

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
ON
ONE SUBDIVISION

THIS DECLARATION is made effective on the 19 day of September, 1991, by Max A. Boesign, Inc. an Idaho Corporation hereinafter referred to as "Declarant."

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

ONE Subdivision, Phase 1, a portion of the SW ¼ of the SE ¼ of Section 2, Township 3 N., Range 1W, of the Boise Meridian, City of Meridian, Ada County, Idaho according to the official plat thereof recorded as Instrument No. **9152520**, records of Ada County.

NOW, THEREFORE, Grantor hereby declares that the Property and each Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, reservations, easements and restrictions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot, parcel or portion, thereof; shall insure to the benefit of every Lot, parcel or portion of the Property and interest therein, and shall insure to the benefit of and be binding upon Grantor, its successors in interest and each Grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest.

Notwithstanding the foregoing, no provision of this Declaration shall be constructed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Grantor's right to post signs incidental to construction, sales or leasing.

ARTICLE I

DEFINITIONS

- 1.1 "Articles" shall mean the Articles of Incorporation of the Association.
- 1.2 "Assessments" shall mean those payments required of Owners and Association Members including Regular, Special and Limited Assessments of the Association as further defined in this declaration.
- 1.3 "Association" shall mean and refer to CRYSTAL SPRINGS Homeowners' Association, Inc., an Idaho non-profit corporation, its successors and assigns.
- 1.4 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon the use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and Regulations, and procedural matters for use in the conduct of business of the Association.
- 1.5 "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.
- 1.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.
- 1.7 "Building Lot" shall mean and refer to any plot of land showing upon any recorded plat of the Property with the exception of Common Area.
- 1.8 "Bylaws" shall mean the bylaws of the Association.
- 1.9 "Committee" shall mean the Architectural Committee described in Article VI hereof.
- 1.10 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.
- 1.11 "Declaration" or "Supplemental Declaration" shall refer to this declaration as hereafter amended and supplemented from time to time.
- 1.12 "Declarant" shall mean and refer to Max A. Boesiger, Inc., an Idaho corporation, and its successors and assigns, if such successors and assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development and as part of such conveyance, the Declarant assigns and transfers to such transferee the Declarant's rights with respect to such Lots.
- 1.13 "Grantor" shall mean and refer to the Declarant.
- 1.14 "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 Property; including, but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, swimming pools and other recreational facilities and fixtures of any kind whatsoever.
- 1.15 "Lot" shall mean and refer to a Building Lot.
- 1.16 "Member" shall mean each person or entity holding a membership in the Association.

- 1.17 "Mortgage" shall mean and refer to any mortgage or deed to trust and "Mortgagee" shall refer to the mortgagee, or beneficiary under a deed of trust, and "Mortgagor" shall refer to the mortgagor, or grantor of a deed of trust.
- 1.18 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.19 "Plat" shall mean the recorded Plat of ONE SUBDIVISION #1 and the recorded Plat of any other Properties annexed hereto.
- 1.20 "Properties" or "Property" shall mean and refer to the real property hereinbefore described, and such additions thereto as may hereafter be annexed and brought within the coverage of this declaration as more particularly provided for herein.
- 1.21 "Set Back" means the minimum distance established by law between the dwelling unit or other structure referred to and a given street, road or Lot line.
- 1.22 "Unit" shall mean one residence which shall be situated upon a Lot.
- 1.23 "Screened" shall be defined as being concealed or made non-visible from eye level, at grade, at all points with the property.

ARTICLE II

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

- 2.1 **Land Use and Building Type.** No Lot shall be used except for residential purposes, and no Lot or the Common Area shall be used for the conduct of any trade or business or professional activity. Notwithstanding the forgoing, the Board may, in its' discretion and upon request by an Owner, allow an Owner to conduct a "garage sale" upon such Owner's Lot.

No improvements shall be erected, altered, placed or permitted to remain on any Lot other than one designed to accommodate no more than one (1) single-family residential dwelling.

- 2.1.1 **Size Limitations.** Split level and two (2) story Units shall have not less than 1400 square feet of interior floor area, exclusive of porches and garages. All other units shall have not less than 1300 square feet of interior floor area on the ground floor of the main structure, exclusive of porches and garages.
- 2.1.2 **Garages.** Each Unit constructed with the Property shall include at least a two (2) car, enclosed garage which is an integral part of the Unit structure.
- 2.1.3 **Roofing Materials.** The roof of each Unit may be constructed of asphalt shingles, or other material as may be approved by the Architectural Committee in writing.

- 2.2 **Architectural Control.** No improvements which will be visible above the ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered including without limitation, change of exterior colors or materials, on the Property, unless and until the building plans, specifications, and plot plan have been reviewed in advance by the Architectural Committee and the same have been approved by the Committee. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, exterior color and materials, physical or artistic conformity to the terrain and the other improvements on the Property which the Architectural Committee, in their reasonable discretion, deems relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout on design of buildings except to the extent incidentally necessitated by use and size requirements.

- 2.3 **Exterior Maintenance: Owner's Obligations.** No improvements, including mailboxes and landscaping, shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any improvement, including trees and 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, or damage to Property or facilities on or adjoining their Lot which would otherwise be the Associations' responsibility to maintain, the Board, upon fifteen (15) days prior written notice to the Owner of said Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein. The Owner of the offending Lot shall be personally liable, and his 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 added to the amounts payable by such Owners as Regular Assessments.

Each Owner shall have the remedial rights set forth herein if the Association fails to exercise its rights within a reasonable time following written notice.

In the event the improvements on any Lot shall suffer damage or destruction from any cause, the Owner thereof shall undertake the repair. Restoration or reconstruction thereof within ninety (90) days of such damage or destruction. If after ninety (90) days of the repair, restoration or reconstruction of such damage or destroyed improvements have not taken place, the Association, upon fifteen (15) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon Owners Lot for the purpose of doing so and such Owner shall bear all costs incurred by the Association, a lien shall be applied to the Lot.

- 2.4 **Improvements Location.** No improvements shall be constructed in violation of set-back requirements established by law, or by this Declaration as set forth on the recorded plat of the Subdivision.
- 2.5 **Nuisances.** No noxious or offensive activity, including without limitation, those creating an offensive odor, shall be carried on upon any Lot or the Common Area nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- 2.6 **Temporary Structures.** No improvements of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time as a residence either temporarily or permanently.
- 2.7 **Signs.** No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by a builder or the Declarant to advertise the Property during the construction and sales period.
- 2.8 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.
- 2.9 **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other household pets may be kept provided that the are not kept, bred or maintained for any commercial purpose and provided that the keeper of such pets complies with all city, and county laws, rules and regulations. No dog runs or kennels shall be permitted to be kept or placed within five (5) feet of a set-back line where applicable. Dog runs or kennels shall only be permitted to be placed and maintained to the rear of dwellings and in no event shall such structure be visible from a street. All such kennels or facilities shall comply with all applicable laws and rules.
- 2.10 **Garbage and Refuse Disposal.** No rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on the Property except trash kept and maintained with the interior of a Unit in sanitary containers. All such material shall only be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, neat and sanitary condition.
- 2.11 **Water Supply.** No individual domestic water supply system shall be permitted on any Lot.
- 2.12 **Sewage Disposal.** No individual sewage disposal system shall be permitted on any Lot. All Lots shall be subject to the following sewer requirements of the City of Meridian:
- 2.12.1 A monthly sewer charge must be paid after connecting to the City of Meridian public sewer system, according to the ordinances and laws of the City.
- 2.12.2 Each Owner shall submit to inspection by the Department of Public Works, the Department of Building, or other Department whenever a subdivided Lot is to be connected to the sewage system constructed and installed on and within its Property.
- 2.12.3 The applicant/Owner of this subdivision, or Lot or Lots therein, shall and hereby does vest in the City of Meridian the right and power to bring all actions against the Owner of the premises hereby conveyed or part thereof for the collection of any charges herein stated.

- 2.13 **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Property lines and a line connecting them at points (30) feet from the intersection of the street lines, or in the case of a rounded Property corner from the intersection of the street Property lines extended. The same sight-line limitation shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of driveway or alley street property line with the edge of driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- 2.14 **Declarant's Right.** Declarant reserves the right to construct residences and other improvements upon any Lot and to offer the same with completed structures thereon for sale to individual Owners.
- 2.15 **Boats, Campers, and Other Vehicles.** No boats, trailers, tractors, recreational vehicles, (i.e., any trailers, campers, motorhomes, automobile campers or similar vehicle or equipment) dilapidated, unrepaired or unsightly vehicles, or similar equipment, motorcycles, snowmobiles, trucks (working or non-working) greater than three-quarter (3/4) of a ton in size shall regularly or as a matter of practice be parked or stored on any portion of the Property (including streets and driveways) unless enclosed by a structure or screened from view in a manner approved, in writing, by the Architectural Committee.
- Notwithstanding the foregoing, any boat, camper trailer or recreational vehicle which is in good repair and working order which does not exceed the following dimensions may be stored on the side yard of Lot between front and rear yard set-backs if screened by a six foot (6') fence; eight feet (8') wide, twenty-seven (27) feet long and ten (10) feet high. Provided, however, such storage may not be located adjacent to the street on a corner Lot.
- 2.16 **Bathrooms.** All bathrooms, sink and toilet facilities shall be inside residence buildings and shall be connected by underground pipes directly with the sewer.
- 2.17 **Antennae.** No television antennae, satellite receivers, or radio aerials shall be installed on the Property, other than within the interior of a Unit.
- 2.18 **Hazardous Activities.** No activity shall be conducted on or in any Unit, Lot or Common Area which is or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon said Property; no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit while attended and in use for cooking purposes, or with a safe and well-designed interior fireplace, (except such picnic fires in portions of said common Areas designed for such use **or**) except such controlled and attended fires required for clearing or maintenance of land.
- 2.19 **Unsightly Articles.** No unsightly articles shall be permitted to remain on any Lot or Common Area as to be visible from any other portion of the Property. Without limiting the foregoing, no clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other portion of the Property. No lumber, grass, shrub or tree clippings or plant waste, compost piles, metals, building or other materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view as approved, in writing, by the Architectural committee.
- 2.20 **Light, Sound – General.** No light shall be emitted from any Lot or from Common Area which light is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Lot or Common Area which is unreasonably loud or annoying, and no odors shall be emitted on any property which are noxious or offensive to others.
- 2.21 **Construction.** During the course of actual construction of any permanent improvements, the restrictions contained in this Declaration and any supplemental declarations shall be deemed waived to

the extent necessary to permit such construction, provided that during the course of such construction nothing shall be done which will result in a violation of these restrictions upon completion of construction and all construction shall be diligently prosecuted to completion, continuously and without delays.

- 2.22 **Re-Construction.** In any case where it is necessary to reconstruct a Unit or any improvement in the Common Area, said re-construction shall be prosecuted diligently, continuously and without delays from time of commencing thereof until such structure is fully completed and painted, unless prevented by causes beyond control and only for such time that such causes continue.
- 2.23 **Maintenance and Repair.** In the event the improvements on any Lot shall suffer damage or destruction from any cause, the Owner thereof shall undertake the repair, restoration and reconstruction thereof within ninety (90) days of such damage or destruction.
- 2.24 **Fences.** All fences shall be of vertical cedar design and construction. No chain-link fences, grape stake fences or fences of basket-weave design shall be allowed. Side fences on corner lots may extend only from the rear Lot line to rear line of the residence.
- 2.25 **Plat Conditions.** All covenants, conditions and restrictions and other matters set forth on all Plats are hereby incorporated by reference and notice is hereby given to the same.
- 2.26 **Front and Side Yards.** The front yard of each Lot and the side yard of any Lot which is adjacent to a street must be planted with sod within twenty-one (21) days of substantial completion, or occupancy, whichever shall first occur, or as soon thereafter as the weather permits. All remaining portions of the yard area of each Lot must be planted with sod, seeded and/or landscaped, within six (6) months of occupancy of the Unit. The failure of the Owner to timely comply with this paragraph shall constitute a failure to perform exterior maintenance and the Association and/or the Grantor shall have all rights and remedies provided in Section 2.3, or any other provision of this Declaration.
- 2.27 **No Dumping.** No excavation material, grass or yard clippings, rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on any vacant or unimproved Lot, without the prior written Approval of the Declarant or the Architectural Committee. The Owner of any Lot who dumps such material shall be liable for the cleanup and/or removal costs.

ARTICLE III

PROPERTY RIGHTS

- 3.1 **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions.
- 3.1.1 The Association has the right to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid.
- 3.1.2 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 on by the members. Such dedication or transfer shall be effective upon the recording of an appropriate instrument executed by the President and Secretary of the Association and upon which said officers affirm that the transfer or dedication was approved by the Owners of a majority of the Lots.
- 3.2 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants or contract purchasers who reside on the property.
- 3.3 **Damages.** Each Owner shall be liable for any damage to such Common Areas or other property owned or maintained by the Association which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, tenants 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 charged as a limited cost of correcting such damage shall be charged as a limited assessment against the Owner and his Lot and may be collected as provided herein for the collection of other assessments.

ARTICLE IV

CRYSTAL SPRINGS HOMEOWNER'S ASSOCIATION

- 4.1 **Organization of Association.** The Crystal Springs Homeowners Association ("Association") is an Idaho Corporation formed under the provisions of the Idaho Non-Profit Corporations Act and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and the Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 4.2 **Membership.** Each Owner of a Lot subject to this Declaration (including the Declarant) 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, except as hereinafter set forth with respect to voting. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the Lot owned by such Owner. The memberships 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 membership transfer shall be void and will not be reflected on the books of the Association.
- 4.3 **Voting.** The Association will have two (2) classes of voting memberships.
- 4.3.1 **Class A.** Class A members shall be the Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 (1) vote be cast with respect to any Lot.
- 4.3.2 **Class B.** The Class B member shall be the Declarant. Upon the recording hereof, Declarant shall be entitled to three votes for each Lot of which Declarant is the Owner. The class B membership shall cease and be converted to Class A membership on January 1, 2000, or when the Declarant no longer owns any Lots whichever event shall first occur.
- 4.4 **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, Bylaws, and this Declaration as the same may be amended and supplemented from time to time.
- 4.5 **Powers and Duties of the Association.**
- 4.5.1 **Powers.** The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Common Area and the performance of the other responsibilities herein assigned, including without limitation.
- 4.5.1.1 **Assessments.** The power to levy assessments (Annual, Special and Limited) on the Owners of Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.

- 4.5.1.2 **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto; to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration of the Articles or the Bylaws, including the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions hereof.
- 4.5.1.3 **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. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power to delegated.
- 4.5.1.4 **Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules, and regulations as the Association deems reasonable and which are consistent with this Declaration (the Association Rules). The Association rules shall govern the use of the Common Area by the Owners, families of the Owners, or by an invitee, licensee, lessee or contract purchaser of any Owner; provided, however, that the Association rules may not discriminate among Owners and shall not be inconsistent with this Declaration the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery and posting, said Association rules shall have the same force and effect as if they where set forth in and are a part of this Declaration. In the event of any conflict between such Association rules shall be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.
- 4.5.1.5 **Emergency Powers.** The Association or any person authorized by the Association may enter upon any 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 Owners as practicable and any damage caused thereby shall be repaired by the Association.
- 4.5.1.6 **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation of the health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
- 4.5.1.6.1 Underground lines, cables, wires, conduits and other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes;
- 4.5.1.6.2 Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and
- 4.5.1.6.3 Any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years after the death of the individuals executing this declaration, on behalf of the Declarant, and their issue who are in being as of the date hereof.

- 4.5.2 **Duties of the Association.** In addition to power delegated to it by the Articles, without limiting the generality thereof, the Association or its 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:
- 4.5.2.1.1 **Operation and Maintenance of Common Area.** Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area including the repair and replacement of property damaged or destroyed by casualty loss and other property acquired by the Association.
- 4.5.2.2 **Maintenance and Management of Sight Retention Ponds.** Provide the management for proper operation and maintenance of the storm drain retention ponds. Along the nine-mile drain ditch, including weed control and maintenance of any pipe outside the jurisdiction of the Ada County Highway District's maintenance practices.
- 4.5.2.3 **Taxes and Assessments.** Pay all real and personal property taxes and assessments separately levied against the Common Area owned and managed 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. In addition, the Association shall pay all other taxes, federal, state to local, including income to corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- 4.5.2.4 **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area and the property owned or managed by it.
- 4.5.2.5 **Insurance.** Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance.
- 4.5.2.5.1 Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area or their property owned or managed by it. Limits of liability of such coverage shall be as follows: not less than Five Hundred Thousand Dollars (\$500,000) per person and Five Hundred Thousand Dollars (\$500,000) Per occurrence with respect to personal injury or death, and property damage.
- 4.5.2.5.2 Full coverage directors and officers liability insurance with a limit of Two Hundred Fifty Thousand Dollars (\$250,000), if the Board so elects.
- 4.5.2.5.3 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 functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or their person charged with the management or possession of any Association funds or other property.
- 4.5.2.5.4 The Association shall be deemed trustee of the interests of all Members of the Association in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.

- 4.5.2.5.5 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.
- 4.5.2.5.6 Notwithstanding any other provision herein, the Association shall continuously maintain in effect such other additional casualty, flood and liability insurance as the Board deems necessary or appropriate.
- 4.5.2.6 **Rule Making.** Make, establish, promulgate, amend and repeal the Association rules.
- 4.5.2.7 **Architectural Committee.** Appoint and remove members of the committee, all subject to the provisions of this Declaration.
- 4.5.2.8 **Drainage Systems.** Operate, maintain, repair and replace, all drainage systems located within the property and shown on the Plat which are not maintained by public authorities.
- 4.5.2.9 **Right-of-Way Maintenance.** Maintain, repair replace the landscaped berm, including the sprinkler system installed thereon, and the fence located on Cherry Lane or any other public right-of-way adjacent to the Property and such other landscaping located within public right-of-way as the Board deems necessary to appropriate.
- 4.5.2.10 **Irrigation Maintenance.** Maintain, repair and replace all irrigation lines or channels located on or serving this subdivision, and to pay all maintenance and construction fees of any Irrigation District with respect to the Property, which amounts shall be assessed against each Lot as provided herein.
- 4.5.2.11 **Street Lights.** Maintain, repair and replace street lights within the Property to the extent such street lights are not operated, maintained, repaired and replaced by the Highway District or other governmental entity, which has jurisdiction of such matters.
- 4.5.2.12 **Subdivision Approval Responsibilities.** Perform all continuing duties and responsibilities imposed upon the Grantor pursuant to any governmental approvals relating to the Property including, without limitation, those set forth in the preliminary plat approval for the Subdivision.
- 4.6 **Personal Liability.** No member of the Board or any committee of the Association or the Architectural Committee or any officer of the Association, or the Declarant, or the manager, if any, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Architectural Committee, any other committee or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

ARTICLE V
COVENANT FOR MAINTENANCE AND ASSESSMENTS

5.1 **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association;

5.1.1 Annual regular assessments or charges.

5.1.2 Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and

5.1.3 Limited assessments as hereinafter provided.

The Regular, Special and Limited assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 **Purpose of Assessments.**

5.2.1 **Regular Assessments.** The regular assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, to pay property taxes and other assessments, to pay the annual assessments of any irrigation district and to pay such other reasonable costs and expenses which are incurred by the Association in carrying out the duties, and business of the Association.

5.2.2 **Special Assessments for Capital Improvement.** In addition to the annual regular assessments authorized above, 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, costs and expenses of the Association which exceed the regular assessments or the costs and expenses of any construction, reconstruction, repair or replacements of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall be approved by a two-thirds (2/3) vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Additionally, upon the sale of each Lot by Grantor, the purchaser shall pay a one-time special assessment of Thirty and no/100 Dollars (\$30.00) per Lot. Such special assessment shall be paid on or before the date of recordation of the deed from Grantor to the purchaser. Grantor, as agent for the Association, shall be entitled to collect this one-time special assessment at the closing of the Lot sale. This one-time special assessment shall be used to defray organizational cost for the Association and general costs of operation.

5.2.3 **Limited Assessments.** The limited assessments may be levied against any owner in an amount equal to the costs and expenses incurred by the Association, including legal fees for corrective action necessitated by such Owner, without limitation, costs and expenses incurred for the repair and replacement of the Common Area or other property owned or maintained by the Association, damaged by negligent or willful acts of any Owner or occupant of a Lot who is occupying the Lot with the consent of the such Owner, or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein.

- 5.2.4 **Special Assessment for Irrigation Systems.** Declarant shall, within twelve (12) months of the recording of this declaration, complete installation of dry lines throughout the Project to serve as a water delivery system for pressurized irrigation systems for ultimate delivery of irrigation water to each Lot. Upon the completion of the installation of said dry lines by Declarant and upon that adoption by the City of Meridian of standards and residential subdivisions, an appropriate diversion, pump and such other equipment or improvements as are in accordance with that standards and specifications adopted by the City of Meridian shall be constructed, installed and completed by the Association. The Association shall levy, by action of its Board of Directors, a Special Assessment for Irrigation System, in a total amount adequate to pay for such equipment, improvements and construction. Each Lot in the Project shall pay an equal portion of that assessment.
- 5.3 **Maximum Annual Regular Assessment.** The initial maximum annual regular assessment to be assessed by the Association, shall be Thirty and No/100 Dollars (\$30.00) per Lot per year.
- 5.3.1 The maximum annual assessment may be increased by the Board each year by not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership of the Association as provided below.
- 5.3.2 The maximum annual assessment may be increased above ten percent (10%) by two-thirds (2/3) vote of each class of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- 5.3.3 The Board of Directors of the Association may fix the amount of the annual assessment at an amount not in excess of the maximum as established from time to time.
- 5.3.4 The total annual regular assessment, levied against the Lots owned by the Declarant, shall be the lessor of (a) the amount of the regular assessment per Lot multiplied by the number of lots owned by the Declarant or (b) the difference between the total annual assessment levied against lots owned by the other parties, other than the Declarant, and the reasonable expenditure of the Association for the purposes described in Section 5.2.1 for the fiscal year.
- 5.4 **Notice and Quorum for any Action Authorized Under Sections 5.2.2 and 5.3.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3 and 5.4 shall be sent to all members not less than ten days (10) nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 5.5 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual or other basis as determined by the Association from time to time.
- 5.6 **Date of Commencement of Annual Assessments – Due Dates.** The annual regular assessments or any special assessments then in effect as provided for herein shall commence as to a Lot or Lots on the first day of the first year following the conveyance of the Lot or Lots from Declarant to an Owner or Owners. 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. 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.

- 5.7 **Effective of Non-payment of Assessments – Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date on a rate of twenty-one percent (21%) per annum or at the highest rate allowed by law if such rate is less than 21%. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of common Area or abandonment of his Lot.
- 5.8 **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 payment which become due prior to such sale or transfer by shall not extinguish personal liability. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

ARCHITECTURAL COMMITTEE

6.1 **Members of the Committee.** The Architectural Committee for the Property, sometimes referred to as the “Committee” shall consist of three (3) members. The following persons are hereby designed by Declarant as the initial members of the Committee for the Property:

<u>Name</u>	<u>Address</u>
Max A Boesiger, Jr	1399 East Monterey Drive Boise, Idaho 83706
Richard D. Boesiger	131 Williams Boise, Idaho 83706
John W. Holland	4720 West Emerald Street Boise, Idaho 83706

Each of said persons shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause.

6.2 **Right of Appointment and Removal.** At any time, Grantor is the Owner of at least one (1) of the Lots, Grantor shall have the right to appoint and remove all members of the Committee. Thereafter, the Board of Directors of the Association shall have the power to appoint and remove all members of the Committee. Members of the Committee may be removed at any time, without cause.

6.3 **Review of Proposed Construction.** The Committee shall consider and act upon any and all proposals of plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Association, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or their written designation consistent with this Declaration, which types of improvements shall be submitted to the Committee for review and approval. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

6.3.1 **Conditions on Approval.** The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same (“Applicant”) to grant appropriate easements to an Association for the maintenance thereof, upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, or upon all three, any may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

6.3.2 **Committee Rules and Fees.** The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approval, or additional factors which it will take into

consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed One Hundred Dollars (\$100.00) Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

- 6.3.3 **Detailed Plans.** The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.
- 6.3.4 **Committee Decisions.** Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within seven (7) days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the committee shall have been mailed to the Applicant within seven (7) days after the date of the filing of said materials with the Committee. The said seven (7) day period shall only commence to run when an authorized representative of the Committee has executed an application form acknowledging acceptance of such application and acknowledging that such application is complete.
- 6.4 **Meetings of the Committee.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but not need be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to section 6.9. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the committee.
- 6.5 **No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.
- 6.6 **Compensation of Members.** The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Board.
- 6.7 **Inspection of work.** Inspection of work and correction of defects therein shall proceed as follows:
 - 6.7.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Committee.
 - 6.7.2 Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance with such sixty (60) day period, specifying the particular **non-compliance**, and shall require the Owner to remedy the same.

- 6.7.3 If for any reason the Committee fails to notify the Owner of any **non-compliance** within sixty (60) days after receipt of the written notice of compliance from the Owner, the improvement shall be deemed to be in accordance with the approved plans.
- 6.8 **Non Liability of Committee Members.** Neither the Committee nor any member thereof, nor its duly authorized Committee representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result in the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.
- 6.9 **Variances.** The Committee may authorize variances from compliance with any of the architectural provision of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstruction, 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 Committee, and shall become effective upon recordation in the Office of the County Recorder of Ada County. If such variances are granted, no violation of the Restrictions contained in this Declaration or any Supplemental 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 or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

- 7.1 **Annexation.** Declarant presently intends to develop other neighboring properties and may, in Declarant's discretion, deem it desirable to annex some or all such other properties to the property covered by this Declaration. The annexed properties may, at Declarant's sole discretion, be used and developed for any purpose allowed under appropriate zoning regulations. Such other properties may be annexed to the Property and brought within the provisions of this Declaration by Declarant, its successors or assign, at any time, and from time to time, without the approval of an Owner, the Association or its Board of Directors provided that the FHA and the VA, or the HUD representatives thereof, determines that the annexation is in accordance with the general plan heretofore approved by them. As such properties are developed, Declarant shall, with respect thereto, record a Supplemental Declaration which shall annex such properties to the Property and which may supplement this Declaration with such additional or different covenants, conditions, restrictions, reservations and easements as Declarant, and FHA and VA, or the HUD representatives thereof, may deem appropriate for the other properties or portions thereof and may delete or eliminate as to such other properties such covenants, conditions, restrictions, reservations and easements as are continues herein which Declarant and FHA and VA, or the HUD representative thereof, deem not appropriate for the other properties.
- 7.2 **Additional Properties.** Subject to the provisions of Section 7.1 above, upon the recording of a Supplemental Declaration as to other properties containing the provisions as set forth in this Section, all provisions contained in this Declaration shall apply to the added properties in the same manner as if it were originally covered by this Declaration, subject to such modification, changes and deletions as specifically provided in such Supplemental Declaration. The Grantees of Lots located in the other properties shall share in the payment of assessments to the Association as provided herein from and after the recordation of the first deed of a Lot within the added properties from Declarant to an individual purchaser thereof.
- 7.3 **Procedures for Annexation.** The additions authorized under Section 7.1 above, shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the other properties or portion thereof, which shall be executed by Declarant or the Owner thereof and shall extend the general plan and scheme of this Declaration. The filing of record of said Supplemental Declaration shall constitute and effectuate the annexation of the other properties or portion thereof described therein, and thereupon said other properties or portion thereof shall become and constitute a part of the properties, become subject to this Declaration and encompassed within the general plans and scheme of covenants, conditions, restrictions, reservations and easements and equitable servitudes contained herein as modified by such Supplemental Declaration for such other properties or portion thereof, and become subject to the functions, powers and jurisdiction of the Association. Such Supplemental Declaration may contain such additions, modifications or declarations of the covenants, conditions, restrictions, reservations or easements and equitable servitudes contained in this Declaration as may be deemed by Declarant and FHA and VA, or the HUD representatives thereof, desirable to reflect the different character, if any, of the other properties or portions thereof or as Declarant and FHA and VA, or the HUD representative thereof, may deem appropriate in the development of the properties or portion thereof.

ARTICLE VIII

EASEMENTS

- 8.1 **Maintenance and Use Easement Between Walls and Property Lines.** The Association or owner of any lot shall hereby be granted an easement of 5' width on the adjoining properties for the purpose of maintenance of fence and/or landscaping so long as such use does not cause damage to any structure or fence.
- 8.2 **Other Maintenance Easements.** Easements for installations and maintenance of utilities and drainage facilities are reserved as shown on the record plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement **are** of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for these improvements for which a public authority or utility company is responsible. A further easements is hereby reserved in favor of the Association for access to and maintenance of any irrigation facilities serving the Common Area.

ARTICLE IX

GENERAL PROVISIONS

- 9.1 **Enforcement.** The Association or any Owner, shall have the right to enforce, by the proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- 9.2 **Severity.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

- 9.3 **Interpretation.** The terms, covenants and conditions hereof are to be read and interpreted consistently and in a manner to protect and promote Property values.

- 9.4 **Term and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by seventy-five percent (75%) of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. This Declaration may be amended, restated, replaced, terminated or superseded during the first twenty (20) year period by an instrument signed by the President and Secretary of the Association affirming that such amendment was approved by two-thirds (2/3) of the Owners of the Lots covered by this Declaration or by an instrument signed by two-thirds (2/3) of the Lot Owners; provided, however, that if Grantor is still the Owner of any Lots the provisions of Article VI may not be amended without the written consent and vote of the Grantor.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of _____, 1991.

Max A. Boesiger, Inc.,
an Idaho Corporation

By _____
Max A. Boesiger Jr. Pres.

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 1991, before me the undersigned, a Notary Public in and for said State, personally appeared MAX A. BOESIGER, INC., the person who executed the instrument on 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 this certificate first above written.

Notary Public for Idaho
Residing at Boise, Idaho

My commission Expires: _____