be entitled to use his/her Unit for any uses not allowed

under the Boise Municipal Code or otherwise limited by this Declaration or any other Condominium Documents.

**6.23 Plat Conditions.** All covenants, conditions and restrictions and other matters set forth on all plats are hereby incorporated by reference and notice is hereby given of the same.

## ARTICLE VII

### Goose Creek Condominium Owners' Association, Inc.

**7.1 Creation.** This Declaration designates and creates the Association as a non-profit corporation under the laws of the State of Idaho. The Association shall be organized by the Grantor and operated by the Association to carry out and enforce the restrictions set forth in this Declaration with respect to the project and to serve as the Management Body for the Project.

**7.2 Membership.** Every Owner shall be entitled and required to be a member of the Association. Each Unit in the Building shall be entitled to one (1) membership, either a Class A membership or Class B Membership as described herein, in the Association. No person or entity other than an Owner may be a Member of the Association, and the Articles and/or Bylaws of the Association shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium or portion thereof. Provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium or to any person or organization that has assumed by contract, or otherwise, liability for paying assessments of any Owner. Pursuant to the terms and time limits set forth in Section 7.3, there shall be initially two (2) classes of membership. All Owners, including the Grantor, shall be deemed Class A members and the Grantor shall be deemed the Class B member, and each shall have those rights set forth in Section 7.3.

**7.3 Voting Rights in the Association.** Each Owner of a unit shall be entitled to one (1) vote per Unit. When more than one (1) person holds such interest in any condominium, all such persons shall be Members, but all such persons shall only be entitled to the number of votes established for such Unit. Except as otherwise provided herein, all matters submitted to a vote of the Association shall be determined, made, or approved or authorized upon a majority (51% or more) vote, i.e. the votes in favor exceed those opposed.

Notwithstanding anything in this Declaration to the contrary, the Grantor, as for a period of three (3) years following the recordation of the first deed to a Condominium, shall have the exclusive right, power and authority to appoint and elect the Board and otherwise manage the affairs of the Project so long as the Grantor owns a Unit in the Project. The Grantor's right to control shall terminate

upon the earlier of (i) three (3) years after the recordation of the first deed to a Condominium; or (ii) when the Grantor no longer owns a Unit in the project.

**7.4 Transfer.** Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein and no such transfer or assignment shall revoke or change any of the rights or obligations of any Owners as set forth herein.

## **ARTICLE VIII**

### **Powers and Duties of the Association**

**8.1 Powers of The Association.** The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to those limitations upon the exercise of such powers as are expressly set forth in the Condominium Documents as the same may be amended from time to time, and is hereby designated the "Management Body" of the Project as provided in the Condominium Act. The Association, functioning through the Board, shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under the Condominium Documents and necessary or proper for, or incidental to the proper management, operation and administration of the Project, including, without limitation:

**8.1.1 Assessments.** The power to levy Assessments on the Owners of Condominiums and to enforce payment of such Assessments.

**8.1.2 Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Condominium Documents, including the Association Rules as defined herein and adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions hereof.

**8.1.3 Parking.** The power and authority from time to time to reassign and relocate any Parking Space(s) if necessary to comply with applicable laws, regulations or ordinances. In no event, however, shall an Owner be deprived of the same number of Parking Spaces granted to that Owner by assignment or other conveyance.

**8.1.4 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 the Management Body as defined in the Condominium Act, and

specifically the authority to delegate its powers and duties to a management firm pursuant to a management agreement; provided, however, that any delegation of the Association's powers and duties may be revoked upon thirty (30) days written notice to such management firm. Neither the Association nor the members of the Board shall be liable for any omission or improper exercise by any person or entity to whom such duty or power has been delegated. Any person or entity delegated any powers authorizing it to act as the Management Company shall be required to carry all the appropriate insurance, including, but not limited to, worker's compensation, liability insurance and bonds, and such Management Company shall ensure that any other person or entity working on the Project on the Management Company's behalf shall carry the same.

**8.1.5 Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Board deems reasonable or proper from time to time (the "Association Rules") including fees, activities, use of the Limited Common Area, vehicles and equipment, the leasing and rental of Units, social events, animals and pets, moving hours and any other event or items related to the Project or the use and enjoyment thereof. The Association shall govern the use of the Units and Common Area by the Owners, their invitees, licensees, lessees, occupants, and contract purchasers of Owners, it being understood that the Association Rules shall apply equally to all Owners and shall not be inconsistent with the Condominium Documents. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, 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 any such Association Rules and any other provision of the Condominium Documents, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Condominium Documents to the extent of any such inconsistency. The Association Rules may from time to time supplement and add to the Condominium Documents.

**8.1.6 Emergency Powers.** The power to enter upon any Unit as necessary in connection with any maintenance or construction for which it is responsible, or when necessitated by violation of this Declaration or Association Rules, or in the event of any emergency involving illness or potential danger to life or property and may take corrective action. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association, except as otherwise provided herein. Owners acknowledge that the Boise City Fire Department and the Association shall have a master key to all locks in the Project. Owners further agree to notify the Board and employ a locksmith approved by the Board before any locks may be changed to preserve the system.

**8.1.7 Licenses, Easements and Rights of Way.** The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Project and for the preservation of health, safety, convenience and welfare of all the Owners, for the purpose of constructing, operating or maintaining:

**8.1.7.1** Underground lines, cable, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone, television, other utility services and above-ground lighting structures, meters and other facilities associated with the provision of lighting and services;

**8.1.7.2** Sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

**8.1.7.3** Cross parking easements, sidewalk abutments, drive lanes, parking areas, curb cuts, landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose.

**8.1.8 Miscellaneous Services.** The power to obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Condominium (subject to reimbursement by the respective Owner for such services as an Assessment), and may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration.

**8.1.9 Property for Common Use.** The power to acquire and hold for the use and benefit of all of the Owners, or for the benefit of only those Owners within a particular Condominium, tangible and intangible personal property and real property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

**8.1.10 Inspection.** The power and authority to enter a Unit for the purpose of conducting a regular maintenance inspection.



**8.1.11 Implied Rights.** Notwithstanding the foregoing, the Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such rights shall include without limitation the right to acquire water or other utility meters for each unit.

**8.1.12 Public Right of Ways.** The power and authority to maintain all areas associated with the Project that may be in the public right-of-way and to charge any assessments, as deemed necessary in the Association's sole discretion, to pay for all costs associated with this maintenance.

**8.1.13 Litigation.** The power and authority to file lawsuits or institute other legal proceedings on behalf of or for the benefit of the Association, as a whole, upon obtaining approval of fifty-one percent (51%) or more of the votes of the Members.

**8.2 Duties of the Association.** In addition to the power delegated to it by the Condominium Documents, the Association or its agents shall have the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

**8.2.1 Operation and Maintenance of Common Area.** Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area and all improvements thereon, including parking areas, drive lanes, common seepage beds, storm sewers or related storm drainage facilities and the exteriors of buildings as set forth in Section 8.2.5 below and including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association, and maintaining the same in a good, clean, attractive and sanitary condition, order and repair.

**8.2.2 Taxes and Assessments.** Pay all real and personal property taxes and assessments separately levied against the Common Area, if any, owned and managed by the Association or against the Association and any property owned by the Association and all such taxes shall be paid or a bond insuring payment posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes levied against the Association in the event the Association is denied the status of a tax exempt corporation.

**8.2.3 Water and Other Utilities.** Acquire, provide and/or pay for water, pressurized irrigation system water and maintenance, storm drainage system maintenance, sewer, garbage disposal, refuse and rubbish collection and other necessary services for the Common Area and Units.

**8.2.4 Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance described in Article XII herein.

**8.2.5 Maintenance of Exteriors and Improvements.** Maintain and repair the exterior surfaces of the Buildings and improvements in the Project. The exterior maintenance shall include: painting, staining, repairing, restaining, replacing and caring for all exterior surfaces including roofs and exterior portions of doors as necessary to maintain them in good condition.

**8.2.6 Inspection and Maintenance Guidelines.** The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area, including, without limitation, the sewer system and drainage facilities. The Board periodically, and at least once every two (2) years, shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines, and shall keep records of such implementation and compliance.

**8.2.7 Drainage Facilities.** Operate and maintain the storm drainage and restricted building area, as depicted on the Plat. Notwithstanding anything to the contrary, no buildings or other similar improvements shall be constructed within the storm drainage and restricted building area, as depicted on the Plat that would materially interfere with the Property's drainage system.

**8.2.8 Operation and Maintenance of Sidewalks and Landscaping.** The Board shall operate, maintain and otherwise manage or provide for the operation, maintenance and management of the sidewalks and landscaping located within the Project or located in the public right of way adjacent to the Project.

**8.3 Maintenance of Records and Right of Inspection.** The Association shall keep and maintain at its principal place of business, current copies of the Condominium Documents, any rules and regulations applicable to the Property and its books, records and financial statements. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Owner or by such Owner's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Owner's interest as an Owner at the office of the Association or at such other place as the Board shall prescribe. The Association may assess an Owner for the reasonable cost of searching, obtaining and/or copying such records and documents, including the costs or fees of any professional assistance from attorneys or accountants which may be necessary in the Board's discretion to comply with any such request for copies and/or information. No Owner or any other person shall copy the membership register for the purposes of solicitation of or direct mailing to any Owner.

**8.4 Amplification.** The provisions of this Section are amplified by the Bylaws; provided, however, that no present or future provision of such Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

**8.5 Use of Association Powers.** Notwithstanding the foregoing, the Association shall not take any action that would impair an Owner's right to enjoy and use his or her Unit as set forth herein, and, in particular in Section 6.22.

## **ARTICLE IX**

### **Assessments**

**9.1 Covenant to Pay Assessments.** By acceptance of a deed to any Condominium, each Owner of such Condominium thereby covenants and agrees to pay when due all Assessment or charges made by the Association against such Owner pursuant to the provisions of this Article IX and this Declaration. The due date, manner and method of payment shall be as set forth in this Declaration or as established by the Board from time to time.

**9.2 Initial Assessments.** Owners acquiring their condominiums from Declarant agree to pay an initial assessment and deposit reserves as part of any conveyance through deed or other recorded instrument of a condominium or portion of a Condominium, as provided for herein, that shall be used to purchase personal property for the building, including, but not limited to seasonal decorations and furnishing for Common Area and to establish contingency and replacement reserves.

**9.3 Rate of Assessments.** Except as otherwise provided herein, all Owners shall be responsible for Regular Assessments and Special Assessments levied by the Association in proportion to their percentage ownership interest in the Common Area, as set forth in Exhibit "D." All Owners shall be responsible for Limited Assessments levied by the Association, as set forth in Section 9.8.

**9.4 Assessment Constitutes Lien.** The Assessments and charges together with interest, costs, including, but not limited to any fees incurred by the Management Company, and reasonable attorney's fees, all of which may be incurred in collecting the same, shall be a charge on the Condominium against which each such Assessment is made.

**9.5 Assessment is Personal Obligation.** Each of the Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Unit at the time such Assessments fall due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains as an Owner. Notwithstanding the foregoing, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid

assessments against the Condominium up to the time of grant or conveyance without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

## **9.6 Regular Assessments.**

**9.6.1 Purpose of Regular Assessments.** The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys' fees and other professional fees, for the conduct of its affairs as provided in Article VIII, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area or furnishing utility services, including water and sewer and other common services to each Unit (if separately metered), any deficit remaining from previous periods, a management contingency reserve, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively the "Expenses"). Grantor and/or the Association reserves the right to separately meter utility services provided to each Condominium, and in such event the Owner of the condominium shall be fully responsible for the costs of providing utilities for the Owner's individual use.

**9.6.2 Computation of Regular Assessments.** Unless otherwise determined by the Board, the Association shall compute and forecast the amount of its Expenses and Regular Assessments on an annual basis. The computation of Regular Assessments shall take place not less than thirty (30) days, no more than sixty (60) days before the beginning of each fiscal year of the Association, unless a change in Members or the Management Company makes it impracticable to compute the Regular Assessments in the time frame. In such event, the Owners shall be immediately notified upon completion of such computation. Notwithstanding the foregoing, the computation of Regular Assessments shall be completed in good faith and shall be valid upon completion. The initial assessments shall be as set forth on Exhibit "F" attached hereto, which assessments shall be in effect until such time as the Association determines the first Regular Assessment. The computation of the Regular Assessments for the period from the recordation of this Declaration until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one year. The Board shall have the exclusive right to approve any Assessment under this Article IX. Expenses and Regular Assessments shall be levied by the Association against Owners in proportion to their percentage ownerships in the Common Area as set forth on Exhibit "D."

**9.7 Special Assessments.** In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including, without limitation, costs of

construction, reconstruction, unexpected repairs or replacement of improvements upon the common Area, attorneys fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to dray such Expenses and levy a Special Assessment. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

**9.8 Limited Assessments.** The Association may levy against any Owner a Limited Assessment equal to the costs and expenses incurred by the Association, including legal and management fees for the construction, installation, maintenance, repair and replacement of common Area and equipment and facilities located thereon, including any corrective action necessitate due to damage by the negligent acts of an Owner, or any person or entity occupying a Condominium with the Owner's consent, either expressed or implied, or for costs incurred in bringing the Owner's Condominium into compliance with the provisions of the condominium Documents.

**9.9 Notice and Assessment Due Date.** Unless the Board establishes a different schedule for the payment of Regular Assessments, monthly installments of the Regular Assessment shall become delinquent if not paid by the fifth (5<sup>th</sup>) day of the each month. If not paid by the fifth (5<sup>th</sup>) of the month, a late fee equal to ten percent (10%) of the Assessment shall be charged to the Owner. Each Assessment, other than a Regular Assessment, shall become delinquent if not paid within ten (10) days of the date of notice thereof to the Owner. With each delinquent payment, a single late charge up to ten percent (10%) of the delinquent installment shall be charged. In addition, each installment payment which is delinquent from more than twenty (20) days may accrue interest at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate allowed by the law of the State of Idaho calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against any delinquent Owner and may foreclose the lien against such Owner's Condominium, as more fully provided herein. The Association expressly reserves its rights to file any liens against such Owner pursuant to city, county and/or state law for any payment not made by the fifteenth (15<sup>th</sup>) day of the month for Regular Assessment of fifteen (15) days after notice of any other Assessment.

**9.10 Estoppel Certificate.** The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which any Regular and Special Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of the Owner's Condominium. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge. Owners agree to pay for all reasonable costs associated with obtaining this estoppel certificate.

**9.11 No Reserves Provided by Grantor.** Owners acknowledge and agree that they have been fully notified and informed that the Grantor did not or will not pay any part of or contribute any initial assessments or deposit reserves for use in the Project.

**9.12 Grantor's Assessment Obligations.** For a period of two (2) years following the recordation of the Plat, Grantor shall only be responsible for the lesser of (i) the shortfall of any operating costs of the Project after the collection of all dues and assessments from the Owners, excluding the Grantor or (2) those dues and assessments, less any assessed reserves for replacement, assessed to those Units owned by the Grantor.

## **ARTICLE X**

### **Enforcement of Assessment; Liens**

**10.1 Right to Enforce.** The Association has the right to collect and enforce its Assessments, including any late charges and/or interest accrued thereon, pursuant to the provisions hereof. Each Owner shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration, including any late charges and/or interest accrued thereon, and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs, including the costs and expenses for any lien releases, 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 this Section to enforce the liens created pursuant to this Section. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

### **10.2 Assessment Liens.**

**10.2.1 Creation.** There is hereby created a claim of lien with power of sale on each and every Condominium to secure payment of any and all Assessments levied against such Condominium pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Condominium upon recordation of a notice of assessment with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of assessment except for tax liens for real property taxes on any Condominium and any

assessment on any Condominium in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

**10.2.2 Notice of Assessment.** Upon default of any Owner in the payment of any assessment issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder a notice of assessment. The notice shall state the amount of such assessment and other authorized charges (including the cost of recording such notice), a sufficient description of the Condominium against which the same have been assessed, and the name of the record Owner thereof. Each assessment shall constitute a separate basis for a notice of assessment, but any number of assessments may be included within a single notice. Upon payment to the Association of such assessment and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. The Association may demand and receive the cost of preparing and recording such release before recording the same.

**10.3 Method of Foreclosure.** Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise powers of sale in deeds of trust or any other manner permitted by law. 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.

**10.4 Required Notice.** No action may be brought to foreclose the lien created by recordation of the notice of assessment, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such notice of assessment has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner described in such notice of assessment, and to the person in possession of such Condominium(s) and a copy thereof is recorded by the Association in the Ada County Recorder's office.

**10.5 No Subordination.** The lien for the Assessments provided for herein in connection with a given Condominium shall not be subordinate to the lien of any Mortgage filed and recorded after the date of such Assessment. Notwithstanding the foregoing, all delinquent Assessments shall be subordinate to any mortgage recorded with in the real property records of Ada County, Idaho prior to the date of the Assessment. The sale or transfer of any Condominium shall affect neither the Assessments lien provided for herein, nor the creation thereof by the recordation of a notice of assessment, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

**10.6 Rights of Mortgagees.** Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of a Mortgagee under any Mortgage upon a Condominium made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Mortgage such Condominium shall remain subject to this Declaration, as amended.

In the event a Mortgagee obtains title to any Condominium by any method permitted under law and/or pursuant to all remedies provided in this Declaration, and/or pursuant to any provisions in the Mortgage, such Mortgagee will not be liable for any such Condominium's unpaid dues or charges which accrue prior to the acquisition of title to such Condominium by such Mortgagee. Further, upon obtaining title to any such Condominium, such Mortgagee shall have the unrestricted right to exercise any vote as may be attributable to such Condominium in any meeting of the Association or otherwise.

Any encumbrancer holding a lien on a Condominium may pay, but shall not be required to pay, any amounts secured by the lien created pursuant to this Section, and upon such payment encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

A Mortgagee shall be responsible for all delinquencies associated with a mortgaged Condominium after being notified of such delinquencies prior to the beginning of any foreclosure proceedings on such Condominium. A Mortgagee shall be entitled to cure a default in payment of Assessments by paying all past due Assessments which accrued no more than sixty (60) days prior to the date that such Mortgagee was first notified by mail of such Owner's failure to pay Assessments past due. In the event of a foreclosure on any first mortgage, the Mortgagee thereof shall take the Condominium interest subject to all unpaid Assessments, except to the extent such liability has been limited by exercise of the cure option set forth in herein.

## **ARTICLE XI**

### **Rights to Common Areas**

**11.1 Use of Common Area.** Every Owner shall have a nonexclusive right and easement to use the Common Area (exclusive of Limited Common Area) and an exclusive or semi-exclusive right to use Limited Common Area designated for exclusive or semi-exclusive use by the Owner, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

**11.1.1 Assessments.** The rights of the association to levy Assessments as provided herein and payment by an Owner of all such Assessments;

**11.1.2 Voting.** The right of the Association to suspend the voting rights and rights to use of or interest in Common Area by an Owner for any



period during which any Assessments or charges against such Owner's Condominium remains unpaid;

**11.1.3 Dedication or Transfer.** The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer shall be effective unless an instrument verifying such dedication or transfer is executed and recorded by the Association verifying that (i) Members representing fifty-one percent (51%) or more of the total number of votes which may be cast by all of the Members, and (ii) fifty-one percent or more of all Mortgagees have approved such dedication or transfer; and

**11.1.4 Association Rules.** The right of the Association to establish and enforce such Association Rules as the Association deems proper regarding the Project and use of Common Area.

**11.2 Delegation of Right to Use.** Any Owner may delegate in accordance with the respective Condominium Documents, such Owner's reasonable right of enjoyment to the Common Area to his or her licensees, invitees and lessees, or contract purchasers who reside in such Condominium.

**11.3 Damages.** Each Owner shall be liable for expenses for corrective action necessitated by violation of this Declaration or Association Rules or for any damage to such Common Area which may be sustained by reason of his or her guests, invitees or licensees. In the case of joint ownership of a Condominium, the liability of such Owners shall be joint and several. The cost of corrective action shall be assessed as an Assessment against the Condominium and may be collected as provided herein for the collection of other Assessments.

## **ARTICLE XII**

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

No labor performed or services or materials furnished with the consent of or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested in writing the performance of such labor or furnishing of such materials or services. Such express written consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency corrective action undertaken by the Association. Labor performed or services or materials furnished for the Property if duly authorized by the Association shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by

payment of sums secured by such lien which is attributable to such Owner's Condominium.

## **ARTICLE XIII**

### **Insurance**

**13.1 Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by reputable 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.

**13.1.1 Casualty Insurance.** The Association shall obtain insurance on the Building in such amounts as shall provide for full replacement thereof, including, but not limited to, those costs associated with rebuilding, design, and required permits, legal fees and any other fees associated with the replacement of the Building, in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire and extended coverage, vandalism and mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

**13.1.2 Public Liability and Property Damage Insurance.** The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Buildings.

**13.1.3 Workers' Compensation and Employer's Liability Insurance.** The Management Company shall purchase on behalf of the Association workers' compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

**13.1.4 Fidelity Insurance.** The Management Company shall purchase in such amounts on behalf of the Association and in such form as it shall deem appropriate coverage against liability of its officers and directors,

dishonesty of employees, destruction or disappearance of money or securities, and forgery.

**13.1.5 Other.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Buildings, including any personal property of the Association located thereon.

**13.1.6 Optional Insurance.** The Association may obtain the following types of insurance coverage, but is not required to do so.

**13.1.6.1 Personal Property Casualty Insurance.** The Association may in its discretion obtain casualty and public liability insurance on the personal property and furnishings initially placed in any Units by Grantor, if any, upon completion of construction of the Building in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualties against which such insurance is obtained. It is expressly understood that any Owner desiring to obtain additional condominium insurance may do so at the sole cost of the Owner.

**13.1.6.2 Casualty and Public Liability Insurance.** The Association may in its discretion obtain casualty and public liability insurance coverage, in amounts it may select, with respect to an Owner's activities within each Unit.

**13.1.7 Form.** Casualty insurance shall be carried in a form or forms naming the Association as the insured as trustee for the Owners, which policy or policies shall specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Area) and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such Mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner and to each first Mortgagee requesting such notice. The Association shall furnish to each Owner and to Declarant a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest or

who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name Declarant, the Management Company and the Association as the insured, with the Association as trustee for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Buildings. In the event eighty percent (80%) of the Owners elect not to rebuild the Project, the insurance proceeds will be distributed to the Owners passed on their percentage ownership in the Common Area.

**13.2 Insurance Proceeds.** The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Section and as provided in Article XIV hereof.

**13.3 Owner's Own Insurance.** Notwithstanding the provisions of Section 12.1 hereof, each Owner may obtain insurance at the Owner's own expense providing coverage upon the Owner's Condominium, personal property, personal liability, and covering such other risks as the Owner may deem appropriate, but each policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Section. All such insurance on the Owner's Condominium shall waive the insurance Company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

## **ARTICLE XIV**

### **Casualty, Damage or Destruction**

**14.1 Affects Title.** Title to each Condominium is hereby made subject to the terms and conditions set forth in this Declaration, as amended from time to time, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires a Condominium.

**14.2 Association as Agent.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with their Condominium upon the Condominium's damage or

destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

**14.3 General Authority of Association.** As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in succeeding Sections of this Declaration means restoring the Condominiums, including the site improvements, equipment and facilities therein, to substantially the same condition in which it existed prior to damage, with each Unit and Common Area having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless eighty percent (80%) of the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

**14.4 Estimate of Costs.** As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain estimates that it deems reliable of the costs of repair or reconstruction of that part of the Project damaged or destroyed, if the Owners and Mortgagees elect to rebuild in accordance with Section 14.3.

**14.5 Repair or Reconstruction.** As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or construction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Units shall be substantially the same as prior to damage or destruction.

**14.6 Funds for Reconstruction.** The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Section 9.7 hereof, may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Special Assessments shall be allocated and collected as provided in that Section. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

**14.7 Disbursement of Funds for Repair or Reconstruction.** The insurance proceeds held by the Association and the amounts received from the assessments provided in Section 14.6 constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 14.6 of this Declaration.

## **ARTICLE XV**

### **Condemnation**

**15.1 Consequences of Condemnation.** If at any time or times during the continuance of the condominium ownership regime pursuant to this Declaration, all or any part of the Project 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 of this Article XV shall apply.

**15.2 Proceeds.** All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

**15.3 Complete Taking.** In the event that all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in the same proportions as their share of the Common Area in the Project, provided that if a standard different from the value of the Condominiums as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled and pay such amounts as soon as practicable.

**15.4 Partial Taking.** In the event that less than all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners as follows:

**15.4.1 Allocation to Common Area.** The total amount allocated to taking of or injury to the Common Area shall be apportioned among the Owners in the same proportions as their shares of the Common Area as provided herein; and

**15.4.2 Allocation to Condominiums.** The total amount allocated to severance damages shall be apportioned to those Condominiums which were taken or condemned as follows: (a) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within the Owner's own Unit shall be apportioned to the particular Unit involved; and (b) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable.

**15.5 Reorganization.** In the event a partial taking results in the taking of a complete Unit, then, upon the distribution of such Owner's apportioned proceeds, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall re-allocate the ownership, voting rights and assessment ratio determined in accordance with this declaration as provided in Section 16.1.2 hereof.

**15.6 Reconstruction and Repair.** Any Reconstruction and Repair necessitated by condemnation shall be governed by the procedures specified in Section 14.6 above.

## **ARTICLE XVI**

### **Miscellaneous**

#### **16.1 Amendment.**

**16.1.1 By Grantor.** With the exception of items in this Declaration which have been required by Boise City as conditions for approval of the project, until the recordation of the first deed to a Condominium, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively "Amendment") by the Grantor by recordation of a written instrument setting forth such Amendment. Additionally, so long as a Grantor owns a Condominium, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated by a recorded amendment by the Grantor to comply with all applicable law or as necessary to allow the Project to be developed and improved as contemplated in the Condominium Documents.

Notwithstanding the foregoing, any material Amendment shall require approval by the vote or written consent of the Members representing sixty-seven percent (67%) or more of the total votes which may be cast by all of the Members. A material Amendment shall include amendments to the voting rights of the Members; any reallocation of ownership interests or right to use Common Area; expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; imposition of any restrictions on a unit owner's right to sell or transfer his or her Unit; termination of the legal status of the project for any reason; redefinition of any Unit boundaries; the conversion of any Unit into Common Area or vice versa; changes in the fundamental nature of the Project.

**16.1.2 By Members.** Except as provided in Section 16.1.1, after the recordation of the first deed to a Condominium, any Amendment to this Declaration, other than herein provided in this Section 16.1, shall be 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 Members representing fifty-one percent (51%) or more of the total votes which may be cast by all of the Members, except where a greater percentage is required by express provision in this Declaration, and such Amendment shall be effective upon its recordation with the Ada County Recorder. Any Amendment to this Section 16.1 shall require the vote or written consent of Owners holding ninety-five percent (95%) of the total votes which may be cast by all of the Members.

Notwithstanding the foregoing, nothing in this Section 16.1.2 shall allow an amendment that would limit the rights of the Owners as stated in Sections 6.22 and 8.5.

**16.1.3 Effect of Amendment.** Any Amendment of this Declaration approved in the manner specified above shall be binding on the effective as to all Owners notwithstanding that such Owners may not have voted for or consented to such Amendment. Such Amendment may add to and increase the Restrictions applicable to the Project but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Condominium which existed prior to the said amendment.

**16.2 Mortgage Protection.** Upon written request to the Association from any holder, insurer or guarantor of any first Mortgage, stating both its name, address and the Unit number of address of the Unit on which it has its first Mortgage, said holder, insurer, or guarantor of a first Mortgage encumbering a Unit shall be entitled to notice of the following:

Any condemnation or casualty loss that affects either a material portion of a Building or a Unit encumbered by such first Mortgage;



Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds a first Mortgage;

A lapse, cancellations, or material modification of any insurance policy maintained by the Association; and

Any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

### **16.3 Enforcement and Non-Waiver.**

**16.3.1 Right of Enforcement.** Except as otherwise provided herein, any Owner, the Association or Grantor shall have the right to enforce any or all of the provisions of this Declaration against any property within a Building and against the Owners thereof.

**16.3.2 Non-Waiver.** Failure of the Declarant or the Board to insist upon strict compliance with this Declaration, the Bylaws or the Association Rules, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment of the right to insist on compliance in the future with any term, covenant, condition or restriction. The receipt by the Board of payment of an assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for by the Board.

**16.4 Registration of Mailing Address.** Each Owner shall register such Owner's mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner fails to provide the Association with a valid address, all notices shall be sent to that Owner's address on record with the Ada County Assessor. All notices or demands intended to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall not be entitled to receive any of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

**16.5 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and

operation of the Project. This Declaration shall be construed governed under the laws of the State of Idaho.

**16.5.1 Restrictions Construed Together.** All of the provisions shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Project as set forth in the recitals to this Declaration.

**16.5.2 Restrictions Severable.** Notwithstanding the provisions of the foregoing Section 16.5.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of the provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

**16.5.3 Singular Includes Plural.** 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 each include the masculine, feminine and neuter.

**16.5.4 Captions.** All captions, titles and the table of contents used in this Declaration are intended solely for convenience for reference and shall not affect that which is set forth in any of the provisions thereof.

**16.6 Owner's Obligations Continue.** All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may have leased, rented or entered a contract of sale of his interest as provided herein, but the Owner of the Condominium shall have no obligation for expenses or other obligations accruing after the Owner conveys such Condominium.

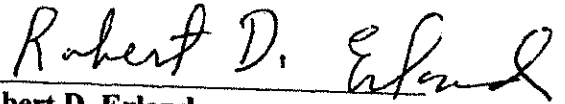
**16.7 Exhibits.** All exhibits attached hereto are incorporated herein as if set forth in full herein. However, in the event of any conflict between such exhibits and the test of this Declaration, this Declaration shall control.

**16.8 Acknowledgement and Waivers.** All owners expressly acknowledge that there are no understandings, representations, warranties or promises of any kind that have been made to induce the Owners into owning Units in the Project except as set forth in this Declaration or any other written valid and binding agreement between the Declarant and the Owners, that this Declaration or any other written valid and binding agreement between the Declarant and the Owners sets forth in full the entire agreement between the parties and governing the Project, and the Owners have not relied on any verbal agreement, statement, representation, warranty or other promises that is not expressed in writing in this Declaration or any other written valid and binding agreement between the Declarant and the Owners. Except as may be set forth in any written agreement between Owner and Declarant, each Owner has acquired and accepted its Condominium Unit "as is, where is" with all faults. No person, agent or employee of Declarant has any authority

to modify the terms of this Section, and no person on Declarant's behalf is authorized to make future verbal agreement upon which any Owner may rely to cancel, change or modify any portion of this Declaration. This Declaration or any other written valid and binding agreement between the Declarant and the Owners supersedes any and all prior understandings and agreements. This Declaration or any other written valid and binding agreement between the Declarant and the Owners may be amended or modified only by the terms included herein.

IN WITNESS WHEREOF, The undersigned, being the Declarant herein, has hereunto set their hands this 25 day of September, 2006.

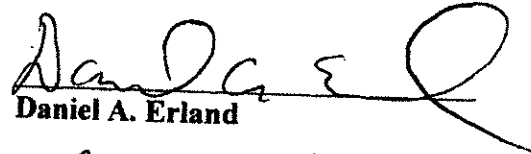
**Declarant:**



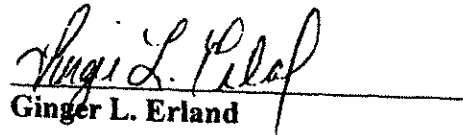
**Robert D. Erland**



**Sharon N. Erland**



**Daniel A. Erland**



**Ginger L. Erland**

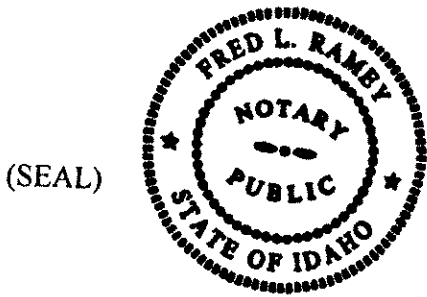


**Kerilynn Erland**

STATE OF IDAHO )  
 ) :SS  
County of Ada )

On this 25 day of September, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **Robert D. Erland and Sharon N. Erland**, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

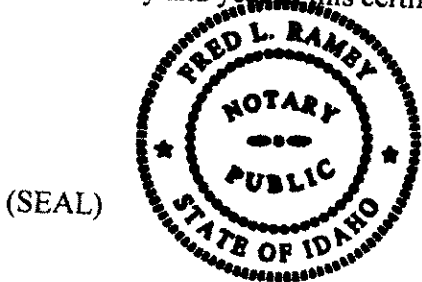


Fred L. Ramey  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 12/14/2010

STATE OF IDAHO )  
 ) :SS  
County of Ada )

On this 25 day of September, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **Daniel A. Erland and Ginger L. Erland**, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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



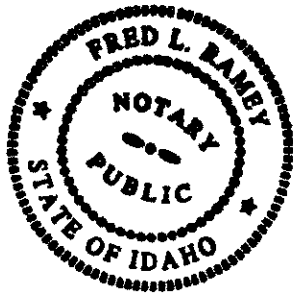
Fred L. Ramey  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 12/14/2010

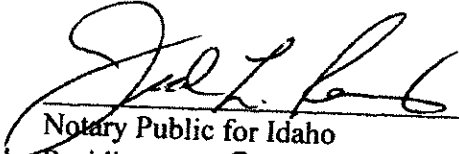
STATE OF IDAHO )  
 ) :SS  
County of Ada )

On this 25 day of September, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **Kerilynn Erland**, a single person, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

(SEAL)



  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 12/14/2010

**Consent By Holder of Recorded Security Interest**

HOME FEDERAL BANK, the holder of a recorded security interest against the real property described in the above and foregoing Condominium Declaration for the Goose Creek Condominiums, by virtue of that certain Deed of Trust recorded on Oct. 5, 2006, as Instrument No. 106/589 03, records of Ada County, Idaho, hereby consents, pursuant to Idaho Code, Section 55-1504(c)(iii), to the recording of the above and foregoing Condominium Declaration for the Goose Creek Condominiums, and the recording of the Plat of said condominium project.

Dated this 4<sup>th</sup> day of October, 2006.

HOME FEDERAL BANK

By [Signature]  
Signature  
Gerald G. Sutton  
Printed Name  
Vice President  
Title

STATE OF Idaho )  
County of Ada ) :ss

On this 4<sup>th</sup> day of October, 2006, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gerald G. Sutton, known to me to be the Vice-President of Home Federal Bank, the bank which executed the instrument, and acknowledged to me that such bank executed the same.

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

(SEAL) **PATTY I. CHUPP**  
**NOTARY PUBLIC**  
**STATE OF IDAHO**

My Commission Expires 5-8-2010.

[Signature]  
Notary Public for Base  
Residing at: Base Idaho  
My Commission Expires: 5/8/2010

# **GOOSE CREEK CONDOMINIUMS**

## **List of Exhibits**

**Exhibit "A" Legal Description**

**Exhibit "B" Copy of Recorded Plat**

**Exhibit "C" Articles of Incorporation of Goose Creek Condominiums**

**Exhibit "D" Owners Interest Regarding Common Area**

**Exhibit "E" Parking Spaces**

**Exhibit "F" Initial Assessments**

**EXHIBIT "A"**  
**GOOSE CREEK CONDOMINIUMS**  
**Legal Description**



**PARCEL DESCRIPTION**

September 12, 2006

**Project:** Goose Creek Condominiums  
**Parcel No:** 32980 Boundary Legal

A condominium project located in Lot 1, Block 1 of Triad Park Subdivision as shown in Book 70 of Plats at Page 7198, Ada County Records, located in the SW 1/4 of Section 29, Township 4 North, Range 2 East, Boise Meridian, City of Boise, Ada County, Idaho, more particularly described as follows:

**COMMENCING** at a found aluminum cap (corner record #8130623) marking the southwest corner of said Section 29;

Thence North 00°02'18" East coincident with the west line of the southwest 1/4 corner of said Section 29, a distance of 672.30 feet;

Thence South 89°57'42" East, 448.10 feet to a found aluminum cap PLS 4998;

Thence North 00°02'56" East (formerly South 00°02'56" West) coincident with the easterly boundary of Lakeharbor No. 8 Subdivision as recorded in Book 62 of Plats at Page 6257, Ada County Records, 64.10 feet to a set 5/8" rebar/cap PLS 5461 and the **POINT OF BEGINNING**;

Thence North 89°57'04" West (formerly South 89°57'04" East) coincident with the northerly boundary of said Lakeharbor No. 8 Subdivision, 24.19 feet to a set 5/8" rebar/cap PLS 5461;

Thence North 28°46'27" West (formerly South 28°46'27" East) coincident with the easterly boundary of Silverlake Terrace Subdivision as recorded in Book 82 of Plats at Page 8992, Ada County Records, 204.16 feet from which a set 5/8" rebar/cap PLS 5461 marking a reference monument bears North 90°00'00" East, 8.00 feet;

Thence North 40°51'35" East (formerly South 40°51'35" West), 233.62 feet to a found 1/2" rebar/cap illegible replaced with 5/8" rebar/cap PLS 5461;

Thence South 49°08'25" East, 224.84 feet (formerly North 49°08'25" West, 224.73 feet) to a found 1/2" rebar/no cap replaced with 5/8" rebar/cap PLS 5461 and the beginning of a non-tangent curve;

Thence 62.81 feet (formerly 62.83 feet) along the arc of said curve to the right, having a radius of 40.00 feet, a central angle of 89°58'20" (formerly 90°00'00"), and subtended by a chord bearing South 04°03'29" East, 56.55 feet (formerly North 04°08'29" West, 56.57 feet) to a found 1/2" rebar/no cap replaced with 5/8" rebar/cap PLS 5461;

Thence South 40°50'02" West, 23.15 feet (formerly North 40°51'35" East, 23.28 feet) to a found 1/2" rebar/no cap replaced with 5/8" rebar/cap PLS 5461;

Thence South 36°08'35" West 84.60 feet (formerly South 36°05'47" West, 84.45 feet) to a set 5/8" rebar/cap PLS 5461 and the beginning of a non-tangent curve;

Thence 139.79 feet along the arc of said curve to the right, having a radius of 148.45 feet, a central angle of 53°57'16" (formerly 53°37'09"), and subtended by a chord bearing South 63°04'41" West (formerly North 63°04'22" East), 134.68 feet to a found 1/2" rebar/no cap replaced with 5/8" rebar/cap PLS 5461;

Thence South 89°58'09" West, 19.29 feet (formerly South 89°57'04" East, 19.36 feet) to a found 5/8" rebar/no cap replaced cap with PLS 5461;

Thence South 00°02'56" West, 5.33 feet (formerly South 00°02'56" West, 5.40 feet) to the **POINT OF BEGINNING**.

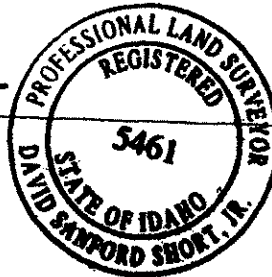
The parcel above described contains 1.63 acres more or less.

Together with and subject to covenants, easements and restrictions of record.

The basis of bearings is North 00°02'18" East from the found aluminum cap, corner record #8130623, marking the southwest section corner and the found brass cap, corner record #102075630, marking the west 1/4 corner both in Section 29, Township 2 North, Range 2 West of the Boise Meridian, City of Boise, Ada County, Idaho.

David S. Short Jr., P.L.S.  
End of Description

*David S. Short Jr.*



*9/12/2006* License No. 5461

**EXHIBIT "B"**

**GOOSE CREEK CONDOMINIUMS**

**Copy of Recorded Plat**