

B94-28336
94057102
94057102 3A

**DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MIDTOWN SQUARE SUBDIVISION**

This Declaration is made this 7th day of March, 1994, by **SR2 DEVELOPMENT COMPANY**, an Idaho corporation, hereinafter called "Grantor."

ORDER
1743000604
FEE 87.00 C. H. HANSEN
RECORD 1743000604

ARTICLE I: RECITALS

1.1 Real Property Description. Grantor is the owner of all that real property subdivided and contained in a subdivision know as Midtown Square Subdivision, a portion of Section 12, Township 3N., Range 1W., Meridian, Adz County Idaho, and sometimes referred to herein as "Midtown Square".

1.2 Development. Grantor proposes to develop said real property in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the City of Meridian, the County of Ada, and the State of Idaho.

1.3 Conditions. Any development plans for said real property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, in Grantor's sole discretion, and impose no obligations on Grantor as to how said real property is to be developed or improved. Any purchases of a lot within a Tract acknowledges that said lot is subject to the above-referenced zoning and subdivision ordinances and regulations and such other governmental ordinances and regulations, and approvals hereunder as may be in effect or as may from time to time be imposed. Said purchaser acknowledges familiarity with the same, constructively or otherwise.

1.4 Purpose. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that apply to said real property. The Restrictions are designed to preserve the value, desirability and attractiveness of said real property, to ensure a well-integrated, high-quality development, and to guarantee adequate maintenance of any common area and improvements located thereon in a cost effective and administratively efficient manner.

ARTICLE II: DECLARATION

Grantor hereby declares that those portions of said real property brought within the jurisdiction hereof as provided herein, 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 thereof, and to enhance the value, desirability and attractiveness thereof. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in said real property or any lot, parcel or portion thereof; 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's successors in interest, or by the Association, as hereinafter defined, against any other owner, tenant or occupant of said real property.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of said real property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities (temporary or otherwise) on any portion thereof, including any common area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing, nor Grantor's right to modify plans for said property.

ARTICLE III: DEFINITIONS

3.1 "Architectural Committee" shall mean the committee created by the Grantor or an Association pursuant to Article X hereof, and may be referred to herein as the "Committee".

3.2 "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

3.3 "Assessments" shall mean those payments required of Owners and Association Members, including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.

3.4 "Association" shall mean the Midtown Square Homeowners Association, an Idaho non-profit corporation, its successors and assigns, established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration.

3.5 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property under jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and Regulations, and procedural matters for use in the conduct of business of the Association.

3.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.7 "Building Lot" shall mean one or more lots within a Tract as specified or shown on any plat and/or by any Supplemental Declaration, upon which improvements may be constructed. With respect to Association voting rights, Building Lots shall also mean a lot so specified on any final plat or on any preliminary plat of the Property.

3.8 "Bylaws" shall mean the Bylaws of the Association.

3.9 "Common Area" shall mean all real property in which the Association holds an interest or which is held or maintained, permanently or temporarily, for the common use, enjoyment and benefit of the Owners. Common Area may be established from time to time by Grantor on any portion of the Property by describing it on a plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration or any Supplemental Declaration. Common Area may include easement and/or license rights, and includes the landscaped areas of Cherry Lane Center, and office park contiguous to Midtown Square.

3.10 "Declaration" shall mean this Declaration as it may be amended from time to time.

3.11 "Design Guidelines" shall mean the construction guidelines approved by the Architectural Committee.

3.12 "Grantor" shall mean SR2 Development Company, an Idaho corporation, or its

successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor or its successor.

3.13 "Improvements" 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, bicycle paths, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever.

3.14 "Limited Assessment" shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.

3.15 "Member" shall mean each person or entity holding a membership in the Association.

3.16 "Owner" shall mean the person or other legal entity, including Grantor, holding fee simple interest of record in Cherry Lane Center or 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.

3.17 "Person" shall mean any individual, partnership, corporation or other legal entity.

3.18 "Plat" shall mean any subdivision plat 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.

3.19 "Property" shall mean those portions of Midtown Square and Cherry Lane Center, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property, which are brought within the jurisdiction hereof. Additionally, Grantor, at its sole election, may withdraw any Tract of which Grantor is the sole Owner previously included within the provisions hereof upon recordation of a written declaration of de-annexation.

3.20 "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area and all improvements located thereon, and the other costs 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 or a Supplemental Declaration.

3.21 "Special Assessment" shall mean the portion of the cost 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 the Association, pursuant to the provisions of this Declaration or a Supplemental Declaration.

3.22 "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.

3.23 "Tract" shall mean a defined portion of the Property within which the contemplated development involves a common use or compatible uses, and which may have been designated as a Tract by this Declaration or a recorded Supplemental Declaration.

ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

4.1 Structures - Generally. All structures (except for sales offices or similar facilities of Grantor) are to be designed, constructed and used in such a manner as shall be compatible with this Declaration, and shall meet the following minimum standards:

4.1.1 Use, Size, Height and Construction of Dwelling Structure. All Building Lots shall be improved and used solely for residential use. No Building Lot shall be improved, except with a single family dwelling unit designed to accommodate no more than a single family and its servants and occasional guests, and such other improvements as are necessary or customarily incident to a single family residence. No business or home occupation shall be conducted from said dwelling unit or improvement. No dwelling unit shall be more than two stories in height. No other structure shall be more than one story in height unless approved in writing by the Architectural Committee. A basement or daylight basement shall not be counted as a story in determining compliance with this Section. The dwelling unit is also referred to herein as the dwelling or residential structure.

All dwelling structures shall be priced to the public at not less than \$125,000.00, and shall have floor area of not less than 1,650 square feet. These minimum floor areas shall be exclusive of garages, patios, breeze-ways, storage rooms, porches and similar areas.

All dwelling structures, and accessory structures, shall be constructed on site, unless otherwise specifically permitted in writing by the Architectural Committee. Modular or manufactured homes or houses shall not be permitted. Already constructed homes or houses shall not be permitted to be moved onto a Building Lot.

4.1.2 Architectural Committee Review. No improvements which will be visible above ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specifications and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: Size, height, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, physical or aesthetic impacts on other property, artistic conformity to the terrain and the other improvements on the Property, and any and all other factors which the Architectural Committee, in its reasonable discretion, may deem relevant.

The Architectural Committee shall be generally guided by the following:

(a) Roofing material may consist of wood shakes, asphalt shingles, tile, cement, slate, or other material approved by the Architectural Committee. Samples must be submitted and approved in writing by the Architectural Committee before installation.

(b) The Committee shall not approve flat roofs, zero roof overhangs, or exterior roof construction of tar paper, gravel or metal, unless such metal is painted or textured in such a manner as to be approved by the Committee.

(c) All metal flashings, chimney caps, roof jacks and other miscellaneous roof

metals shall be painted to blend with roof materials.

(d) Exterior colors shall be of a flat or semi-gloss type and shall be limited to subdued tones. Trimming of windows and doors in a contrasting color shall be encouraged. Colors shall be compatible with surrounding homes. Exterior colors must be approved in writing by the Committee prior to application.

(e) The Committee shall not approve any plans which contemplate visible construction with blocks of cement, cinder, pumice or similar materials, unless the same is faced on the outside with wood, stone, stucco or similar materials and approved in writing by the Committee.

(f) The Committee shall not approve any extreme, bizarre, or eccentric design or construction.

(g) Exterior surfaces are to be of hardboard, stucco or wood. There must be some brick, stone, or stucco applied to the exterior surface facing the street in an amount and style as approved by the Committee.

(h) Masonry wainscot is discouraged.

(i) Wood, white clad and bronze anodized metal are approved for windows, door frames, skylights and garden windows.

(j) Garage doors with windows shall not be approved.

(k) Utility meters are to be placed in an unobtrusive location and concealed behind fences where possible. Location shall be shown on the site plan.

(l) All gutters and downspouts are to be continuous and shall be colored to blend with the surface to which they are attached.

Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

4.1.3 Setbacks and Height. No residential or other structure (exclusive of fences and similar structures) shall be placed nearer to the Building Lot lines or built higher than permitted by the plat for the Tract in which the Building Lot is located, by any applicable zoning restriction, by any conditional use permit, or by a building envelope designated either by Grantor or the Architectural Committee, or as may be specified in this Declaration or any Supplemental Declaration, whichever is more restrictive. No such structure shall be located on any Building Lot nearer than twenty (20) feet to the front lot line or nearer than fifteen (15) feet to the rear lot line; on corner lots, the street side lot line set-back shall be at least twenty (20) feet. Single story dwelling structures shall be at least five (5) feet from the side lot lines; two story dwelling structures shall be at least ten (10) feet from any side lot line; provided, however that only the second story portion shall be required to be at least ten (10) feet from the side lot lines.

4.1.4 Accessory Structures. Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the Architectural Committee. Garages, detached storage sheds or storage sheds attached to the residential structure, patio

covers and detached patio covers, 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. No pools, pool slides, diving boards, hot tubs, spas or similar items shall extend higher than five (5) feet above the finished grade surface of the Building Lot upon which such item(s) are located, and no playhouses or playground equipment shall extend higher than ten (10) feet, except for basketball backboards, which may extend beyond this limit as reasonably required to accommodate a ten (10) foot rim. Basketball backboards shall be allowed in the front or back yard of any Building Lot, provided that the location and type of construction of such backboards are approved by the Architectural Committee prior to construction, and do not promote noise or other nuisance that is offensive or detrimental to other property in the vicinity of the Building Lot or offensive or detrimental to the occupants of such other property. At a minimum, basketball backboards shall be free standing, constructed of plexiglass or acrylic materials and shall be supported by removable metal posts.

4.1.5 Driveways. All access driveways shall have a wearing surface approved by the Architectural Committee, consisting of concrete, and shall be properly graded to assure proper drainage. No driveway shall be wider than the garage to which said driveway leads unless approved by the Architectural Committee.

4.1.6 Mailboxes. All mailboxes and stands will be of consistent design, material and coloration as specified by the Architectural Committee, and to assure uniformity, shall be located at places designated by the Architectural Committee and/or the Postal Service.

4.1.7 Fencing. No fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than six (6) feet, or other lesser height as the Architectural Committee may require, above the finished graded surface. Any fence or boundary wall constructed on or near the lot line common to one or more Building Lots shall be constructed as a "good neighbor" (alternating or open panels) fence or wall. No fence shall be constructed so as to extend toward the front of the Building Lot past the front plane of the dwelling structure constructed thereon, or closer than ten (10) feet to any side Building Lot line of a corner of a Building Lot adjacent to a dedicated street. Fencing using natural landscaping as a visual and/or privacy barrier is strongly encouraged. "Invisible" fencing to control and contain dogs is strongly encouraged and shall be allowed. No fence shall be constructed of any material other than wood, nor finished in other than a natural finish, except as may be specifically approved in writing by the Architectural Committee prior to construction. All fencing and boundary walls constructed on any Building Lot shall be of compatible style and material to that other fencing constructed adjacent to or abutting such Building Lot, and shall otherwise be as approved by the Architectural Committee.

4.1.8 Lighting. Exterior lighting, including flood lighting, shall be part of the architectural concept of the improvements on a Building Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Architectural Committee prior to installation. Lighting shall be restrained in design, and excessive brightness shall be avoided. Each dwelling unit shall have a light post of uniform design with photosensitive switch, fixed within ten (10) feet of the front property line.

4.2 Antennae. No exterior radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Property unless it is approved by the Architectural Committee and located or screened in a manner acceptable to said Architectural Committee. No satellite dishes shall be allowed on the Property.

4.3 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.

4.4 No further Subdivision. Subject to paragraph 3.21, below, no finally platted Building Lot may be further subdivided, nor may any easement or other interest therein be granted.

4.5 Signs. No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee or the Association, except: (1) such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots; (2) temporary signs naming the contractors, the architect, and the lending institution for a particular construction operation; (3) such informational signs, of customary and reasonable dimensions as prescribed by the Architectural Committee may be displayed on or from the Common Area; and (4) one (1) sign of customary and reasonable dimensions not to exceed three (3) feet by two (2) feet as may be displayed by an Owner other than Grantor on or from a Building Lot advertising the residence for sale or lease. Without limiting the foregoing, no sign shall be placed in any Common Area without the written approval of the Architectural Committee or the Association.

4.6 Nuisances. 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. 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. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Association), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Association.

4.7 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. In the event that any Owner shall permit any improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages adjoining property or facilities, 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 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 VII 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. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amount payable by such Owner as Regular Assessments.

4.8 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. 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 the Architectural Committee, which may

include drainage from any Common Area over any Building Lot in the Property.

4.9 Grading. The Owner of any Building Lot within the Property in which grading or other work has been performed pursuant to an approved grading plan shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means and devices which are not the responsibility of the Association, or a public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided in Article VII herein, as may be applicable. An approved grading plan means such plan as may have been approved by the applicable government agency and/or the Association.

4.10 Water Supply System. No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Building Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Committee and all governmental authorities having jurisdiction. Grantor or affiliates of Grantor may use the water supply as deemed necessary for temporary or other irrigation purposes.

4.11 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 Unsightly Articles. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in areas approved by the Architectural Committee. No clothing or fabrics shall be hung, dried or aired in such a way as to be visible to other property, and no equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Building Lot except within an enclosed structure or as appropriately screened from view. No vacant residential structures shall be used for the storage of building materials.

4.13 No Temporary Structures. No house trailers, mobile home, tent (other than for short term individual use which shall not exceed one month unless approved by the Association), 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. Also excepted from this requirement is any sales office established by Grantor for the Property.

4.14 No unscreened Item. No garbage cans, trash containers, firewood, boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepared and unsightly vehicles or similar items, vehicles or equipment shall be placed or parked upon any portion of the Property (including, without limitation, streets, parking areas and driveways) unless the same are enclosed by a structure concealing them from view in a manner approved by the Architectural Committee. To the extent possible, garage doors shall remain closed at all times.

4.15 Sewage Disposal System. 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 municipal sewer system and pay all charges assessed therefor.

4.16 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel, or earth. This paragraph shall not prohibit exploratory drilling or coring which is necessary to construct a residential structure or

improvements.

4.17 Energy Devices, Outside. No energy production devices, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintain on any portion of the Property without the written approval of the Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This paragraph shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

4.18 Vehicles. The use of all vehicles, including by not limited to trucks, automobiles, bicycles, motorcycles, snowmobiles, aircraft and boats, shall be subject to all Association Rules, which may prohibit or limit the use thereof. No on-street parking shall be permitted except where expressly designated for parking use. No parking bays shall be permitted in any side, front or back yard. Vehicles parked on a driveway shall not extend into any sidewalk or bike path or pedestrian path.

4.19 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. The paragraph 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. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of the Owner. The animal owner shall clean up any animal defecation immediately from common areas or public rights-of-way. Failure to do so may result, at the Board's discretion, with a Limited Assessment levied against such animal owner. The construction of dog runs or other pet enclosures shall be subject to Architectural Committee approval, shall be appropriately screened, and shall be maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of ten (10) feet from the side and twenty-five (25) feet from the rear Building Lot line, shall not be placed in any front yard of a Building Lot, and shall be screened from view so as not to be visible from the street or an adjacent Building Lot. The use of "invisible" fencing to control or restrain dogs to the respective animal owner's lot is strongly encouraged and is recommended.

4.20 Landscaping. The Owner of any Building Lot shall sod and landscape such Building Lot in conformance with the Architectural Design Standards and Construction Guidelines, and incorporated herein by this reference, and the Owner's specific landscape plan submitted to and approved by the Architectural Committee. All landscaping shall be planted within thirty (30) days after the dwelling structure is completed, except that during the months of November through March, an extension of time may be granted by the Architectural Committee for reasons of cold or inclement weather. Prior to construction of improvements, the Owner shall provide adequate irrigation and maintenance of existing trees and landscaping, shall control weeds, and maintain the Owner's property in a clean and safe condition free of debris or any hazardous condition.

4.21 Exemption of Grantor. Nothing contained herein shall limit the right of the 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 Area to utility companies, public agencies or others, or to complete excavation, grading and construction of improvements to and on any portion of the Property owner 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 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 right-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. Grantor may use any structure owned by Grantor on the Property as a model home complex or real estate sales or leasing office. Grantor need not seek or obtain Architectural Committee approval of any improvement constructed or placed by Grantor or an affiliate of Grantor on any portion of the Property owned by Grantor or an affiliate of Grantor. 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.

4.22 Conveyances to and from Municipalities. The Board shall have the power to convey any Common Area to the City of Meridian, the County of Ada, the State of Idaho, the United States of America or any political subdivision thereof. The Board shall also have the power to receive a conveyance of any property interest from the above-referenced entities or any other individual or entity and to hold such property interest as Common Area.

4.23 Commencement of Construction. Any Owner of a Building Lot shall, within a period of one (1) year following the date of purchase of the Building Lot from Grantor, commence the construction of a dwelling structure in compliance with the restrictions herein, and such construction shall be completed within six (6) months thereafter. The term "commence the construction" as used in this paragraph, shall require actual physical activities upon such dwelling structure upon such Building Lot. In the event such Owner shall fail or refuse to commence the construction of a dwelling structure within said one (1) year period, Grantor may, at Grantor's option, following the expiration of said one (1) year period, repurchase said Building Lot from such Owner or the then Owner of such Building Lot at a repurchase price equivalent to the money actually paid to Grantor, less an amount equivalent to ten percent (10%) thereof. In the event Grantor shall exercise Grantor's option to repurchase such Building Lot, upon tender of said repurchase price, Owner or the then Owner of such Building Lot shall make, execute and deliver to Grantor a deed reconveying said Building Lot, free and clear of all liens, which deed shall be binding upon all persons who may, at any time hereafter, own or claim any right, title, or interest in such Building Lot, and the successors in title thereof, whether acquired by voluntary act or through operation of law. Grantor shall be entitled to pursue the remedy of specific performance with respect to this paragraph.

Following commencement of any construction of any improvement, construction shall be diligently pursued and completed as soon as specifically set forth herein, or otherwise as soon as reasonably practicable.

ARTICLE V: MIDTOWN SQUARE HOMEOWNERS ASSOCIATION

5.1 Organization of Midtown Square Homeowners Association. Midtown Square Homeowners Association, Inc., ("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 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 or with any Supplemental Declaration which Grantor might adopt pertaining to Midtown Square.

5.2 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. Membership in the Association, shall be appurtenant to the Tract, Building Lot or other portion of the Property owned by such

Owner. The membership in the Association shall not be transferred, pledged, assigned or alienated in any way except upon transfer of Owner's title 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.

5.3 Voting. Except as provided below for Grantor, voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own. The number of votes such Member may cast on any issue is determined by the number of Building Lots which the Member owns. With respect to Grantor, the number of votes which Grantor may cast is determined by the number of Building Lots within the Property which have been finally platted. For the purposes of clarification, and to insure that Grantor maintains control over the development and management of the Property, it is specifically set forth that, as of the date hereof, the Property consists of forty-six (46) Building Lots; that voting rights attach to all forty-six (46) Building Lots and Cherry Lane Center as long as the same are within the definition of the Property as set forth in paragraph 3.19, above; and that Grantor shall be presently entitled to the voting rights attached to each Building Lot Grantor owns.

For voting purposes, the Association shall have three (3) classes of Members as described below:

5.3.1 Class A Members. Owners other than Grantor 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 date of the vote.

5.3.2 Class B Members. The Grantor shall be known as the Class B Member, and shall be entitled to ten (10) votes for each Building Lot of which Grantor is the Owner. The Class B Member shall cease and be converted automatically to a Class A Member upon the earlier occurrence of (i) when the total cumulative votes of the Class A Members equal or exceed the total votes of the Class B Member, or (ii) ten (10) years from the date on which the first Building Lot is sold to an Owner, other than Grantor.

5.3.3 Class C Members. The owner of the office and business park know as Cherry Lane Center, adjacent and contiguous to Midtown Square Subdivision, shall be known as the Class C Member. The Class C Member shall be entitled to cast fifty (50) votes on all matters and decisions relative to the landscaping and maintenance of that portion of the Common Area designated as Lot 1 of Block 1, Lot 1 of Block 2, and all landscaped areas of Cherry Lane Center. All rights and responsibilities of Owners of Building Lots, as set forth herein shall apply to the Class C Member.

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. Fractional votes, however, 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 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.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by the 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 Board of the Association shall be elected in accordance with the provisions set forth in the Bylaws.

5.5 Powers and Duties of the Association.

5.5.1 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 Area and the Association's other assets, and the affairs and performance of the other responsibilities herein assigned, including without limitation, the following:

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

5.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner 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, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

5.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and contract for the maintenance, repair, replacement and operation of the Common Area. Neither the Association or the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Areas by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were apart of this Declaration. In the event of any conflict between the Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration.

5.5.1.5 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.

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

5.5.1.6.1 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

5.5.1.6.2 Public sewers, storm drains, underground irrigation pipes, 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,

5.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets and land conveyed for any public or quasi-public purpose including, but not limited to pedestrian/bicycle pathways.

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 individual(s) executing this Declaration who is (are) in being as of the date hereof.

5.5.2 Duties. In addition to duties necessary and proper to carry out the powers 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:

5.5.2.1 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss.

Specifically, the Association shall, at Grantor's sole discretion, operate and maintain all properties owned by Grantor for temporary or permanent use by Members.

5.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the cost of repairs, replacement, maintenance and improvement of the Common Area.

5.5.2.3 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Area 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 of 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 corporation taxes levied against the Association, in the event that the Association is denied the status of a tax exempt corporation.

5.5.2.4 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area, and to manage all domestic, irrigation and amenity water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

5.5.2.5 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:

5.5.2.5.1 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 insurance replacement value of all improvements, equipment and fixtures located within the Common Area.

5.5.2.5.2 Comprehensive public liability insurance insuring the Board, the Association, the 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 Area. Limits of Liability of such coverage shall be as follows: Not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence with respect to personal injury or death, and Five Hundred Thousand Dollars (\$500,000.00) per occurrence with respect to property damage.

5.5.2.5.3 Full coverage directors' and officers' liability insurance with a limit of at least One Hundred Thousand Dollars (\$100,000.00).

5.5.2.5.4 Such other insurance, including motor vehicle insurance and Workman'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.

5.5.2.5.5 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 interest in such proceeds and to deal therewith.

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

5.5.2.6 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable.

5.5.2.7 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to Association Members, the cost of which shall be included in Regular Assessments.

5.5.2.8 Architectural Committee. Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration.

5.5.2.9 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 lien with the Ada County Recorder, as more fully provided herein.

5.5.2.10 Private Street Lights. Maintain, repair or replace private street lights located on the Property. This duty shall run with the land and cannot be waived by the Association unless the City of Meridian consents to such waiver.

5.6 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officers of the Association, or the Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Grantor, or the Architectural Committee, or any other committee, or any officer of the Association, or the 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, and, provided that such person has so acted, the Association shall indemnify and hold harmless said person from any damage, loss or prejudice aforesaid.

5.7 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:

5.7.1 A pro forma 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 shall include a schedule of Assessments received and receivable, identified by the Building Lot number and the name of the person or entity assigned.

5.7.2 Within thirty (30) days after the close of each fiscal year, the Association shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year.

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 Meetings of the 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. Only Members shall be entitled to attend Association meetings, and all other persons may be excluded. Notice to 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 fifty (50) 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 or proxy of the Class B Member where there is such a Member, and Class C Member where there is such a member and of the Class A Members representing Owners holding at least one-third (1/3) 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, as otherwise provided by law, 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. A second meeting may be called as the result of such an adjournment, provided notice is given as provided above. At any such meeting properly called, the presence of any member shall constitute a quorum.

ARTICLE VI: RIGHTS TO COMMON AREA

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

6.1.1 The right of the Association, as it may hold or control such Common Area, to levy and increase Assessments;

6.1.2 The right of the Association to suspend the voting rights and rights to use of, or interest in, Common Area Property (but not including access to private streets, cul-de-sacs and walkways of the Property by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid; and for a period not to exceed sixty (60) days for an infraction of the Association Rules;

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

6.1.4 The right of the Association to prohibit the construction of structures or improvements on all Common Areas which interfere with the intended use of such areas as walkways;

6.1.5 The right of the Owner of Lot 1 of Block 5, to the exclusive use of Lot 1 of Block 5, provided such use does not interfere with the intended use of the southeast corner thereof as an entrance sign to Midtown Square Subdivision, and provided further that such Lot Owner shall not be solely responsible for the landscaping around and maintenance of such entrance sign;

6.1.6 The right of the Owner and Tenants of Cherry Lane Center to the peaceful, quiet, and private enjoyment of the office buildings and surrounding grounds therein.

6.2 Designation of Common Area. Grantor shall designate and reserve Common Area in

the Declaration, Supplemental Declarations and/or recorded Plats, deeds or other instruments and/or as otherwise provided herein. The Common Area is herewith designated as Lot 1 of Block 1, Lot 1 of Block 2, and Lot 13 of Block 5, the southeast corner of Lot 1 of Block 5 as described in 6.1.5 herein, and the landscaped areas of Cherry Lane Center.

6.3 Designation of Right to Use. Any Owner may delegate, in accordance with the Bylaws and Association Rules as the case may be, such Owner's right of enjoyment to the Common Area, 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, or who are tenants of Cherry Lane Center. Only Grantor shall have the right to delegate the right of enjoyment to the Common Area to the general public, and such delegation to the general public shall be for a fee set by Grantor.

6.4 Damages. Each Owner shall be fully liable for any damages to any Common Area 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.

ARTICLE VII: ASSESSMENTS

7.1 Covenants to Pay Assessments. By acceptance of a deed to any property in Midtown Square, each Owner of such property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

7.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, cost and reasonable attorney's 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.

7.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorney's 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 or she remains an Owner.

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

7.2.1 Purpose of Regular Assessment. 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 cost and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area, 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 for the Common Area, or other property of the Association that must be replaced and maintained on a regular basis

(collectively "Expenses").

7.2.2 Computation of Regular Assessments. The Regular Assessment for calendar year 1994 for Class A Member shall be \$100.00. The Regular Assessment for Class C Member shall not accrue until Cherry Lane Center completes and leases its first office building. The Regular Assessment for Class C Members shall be (1/2) the total amount of the annual Regular Assessment of Class A Members. Thereafter, the Association shall compute the amount of its expenses on an annual basis. The Board shall compute the amount of Regular Assessments owned beginning the first day of the third month following the month in which the closing of the first sale of a Building Lot occurred ("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 reduced by a pro rata amount based on the number of months if such period is less than one year.

7.2.3 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 as follows: Each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of expenses by the fraction produced by dividing the finally platted Building Lots attributable to the Owner by the total number of finally platted Building Lots in the Property.

7.3 Special Assessments.

7.3.1 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 cost of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such expenses and levy a Special Assessment against the Property 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.

7.3.2 Consistent Basis of Assessment. 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 the Association.

7.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the 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 instrument for Midtown Square.

7.5 Uniform Rate of Assessment. 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.

7.6 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 in the amount of one hundred dollars (\$100.00) and shall be collected in full at the closing of the Building Lot, regardless of the time of year the building lot is conveyed to Owner.

7.7 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owners of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for payment of Regular Assessments and Special Assessments shall be the first day of the month unless some other due date is established by the Board. Each installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the due thereof. There shall accrue with each delinquent payment, a late charge equal to ten percent (10%) of the delinquent payment. In addition, each payment which is delinquent for more than twenty (20) days shall accrue interest at eighteen percent (18%) 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 attorney's fees, 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.

7.8 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 that dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 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.

7.9 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 in the applicable Tract, not less than fifteen (15) days nor more than fifty (50) 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 meeting 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.

ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS

8.1 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 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 pursuant to paragraph 8.3 to enforce the lien created hereby. A suit to remove a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

8.2 Assessment Liens.

8.2.1 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 or as set forth herein, and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorney's 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 and 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.

8.2.2 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. 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.

8.3 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 same. 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.

8.4 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.

8.5 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 8.6 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.

8.6 Right of Mortgagees. Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under and 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 deed of trust such Building Lot shall remain subject to this Declaration as amended.

ARTICLE IX: INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

9.1 Member's Right of Inspection. 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 Member of the Association or by such Member's duly appointed representatives, at any reasonable time during business hours and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such place as the Board shall prescribe. No Member or any other person shall copy the membership register for the purpose of solicitation of or direct mailing to any Member of the Association.

9.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to:

9.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.

9.2.2 Hours and days of the week when such an inspection may be made.

9.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this Article.

9.3 Director's Right of Inspection. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE X: ARCHITECTURAL COMMITTEE

10.1 Creation. Within thirty (30) days of the date on which Grantor first conveys a Building Lot to an Owner, Grantor shall appoint two (2) individuals to serve on the Architectural Committee ("Architectural Committee"). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity appointing them at any time without cause.

10.2 Grantor's Right of Appointment. At any time, and from time to time, prior to ten (10) years after the recording date of this Declaration in which Grantor is the Owner of at least ten percent (10%) of the aggregate Building Lots, Grantor shall have the exclusive right to appoint and remove all members of the Architectural Committee. At all other times, the Board shall have the

right to appoint and remove all members of the Architectural Committee. If a vacancy on the Architectural Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.

10.3 Review of Proposed Construction. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such 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 Architectural Committee. The Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, licensed with the State of Idaho, to assist the Architectural Committee in its review of 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 habitat of the Common Areas, or appearance of the surrounding area of the property as a whole, that the appearance of any structures 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.

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

10.3.2 Architectural Committee Rules and Fees. The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules may require a standard fee to accompany each application. The Architectural Committee, from time to time, shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the cost and expenses of the Architectural Committee, including the cost and expense of hiring a architect licensed by the State of Idaho, as provided above, or for such other purposes as established by the Board.

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

10.3.3 Detailed Plans. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review on any plan submitted for approval.

10.3.4 Architectural Committee Decisions. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval within twenty (20) days after filing all materials required by the Architectural Committee. Any materials submitted

pursuant to this Article shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed to the Applicant within twenty (20) days after the date of filing said materials with the Architectural Committee.

10.4 Meeting of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time by resolution unanimously adopted in writing, designate an Architectural Committee representative (who may, but need not be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to paragraph 10.9. In the absence of such designation, the vote of the two (2) members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

10.5 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

10.6 Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and any fees received pursuant to 10.3.2 herein, and except as otherwise agreed by the Board.

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

10.7.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.

10.7.2 Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particular non-compliance, and shall require the Owner to remedy the same.

10.7.3 If upon the expiration of thirty (30) days from the date of such notification, or any longer time the Architectural Committee determines to be reasonable, the Owner shall have failed to remedy such non-compliance, the Architectural Committee shall notify the Board in writing of such failure. Upon notice and hearing, as provided in the Bylaws, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling unless the Board specifies a longer time as reasonable. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-compliance improvement and remedy the non-compliance, and the Owner shall reimburse the Association, upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

10.7.4 If for any reason the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the written notice of compliance from the Owner, the work shall be deemed to be in accordance with the approved plans.

10.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Architectural Committee representative, shall be liable to any 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 Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

10.9 Variances. The Architectural Committee 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. However no variances will be granted for construction of structures or improvements, including without limitation manicured lawns, in the Common Areas. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the office of the County Recorder of Ada County. If such variances are granted, no violation of the covenants, conditions or 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 any Supplemental Declaration for any purpose except as to the particular Building Lot 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 such Owner's use of the Building Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

10.10 Appeal. Any Owner may appeal in writing the decision of the Architectural Committee. The appeal shall be filed with Association within ten (10) days after the decision. Said appeal shall state the decision appealed from and reasons therefor. The appeal shall be heard by the Board within thirty (30) days. If no appeal is filed within the aforesaid ten (10) days, the decision of the Architectural Committee shall be final.

ARTICLE XI: EASEMENTS

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to the unwillful placement or settling or shifting of the improvements including but not limited to structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. 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 encroachment, 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 encroachment over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph.

11.2 Easement of Access. All Owners of Building Lots will have a perpetual easement for access, ingress and egress over the Common Area, including but not limited to the private walkway, described as Lot 13 Block 5. This easement shall run with the land. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for a pedestrian walkway or bicycle path.

11.3 Drainage and Utility Easements. 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, 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. 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 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 and/or a Tract, 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.

11.3.1 Improvement of Drainage and Utility Easement Areas. The Owners of Building Lots are hereby restricted and enjoined from constructing any improvements upon any drainage or utility easement areas as shown on the Plat of Midtown Square 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 the Grantor, the Association or designated entity with regard to the landscaping easement described in this Article, 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 Architectural Committee, 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.

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

11.4.1 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, shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

11.4.2 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.

11.5 Driveway Easements. Whenever a driveway is installed within the Property which in whole or in part lies upon a Building Lot owned by an Owner other than the Owner of the Building Lot served, or installed to serve more than one Building Lot, the Owner of each Building Lot served or to be served by such driveway shall be entitled to full use and enjoyment of such other Building Lot as required to service such Owner's Building Lot or to repair, replace or maintain such driveway.

11.6 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 driveways, or with respect to the sharing of the cost therefor, 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.

11.7 General Landscape Easement. An easement is hereby reserved to the Association, its contractors and agents, to enter those portions of Building Lots, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time.

11.8 Maintenance and Use Easement Between Walls and Lot Lines. Whenever the wall of a structure, or a fence or retaining wall, is legitimately constructed on a Building Lot under plans and specifications approved by the Architectural Committee, and is located within three (3) feet of the Lot line of such Building Lot, the Owner of such Building Lot is hereby granted as easement over and on the adjoining Building Lot (not to exceed 3 feet from the Building Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Building Lot is hereby granted as easement for landscaping purposes over and on the area lying between the Lot line and such structure or fence so long as such use does not cause damage to the structure or fence.

11.9 Sewer Covenants and Restrictions. All Building Lots within Midtown Square shall be subject to and restricted by the following covenants and restrictions:

11.9.1 A monthly sewer charge must be paid after connecting to the municipal public sewer system, according to the ordinances and laws of the City of Meridian.

11.9.2 The Owner of the Building Lot shall submit to inspection by either the Department of Public Works or the Building Department whenever a Building Lot is to be connected to the City's sewage system and a building sewer line is constructed or installed on or within Owner's Lot.

11.9.3 Grantor shall and hereby does vest in the City of Meridian the right and power to bring all actions against the Owner of the Property conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

ARTICLE XII: MISCELLANEOUS

12.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holder of such easement as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run for a term of twenty (20) years from the date this Declaration is recorded, unless amended as herein provided. Thereafter, 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 Meridian, such consent not to be unreasonably withheld provided that a responsible successor organization shall agree to perform those maintenance responsibilities arising from applicable governmental requirements.

12.2 Amendment.

12.2.1 By Grantor. Except as provided in paragraph 12.3 below, until the recordation of the first deed to a Building Lot in the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination. Any amendment affecting only a particular Tract may be made by Grantor by an amendment to this Declaration at any time up to the recordation of the first deed to a Building Lot in such Tract.

12.2.2 By Owners. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration, other than this Article XII, may be amended 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 fifty percent (50%) 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 XII shall require the vote or written consent of Members holding ninety-five percent (95%) of the voting power of the Association.

12.3 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, that after foreclosure of any such first deed of trust such Building Lot shall remain subject to this Declaration, as amended.

12.4 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 changed from time to time by notice in writing to the Master Association, as provided in this paragraph.

12.5 Enforcement of Non-Waiver.

12.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner of

any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property, and Owners thereof.

12.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with the provisions 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 the Grantor, the Association or any Owner of a 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.

12.5.3 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.

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

12.5.5 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.

12.6 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.

12.6.1 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.

12.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph, 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 effect the validity or enforceability of any other provision herein.

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

12.6.4 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.

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

1743000632

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 7th day of March, 1994.

SR2 DEVELOPMENT COMPANY, AN IDAHO CORPORATION

ATTEST: *SK Ricks* BY: *SK Ricks*
Secretary Steven K. Ricks, President

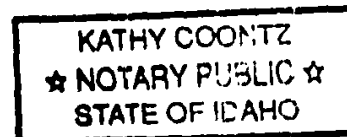
STATE OF IDAHO)
County of Ada) :ss

On this 7th day of March, 1994, personally appeared STEVEN K. RICKS, known or identified to me to be the President and Secretary of SR2 DEVELOPMENT COMPANY, the Company that executed the foregoing Instrument, and acknowledged to me that such Company executed the same.

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

Kathy Coontz
Notary Public for Idaho
Residing at Boise, Idaho

My Commission Expires: 8-15-97



My Commission Expires 8-15-97.
Residing at: Boise, ID