



RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
SAVANNAH GREENS NO. 2 SUBDIVISION

ARTICLE I.

RECITALS

WHEREAS, **THIS DECLARATION SUPERSEDES ALL PREVIOUS DECLARATIONS AND AMENDMENTS**, and is made effective on this 17th day of SEPTEMBER, 2010;

WHEREAS, the following recorded documents are hereby superseded by this Declaration and shall have no further force and effect:

- (1) Declaration of Covenants, Conditions and Restrictions for Savannah Greens No. Subdivision, recorded January 27, 1997, as Instrument No. 97006216, records of Ada County, Idaho, and recorded February 25, 1997, as Instrument No. 97014599, records of Ada County, Idaho, and recorded February 15, 2008, as Instrument No. 108017369, records of Ada County, Idaho;
- (2) Amendment to Declaration of Covenants, Conditions and Restrictions for Savannah Greens No. 2 Subdivision, recorded August 4, 1997, as Instrument No. 97062540, records of Ada County, Idaho;
- (3) Amendment to Declaration of Covenants, Conditions and Restrictions for Savannah Greens No. 2 Subdivision, recorded May 21, 1999, as Instrument No. 99051252, records of Ada County, Idaho;

WHEREAS, the Members are the owners of certain land in Savannah Greens No. 2 Subdivision, in Ada County, Idaho, hereafter "Property";

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

WHEREAS, the Property has been developed as a planned-unit development of townhouse dwelling units pursuant to a common architectural theme, with private roads and streets, a non-profit owners association has been created to provide maintenance of the common areas and govern the Property.

ARTICLE II.

DECLARATION

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

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

ARTICLE III.

DEFINITIONS

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

ACC: The Architectural Control Committee for the Property.

ACC Rules/ACC Standards: Such rules or standards as may be promulgated by the ACC as authorized by Section 5.28, below.

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

Association: Savannah Greens Owners Association, Inc., an Idaho non-profit corporation.

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

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

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

Common Area: All real property, or interest therein, located within or outside of the boundaries of the Property in which the Association owns an interest or controls or which the Association is obligated to maintain, and which is owned, held, controlled or maintained for the betterment of the Owners and Occupants of the Property, and includes, without limitation, stormwater and/or drainage facilities, common landscaped areas, private streets or drives, and common parking areas. The Common Area is sometimes referred to herein as Association Properties or Association properties.

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

Improvements: All structures, facilities or systems, and appurtenances thereto of all kinds and types, including but not limited to Buildings, roads, driveways, parking lots, sidewalks, walkways, mailboxes, walls, fences, screens, landscaping, poles, signs, lighting, stormwater and/or drainage facilities, and fixtures of any kind whatsoever. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

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

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

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

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

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot with the Property owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

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

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

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

Property: The whole of the Property described in Article I, above.

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

Savannah Greens Owners Association, Inc.: The Idaho non-profit corporation comprised of Members and existing for the purpose of providing self-government for the Property.

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

Subdivision: The whole of the Property described above (also sometimes referred to herein as "Property").

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision and recorded in the official records of Ada County, Idaho. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include "Supplemental Declaration."

ARTICLE IV.

PURPOSE

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

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

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

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

ARTICLE V.

PERMITTED USES AND PERFORMANCE STANDARDS

SECTION 5.01. Use. Lots shall be used only for residential purposes and such uses as are customarily incidental thereto and Common Area. As used herein and elsewhere in this Declaration, "residential" shall mean the use of the Improvements on a Lot for living accommodations by not more than two (2) unrelated persons, excluding guests of the principal occupant(s), which guests may reside therein on a temporary basis. Notwithstanding the provisions of §67-6530 et. seq., Idaho Code, as used in this Declaration, "residential" is not intended, nor shall the same be construed, to include the use of Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.

SECTION 5.02. Buildings. No Lot shall be improved except with one (1) dwelling unit. Each dwelling unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) standard size automobiles. No carports shall be allowed. The minimum square footage of living area within a dwelling unit located on a Lot shall be 1,200 square feet.

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

SECTION 5.04. Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence. No noxious or

offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. Burglar alarms must be internal to a dwelling unit, and shall not emit noise or light outside of such dwelling unit for a period longer than ten (10) minutes following the trigger of such alarm.

SECTION 5.05. Set-Backs. No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to a Lot line than is permitted by the ordinances of Garden City, Idaho, applicable to the Property.

SECTION 5.06. Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

SECTION 5.07. Easements. There is hereby reserved for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association and their successors and assigns, for purposes incident to such use, development and maintenance of the Property, the following easements:

- (a) For the installation and maintenance of public utility and drainage facilities of all kinds, including radio and television transmission cables, the easements so designated on the recorded Plat(s) for any portion of the Property. In addition, a ten foot (10') natural gas line easement is hereby established contiguous to and at the rear of each dwelling unit.
- (b) For the purpose of permitting the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Improvements within the Common Area.
- (c) Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement of settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.
- (d) For the purpose of permitting the Association, its contractors and agents, to enter upon the Lots within the Subdivision and, if required, within the Buildings, for the purpose of performing all maintenance, repair and replacement rights and duties set forth in this Declaration; provided, that entry upon a Lot or within a Building shall be at reasonable times and intervals with a minimum of inconvenience to the occupants of the Building(s).
- (e) Any additional easements, if any, as shown and designated on a recorded Plat(s) for any portion of the Property.

The easement areas (excluding any equipment or appurtenances owned by the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated. Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary thereof, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary. Whenever utility house connections are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Lot.

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

SECTION 5.08. Lighting. If required by the ACC, each Owner shall install, and maintain in an operative condition, such exterior lighting as shall be provided in the ACC Rules/ACC Standards.

SECTION 5.09. Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Rules/ACC Standards. No gravel roofs shall be permitted.

SECTION 5.10. Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) domesticated dogs and/or cats, or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.

SECTION 5.11. Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Property.

SECTION 5.12. Grading and Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed, or that drainage which is shown on any plans approved by the ACC, which may include drainage from Common Area over any Lot in the Property. The Owner of any Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of Garden City Code or by the Association, shall maintain and repair all graded surfaces, drainage structures, means or devices which are not the responsibility of any Irrigation District or other public agency.

SECTION 5.13. Commercial Use Prohibited. No Lot shall be used at any time for commercial or business activity. The rental by an Owner of a Lot and the Improvements thereon for residential purposes shall not be a use in violation of this Section. The use of a Lot for a shelter home, as the same is defined in §67-6530 et. seq., Idaho Code, whether or not operated for profit, shall, for the purposes of this Declaration, be a commercial or business use.

SECTION 5.14. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) The Association shall be responsible for maintaining the exterior of all Buildings located within the Subdivision. The exterior maintenance shall include the following: painting, staining, repairing, replacing and caring for all exterior surfaces including roofs and exterior portions of doors; maintaining, repairing and replacing exterior lighting, exterior portions of chimneys, rain gutters and down-spouts; maintaining, repairing and replacing landscaping in front and side yards not enclosed by a fence; but **not** including maintaining, repairing, replacing or cleaning of glass or maintaining, repairing or replacing landscaping in rear yards or areas on a Lot enclosed by a fence, exterior articles of hardware not specifically mentioned herein, window casements, sashes and frames other than painting or staining of the same, and/or awnings including, without limitation, any awning between a detached garage and its associated dwelling unit, which excluded items shall remain the responsibility of the Owner of the Lot on which the Building is located. The Association shall be responsible for maintaining, repairing, replacing and caring for walks, parking areas and driveways located on each lot.
- (b) Each Owner of a Lot within the Subdivision shall be responsible for maintaining all electrical and mechanical door bells, knockers and other such devices located on such Owner's Lot and for any and all maintenance required for the interiors of the Building, including, without limitation, maintaining, repairing, replacing and caring for electrical wiring and fixtures, plumbing pipes and conduits, all fixtures and appliances, whether built-in or freestanding, air conditioning, heating, sewerage disposal and interior fire protection systems and all amenities and hardware located within the interiors of the Building. In the event that any maintenance or repair is performed by the Association which is required by the willful or negligent act of an Owner, the Owner's family, guests or invitees, the cost of such maintenance and repair shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and said Owner's Lot as a Limited Assessment against said Lot which Limited Assessment shall be enforceable in the manner set forth in Article XII, below, of this Declaration.
- (c) All damage to any Improvements shall be repaired as promptly as is reasonably possible, whether such repair is required to be performed by the Association or an Owner.
- (d) A Building which is vacant for any reason shall be kept locked in order to prevent entrance by vandals.

- (e) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (f) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (g) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.
- (h) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any Building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article XII, below, of this Declaration.

SECTION 5.15. Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

SECTION 5.16. Boats, Campers and Other Vehicles. Trailers, mobile homes, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure or screened from public view and at no time shall any of said vehicles or equipment be parked or stored on a public or private right-of-way within the Property. No operative or recreational vehicle shall be parked or stored for a period in excess of seventy-two (72) consecutive hours on any public or private right-of-way within the Property, or on any portion of a Lot between the front of a Building and the abutting public or private right-of-way. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure.

SECTION 5.17. Automobiles. A minimum of two (2) off-street parking spaces for automobiles shall be provided on each Lot. The primary purpose of the garage on each Lot is for the parking and storage of automobiles and other vehicles (hereafter "automobiles"). No other use of a garage which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed shall be permitted. The Owner shall provide sufficient garage space, the originally constructed off-street parking, or other parking approved by the ACC for all automobiles used by the Occupants of a Lot. All automobiles shall be kept within the garage or approved space, and the parking thereof in a public or private right-of-way within the Subdivision, other than for temporary purposes (as determined by the ACC), is **PROHIBITED**. On-street automobile parking shall be allowed for temporary guest parking only.

SECTION 5.18. Garage Doors. Garage doors shall be closed except when open for a temporary purpose.

SECTION 5.19. Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Rules/ACC Standards.

SECTION 5.20. Vehicles. The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC Rules/ACC Standards, which may prohibit or limit the use thereof within the Property, provide parking regulations and other rules regulating the same.

SECTION 5.21. Exterior Energy Devices. No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

SECTION 5.22. Mailboxes. No free-standing mailbox shall be constructed or installed on any Lot without the prior written approval of the plans thereof by the ACC.

SECTION 5.23. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot, or on either side of the main entrance into the Subdivision. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Rules/ACC Standards with respect to signs allowed within the Subdivision, which ACC Rules/ACC Standards, if adopted, shall regulate signs within the Subdivision and shall control over the specific provisions of this Section.

SECTION 5.24. Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written

consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC thereof. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.25. Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications thereof, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the ACC Rules/ACC Standards. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of Garden City, Idaho, applicable to the Property.

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

- (a) No fence or wall shall be permitted to be constructed or installed on the Common Area or any portion of a berm within the Property;
- (b) Fences and walls shall not extend closer to any street than twenty feet (20'), nor project beyond the front set-back of the principal Building on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of Garden City, Idaho, and the ACC. Notwithstanding the foregoing, on corner Lots no fence shall be located closer than the more restrictive of the following: (i) ten feet (10') from the back (inside edge) of the sidewalk on the side Lot line, or (ii) such distance from such sidewalk as shall be required by the applicable ordinances of Garden City, Idaho.
- (c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat(s) of the Property.
- (e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Lots and streets, and shall not be allowed if the same constitute an undesirable, noxious or nuisance effect upon neighboring Lots.

SECTION 5.26. Landscaping. The following provisions shall govern the landscaping of Lots within the Property:

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XIII, below. The ACC shall approve said landscape plan prior to the

installation and/or construction of landscaping on a Lot. The use of berms and sculptures planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan.

- (b) The ACC Rules/ACC Standards shall set forth the initial minimum landscaping required on each Lot.

SECTION 5.27. Irrigation Water. Each Owner, by the acceptance of a deed to a Lot within the Property, acknowledges that there is no obligation to deliver irrigation water to the individual Lots within the Property. Provided, that if facilities for the delivery of irrigation water to the individual Lots are constructed or installed, the maintenance, repair and replacement of such facilities shall be the responsibility of the Association, with the cost thereof to be included within the Regular Assessments described in Section 11.02, below.

SECTION 5.28. Adoption of ACC Rules/ACC Standards. The ACC shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the ACC, as the case may be, to carry out the purposes of this Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Declaration.

ARTICLE VI.

SAVANNAH GREENS OWNERS ASSOCIATION, INC.

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

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

SECTION 6.03. Voting. The Association shall have one (1) class of voting membership. Members shall be all Owners of Lots within the Property and shall be entitled to one (1) vote for each Lot owned.

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

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

- (a) Assessments. The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.
- (d) Liability of Board Members and Officers. Neither any member of the Board nor any officer of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- (e) Association Rules. The power to adopt, amend and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and occupants or any other person of the Common Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this

Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

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

- (g) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service;
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes;
 - (iii) Any similar public or quasi-public improvements or facilities.

- (h) Fiscal Year. The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

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

- (a) Operation and Maintenance of Common Area. Perform, or provide for the performance of, the operation, maintenance and management of the Common Area and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, and the maintenance, management, repair or replacement of all other property owned or controlled by the Association.

- (b) Taxes and Assessments. Pay all real and personal property taxes and assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are

paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes.

- (c) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- (d) Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance specified in Article VIII, below.
- (e) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Property, whether the same be located within or without the boundaries of the Property.
- (f) Private Road and Security Facilities. Maintain, repair or replace all or any portion of any private road(s) and security facilities located within the Property or adjacent thereto, if the same serve the Property.
- (g) Rule Making. Make, establish, promulgate, amend and repeal Association rules.
- (h) Architectural Control Committee. Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration.
- (i) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

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

- (a) A pro forma operating statement (budget) for the upcoming fiscal year shall be distributed at least ten (10) days prior to the date of the annual meeting.
- (b) Within thirty (30) days after the close of each of the first three quarters of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, an operating statement reflecting the income and expenditures of the Association for the fiscal year-to-date.
- (c) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

ARTICLE VII.

MAINTENANCE OF PRIVATE ROADS AND SECURITY FACILITIES

SECTION 7.01. Duty to Maintain Private Roads. The Association shall be responsible for maintaining the Private Roads which shall serve the other Lots in the Development. Such maintenance shall include, but not be limited to, the following: the repairing, patching, sealing, replacing and caring for the Private Roads, stormwater and/or drainage facilities, curb and gutter Improvements, if any, including the sweeping and cleaning thereof, when required. As used herein, "Private Roads" shall include the roadway surface, curbs, gutter and sidewalks, if any, and stormwater and/or drainage facilities located within said Lot 77, Block 1, and any appurtenant Improvements located thereon or therein, such as street lights, street signs and landscaping.

SECTION 7.02. Duty to Maintain Security Facilities. The Association shall be responsible for maintaining all security facilities, if any, located within the Subdivision, except those which are installed by an Owner on a Lot and designed for the protection of the Building and/or Occupants thereof. The Association shall be responsible for maintaining the photocell lights on the garages facing the alleys and photocell lights located at the entry walkway to each Lot; provided, however, the Owner of each Lot shall contact the Association to advise the Association of the need to replace the photocell lights on the garage facing the alley and photocell lights located at the entry walkway to such Owner's Lot. Maintenance shall include, but not be limited to, the following: the general maintenance and upkeep, repairing, replacing, restoration and rebuilding of all and any such security facilities as the same may be constructed and installed within the Subdivision, including any appurtenances or related property used or necessary in connection therewith. In addition, if the operation of said security facilities requires the payment of on-going expenses to operate the same, such as utility expenses, the Association shall be responsible for the payment of all such on-going expenses. As used herein, "security facilities" shall include, without limitation, photocell lights system(s) throughout the Subdivision, and all equipment, property and systems, if any, installed to serve exclusively the Lots and Owners within the Subdivision, but shall not include any such equipment, property or systems installed to serve less than all of such Lots and/or Owners. Nothing herein is intended, nor shall the same be construed, as requiring the Association to install any such security facilities, and the provisions of this Declaration applicable to security facilities shall apply only if the same are installed within the Subdivision.

SECTION 7.03. Liability for Damage. In the event that any maintenance, repair or replacement of all or any portion of the Private Roads, as described further in Section 7.01, above, or the security facilities, as described further in Section 7.02, above, is performed by the Association as a result of the willful or negligent act of an Owner, an Owner's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in this Declaration.

SECTION 7.04. Cost of Maintenance, Repairs and Replacement. The cost of the maintenance, repairs and replacements of the Private Roads, as described further in Section 7.01, above, and the security facilities, as described further in Section 7.02, above, if any, within the Subdivision and the continuing operational expenses, if any, including taxes, shall be paid by the

Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within the Subdivision. Such costs and expenses (hereafter "cost and expenses") shall be apportioned among the Lots within the Subdivision based on the three original Regular Assessment rates, described in Article XI, below. In the event the Association does not have adequate funds to pay the cost and expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, based on the three original Regular Assessment rates, described in Article XI, below, as a Special Assessment.

SECTION 7.05. Easement for Maintenance. There is hereby reserved to the Association, its contractors and agents, an easement to enter upon the Lots within the Subdivision for the purpose of accomplishing all maintenance, repair and replacement rights and duties set forth in this Article.

SECTION 7.06. Easement for Use. There is hereby granted for the use and benefit of each Lot, and for the use and benefit of each Owner, and their respective successors and assigns, for the purposes incidental to the use and enjoyment of the Lots, a perpetual easement to enter on, over and across Lot 77, Block 1, as shown on the recorded plat for the Subdivision (herein "Private Roads"), which Private Roads are to be used for ingress to and egress from each Lot. It is expressly understood and agreed that the easement herein created shall be absolute and non-exclusive and that in all respects the Private Roads shall be used, and available for use, by all such persons, their tenants, guests, invitees and licensees in the same manner as if the Private Roads were a public road, subject to the right of the Board to impose such rules, regulations and restrictions, as may be necessary, required or convenient to assure the privacy, safety, security and well-being of each such Lot and the Occupants residing within the Subdivision, provided, however, that such shall not deprive or unreasonably restrict any of such Occupants the right to have access to and from such Lot.

SECTION 7.07. Reserve for Maintenance, Repair and Replacement. The Association shall have the right to establish a reserve account for the payment of the cost and expenses as set forth herein with regard to the maintenance, repair and replacement of the Private Roads and the security facilities, if any, and for the purpose of funding the same. The Association shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment so determined for the purpose of funding the maintenance, repair and replacement reserve account shall be as described in Article XI, below. The Board shall have the right to place all funds collected for the maintenance, repair and replacement reserve account in an interest-bearing account in an appropriate financial institution.

SECTION 7.08. ACHD Not Liable. It is acknowledged and agreed that neither Ada County Highway District nor any other governmental entity having jurisdiction and control over the public right(s)-of-way within Ada County shall have any obligation or responsibility to maintain, repair or replace all or any portion of a Private Road within the Subdivision or the security facilities, if any, for the Subdivision. Any purported amendment to this Section to impose liability upon Ada County Highway District or any other governmental entity for a Private Road and/or the security facilities within the Subdivision shall be of no force or effect unless Ada County Highway District or such other governmental entity shall expressly consent thereto.

ARTICLE VIII.

INSURANCE

SECTION 8.01. Property Casualty Insurance.

- (a) The Association shall have the responsibility to purchase and keep in force a master or blanket policy of property casualty insurance in an amount equal to the full replacement value (that is, one hundred percent [100%] of the then current replacement cost, exclusive of land, foundation and excavation) of all Buildings located in the Subdivision, with an inflation-guard endorsement and such other endorsements as may be reasonably required by a Mortgagee or the Federal National Mortgage Association and such other endorsements and coverage as the Association deems appropriate. The maximum deductible shall be the amount of \$1,000.00 per loss or occurrence, with the Owner(s) of the Lot(s) damaged or destroyed being responsible for the payment of such deductible. The master or blanket policy of property casualty insurance required to be purchased and kept in force by the Association shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsement and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage (excluding flood and ground or surface water) and other risks as are customarily covered in extended coverage property casualty and damage insurance policies for similar property. In addition, the insurance required herein shall contain the following provisions:
- (i) Named Insured. The named insured under any such policy(s) shall be Savannah Greens Owners Association, Inc., as trustee for the Owners of Lots within the Subdivision, or its authorized representative, including any trustee with which said Association may enter into an Insurance Trust Agreement, or any successor trustee, each of which shall be referred to as the "Insurance Trustee" and said Insurance Trustee shall have the exclusive authority to negotiate losses under said policy(s).
 - (ii) No Contribution. The insurance coverage shall be written as and shall provide primary coverage of the risks insured against, not contributing with and not in excess of coverage carried by an Owner or the Mortgagee of an Owner.
 - (iii) No Prejudice. The insurance coverage shall not be prejudiced by:
 - (a) Any act or negligence of an Owner when such act or negligence is not within the control of the Association; or
 - (b) Any failure of the Association to comply with any warranty or condition regarding any portion of a Building over which the Association has no control.
 - (iv) No Cancellation or Modification. The insurance coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insured, including Mortgagees.

- (v) Waiver of Subrogation. The policy(s) of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Lot within the Subdivision and/or their respective agents, co-insurance or on an invalidity arising from the acts of an insured.
 - (vi) Restoration vs. Cash Settlement. The policy(s) of insurance shall provide that, despite any provisions therein giving the insurer the right to elect to repair any damage and restore the Building in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party, or any requirement of law.
- (b) Each Owner of a Lot in the Subdivision shall be responsible to provide the insurance for personal property located on said Owner's Lot and personal liability insurance in an amount deemed appropriate by the Owner, and the Association shall have NO OBLIGATION to provide such insurance. Documentation of any interior upgrades is the responsibility of the Owner. Such Documentation may be necessary to prove loss beyond the original construction value.

SECTION 8.02. Flood Insurance. If the Subdivision (or any portion thereof) is located in an area identified by any governmental entity having jurisdiction of the Subdivision as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or otherwise, and if the Association is able to do so, it shall purchase and maintain a master or blanket policy of flood insurance covering all Buildings within the Subdivision, said flood insurance policy(s) to be in such amount and to contain such terms and conditions as are provided in Section 8.01, above, relating to property casualty insurance as are possible to be obtained by the Association. In the event the Association is unable to obtain such a master or blanket policy of flood insurance, the Board of the Association shall have the right to either (i) purchase and maintain individual flood insurance policies on each Lot improved with a Building, or (ii) require each Owner of a Lot improved with a Building to purchase and maintain an individual policy of flood insurance in such amount and containing such terms and provisions as are herein required for a master or blanket policy(s).

SECTION 8.03. Comprehensive Public Liability Insurance. The Association shall have the responsibility to purchase and keep in force a master or blanket policy of comprehensive public liability insurance (hereafter "Public Liability Policy") insuring the Association, the Board, officers, the individual Owners, and the agents and employees of each of the foregoing (hereafter collectively "Insureds"). The Public Liability Policy shall have bodily and personal injury limits of not less than (i) \$1,000,000.00 per person per occurrence, (ii) \$2,000,000.00 aggregate for premises and operations, (iii) \$1,000,000.00 aggregate for products and completed operations, (iv) \$50,000.00 for fire legal liability, (v) medical payments of \$5,000.00 per person, and (vi) property loss or damage limits of not less than \$500,000.00. The Public Liability Policy shall protect the Insureds against any liability incident to the ownership and/or use of the Lots, Private Roads and any Common Area owned by the Association or easement areas under the control of the Association. The Public Liability Policy shall contain a provision that the Insured shall nevertheless be entitled to recover under such policies for any

loss occasioned by such Insured, or its partners, officers, employees or agents. The Public Liability Policy shall be written as a primary policy, not contributing with and not in excess of coverage which an Insured may carry.

SECTION 8.04. Other Insurance. In addition to the insurance policies required under Sections 8.01, 8.02 and 8.03, above, the Association shall purchase and maintain the following policies of insurance:

- (a) **Directors and Officers Liability Insurance.** If elected by the Board, full coverage directors and officers liability insurance in an amount determined by the Board.
- (b) **Public Liability Insurance – Umbrella.** If elected by the Board, a public liability umbrella insurance policy providing protection of the Insured named in Section 8.03, above, in such additional amount as the Board may determine.
- (c) **Other Insurance.** Such other insurance, including Workmen's Compensation Insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.

SECTION 8.05. Proceeds From Insurance. The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to the Association under any policies purchased and maintained by the Association, and the Association shall have full power to receive the Owners' interests in such proceeds and to deal therewith.

SECTION 8.06. Premiums – allocation. Insurance premiums for the insurance coverage purchased by and maintained by the Association shall be deemed a common expense to be included in the Regular Assessments or, if necessary, Special Assessments, levied by the Association.

ARTICLE IX.

PARTY WALLS

SECTION 9.01. General Rules Apply. Each wall which is built as a part of the original construction of the Improvements constructed on a Lot within the Subdivision and placed on the dividing line between two (2) Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to neglect or willful acts or mischief shall apply thereto.

SECTION 9.02. Sharing of Costs. To the extent that the cost of repairing and maintaining a party wall is not covered by insurance required to be provided by the Association or the Owners as provided in Article VIII, above, the cost of such repair or maintenance shall be shared by the Owners of the Lots located on either side of said party wall, without prejudice, however, to the right of any such

Owner to call for a larger contribution for the other Owner under any rule of law regarding liability for the negligent or willful acts or omissions of such other Owner or the Occupants of the Lot, or their agents or contractors.

SECTION 9.03. Weatherproofing. Notwithstanding any other provision of this Article to the contrary, an Owner who by such Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements or the repairs necessary from the failure to timely provide such protection.

SECTION 9.04. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 9.05. Arbitration. In the event of any dispute arising concerning a party wall, or a dispute involving the interpretation of the obligations of an Owner(s) under the provisions of this Article, the matter shall be submitted to the Board of the Association, who shall act as a Board of Arbitration and shall proceed in accordance with the rules and procedures of the American Arbitration Association then in effect, and the decision of the majority of the members of the Board shall be binding on the Owners.

ARTICLE X.

ASSOCIATION PROPERTIES

SECTION 10.01. Use. Each Owner of a Lot, such Owner's family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties subject to the following:

- (a) **Articles, Etc.** The provisions of the Articles and By-Laws of the Association, this Declaration and applicable Supplemental Declaration and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of published rules and regulations of the Association.
- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision.

- (d) Mortgage or Conveyance of Common Area. Except as provided in subsection (c), above, no portion of the Common Area shall be mortgaged or conveyed by the Association without the prior approval of at least two-thirds (2/3rds) of the Members, which approval may be obtained in writing or by a vote of the Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 11.08, below, shall apply.

SECTION 10.02. Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of said Owner's family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article XI, below.

SECTION 10.03. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, Insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 10.04. Condemnation. If at any time any part of a Common Area or other property owned by the Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE XI.

ASSESSMENTS

SECTION 11.01. Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

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

SECTION 11.02. Regular Assessments. Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular

Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Private Roads and security facilities, if any, for the maintenance of the exterior of the Buildings, and for the maintenance of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping maintenance, maintenance of the exterior of Buildings, maintenance and repair of the Private Roads, lighting, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s) for such purposes as deemed necessary and prudent by the Board.

The initial monthly Regular Assessment shall be based on the number of Lots in each of the Buildings. Each three (3) and four (4) Lot Buildings shall generate a total of \$300.00 per month, and each two (2) Lot Building shall generate a total of \$175.00 per month. The resulting initial monthly Regular Assessment shall be as follows: (i) owners in Buildings with four (4) Lots, \$75.00 per month; (ii) owners in Buildings with two (2) Lots, \$87.50 per month; and (iii) owners in Buildings with three (3) Lots, \$100.00 per month.

- (a) Regular Assessment amounts may be changed in the manner described below and shall be an apportioned amount based on the original Regular Assessment for each Lot Owner.
- (b) The Regular Assessment may be increased when deemed appropriate by the Board each year by not more than ten percent (10%) above the Assessment for the previous year without a vote of the membership of the Association.
- (c) A quorum shall consist of the Members of the Association in person or by proxy at a meeting duly called for the purpose of increasing a Regular Assessment in excess of ten percent (10%) a year. A majority vote of two thirds (2/3rds) of the Members who are voting in person or by proxy at such meeting shall constitute approval.
- (d) The Board may fix the Regular Assessment at an amount established using the methodology above.

SECTION 11.03. Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

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

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

At the closing of the sale of each Lot, a special assessment of \$100.00 shall be collected from the purchaser of the Lot as payment for the costs of Maintenance, Repairs and Replacements.

SECTION 11.04. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) Maintenance and Repair. The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, which maintenance and repair is the responsibility of the Owner of said Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Subdivision or the Building(s) within the Subdivision or the appearance of the Subdivision, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.
- (b) Correction of Violations. In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys's fees shall be assessed and collected as set forth in Article VIII and Article IX of this Declaration.
- (c) Limited Purpose. The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 11.05. Assessment Due Date. The due dates for Regular, Special and Limited Assessments shall be the first (1st) day of each calendar month, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 11.06. Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at a rate of one percent (1.0%) per month. Such

interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

SECTION 11.07. Estoppel Certificate. The Association, upon not less than 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 knowledge of the Association, a particular Owner is in default under the provisions of this Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

SECTION 11.08. Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 11.03, above, or a Limited Assessment described in Section 11.04, above, shall be sent to each owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting.

- (a) A quorum shall consist of the Members of the Association in person or by proxy at a meeting duly called for the purpose of levying a Special Assessment. A majority vote of two thirds (2/3rds) of the Members who are voting in person or by proxy at such meeting shall constitute approval.
- (b) In a case involving the levying of a Limited Assessment on a Lot, as provided in Section 11.04, above, there shall be no requirement of a quorum at a meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

ARTICLE XII.

ENFORCEMENT OF ASSESSMENTS

SECTION 12.01. Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

SECTION 12.02. Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Property pursuant to this Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

SECTION 12.03. Notice of Assessment. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Ada County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

SECTION 12.04. Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

SECTION 12.05. Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 12.06. Reporting. The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 12.05, above. The duty to give such Notice shall

arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

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

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$50.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 12.02, above. The charge for such notification shall be subject to change by the Board.

SECTION 12.07. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

SECTION 12.08. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

ARTICLE XIII.

ARCHITECTURAL CONTROL COMMITTEE

SECTION 13.01. Members of the Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

SECTION 13.02. Appointment. All members of the ACC, who may or may not be members of the Board, shall be appointed or removed by the Board.

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

SECTION 13.03. Compensation. The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the plans and specifications described in Section 13.07, below.

SECTION 13.04. Non-Liability. Neither the ACC, or any member thereof, ~~or Grantor or~~ any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC or its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

SECTION 13.05. Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Property without the prior express written approval of the ACC.

SECTION 13.06. Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics, economic circumstances, or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

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

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

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

SECTION 13.07. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

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

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set-backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements.
- (b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.

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

SECTION 13.08. Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Property as a quality residential development.

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

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

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

SECTION 13.09. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.

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

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

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

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

SECTION 13.10. Hearing. An Owner submitting an application under Section 13.07, above, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such

Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 13.12, below.

SECTION 13.11. Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 13.10, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

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

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

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

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

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

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a

substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 13.12, below.

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

SECTION 13.12. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Rules/ACC Standards or the approved plans and specifications.

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

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

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

SECTION 13.13. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article XI, above.

SECTION 13.14. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Section 11.04, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy,

pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 13.15. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

ARTICLE XIV.

PROTECTION OF MORTGAGEES

SECTION 14.01. Purpose. Notwithstanding any and all provisions of this Declaration to the contrary, to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") to participate in the financing of the purchase of Lots within the Property, the provisions of this Article are added thereto. To the extent the following Sections of this Article conflict with any other provisions of this Declaration or the provisions of any Supplemental Declaration, this Article shall control.

SECTION 14.02. Restrictions on Amendments. No amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Declaration, as amended.

SECTION 14.03. Mortgagee Defined. For the purposes of this Article only, a "Mortgagee" shall refer only to FHLMC, GNMA, FNMA, FHA and VA, as described in Section 14.01, above.

SECTION 14.04. Right to Notice. Each Mortgagee, upon filing a written request for notification with the Board in accordance with Section 12.06, above, shall be given written notice by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Declaration and under any Supplemental Declaration applicable to the Lot, the Articles or the By-Laws of the Association (hereafter collectively referred to as "Project Documents"), which default is not cured within thirty (30) days after the Association has notice of such default.

SECTION 14.05. Exemption From Prior Assessments. Each Mortgagee which comes into possession of a Lot by virtue of foreclosure or otherwise shall take title to such Lot free from any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation thereof to all Lots, including the mortgaged Lot.

SECTION 14.06. Changes Requiring Unanimous Approval. Without the prior unanimous approval of all Mortgagees of Lots within the Property, neither the Association nor the Owners shall:

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

SECTION 14.07. Restrictions on Other Changes. Without the prior written approval of at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots within the Property, neither the Association nor the Owners shall:

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

SECTION 14.08. Right to Inspect Books, Etc. Mortgagees, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financing reports and other financial data; (iii) receive written notice of all meetings of Owners; and (iv) designate in writing a representative to attend all such meetings.

SECTION 14.09. Notification of Damage. Upon the Board receiving notice of any damage to the Common Area or any Lot wherein the cost of repair, replacement or reconstruction exceeds Ten Thousand Dollars (\$10,000.00) or notice of any condemnation or eminent domain proceedings or other similar involuntary acquisition of any portion of the Property, the Board shall give to each Mortgagee which has filed with the Board a written request for notice, prompt written notice of said damage or condemnation.

SECTION 14.10. Right to Pay Charges. Mortgagees may pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on the property casualty insurance policy(s) to be purchased and maintained by the Association covering the Buildings and/or covering the Common Area, if any, and said Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

SECTION 14.11. Fidelity Bond Required. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association.

SECTION 14.12. Lessee's Obligations. Any agreement for the leasing or rental of a Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject to the provisions of the Project Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the leasing or rental agreement.

SECTION 14.13. Liability for Taxes. All taxes levied and assessed on the Common Area, if any, must be assessable against those Common Areas only, and the Association shall be solely responsible for the payment thereof.

SECTION 14.14. Waiver of Liability and Subrogation. Any provision in this Declaration which requires Owners to indemnify the Association or the Board of the Association, or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

SECTION 14.15. Additional Contracts. In addition to the foregoing provisions of this Article, the Board may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, FHA, VA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots with Improvements thereon. Each Owner hereby agrees that it will benefit the Association and each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots, if such agencies approve the Property as a qualifying subdivision under applicable policies, rules and regulations as adopted from time to time.

SECTION 14.16. Release of Information by Mortgagee. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot and the Owner of a Lot encumbered by such a Mortgage hereby consents thereto.

SECTION 14.17. Restricted Application. It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA, GNMA, FHA or VA purchases, grantees or insures a Mortgage on a Lot within the Property and then only to the extent the same are required by said purchaser, guarantor or insurer. In the event the standards and guidelines of FHLMC, FNMA, GNMA, FHA or VA do not require, as condition of

approval of the Property as a qualifying subdivision, the inclusion of one (1) or more of the provisions of this Article, said non-required provisions shall be of no further force or effect.

ARTICLE XV.

MISCELLANEOUS

SECTION 15.01. Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, said covenants, conditions, restrictions and easements shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4ths) of the Lots covered by this Declaration and such written instrument is recorded with the Ada County Recorder.

SECTION 15.02. Amendment. This Declaration may be amended as described herein by Owners. Except where a greater percentage is required by an express provision in this Declaration, the provisions of this Declaration, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of Owners of at least two-thirds (2/3rds) of the Lots covered by this Declaration, and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 15.02 shall require the vote or written consent of the Owners of two-thirds (2/3rds) of the Lots covered by this Declaration.

SECTION 15.03. Sewer Covenants. The following covenants shall run with each Lot and any Common Area affected thereby and shall be binding upon each Owner of a Lot and all occupants of any Improvements constructed on a Lot:

- (a) No Lot may be used or occupied for any allowed use 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 Lot shall be paid by the Owner at the time of construction of the Improvements thereon and the connection thereof to the public sewerage collection system, said sewer hook-up fees to 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 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 Association shall provide access, satisfactory to the governmental entity having jurisdiction thereof, for sewer cleaning equipment to all sanitary sewer manholes located outside the public right-of-way.
- (f) Each Owner of a Lot hereby authorizes the governmental 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 entity for sewer service connected 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.

SECTION 15.04. Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 15.05. Non-Waiver. The failure of the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 15.06. Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration and agrees to be bound by the same.


SECTION 15.07. Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners.


SECTION 15.08. Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 15.09. Interpretation. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

SECTION 15.10. Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the undersigned President and Secretary of Savannah Greens Owners Association, Inc. hereby certify and confirm that the foregoing Restated Declaration of Covenants, Conditions, Restrictions and Easements for Savannah Greens No. 2 Subdivision was approved by a vote or written consent of Owners, owning at least two thirds of the Lots covered by the Declaration.

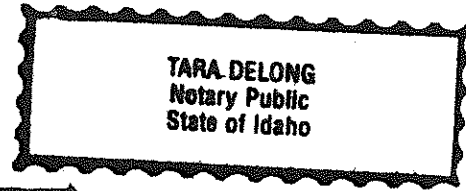

John Hutchison, President


Jean Lamb, Secretary

STATE OF IDAHO }
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County of Ada }

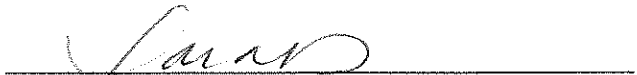


TARA
Notary Public
State of Idaho



On this 10th day of September, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared John Hutchison and Jean Lamb, known or identified to me to be the President and Secretary, respectively, of Savannah Greens Owners Association, Inc., the corporation that executed the instrument or the persons who executed the instrument of behalf of said corporation, and acknowledged to me that such corporation executed the same.

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


Notary Public for Idaho

Residing at: ADA CO, IDAHO

Commission Expires: JULY 19, 2016