



FOR RECORDING INFORMATION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WALNUT CREEK SUBDIVISION
(A.k.a. Galiano Estates Subdivision)

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THIS DECLARATION is made on the date hereinafter set forth by Galiano, LLC, an Idaho limited liability company, hereafter referred to as "Declarant", and Daniel B. Zillner and Jana Lee Zillner, husband and wife, hereafter referred to as "Zillner".

W I T N E S S E T H

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

GALIANO ESTATES SUBDIVISION, according to the official plat thereof, recorded as Instrument No. 107150335 on the 5th day of November, 2007, records of Ada County, Idaho; and

WHEREAS, Declarant and Zillner desire to subject the above-described Properties, except Lot 1, Block 1 and Lot 1, Block 4 thereof, to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Properties and their present and subsequent Owners as hereinafter specified, and will convey the Properties subject thereto;

NOW, THEREFORE, Declarant and Zillner hereby declare that all of the Properties above described, except Lot 1, Block 1 and Lot 1, Block 4 thereof, shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set

forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the Properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following terms shall have the following meanings:

Section 1. "ASSESSMENT" shall mean a payment required of Association members, including Initiation, Annual, Special and Limited Assessments as provided for in this Declaration.

Section 2. "ASSOCIATION" shall mean and refer to the Walnut Creek Homeowners Association, Inc., a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 3. "COMMON AREA" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners. The initial Common Area to be owned by the Association is described as Lot 13, Block 1; Lot 1, Block 2; Lot 1, Block 3; Lot 4, Block 4; Lots 1 and 13, Block 5; Lots 1, 12 and 16, Block 6; Lot 4, Block 7; and Lots 1 and 8, Block 8; Lot 1 Block 9, Galiano Estates Subdivision, according to the official plat thereof.

Section 4. "DECLARANT" shall mean and refer to Galiano, LLC, an Idaho limited liability company, and subject to the provisions of Article XV, Section 4, its successors, heirs and assigns.

Section 5. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the County Recorder of Ada County, State of Idaho.

Section 6. "DWELLING UNIT" shall mean that portion or part of any structure intended to be occupied by one family as a dwelling unit, together with the vehicular parking garage adjoining or adjacent thereto, and all projections therefrom.

Section 7. "IMPROVEMENT" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Properties, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever.

Section 8. "INSTITUTIONAL HOLDER" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 9. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 10. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

Section 11. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any Mortgage.

Section 12. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "PLAT" shall mean a final subdivision plat covering any real property in Galiano Estates Subdivision, as recorded in the office of the county recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 14. "PROPERTIES" shall mean and refer to that certain real property hereinabove described.

Section 15. "SUBDIVISION" shall mean the Galiano Estates Subdivision as shown on the final Plat recorded in the Office of the County Recorder, Ada County, Idaho.

ARTICLE II: PROPERTY RIGHTS

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

A. The right of the Association to levy reasonable assessments for the maintenance of any improvements or facilities situated upon the Common Area.

B. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien thereagainst; provided that the Common Area may not be mortgaged or conveyed without the consent of at least 66-2/3% of the Owners (excluding Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.

D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the written approval of all First Mortgagees and two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.

E. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of the Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including without being limited thereto, reasonable regulations and restrictions regarding vehicle parking.

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

Section 3. Rights Reserved by Declarant: Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

A. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees, easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Properties, or any adjacent real property owned by Declarant, or its successors or assigns;

B. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees (including any district, company, unit of local government, association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), easements, access and rights-of-way on, over, under and across all or part of the Common Area and utility easements on, over and under all Lots and Common Area as provided on any recorded Plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

C. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees, the right to use the Common Area where applicable, to facilitate and complete the development of the Properties, and any annexed property, including without limitation the use of the Common Area where applicable, for:

1. Construction, excavation, grading, landscaping, parking and/or storage;

2. Maintenance and operation of a sales office and model units for sales purposes;
3. The showing to potential purchasers of any unsold Lot, unit or improvements within the Properties;
4. Display of signs and flags to aid in the sale of any unsold Lots and units, or all or part of the Properties;
5. Construction, operation and maintenance of all or any portion of any Common Area by Declarant, its successors or assigns;

Section 4. Right to Amend Declaration: Declarant reserves the right to amend this Declaration in accordance with the provisions of Article XV, Section 3, below, and to set forth additional covenants, conditions, restrictions and easements to be applicable to any Lot not yet sold.

Section 5. Reservation of Development Rights: No provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete development of the properties and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the properties, nor Declarant's right to post signs incidental to construction, sales or leasing. Any development plans or schemes for the Properties in existence prior to or following the effective date of this Declaration are subject to change at any time by Declarant, and impose no obligation on Declarant as to how the property is to be developed or improved.

ARTICLE III: HOMEOWNERS ASSOCIATION

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

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

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

Class B: Class B member(s) shall be the Declarant who shall be entitled to ten (10) votes, or the maximum permitted by applicable rules and regulations of the U. S. Department of Housing and Urban Development and/or the U. S. Veterans Administration, for each Lot owned. The Class B membership shall be converted to Class A membership on the happening of either of the following events, whichever occurs first:

A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

B. On the expiration of ten (10) years from the date on which the first Lot is sold to an Owner.

Section 3. Assessments: Each Owner of any Lot, by acceptance of a deed therefore from Declarant (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association an Initiation Assessment, Annual Assessments, Special Assessments and Limited Assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided:

A. Initiation and Transfer Assessments: Upon the initial conveyance of each Lot, the purchaser thereof shall pay an Initiation Assessment to the Association in the amount of \$200.00, which said sum shall be used, to the extent necessary, to reimburse Declarant for the costs it incurs in the maintenance and operation of the Common Area and the improvements located thereon. Upon each subsequent transfer of each Lot, the purchaser thereof shall pay a transfer assessment to the Association in the amount of \$25.00.

B. Annual Assessments: The Annual Assessment levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners, for the operation, maintenance, repair and improvement of the Common Area and facilities located thereon, for the reasonable expenses incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration or in the Bylaws of the Association, and for any other purpose reasonably authorized by the Board of Directors of the Association. The Annual Assessments provided for herein shall initially be in the amount of \$295.00 payable in full at the closing of the sale of each Lot. Thereafter, the Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

C. Special Assessments: In addition to the Initiation and Annual Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an improvement upon the Common Area, or for any unanticipated expenses or obligations, provided that any such assessment intended to pay the cost of initial construction of any new facility or improvement shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking

any action authorized under this paragraph above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any Special Assessment shall be payable over such a period as the Board of Directors shall determine.

D. Limited Assessments: The Association shall have the power to incur expenses for the maintenance and repair of any Lot or Improvement, for the repair of damage to the Common Area caused by the negligence or willful misconduct of an Owner or his family, guests, invitees, agents, employees, or contractors, or for the correction of any violation of this Declaration, if the responsible Owner has failed or refused to perform such maintenance or repair or to correct such violation after written notice of the necessity thereof has been delivered by the Board of Directors to the responsible Owner. The Board of Directors shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such maintenance, repair or corrective action, together with any other cost or expense, including attorney's fees, arising out of or incident to such maintenance, repair or corrective action or the collection of the assessment therefore. Any such Limited Assessment shall be due within fifteen (15) days of the date written notice thereof is delivered to the responsible Owner. The notices required in this paragraph shall be delivered personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown on the records of the Association.

E. Uniform Rate of Assessment: The Initiation, Annual and Special Assessments (but not Limited Assessments) must be fixed at a uniform rate for non-exempt Lots.

F. Creation of Lien and Personal Obligation of Assessments: The Initiation, Annual, Special and Limited Assessments, together with interest, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

G. Effect of Nonpayment of Assessments; Remedies of Association: Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

H. Subordination of the Lien to Mortgages: The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage

foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

I. Certificate of Payment: The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

J. Exempt Property: The following property, subject to this Declaration, shall be exempt from the Assessments created herein:

1. All property expressly dedicated to and accepted by a local public authority;
2. All properties owned by the Declarant or an Association;
3. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.
4. All Lots owned by Zillner, until title is transferred to another, or until occupancy (by other than current occupants), whichever occurs first.

ARTICLE IV: EASEMENTS

Section 1. Drainage and Utility Easements: This Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities and easements that are set forth on the Plat, or as may be required for the development of the Properties. In addition, Declarant hereby reserves to itself and for the benefit of the Association the right to grant additional easements and rights-of-way over the Properties, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Properties until close of escrow for the sale of the last Lot in the Properties to a purchaser.

Section 2. Improvement of Drainage and Utility Easement Areas: The Owners of Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas as shown on the Plat or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose.

Section 3. Landscaping Easement: An easement is hereby granted and reserved to the Association for the installation, maintenance and replacement, as may be necessary from time to time, of landscaping improvements and related facilities over the westerly 30 feet, southerly 5 feet, and easterly 20 feet of Lot 1, Block 1, and the westerly 30 feet, northerly 5 feet, and easterly 20 feet of Lot 1, Block 4, together with the right of ingress and egress as may be necessary in order to exercise any and all easement rights described herein. The Association shall be responsible for the

proper care, maintenance, operation and replacement of any and all landscaping improvements and related facilities located within the easement areas described herein.

ARTICLE V: STORM WATER DRAINAGE AND RETENTION SYSTEM

Section 1. Ada County Highway District Storm Water and Drainage Easement: The Ada County Highway District has been granted a perpetual blanket storm water drainage easement by separate instrument over those portions of the Properties as are depicted or described on the Plat as Lot 1 Block 5 and Lot 12 Block 6 (which purpose is for storm water), or as described in said separate instrument on which has been constructed storm water drainage facilities to be owned and operated by the Ada County Highway District in accordance with the provisions of the Master Perpetual Storm Water Drainage Easement recorded on May 20, 2004 as Instrument No. 104068411 records of Ada County, Idaho.

Section 2. Operation and Maintenance: Operation and maintenance of the storm water drainage facilities shall be governed by the Galiano Estates Subdivision Storm Water System Operation and Maintenance Manual dated June 2007, prepared by B & A Engineers, Inc. (the "Manual"), which Manual may only be modified with the written approval of the Ada County Highway District. Light maintenance of the Storm Water System shall be the responsibility of the Association, which shall include periodic inspection and cleaning of the sediment tank, periodic inspection and surface maintenance (including mowing, weed control, irrigation, trash clean up and soil aeration) of the infiltration swale, all as more particularly described in the Manual. The Ada County Highway District shall be responsible for the heavy maintenance of the Storm Water System, which shall include periodically inspecting and cleaning the catch basins and sediment tanks, excavation, removal and replacement of the seepage beds under the retention basins, as more particularly described in the Manual.

Section 3. Inspection and Maintenance: The Ada County Highway District shall have the right at all times to inspect the storm water drainage facilities and perform any required maintenance and repairs.

Section 4. Assessment and Lien Rights: The Ada County Highway District shall be entitled to levy assessments to the Association for the reasonable costs of all required maintenance and repairs to the storm water drainage facilities and shall be entitled to a continuing lien against all Lots for such unpaid assessments for maintenance and repair to the storm water drainage facilities.

Section 5. Approval of Amendments: Any amendment of this Declaration, the Covenants, Conditions and Restrictions contained herein, or the manual referred to in Section 2, above, having any direct impact or affect on the Ada County Highway District's storm water drainage facilities shall be subject to prior review and approval by the Ada County Highway District.

ARTICLE VI. IRRIGATION WATER SUPPLY SYSTEM

Section 1. Irrigation Water Supply System: All Lots and Common Area to which delivery of irrigation water is feasible in the Declarant's discretion, shall have access to a

pressurized irrigation water system ("Irrigation Water Supply System") to be constructed by Declarant and owned and operated by the City of Kuna (the "City") for the benefit of the Association, Declarant and Lot Owners, in accordance with the following provisions:

A. Use of the water delivered through the Irrigation Water Supply System shall be subject to such rules and regulations of the City as may from time to time be adopted by the City. The irrigation water supplied through the Irrigation Water Supply System is derived from the Boise River, and delivered by one or more irrigation entities and is subject to variability and availability from year to year, and generally only from approximately mid-April through mid-October of each year.

B. The City shall be responsible for the maintenance and repair of the Irrigation Water Supply System up to the stub provided for each Lot. Each Owner shall be responsible for the costs incurred in installing, operating, maintaining, repairing or replacing any component of the sprinkler irrigation system located on a Lot from and beyond the said stub.

C. Water from the Irrigation Water Supply System is non-potable and may contain weed seed, herbicides, pesticides or other contaminants over which the Declarant, and the City have no control. Each Owner shall be responsible to insure the irrigation water used on his Lot is not consumed by any person or used for culinary purposes.

D. Any Owner desiring to connect an alternate source of irrigation water to the irrigation system on his Lot shall be responsible for the cost thereof (both for the connection and the water) and have a backflow prevention device installed to prevent the alternate source from being contaminated with non-potable irrigation water, in accordance with applicable law.

E. Each Owner shall be required to pay the assessment levied by the City for the operation, maintenance, repair and replacement of the Irrigation Water Supply System and delivery of irrigation water regardless of actual use or non-use of water from the Irrigation Water Supply System.

Section 2. Easement: Declarant reserves to itself, its agents, contractors, subcontractors and employees, successors and assigns, a nonexclusive easement as depicted on the Plat, inside the boundary of each Lot and the Common Area adjacent to the right-of-way for construction of the pressurized Irrigation Water Supply System.

ARTICLE VII: MAINTENANCE RESPONSIBILITY

Section 1. Association Responsibility: The Association shall provide maintenance to and be responsible for the Common Areas and the landscaping easement described in Article IV, Section 3 above. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, invitees, employees, agents or contractors the costs of such maintenance or repairs shall be assessed to such Owner as set forth in Article III, Section 3, above. The Association reserves an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association.

Section 2. Owner's Responsibility: Each Owner shall be responsible for maintaining and keeping in good order and repair the exterior of his Dwelling Unit, outbuildings, and any private decks, fences, courtyards, landscaping and lawn contiguous to his Dwelling Unit. Each Owner shall further be responsible to cut or otherwise control the weeds and other noxious plants on his Lot so as to avoid any unsightly condition or hazard or nuisance to the neighborhood. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the owner must complete repair and/or replacement of the Dwelling Unit within one hundred eighty (180) days of the damage or destruction, subject to reasonable delays caused by inclement weather.

Section 3. Failure to Owner to Maintain: If the Owner fails to perform his maintenance responsibilities as set forth herein, the Association shall, upon fifteen (15) days prior written notice to the Owner, have the right to correct such condition, and to enter upon the Owner's Lot for the purpose of doing so, and seek reimbursement of the cost thereof in accordance with the provisions of Article III, Section 3, above.

ARTICLE VIII: PROPERTY USE RESTRICTIONS

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

A. Lot Use: No Lot, with the exception of the Common Area shall be used except for single-family residential purposes. No Lot or the Common Area shall be used for the conduct of any trade, business or professional activity. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations. The Owner of each Lot shall complete construction of Dwelling Unit as permitted herein within eight (8) months of commencement and no later than one (1) year after the date of the first conveyance of the Lot to an Owner by Declarant or Zillner (unless otherwise authorized by Declarant in writing); provided, however, that if adjacent Lots are purchased by an Owner with the intent that the Lots be used together (for example to construct a Dwelling Unit on one Lot and to provide additional yard area on the other), then the one (1) year time requirement for the completion of construction shall not apply to the Lot(s) on which no Dwelling Unit is intended to be constructed; further provided that nothing contained in this paragraph shall be construed to relieve an Owner from its maintenance obligations as set forth in this Declaration, including without limitation, Article VII, above.

B. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said Properties, except that two dogs, cats or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling Unit or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee and that in no event shall the said boundary extend beyond the front plane of the Dwelling Unit constructed on said Lot.

C. Garbage and Refuse Disposal: No part of said property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. Any incinerators or other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee, shall be kept in a clean and sanitary condition, and must be used and maintained in accordance with all applicable laws, ordinances and regulations.

D. Nuisance: No noxious, offensive or unsightly conditions (including but not necessarily limited to sights and sounds) shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. All exterior lighting shall be placed in such a manner to minimize glare and excessive light spillage onto neighboring Lots.

E. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Properties.

F. Antennas: Antennas, satellite dishes, or other devices for the transmission or reception of television, radio or electric signals or any other form of electromagnetic radiation shall not be erected on any Lot except as may be approved by the Architectural Control Committee, and in no event shall such devices be installed on the front or side elevations of a Dwelling Unit constructed on a Lot, unless specifically approved by the Architectural Control Committee.

G. Parking and Storage of Vehicles and Equipment: Parking of boats, trailers, motorcycles, trucks (except one ton in size or smaller), truck campers, motor homes, recreational vehicles, and like equipment, or commercial equipment or machinery, junk cars or other unsightly vehicles, shall not be allowed on any Lot, except in fully enclosed buildings, or if such vehicle or equipment is less than six (6) feet in height, behind a six (6) foot solid vinyl fence, and if such vehicle or equipment is greater than six (6) feet in height, behind a six (6) foot solid vinyl fence topped with lattice to a height which will entirely obscure such vehicles or equipment from view from the street, all as has been approved in writing by the Architectural Control Committee, or under such other circumstances, if any, as may be prescribed in writing by, and in the sole discretion of the Board of Directors of the Association, which discretion may not be challenged for having been exercised unreasonably; provided, however, that boats, trailers, campers, motor homes and similar recreational vehicles may be parked on a Lot for a period not to exceed 48 hours while in immediate use by an Owner, being prepared for use, or being prepared for storage after use. All other parking or storage of any other vehicles and equipment shall be prohibited, except as approved in writing by the Board of Directors of the Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.

H. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Bylaws, and any adopted rules and regulations, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall

mean any agreement for the leasing or rental of a Dwelling Unit or any portion of a Lot (including a month-to-month rental agreement); and all such leases shall be in writing. Leases of all or part of a Lot for agricultural purposes may be permitted so long as the agricultural use undertaken on that Lot does not conflict or interfere with the residential character of the Properties. Other than the foregoing, there is no restriction on the right of any Owner to lease his Dwelling Unit.

I. Fences: No fences shall be constructed on any Lot except as may be approved, in advance, by the Architectural Control Committee as to design, color, height, materials and location. No such fence shall extend beyond the front plane of the Dwelling Unit constructed or to be constructed on the Lot.

J. Drilling and Exploration: No oil or mining exploration or development of any kind or nature nor any structures in connection therewith shall be permitted to be erected, maintained or used on any Lot and no minerals shall be permitted to be extracted on any Lot.

K. Signs: No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for sale by displaying a single, neat sign of not more than six (6) square feet on a Lot. Other temporary signs advertising the name of the builder or the name of the institution providing financing may be displayed on their Lot during construction of improvements only by written approval of Declarant.

L. Subdividing: No Lot may be further subdivided, nor may any easement or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prohibit an Owner from transferring and selling a 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. The provision of this section shall not apply to the division of any Lot between adjoining Lots.

M. Parking Rights: Subject to the provision of paragraph G above, any automobile or other vehicle used by any Owner shall be parked in the driveway or garage which is a part of his Dwelling Unit and may not be parked on the streets in the Subdivision.

N. Mail Boxes: All mail boxes will be provided by Lot Owner and shall be of consistent design, material and coloration (which shall be specified by Declarant) and shall be located on or adjoining building Lot lines and places designated by Declarant or the Architectural Control Committee.

O. Generators and Solar Panels: Generators and solar panels or other devices for the generation or transmission of electricity shall not be erected on any Lot except as may be approved by the Architectural Control Committee and in no event shall such devices be installed on the front or side elevations of a Dwelling Unit constructed on a Lot, unless specifically approved by the Architectural Control Committee.

ARTICLE IX: BUILDING RESTRICTIONS

Section 1. Building Restrictions: With the exception of Common Area Lots, no

buildings shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling which may not exceed two (2) stories in height, and a private garage for three (3) or more motor vehicles. Each Dwelling Unit may not be occupied by more than one (1) family. The minimum square footage of living space (excluding the garage) of each Dwelling Unit shall be two thousand two hundred (2,200) square feet. Although, twenty percent (20%) of the buildable lots (designated by Declarant) may have homes constructed with a minimum of one thousand eight hundred (1,800) square feet. No split entry, mobile or manufactured homes shall be permitted to be placed or installed on any Lot.

Section 2. Outbuildings: No outbuildings, including but not limited to garages, storage sheds, patio covers and guest homes, shall be constructed or placed on any Lot except as have been approved, in writing, by the Architectural Control Committee as to location, size, height, design, color, and materials. Any outbuilding must match the Dwelling Unit constructed on the Lot in construction and appearance.

Section 3. Setbacks: All improvements must be constructed or maintained on a Lot within the minimum building setbacks as required by the applicable governmental agency having jurisdiction.

Section 4. Construction Requirements: Each Dwelling Unit shall be composed of such materials and of such colors as has been approved by the Architectural Control Committee. Vinyl siding is prohibited. All roofs shall be comprised of 40-year architectural shingles, weathered wood in color, or as may be approved by the Architectural Control Committee, and with a minimum 6/12 pitch. All fireplace chimneys must be of masonry or metal and, if metal, shall be wrapped with the same materials as exist on other areas of the exterior of the Unit to within one foot of the top cap. Each Dwelling Unit must have at least two exterior lights illuminating the garage door openings, one exterior light for the front entryway(s). All driveways must be concrete and sized to accommodate at least two (2) passenger cars. Each Dwelling Unit shall include a garage sized to accommodate at least three (3) passenger cars and unless otherwise approved by the Architectural Control Committee shall be side entry only (meaning garage doors shall not face directly toward the public road adjacent to such Lot).

Section 5. Landscaping: Prior to occupancy of the Dwelling Unit located thereon, each Lot shall be fully landscaped in the front yard with grass (rolled sod only), one (1) deciduous tree of at least two and one-half (2 1/2) inches caliper designated as a 'Street Tree' to be located in the front left-hand corner of each building lot (specie to be determined by ACC), and at least one (1) other deciduous tree of at least two and one-half (2 1/2) inches caliper and at least one (1) conifer tree at least eight (8) feet in height and eight (8) 2-gallon and four (4) 5-gallon shrubs or bushes as has been approved by the Architectural Control Committee. A fully automatic underground sprinkler system shall be installed throughout the landscaped areas of each Lot. As used herein, the front yard shall include that portion of each Lot to the side of the Dwelling Unit constructed thereon which is between the road from which access to the Lot is taken and the rear plane of the Dwelling Unit or a fence which extends from the side of the Dwelling Unit to the side lot line. Rear yard landscaping shall be completed within six (6) months of occupancy, weather permitting.

Section 6. Grading and Drainage: Each Owner shall be responsible to assure that the finished grade and elevation of his Lot is properly constructed so as to convey all water from sprinklers and storm runoff to the front of the Lot and into the street adjacent to the front yard (or in the case of a corner lot, the street adjacent to the side yard), and to prevent the migration or accumulation thereon of drainage waters from the Common Area or any other Lots within the Properties. Declarant recommends that a geological and soils test be completed on each Lot prior to commencement of construction of a Dwelling Unit thereon. The Declarant shall have no liability or responsibility for any damages which may be caused as a result of the failure of an Owner to comply with the provisions of this Section.

Section 7. Job Site Maintenance; Construction Hours: Job sites are to be kept clean during construction. All dirt, nails, gravel and other building materials must be removed from the street and sidewalk daily. Work vehicles shall not be parked in front of occupied houses, nor shall they block streets. Power and water must not be used from existing dwellings without the prior permission of the Owner. Dumpsters and portable toilets are the responsibility of the Owner or his contractor and shall be kept orderly at all times and emptied on a timely basis. All contractors and subcontractors shall be prohibited from keeping dogs at the job site. Each Owner shall be responsible to repair any damage to any road, mailbox, utility facility or other on-site or off-site improvement caused by the Owner or the Owner's agents or contractors during the construction of any improvements on the Owner's Lot. In the event an Owner or his contractor shall fail or refuse to comply with the job site maintenance requirements of this section, the Declarant or the Association may take such remedial action as it deems appropriate, including but not limited to the clean-up of the Properties, the costs of which may be added to and become a part of the assessment to which such Owner's Lot is subject. All exterior construction activities shall be limited to the hours between 7:00 a.m. and 7:00 p.m. Monday through Friday and 8:00 a.m. and 6:00 p.m. Saturday and Sunday.

Section 8. Exemption: The provisions of this Article shall not apply to the improvements existing as of the date of recordation hereof located on Lot 8, Block 6, for so long as the said improvements shall not be removed and replaced or substantially modified, in which event the provisions of this Article shall then and thereafter apply.

ARTICLE X: ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Declarant for so long as it owns any Lot and thereafter by the Board of Directors of the Association.

Section 2. Approvals Required: No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in

writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

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

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

A. Site Plan: A site plan showing the location of buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all setbacks and other pertinent information related to the improvements.

B. Building Plan: A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicate, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used. Garage, accessory and outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to style and exterior colors and shall not be higher than ten feet above the roof line of the principal building on the Lot.

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

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this

Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

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

Section 6. Variances: The Architectural Control Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Control Committee, and shall become effective upon recordation in the official records where this Declaration is recorded. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration 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 for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall it effect in any way the Owner's obligation to comply with all governmental laws and regulations effecting such Owner's use of the Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

Section 7. Waiver: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 8. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Homeowners Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 9. Certification by Secretary: The records of the Secretary of the Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Association showing that the plans and specifications for the improvement or other matters therein provided for

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

Section 10. Construction and Sales Period Exception: During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwelling Units; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarant shall have the right to select and use any individual Dwelling Units owned by it as models for sales purposes and may, by written authorization, permit other builders to use Dwelling Units owned by them as such models.

ARTICLE XI: INSURANCE AND BOND

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

A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

B. A comprehensive policy of public liability insurance covering all of the common areas, commercial spaces and public ways in the properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Dwelling Unit Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. If the properties contain

more than one hundred (100) Units, coverage shall be for at least \$1,000,000 per occurrence, for personal injury and/or property damage.

C. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

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

A. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.

B. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

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

A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.

B. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

C. All policies shall be written by a company licensed to write insurance in the state of Idaho.

D. Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal Home Loan Mortgage Corporation.

ARTICLE XII: CONDEMNATION

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

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

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

ARTICLE XIII: MORTGAGEE PROTECTION

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

A. The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.

B. The holders of First Mortgages shall have the right to examine the books and records of any Association and to require annual reports or other appropriate financial data.

C. Any management agreement for the Properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the contracting Association for cause upon thirty (30) days' written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.

D. Any lien which the Association may have on any Dwelling Unit for the payment of assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date notice of such assessment lien is duly recorded.

E. Unless all institutional holders of First Mortgages have given their prior written approval, no Association shall:

1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)

2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the maintenance of the Common Area property, party walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.
4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XIV: ANNEXATION

Section 1. Time for Annexation; Land Subject to Annexation: Declarant hereby reserves the right to annex any other real property into the Subdivision project described herein by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to the project created by this Declaration, pursuant to the provisions of this Article.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the project; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Lots within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

Section 2. Procedure for Annexation: Any such real property may be annexed into the project by the recordation of a Notice of Annexation executed by Declarant and containing the following information:

- A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of the County where this Declaration is recorded;
- B. An exact legal description of the added land;
- C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and
- D. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

Section 3. De-Annexation: Declarant may delete all or a portion of the property described in this Declaration and any annexed property from the Properties and from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all such property and provided that a notice of de-annexation is recorded in the official records of the County where this Declaration is recorded in the same manner as a notice of annexation. Members other than Declarant as described above, shall not be entitled to de-annex all or any portion of the Properties except on the favorable vote of all Members of the Association and approval of Declarant so long as Declarant owns any Lot, part, parcel or portion of the Properties.

ARTICLE XV: GENERAL PROVISIONS

Section 1. Enforcement: The Association or any Owner or the Owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In addition to the foregoing, the Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$100 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown on the records of the Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of Directors of the Association or by a Committee composed of not less than three (3) persons appointed by the Board of Directors. Such hearing shall be conducted in good faith and in a fair and reasonable manner. Any Owner challenging the monetary penalty imposed as provided herein, including any claim alleging defective notice, must commence legal action within one (1) year after the date of the imposition of the said penalty. Any monetary penalty imposed as provided herein shall become a part of the assessment to which such Owner's Lot is subject. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association or an Owner is required to initiate any action to enforce the provisions of this Declaration, it shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees and costs incurred as a consequence thereof, whether

or not any lawsuit is actually filed, and if such enforcement action is initiated by the Association, any such attorney fees and costs so incurred shall be added to and become a part of the assessment to which such Owner's Lot is subject.

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

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years; provided, however, that except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may, at any time, be amended or terminated by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of membership; and further provided that no amendment or modification of this Declaration shall be effective to amend, modify, replace, repeal or terminate any rights or easements reserved or granted to Declarant herein without the express written consent of Declarant; and further provided that Declarant may amend this Declaration at any time that Declarant owns any real property subject hereto. Any amendment must be recorded.

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

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Declarant has caused its name to be hereunto subscribed this
21st day of November, 2008.

DECLARANT:

Galiano, LLC

By: Edward J. Mason, manager
Edward J. Mason, Manager

Zillner:

Daniel B. Zillner
Daniel B. Zillner

Jana Lee Zillner
Jana Lee Zillner

