

MASTER DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BOULDER POINT SUBDIVISION

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THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR Boulder Point Subdivision is made effective as of the ____ day of _____, 2019, by M3 ID Boulder Heights, LLC, an Arizona limited liability company (“**Grantor**” and “**Class B Member**”).

ARTICLE I: RECITALS

Property Covered. The property subject to this Declaration is located in the County of Ada, State of Idaho, and is more particularly described in **Exhibit A** attached hereto and made a part hereof (the “**Property**”). Should Grantor choose, in its sole discretion, to develop the Property in stages or phases, Grantor, in its sole discretion, may amend or supplement this Declaration to add additional Property.

Purpose of Declaration. Boulder Point Subdivision is a residential development, which Grantor currently intends to develop into several unique residential neighborhoods. The Property may contain parcels of Common Area. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions, plans and equitable servitudes (collectively, the “**Restrictions**”) that will apply to the entire development and use of all portions of the Property. The Restrictions are designed to preserve the Property’s value, desirability and attractiveness, and to guarantee adequate maintenance of the Common Areas, and the Improvements located thereon.

ARTICLE II: DECLARATION

2.1 Declaration. 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, 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, 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 inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor’s successors in interest and each grantee or Owner and such grantee’s or Owner’s respective successors in interest, and may be enforced by Grantor, by any Owner or such Owner’s successors in interest, or by the Association.

Notwithstanding the foregoing, until one hundred percent (100%) of the Property is transferred by Grantor, no provision of this Declaration shall be construed as to prevent or limit Grantor’s right to complete development of Property, including any subdivision or re-subdivision 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, including the Common Areas or any public right-of-way, nor Grantor’s right to post signs incidental to construction, sales or leasing.

Phased Development; Consent. Owner acknowledges that the development of the Property will be phased over time and construction activities will occur on the Property throughout the development process. Additional phases of the Subdivision may be identified by Supplemental Declaration in connection with the recordation of each applicable Plat. Owner

recognizes that the development of the Property and creation of phases may change from time to time in the Declarant's discretion, and no Owner shall object to, interfere with or otherwise impede the development of any remaining portion of the Property, or any additional land annexed to the Property or the Subdivision. Each Owner's agreement not to object to or oppose the development of the Subdivision is a material consideration to the conveyance of any portion of the Property by the Declarant to such Owner.

Each Owner, by acquiring any Building Lot, recognizes and agrees that there are certain risks associated with construction, grading, and development in sloped areas. By acquiring a Building Lot, each Owner, for itself and its successors and assigns, hereby represents that such Owner has had the opportunity to conduct any and all due diligence deemed necessary by such Owner and associated with the preparation of a Building Lot, including, without limitation: review of grading and compaction of such Building Lot; review of geotechnical studies; and evaluation of the overall fitness and capacity of a Building Lot to accept residential improvements on such Building Lot. Any and all site preparation in connection with any Building Lot is provided on an as-is, where-is basis without representation or warranty of any kind. By acquiring a Building Lot, each Owner hereby waives any and all claims associated with the construction, grading, and development of any Building Lot in the Subdivision.

ARTICLE III: DEFINITIONS

^{3.1} "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee established by Grantor pursuant to Article VI hereof.

^{3.2} "Architectural Guidelines" shall mean the architectural design guidelines and rules promulgated, published, amended, and/or supplemented from time to time pursuant to this Declaration.

^{3.3} "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

^{3.4} "Assessments" shall mean those payments required of Owners and Association Members.

^{3.5} "Association" shall mean Boulder Point Subdivision Homeowners' Association, Inc., a non-profit corporation organized or to be organized under the laws of the State of Idaho, its successors and assigns.

^{3.6} "Association Rules" shall mean those rules and regulations that the Association may issue from time to time governing conduct within the Subdivision, including imposition of fines for violation of said rules. The Association Rules may, among other things, also identify procedural matters for use in the conduct of the business of the Association.

^{3.7} "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

^{3.8} "Building Lot" shall mean and refer to any plot of land showing upon any recorded plat of the Property. The term "Building Lot" shall not include Common Area but may include condominium units to the extent that any are located on the Property.

"Bylaws" shall mean the Bylaws of the Association.

"Boulder Point Subdivision" shall mean the Property.

"Class B Member Termination Date" shall mean the date on which: (a) Grantor no longer owns any Building Lot or any other portion of the Property; and (b) Grantor informs the Board in writing that Class B Member status is terminated.

3.10 "Common Areas" shall mean all real property (including all the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. Common Area may include, without limitation, parcels designated as common landscaped areas, irrigation facilities, private streets or drives, parking areas or drives, common open space, park areas, Association facilities (including storage and maintenance facilities), homeowner recreation facilities, and other amenities and facilities. Common Area shall be owned and maintained by the Association, or its assigns and may include easement and/or license rights. Common Area may be established from time to time by the Declarant by describing such area on a recorded Plat, by granting or reserving Common Area in a deed or other instrument, or by designating Common Area as such in this Declaration or any Supplemental Declaration.

"County" shall mean Ada County, Idaho.

3.13 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Boulder Point Subdivision, as it may be amended from time to time.

3.15 "Grantor" shall mean M3 ID Boulder Heights, LLC, an Arizona limited liability company, and any successor in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by M3 ID Boulder Heights, LLC or its successor, but excluding transfers to individual Building Lot Owners by Grantor.

3.16 "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, street lights, mail boxes, electrical lines, pipes, pumps, ditches, ponds, and fixtures of any kind whatsoever. Improvement(s) include(s) both original improvements existing on the Property on the date hereof and all alter changes and improvements.

"Limited Assessment" shall mean a charge against a particular Owner, and such Owner's Building Lot, directly attributable to such Owner, equal to the cost incurred by an Association in connection with corrective action performed pursuant to the provisions of this Declaration, including, without limitation, damage to any Common Area, or the failure of an Owner to keep such Owner's Building Lot and/or Improvements in proper repair, and including interest thereon as provided in this Declaration.

"Member" shall mean each Owner holding a membership in the Association.

"Occupant" shall mean any resident or occupant of a Building Lot, including, without limitation, the Owner, family members, guests, invitees, and/or tenants.

“Owner” shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

“Person” shall mean any individual, partnership, corporation, trust, or other legal entity.

“Plat” shall mean any subdivision plat authorized by Grantor and covering any portion of the Property as recorded at the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof.

3.22 “Project Documents” shall mean this Declaration, any Supplemental Declarations, the Articles and Bylaws, Association Rules, and documents promulgated by the ACC, including ACC Architectural Guidelines, in accordance with Article VI.

3.23 “Property” shall mean the real property described on Exhibit A, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such real property, and including such additions thereto as may hereafter be annexed and brought within the coverage of this Declaration as more particularly provided for herein.

3.25 “Regular Assessment” shall mean the portion of the cost of maintaining, improving, repairing, managing and/or operating the Common Areas and all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of an Association, which is to be levied against the Property of and paid by each Owner to the Association, pursuant to the terms hereof or the terms of this Declaration.

3.26 “Setbacks” shall mean the minimum distance established by law or the Architectural Guidelines between the dwelling unit or other structure referred to and a given street, road, or Building Lot line.

3.27 “Special Assessment” shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to Association, pursuant to the provisions of this Declaration.

3.29 “Subdivision” shall have the same meaning as Property.

“Supplemental Declaration” shall mean any supplemental declaration including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Property. Grantor shall have the right to unilaterally annex future phases into the Association by means of Supplemental Declaration.

ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

Prior Plan Approval. Except for Improvements made by Grantor, no Improvements of any kind shall be placed or permitted to remain upon any part of the Property including, without limitation, a Building Lot, unless a written request for approval has been approved by the Board or the ACC or a person so designated by the Board to approve the

same. Any such written request for approval shall include all plans, specifications, landscaping plans, and exterior color scheme for the proposed Improvements.

Improvements – Generally. All Improvements are to be designed, constructed and used in such a manner as to promote compatibility between the types of use contemplated by this Declaration, and are subject to review by the ACC in accordance with Article VI, any ACC Architectural Guidelines promulgated by Grantor or the ACC in accordance with Article VI, and the following limitations:

4.2

Use, Size and Height of Dwelling Structure. All Building Lots identified on the Plat shall be improved with a single-family dwelling unit or structure of frame, stone or brick construction. No single-family structure shall have a floor area of less than 2,500 square feet, exclusive of garages, patios, breezeways, storage rooms, porches, covered patios, and similar structures. **Additional Setbacks and building height restrictions shall be as set forth in the Architectural Guidelines.**

4.3.1 Roofs. Roof materials and pitch shall be as set forth in the Architectural Guidelines.

4.3.2 Garages. Each dwelling shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) standard size automobiles. No carports shall be allowed.

4.3.3 Accessory Structures. Improvements consisting of detached accessory structures shall be allowed if in conformity with the provisions of this Declaration, and as approved by the ACC, as provided more fully in Article VI below. There shall be no metal storage nor wood storage attachments to any dwelling unit except as approved by the ACC. Garages, storage sheds attached to the residential structure, patio covers, and guest homes, shall be constructed of, and roofed with, the same materials, and with similar colors and design, as the residential structure on the applicable Building Lot.

4.3.4 Fencing. No fence shall be allowed except as approved by the ACC in accordance with the Architectural Guidelines. Fencing, where permitted, will be limited to rear and side yard lot boundaries that do not extend beyond the front of a residence. Prior to the construction of any fence, plans shall be submitted to and approved in writing by the ACC. The submittal shall locate the fence on the lot's site plan and shall designate the type and height of fence, and otherwise comply with the fencing restrictions set forth in this section. If yard fencing is not proposed in connection with construction of the residence, any subsequent application, if approved, shall require that the fence construction time period be limited to a specified thirty (30) day period. All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Building Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs. No fence or wall shall interfere with the use and enjoyment of any easement shown on the Plat. No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Building Lots and streets, and shall not be allowed if the same constitute an undesirable, noxious or nuisance effect upon neighboring Building Lots.

4.3.5 Exterior of Dwelling Structure. The visual harmony and aesthetic appeal of the structures on the Building Lots being of mutual concern to all Owners and having a direct

bearing on the value of Building Lots and Improvements thereon, the ACC shall have the right to control the texture, design and color scheme of the outside walls, fences, roofs and patio roofs of all structures erected upon Building Lots, and to require landscaping. No change shall be made in the color of paint, stain, or other exterior finish to a dwelling unit or structure without prior written approval by the ACC.

4.3.6 Lighting. Exterior lighting fixtures that can be seen from the streets, common area, or neighboring Building Lots must be of an indirect type. The use of shielded luminaries is encouraged. Lighting shall be further subject to the requirements of Boise City and the Architectural Guidelines.

4.3.7 Location on Building Lot. Unless otherwise specifically approved in writing by the ACC, all structures (exclusive of fences and similar structures) shall be placed within the building Setbacks for each Building Lot. All utility facilities and/or systems used in connection with a Building Lot shall be placed underground.

4.3.8 Completion of Construction. Once any Owner of a Building Lot shall have commenced the construction of a dwelling unit or structure in compliance with the restrictions herein, such construction shall be completed within one (1) year thereafter. The term "commenced the construction" as used in this subparagraph 4.1.5 shall mean the start of actual physical construction activities upon such dwelling unit or structure upon such Building Lot.

4.4 Landscaping. The initial Owner of a Building Lot shall submit a landscape plan which must be approved by the ACC and shall install the minimum landscaping provided in such approved plans and identified in the Architectural Guidelines then promulgated by the ACC and in accordance with this Section 4.4. Prior to completion of the landscape plan, Owner shall control weeds and maintain the property in a clean and safe condition, free of debris or any hazardous condition. Each Owner is responsible for irrigating and mowing all grass along road right-of-ways that border such Owner's Building Lot. All trees located on common Building Lot lines shall be the joint responsibility of the adjoining Building Lot owners.

It is the requirement of the City of Boise that Grantor and Owners limit the localized infiltration of irrigation water into the near surface soils so as not to destabilize cut and fill areas within the development. In order to implement that requirement, a community pressurized irrigation system is not permitted, irrigated landscaping on slopes steeper than thirty percent (30%) is prohibited, and irrigated landscaping will be confined to less than fifty five percent (55%) of the Lot area (excluding any Common Areas). The ACC will review all landscaping plans for conformance with these requirements and the Architectural Guidelines adopted by the ACC from time to time. The initial Owner of each Building Lot shall install an automatic sprinkler system and landscape the Building Lot in conformance with the landscape plan submitted by the Owner and approved by the ACC. All landscaping shall be completed within nine (9) months of occupancy or substantial completion of a residential dwelling on a Building Lot, whichever is earlier. Prior to construction of Improvements, the Owner shall control weeds and maintain the Owner's property in a clean and safe condition free of debris or any hazardous condition.

Owners shall ensure that landscaping installed on a Building Lot is wildlife friendly. As a result, species harmful to wildlife, including non-native yew plants and arbor vitae, are prohibited.

Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. Any building or structure that is vacant and unoccupied shall be kept locked and the windows glazed to prevent entrance by vandals. Vacant structures and unimproved Building Lots shall not be exempt from the provisions of this Declaration. 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, overgrown, weed-infested, unsightly or unattractive condition, or damages property or facilities on or adjoining their Building Lot which would otherwise be the Associations' responsibility to maintain, the Board 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 such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association, as the case may be, 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 in Article VIII of this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due.

Excavation. No excavation for stone, sand, gravel, earth or minerals shall be made upon a Building Lot unless such excavation is necessary in connection with the construction of an approved structure thereon. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in or under a Building Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or under any Building Lot. No derrick or other structure design for use in boring for oil or nature gas shall be erected, maintained or permitted upon any Building Lot.

4.7 Antennae. No exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be erected or maintained on the Property unless it is located or screened in a manner acceptable to the ACC.

4.8 No Temporary Structures. No house trailer, mobile home, tent (other than for short term individual or visitor use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property.

Boats, Campers and Other Vehicles. No dilapidated or unrepaired and unsightly vehicles or similar equipment, as determined in the reasonable discretion of the Board, shall be placed upon any portion of the Property (including, without limitation, streets, parking areas and driveways) unless the same are concealed from view in a manner approved by the ACC and using, without limitation, fencing and/or landscaping. Further, no boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles or bicycles shall be stored in the area between the front plane of a dwelling unit on a Building Lot and any street. No motor homes, motor coaches, campers, trailers, snowmobiles, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (including any vehicle that has not been driven under its own propulsion for a period of three (3) days or longer), oversized vehicles (including any vehicles too high or too wide to clear the entrance of an approved residential garage door opening), snow removal equipment, garden maintenance equipment, and any other potentially unsightly machinery and equipment shall be placed upon any portion of the Property, including, without limitation, streets and driveways, unless the same are enclosed by a structure or approved fence concealing them from view in a manner approved by the ACC or Board. The Board or its

agent may remove any vehicles in violation of this section at any time and charge a Limited Assessment in doing so in accordance with Section 8.6 hereof.

Unightly Articles; Nuisances. All Building Lots shall be managed and maintained so as to prevent any accumulation of junk, emissions, construction, hazardous materials, and utilities. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure appropriately screened from view, except when necessarily placed for pick-up by garbage removal services. Vacant Building Lots are to be kept in clean natural state. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. No building materials of any kind shall be placed or stored on a Building Lot until the Owner of such Building Lot or such Owner's builder is ready and able to commence construction.

No Hazardous Activities. No activities shall be conducted on the Property, and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property.

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

4.13 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property unless the presence of such creatures does not constitute a nuisance. Chronic dog barking shall be considered a nuisance. This paragraph 4.11 does not apply to the keeping of up to two (2) domesticated dogs, up to two (2) domesticated cats, and other household pets which do not unreasonably bother or constitute a nuisance to others, provided such animals are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Building Lot. Consistent and/or chronic barking by dogs or similar sounds by other household pets shall be considered a nuisance. Owners shall clean up any animal defecation or other debris immediately from any Common Area or public right-of-way. Failure to do so may result in a Limited Assessment in accordance with this Declaration and the Association Rules. Dog runs must receive ACC approval and shall be appropriately screened, maintained in a sanitary condition, placed a minimum of ten (10) feet from the side and rear Building Lot lines, screened from view from any Common Area or Building Lot, and shall not be placed in any front yard of a Building Lot.

See, in addition, provisions regarding wildlife in Section 15.11 hereof.

Trade or Business. All Building Lots shall be used for single-family residential purposes and such uses as are customarily incidental thereto. Trade or business may be conducted in and from any Building Lot by an Owner or Occupant so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from

the exterior of the dwelling on the Building Lot; (b) the business activity conforms to all zoning requirements; (c) no signs relating to said business activity are displayed where visible from any location with the Subdivision; (d) the business activity does not increase the liability or casualty insurance obligations or premiums of the Association; and (e) the business activity does not constitute a nuisance, hazardous, or offensive use, as may be determined in the sole discretion of the Board.

No Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are unsafe or hazardous to any Person or portion of the Property. Nothing shall be done or kept on the Property and/or on any Building Lot that will increase the rate of, or cancel any insurance on any other portion of the Property. No blasting, mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, sand, gravel, or earth shall be allowed on the Property. The foregoing shall not prohibit exploratory drilling or coring necessary to construct Improvements.

Drainage Pattern. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by Declarant and/or the Board, the City of Boise, and the Ada County Highway District ("ACHD"). For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by Declarant and/or the Board and/or ACHD, which may include drainage from Common Area over, any Building Lot in the Property.

4.17 Grading and Drainage Requirements. A site plan indicating the proposed grading and drainage of a Building Lot must be approved by the ACC before any construction is initiated. Building Lot grading shall be kept to a minimum and buildings are to be located for preservation of the existing grades, berms or swales which should be an integral part of the grade design. **Owners shall be responsible to review a surface drainage run-off plan with the ACC and any local government having jurisdiction prior to construction, including Boise City. Owners are particularly directed to review the requirements of the Boise City Hillside and Foothills Areas Development ordinances, as the same may be amended from time to time. ACC review of such surface drainage and grading plans shall not be construed as an engineering approval or warranty of design and any liability associated therewith shall reside solely with the applicable Owner. Owners are advised that additional hillside applications may be required by Boise City and other local governments with jurisdiction in connection with individual Building Lot grading. Owners are advised that no construction, grading, filling, clearing, or excavation of any kind may be initiated until the Owner has received approval of such surface runoff drainage design plan from Boise City or any other local government with jurisdiction. All drawings submitted to any local government and the ACC shall include specific soil conditions and revegetation requirements. Owners shall minimize soil disturbance between December 1 and April 15. Owners are responsible to file an NOI with the EPA, if applicable. Water from a Building Lot shall not drain or flow into adjacent streets, Building Lots, or Common Areas and shall be retained on-site. Each Owner shall refrain from using irrigation water that flows onto adjacent streets, Building Lots, or Common Area.**

Water Supply Systems. No individual domestic water supply system shall be permitted on any Building Lot.

Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Building Lot to the City of Boise Sewer System and pay all charges assessed therewith. Any Lot requiring an individual sewage pump system shall not have an onsite storage capacity greater than 150 gallons.

4.19

Driveway and Roadway Construction Requirements. All access driveways shall be constructed in accordance with the ACC Architectural Guidelines.

Signs. No sign of any kind shall be displayed to the public view without the approval of the ACC except: (1) such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots; (2) such signs identifying Boulder Point Subdivision, or informational signs, of customary and reasonable dimensions as prescribed by the ACC may be displayed on or from the Common Areas; (3) one (1) sign of customary and reasonable dimensions as prescribed by the ACC as may be displayed by an Owner other than Grantor on or from a Building Lot advertising the residence for sale or lease; and (4) any sign required by the County of Ada. A customary "for sale" or "for lease" sign not more than three (3) feet by two (2) feet shall not require ACC approval. No sign shall be placed on Common Area lots without the written approval of the ACC.

Insurance Rates. Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance on any property owned or managed by the Association or which would be in violation of any law.

4.22

Exemption of Grantor. Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements with respect to Common Areas to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales lease or otherwise. Grantor need not seek or obtain ACC approval of any Improvements constructed or placed within the Property by Grantor, but this particular exception shall not apply to building(s) or structure(s) constructed by Grantor on a Building Lot owned by Grantor. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property, by an express written assignment recorded in the Office of the Ada County Recorder.

Each Owner, by acceptance of a deed to a Building Lot, agrees that such Owner shall not object to or oppose any development of any portion of the Property, or other property owned or purchased by Grantor and annexed to the Property and made subject to this Declaration. Such agreement not to oppose development is a material consideration to the conveyance of any portion of the Property by Grantor to any and all Persons.

Adoption of Rules. The Association, through its Board of Directors, may adopt and amend from time to time Association Rules not inconsistent with this Declaration relating to the use of the Common Areas and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners.

4.24

Pathways. The Property will contain certain pathways that are accessible by Owners and certain pathways that will be accessible by Owners and the general public. Each Owner acknowledges that members of the public may use identified pathways and that Grantor and the Association (as applicable) will have access to maintain, operate, and repair such pathways, the use of which will be subject to Association Rules controlling access.

No Other Recordation. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Grantor's review and written consent, which consent may be withheld by Grantor in its sole and absolute discretion. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Grantor. This section may not be amended without the written consent of Grantor. The rights contained in this section shall terminate upon the Class B Member Termination Date.

4.27

Governmental Approvals. All Lots shall be used and developed, and all construction shall be carried out thereon in accordance with all governmental approvals, including but not limited to the provisions of any permits and approvals issued by the City of Boise.

4.28

Rock Outcroppings. The alteration, defacing, or physical encroachment on any significant surface rock outcropping that changes the appearance and natural condition thereof shall be prohibited unless otherwise approved in writing by the Board. No rock may be removed from any Building Lot or Common Area without the prior written approval of the Board.

5.1

ARTICLE V: THE ASSOCIATION

Organization of The Association. The Association shall be initially organized by Grantor as an Idaho non-profit corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the

transfer of Owner's title in such Owner's Building Lot and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

Meetings of Association. Each year the Association shall hold at least one meeting of the Members, according to the schedule for such meetings established by the Bylaws; provided, that such meeting shall occur no earlier than April 1 and no later than July 31 each year. Only Members shall be entitled to attend Association meetings, and all other persons may be excluded. Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, and any person in possession of a Building Lot, not less than ten (10) days nor more than thirty (30) days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board. The presence at any meeting in person of the Class B Member where there is such a Member, and, after the Class B Member Termination Date, the presence of the Class A Members representing Owners holding at least thirty percent (30%) of the total votes of all Class A Members, shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was scheduled. At any such meeting properly called, the presence of any Member shall constitute a quorum.

Voting. Voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own, or attributable to the Building Lots owned by Grantor. The number of votes any Member may cast on any issue is determined by the number of Building Lots which the Member, including Grantor, owns. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Building Lot. For voting purposes, the Association shall have two (2) classes of Members as described below:

5.4.1 Class A Members. Owners other than Grantor (prior to the Class B Member Termination Date, as defined in Section 5.4.2) shall be known as "Class A Members." Each Class A Member shall be entitled to cast one (1) vote for each Building Lot owned by such Class A Member on the day of the vote.

5.4.2 Class B Member. Grantor shall be known as the "Class B Member," and shall be entitled to fifty (50) votes for each Building Lot owned by such Class B Member on the day of the vote. The Class B Member shall cease to be a voting Member in the Association on the Class B Member Termination Date. Grantor may assign and transfer its Class B Member status and associated voting rights to a successor in title to any portion of the Property by means of a writing recorded in the records of Ada County, Idaho.

Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Building Lot concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Building

Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

Board of Directors and Officers. The affairs of the Association shall be conducted and managed by a Board of Directors (“Board”) and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Association may exercise any right or privilege given to the Association expressly by this Declaration and the Project Documents, or as reasonably implied from or reasonably necessary to effectuate any such right or privilege.

Power and Duties of the Association.

5.6.1 Powers. The Association shall have all the powers of a corporation organized under the general 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. The Association 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 Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Areas and the Association’s other assets, including water rights when and if received from Grantor, and affairs and the performance of the other responsibilities herein assigned, including without limitation:

5.6.1.1 Assessments. The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

5.6.1.2 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 who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws.

5.6.1.4 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager for the maintenance, repair, replacement and operation of any Common Area. The Association and the members of the Association shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.6.1.3 Emergency Powers. The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) 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 the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

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 Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.6.1.5.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals-for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services; and

5.6.1.5.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

5.6.1.5.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose.

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 issue of the individuals executing this Declaration on behalf of Grantor who are in being as of the date hereof.

5.6.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by this Declaration, and the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

5.6.2.1

Operation and Maintenance of Common Areas and ACHD Storm Water Retention Ponds. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Areas. Provide all "light" maintenance of the storm water retention ponds located on Lot 1, Block 11 and Lot 1, Block 13 of the plat of Boulder Heights Estates Subdivision No. 8, as specified in the Operation and Maintenance Manual for said facilities.

Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Areas or against the Association and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state or local taxes, including income or corporate taxes levied against the Association, in the event that the Association is denied the status of a tax exempt corporation.

Water and Other Utilities. Acquire, provide and/or pay for necessary services for maintenance of the Common Areas, and to manage for the benefit of the Association all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

5.6.2.3 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance:

5.6.2.4 5.6.2.4.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Areas.

5.6.2.4.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas. Limits of liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage.

5.6.2.4.3 Such other insurance, including motor vehicle insurance and Worker'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 other person charged with the management or possession of any Association funds or other property.

5.6.2.4.4 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith.

5.6.2.4.5 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

5.6.2.4.6 Each Owner may obtain insurance at such Owner's own expense providing coverage upon such Owner's Building Lot, such Owner's personal property, for such Owner's personal liability, and covering such other risks as such Owner may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the

Association obtains pursuant to this article. All such insurance shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation. Proceeds of such insurance claims shall be paid to the owner of the Building Lot and/or the mortgagee in connection with such Building Lot.

Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or Bylaws, including, without limitation, the recordation of any claim of ~~5.6.5~~ with the Ada County Recorder, as more fully provided herein.

Personal Liability. No Member of the Board, or member of any committee of the Association, including the ACC, or any officer of the Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any ^{5.7} 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, Grantor, or any committee, or any officer of the Association, or Grantor, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional misconduct.

^{5.8} Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and copies shall be distributed to each Member of the Association as follows:

5.8.1 Budget/Projected Operating Statement. A projected operating statement or budget, for each fiscal year shall be distributed not less than sixty (60) days before the beginning of each fiscal year. The operating statement projected for the ensuing fiscal year shall include a schedule of Assessments received and receivable, identified by the Building Lot number and the name of the person or entity assigned.

5.8.2 Balance Sheet. Within thirty (30) days after the close of each fiscal year, the Association shall cause to be prepared a balance sheet as of the last day of the Association's fiscal year, and will deliver such Balance Sheet to each Owner within ninety (90) days after the end of each fiscal year.

5.8.3 Operating Statement. Within thirty (30) days after the close of each fiscal year, the Association shall cause to be prepared an annual operating statement reflecting the income and expenditures of the Association. Copies of the balance sheet and operating statement shall be distributed to each Member within ninety (90) days after the end of each fiscal year.

5.8.4 Audit. The Corporation will provide an audited statement for the preceding fiscal year if the holder, insurer or guarantor of any first mortgage that is secured by a Building Lot submits a written request for it; such holder, insurer or guarantor shall pay the reasonable cost of such audit. A copy of each audit shall be delivered to each Member within thirty (30) days after the completion of such audit.

Manager. The Association may employ or contract for the services of a professional manager or management company, provided that no such management or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association upon thirty (30) days' notice, with or without cause, and without payment of a termination fee. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.

Rules Regarding Inspections of Books and Records. The membership register, books of account and minutes of meetings of the Board and Committees of the Association shall be made available for inspection and copying by any Owner of the Association or by such Owner's duly appointed representatives, at any reasonable times designated by the Association and for purposes reasonably related to such Owner's interest as a member of the Association. No Owner or any other Person shall copy the membership register for the purposes of solicitation of or direct mailing to any Owner. The Board shall establish reasonable rules with respect to: (a) notice to be given to the custodians of the records by the Person's desiring to make the inspection; (b) hours and days of the week when such inspection may be made; and (c) payment of the cost of re-producing copies of documents requested pursuant to this Article.

Variance Authority. The Board shall have the authority to grant one-time variances of otherwise applicable restrictions contained in this Declaration. If such variances are granted, no violation of the 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 property and particular provision covered by the granted variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of such Owner's Building Lot, including but not limited to zoning ordinances and Building Lot set-back lines or requirements imposed by any governmental or municipal authority.

6.1

ARTICLE VI: ARCHITECTURAL CONTROL

ACC. In order to protect the quality and value of all homes built on the Property, and for the continued protection of the Owners thereof, an ACC, initially consisting of three (3) individuals appointed by Grantor, is hereby established. The ACC shall have exclusive jurisdiction over all original construction on any portion of the Property existing or annexed at a future date. Until one hundred percent (100%) of the Property has been developed and conveyed to Owners other than builders, Grantor retains the right to appoint all members of the ACC, who shall serve at Grantor's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Grantor. Initially the Grantor and ultimately the ACC shall have the power to promulgate the Architectural Guidelines relating to the planning, construction, alteration, modification, removal or destruction of the Improvements within the Property deemed necessary or desirable by the Grantor or the ACC, as the case may be, to carry out the purposes of this Declaration. The ACC Architectural Guidelines shall be consistent with the provisions of this Declaration. The ACC Architectural Guidelines may contain provisions not limited to Architectural Guidelines, exterior finishes and colors, roofing materials, fences, landscaping, exterior lighting, mailboxes and the like. They may also include policies, procedures and rules, which in the discretion of the ACC are

reasonable to maintain a quality subdivision and to protect property values. The Building Lot owner shall review and be familiar with the current ACC Architectural Guidelines, copies of which are available from the Grantor.

Approval by Committee Required. No building, fence, wall, patio cover, window awning or other Improvement shall be commenced, erected, or maintained upon any Building Lot, Common Areas or other portion of the Property, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, location of the same, color, and such other detail as the ACC may require shall have been submitted to and approved in writing by the ACC. A single-family dwelling unit or structure should take into consideration the Building Lot frontage and the potential for side-lot access for the garage, which side-lot garage access shall be encouraged where appropriate. In the event the ACC fails to approve or disapprove such plans, specifications and location within thirty (30) days after said plans and specifications have been submitted to it in such form as may be required by the ACC, in writing, approval will not be required, and this Article will be deemed to have been fully complied with.

ACC Representative. The ACC may appoint in writing one (1) of its members to act as its designated representative (the "**Committee Representative**"). The Committee Representative may be delegated all duties and obligations of the ACC. In the event a Committee Representative is appointed, it is intended that the ACC shall look to the Committee Representative to perform all functions of the ACC; provided, however, the ACC shall make all final determinations and decisions regarding all duties and obligations of the ACC. Any action or decision made by a majority of the members of the ACC shall be a binding decision of the entire ACC.

6.4 Review of Proposed Construction. The ACC 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, including the inspection of construction in progress to assure its conformance with plans approved by the ACC. 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 ACC to review and approval. The ACC 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.

Conditions of Approval. The ACC 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.

Committee Rules. The ACC 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.

ACC Fee Assessment. The Architectural Committee shall require a fee to accompany each application for approval of any plans and specifications for improvements to be constructed on a Building Lot, 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, as further set forth in the Architectural Guidelines. Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

Detailed Plans. The ACC 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, colored renderings, and descriptions or samples of exterior material colors, as further specified in the Architectural Guidelines. Until receipt by the ACC of any required plans and specifications, the ACC may postpone review of any plan submitted for approval.

Form of ACC Decisions. Decisions of the ACC and the reasons therefor shall be transmitted by the ACC to the Applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the ACC. In the event no decision is provided within such time period, such applications shall be deemed denied in accordance with the procedures set forth in the Architectural Guidelines.

Meetings of the ACC; Voting. The ACC shall meet from time to time as necessary to perform its duties hereunder. Unless a Committee Representative is appointed in accordance with Section 6.3 hereof, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the ACC taken without a meeting, shall constitute an act of the committee.

6.11 No Waiver of Future Approvals. The approval of the ACC 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 ACC, 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.

6.12 Compensation of Members. The members of the ACC 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.

Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

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 ACC.

Within sixty (60) days thereafter, the ACC or its duly authorized representative may inspect such improvement. If the ACC 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 noncompliance, and shall require the Owner to remedy the same.

If for any reason the ACC fails to notify the Owner of any noncompliance 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.

Non-Liability of ACC Members. Neither the ACC nor any member thereof, nor its duly authorized ACC 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 ACC'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 ACC 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 ACC 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.

Variances. The ACC may authorize variances from compliance with any of the architectural provisions 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 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 ACC, 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 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 Building Lot set-back lines or requirements imposed by any governmental or municipal authority.

Enforcement. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or ACC, such offending Owner shall, at such Owner's own cost and expense, remove such Improvement AND restore the Building Lot to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Building Lot, remove the violation, and restore the Building Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Building Lot and collected as a Limited Assessment. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration and the ACC Architectural Guidelines may be excluded by the Board from the Property. In such event, neither the Association, nor its officers, nor its directors shall be held liable to any Person for exercising the rights granted hereunder. In addition to the foregoing, the Association shall have

the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Declaration and the decisions of the ACC.

Grantor's Exemption. Any and all Improvements constructed by Grantor on or to the Property are not subject to review and approval by the ACC.

ARTICLE VII: RIGHTS TO COMMON AREAS

6.17 Use of Common Areas. Every Owner shall have a right to use each parcel of the Common Areas, which right shall be appurtenant to and shall pass with the title to every Building Lot, subject to the following provisions:

7.1 The right of the Association holding or controlling the Common Areas to levy and increase Assessments;

The right of the Association to suspend the voting rights and rights to use of, except for the right of an Owner to ingress and egress to such Owner's Building Lot, or interest in, Common Areas by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid;

The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be permitted by the Articles and Bylaws and agreed to by the Members. No dedication or transfer of said Common Areas shall be effective unless an instrument agreeing to such dedication or transfer signed by Members representing two-thirds (2/3) of each class of Members has been recorded;

The right of the Association to prohibit the construction of structures or Improvements on the Common Areas;

The right of the Association to suspend any Member's voting rights and/or right to use any of the recreational facilities owned by the Association, for any period during which any assessments against said Member's property remains unpaid, and for a period not to exceed thirty (30) days for each infraction of its published rules and regulations;

The right of the Association to limit the number of Members permitted to use the Common Areas, or a portion thereof, at any one time; and

7.2 The right of the Association to publish reasonable rules and regulations governing the use of the Common Areas.

Stormdrain Facilities. Certain storm drain facilities are located on Lot 1, Block 11 and Lot 1, Block 13 of the plat of Boulder Heights Estates Subdivision No. 8. The Association shall provide "light" maintenance of such storm drain facilities in accordance with the operations and maintenance manual approved by ACHD from time to time and on file with the Association. The cost of such maintenance may be subject to repayment as part of a Regular or Special Assessment. Damage to such stormdrain facilities may be subject the Owner who causes such damages (directly or through such Owner's invitees or family members) to a Limited Assessment to defray the costs of repair.

Designation of Common Areas. Grantor shall designate and reserve the Common Areas in this Declaration, and/or recorded Plats, deeds or other instruments and/or as otherwise provided herein.

Delegation of Right to Use. Any Owner may delegate, in accordance with the respective Bylaws of the Association such Owner's right of enjoyment to the Common Areas, to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot.

7.4 Damages. Each Owner shall be fully liable for any damage to any Common Areas which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Building Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments. No Owner shall be liable for any amounts greater than is legally allowable under Idaho law.

ARTICLE VIII: ASSESSMENTS

Covenant to Pay Assessments. By acceptance of a deed to any property in the Subdivision, each Owner of such property hereby covenants and agrees to pay when due all Regular, Special, and Limited Assessments (collectively, "**Assessments**") or charges made by the Association against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

8.1.1 Assessment Constitutes Liens. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

8.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.

Capitalization of Association. Upon acquisition of record title to a Building Lot by the first owner thereof other than Grantor, a contribution shall be made by the Owner to the working capital of the Association in an amount equal to Five Hundred and No/100 Dollars (\$500.00). Upon any subsequent transfer of record title to a Building Lot, a contribution shall be made by the Owner to the working capital of the Association in an amount equal to Five Hundred and No/100 Dollars (\$500.00). These amounts shall be in addition to, not in lieu of, the annual Regular Assessment and shall not be considered an advance payment of such Assessment.

Exempt Property. The following property shall be exempt from payment of Regular and Special Assessments: (a) all Common Area; (b) any property dedicated to and

accepted by any governmental authority or public utility; and (c) all Building Lots owned by Grantor (collectively, the “**Exempt Property**”).

Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

8.4.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorney’s fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all Improvements located on such areas owned and/or managed and maintained by the Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Areas, or other property of the Association that must be replaced and maintained on a regular basis (collectively “**Expenses**”).

8.4.2 Computation of Regular Assessments. The initial Regular Assessments charged by the Association shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per quarter. The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute the amount of Regular Assessments owed beginning the first day of the third month following the month in which the closing of the first sale of a Building Lot occurred in the Subdivision for the purposes of the Association’s Regular Assessment (“**Initiation Date**”). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be adjusted by an amount which fairly reflects the fact that such period was less than one year.

8.4.3 Amounts Paid by Owners. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner, including Grantor, for any given fiscal year shall be computed by multiplying the Association’s total advance estimate of Expenses by the fraction produced by dividing the Building Lots attributable to the Owner by the total number of Building Lots in the Property.

Special Assessments.

8.5.2 Purpose and Procedure. In the event that the Board shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Areas, attorney fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross Expenses of the Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of the Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

8.5.3 Consistent Basis of Assessments. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for such Association.

Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, a Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for the Subdivision.

8.6

8.6.1 Enforcement Requirements. Notwithstanding anything to the contrary contained in the Declaration, no Limited Assessments may be imposed upon an Owner for a violation of the terms of the Declaration by an Owner unless the following requirements are complied with by the Board: (i) A majority vote by the Board shall be required prior to imposing any Limited Assessment on an Owner for a violation of any covenants and restrictions pursuant to the rules and regulations of the Association; (ii) Written notice by personal service or certified mail of the meeting during which such vote is to be taken shall be made to the Owner at least thirty (30) days prior to the meeting; (iii) In the event the Owner begins resolving the violation prior to the meeting, no Limited Assessment shall be imposed so long as the Owner continues to address the violation in good faith until fully resolved; and (iv) No portion of any Limited Assessment may be used to increase the remuneration of any member of the Board or an agent of the Board.

8.6.2 Fine for Violation. The Board shall be entitled to impose a fine of \$10.00 per day or a maximum of \$900.00 total, as a Limited Assessment, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained in this Declaration, provided that the procedures in Section 8.6.1 are followed. At the Board's sole discretion, any such fine once levied may be subsequently removed on a case-by-case basis. Any monetary penalty imposed as provided herein shall be a Limited Assessment to which such Owner's Building Lot is subject, shall be in addition to any other Assessments levied by the Association pursuant to the provisions of this Declaration, and shall not be subject to any of the requirements, limitations or restrictions on the amount or uniformity of Assessments contained herein. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.7
8.8
Uniform Rate of Assessments. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Building Lot for all Members of the Association.

8.9
Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year in which the Initiation Date occurs. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in equal monthly or quarterly installments, as determined by the Board, as per paragraph 8.2.3 above.

Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular

Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each delinquent installment payment a late charge equal to five percent (5%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at ten percent (10%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees in collecting the same, and no Owner may exempt such Owner from such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owner's Building Lot.

Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 8.8 may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, shall be sent to all Members of the Association and to any person in possession of a Building Lot, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

9.1

ARTICLE IX: ENFORCEMENT OF ASSESSMENTS; LIENS

Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to paragraph 9.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

Assessment Liens.

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

9.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

9.3 Costs of Collection and Enforcement. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in the Declaration and agrees to the enforcement of all Assessments in the manner herein specified.

9.3.1 Late Payment. Any Regular, Special, or Limited Assessment not paid within thirty (30) days after the due date shall incur a late payment fee of Four Hundred Dollars (\$400.00), and shall bear interest from the due date at the rate of eighteen percent (18%) per annum or at the highest rate allowed by law if such rate is less than 18%. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or an action to foreclose the lien against such Building Lot in accordance with this Article.

9.3.2 Attorneys' Fees. In the event an attorney or attorneys are employed for the collection of any Regular, Special, or Limited Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to this Section to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Building Lot(s), and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in paragraph 9.6 with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

9.7

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

10.1

ARTICLE X: EASEMENTS

Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Areas adjacent thereto or as between adjacent Building Lots due to the unwillful placement or settling or shifting of the Improvements. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph 10.1.

Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots (consistent with Paragraph 4.12 above), and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Areas.

Drainage, Irrigation and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities, irrigation and drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property to a purchaser.

Improvement of Drainage, Irrigation and Utility Easement Areas. The Owners of Building Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage, irrigation or utility easement areas as shown on the Plat of Boulder Point Subdivision (all phases) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose; provided, however that the Owner of such Building Lots and Grantor, Association or designated entity with regard to the landscaping easement described in this Article X, shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the ACC, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Building Lot whose Improvements were so damaged.

Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefore, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

Whenever utility house connections are installed within the Property, which connections serve more than one Building Lot, the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Building Lot.

Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections, or with respect to the sharing of the cost therefore, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

ARTICLE XI: [intentionally omitted]

ARTICLE XII: DAMAGE OR DESTRUCTION

Damage to Common Area; Association as Attorney-in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on Common Area. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner that may be necessary or appropriate to exercise the powers granted herein to the Association as attorney-in-fact. In the event of damage to Common Area, the Association shall endeavor to repair such damage and shall employ amounts received from insurance proceeds or Special Assessments in order to do so.

12.2 Damage Affecting Building Lots. In the event of damage or destruction to the Improvements located on any Building Lot, the Owner thereof shall promptly repair and reconstruct to the condition prior to such damage or destruction. If such repair or reconstruction is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair or reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine in accordance with then-existing Association Rules and the procedures for Limited Assessments set forth herein. The Board shall be authorized to extend the foregoing timeframes for good cause, which may include circumstances beyond the Owners' control.

13.1

ARTICLE XIII: CONDEMNATION

13.2 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.

13.3

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

Apportionment. The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Building Lot basis. The appropriate 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 Building Lot. Each such account shall remain in the name of the

appropriate Association and shall be further identified by Building 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 liens or in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

ARTICLE XIV: DISPUTE RESOLUTION

Agreement to Avoid Litigation. All Owners agree to encourage the amicable resolution of disputes within the Property. Accordingly, all claims, grievances, or disputes by any Owner arising out of or relating to the interpretation, application, or enforcement of the Project Documents, or the rights, obligations, and duties of any Owner (collectively, the “**Claims**”), shall be subject to the provisions of this Article.

Mandatory Procedures. Any Owner having a Claim (a “**Claimant**”) shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until Claimant has: first, made every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation; and, second, if the parties do not resolve the Claim through negotiation, Claimant shall submit the Claim to mediation. If the good-faith results of negotiation and mediation are unsatisfactory, either party shall then be authorized to seek any remedy at law or in equity.

Costs of Resolving Claims. The Owner shall bear all of its own costs incurred prior^{14.3} to and during the proceedings described herein, including fees of attorneys or other representatives. Each party shall share equally all charges in connection with mediator(s).

ARTICLE XV: MISCELLANEOUS

15.1

Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2044, unless amended as herein provided. After December 31, 2044, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Members holding at least three-fourths (3/4) of the voting power of the Association and such written instrument is recorded with the Ada County Recorder. Further provided that the Association shall not be dissolved without the prior written approval of the City of Eagle and Ada County Highway District, such consent not to be unreasonably withheld provided that a responsible successor organization shall agree to perform those maintenance responsibilities arising from applicable city and county governmental requirements.

Amendment.

15.2.1 By Grantor. Until the Class B Member Termination Date, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, “amended” or an “amendment”) or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination.

15.2.2 By Owners. After the Class B Member Termination Date, and except where a greater percentage is required by express provision in this Declaration, any

amendment to the provisions of this Declaration, other than this Article XV, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than sixty-six percent (66%) of the votes in the Association, and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Article XV shall require the vote or written consent of Members holding ninety percent (90%) of the voting power of the Association.

15.2.3 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first deed of trust such Building Lot shall remain subject to this Declaration, as amended.

15.4 Annexation and Withdrawal of Property. Grantor may, in its discretion, at any time and from time to time, and without having to obtain the consent, approval, or signature of any Person or the Association, elect to remove any portion of the Property from (or annex additional real property to) the jurisdiction of this Declaration. In the case of de-annexed property, such property shall be considered de-annexed upon a notice duly recorded in the Ada County Recorder's Office stating that such de-annexed property has been removed from the jurisdiction of this Declaration.

15.5

Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be 15.6 changed from time to time by notice in writing to the Association, as provided in this paragraph 12.4.

Enforcement and Non-Waiver.

15.6.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Building Lot, or the Association, shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

15.6.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary

notwithstanding, only Grantor, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

15.6.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

15.6.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

15.6.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

15.6.6 Attorneys' Fees. In the event any suit or other proceeding is instituted by the Association to enforce any of the Project Documents, the prevailing party in such proceeding shall recover its costs and expenses incurred in connection therewith, as well as such amount as the court may determine to be reasonable as attorneys' fees as trial and upon any appeal or petition for review thereof.

15.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

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

15.7.2 Restrictions Severable. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

15.7.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

15.7.4 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

15.7.5 Presumption. The Association and the ACC shall be entitled to a presumption of validity in connection with any interpretation of this Declaration by either body.

Use of Trade Name. Each Owner, by acceptance of a deed for such Owner's Building Lot, shall be deemed to acknowledge that "Boulder Point" is or may become a service mark, trade name, and/or trademark of Grantor or its licensees, and to covenant that any such Owner shall not use the term "Boulder Point" without the prior written permission of Grantor.

Grantor grants to the Association a revocable, non-exclusive license to use the name "Boulder Point" for the sole purpose of identifying the Association.

Successors and Assigns. All references herein to Grantor, Owners, the Association or person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Association or person.

Mortgagees' Right to Satisfy Obligations of the Association. In the event that the Association fails to pay any debt or sum lawfully owed by it, for which a lien has been placed against the Common Areas, or in the event that the Association fails to pay premiums due on insurance policies required by this Declaration, the lapse of which would jeopardize a mortgagee's security in any Building Lot, such mortgagee may pay said premium after first having served five (5) days, written demand for such payment on the Association. In the event that the Association has allowed said insurance policies to lapse, any such mortgagee whose security in any Building Lot is jeopardized thereby may secure new comparable insurance coverage. In the event that such mortgagee makes payments allowed hereunder, it shall be entitled to prompt reimbursement from the Association.

Owners' Further Acknowledgments. By accepting a deed to any Building Lot(s) contained within the Property, each Owner acknowledges and agrees:

15.11

Owner has read and understands the Project Documents;

That certain portions of the Subdivision, including trails, may be utilized by the general public;

That in order to receive approval to develop the Subdivision, the Declarant was required to obtain approval from local governments with jurisdiction, including Boise City and/or Ada County, that through this process certain conditions of approval attached to the Subdivision, and that Owner understands and will abide by all such conditions;

That Owner has accepted title to the Building Lot(s) after conducting all necessary inquiries and due diligence, and that Owner takes such Building Lot(s) "AS IS, WHERE IS," without any express or implied warranty from Grantor;

That certain areas of the Subdivision are subject to the Boise City Hillside and Foothills ordinance requirements, as amended from time to time and that development approvals in such areas require approval by Boise City;

Certain areas of the Subdivision are located in the Boise City Wildland-Urban Fire Interface Overlay. The requirements of Boise City Code in connection with the wildland-urban fire interface (as the same may be from time to time amended) are hereby incorporated herein, including, without limitation, a requirement of thirty (30) feet of clear space around each structure. All Owners are required to comply with the approved fire prevention plan for the Subdivision on file with Boise City; and

There is wildlife habitat in the area of the Subdivision. Damage to landscaping from wildlife shall be the responsibility of each individual Building Lot owner and shall not be the responsibility of Grantor or any of its affiliates, the Association, the State of Idaho, or the County. Neither Grantor nor any of its affiliates, the Association, the County, nor the State of

Idaho will be liable for wildlife depredation. Hunting shall be prohibited within the Property. Artificial feeding of big game and non-game animals shall be prohibited; however, wild songbirds may be fed with Idaho Department of Fish and Game approved birdfeed and further provided that any feeding trays are routinely cleaned to prevent the spread of disease. Only such action as shall be approved by the Idaho Department of Fish and Game may be taken to protect landscaped areas from wildlife foraging, such as wrapping wire around trees, using Fish and Game approved repellants, or planting vegetation less desirable to wildlife. Planting of invasive plant species in natural open space areas is prohibited. The display and/or discharge of fireworks is prohibited.

Conflicts Between Documents. In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control. In case of conflict between this Declaration and the Architectural Guidelines, this Declaration shall control.

15.12

[end of text – signature on following page]

EXHIBIT A

Legal Description of Property