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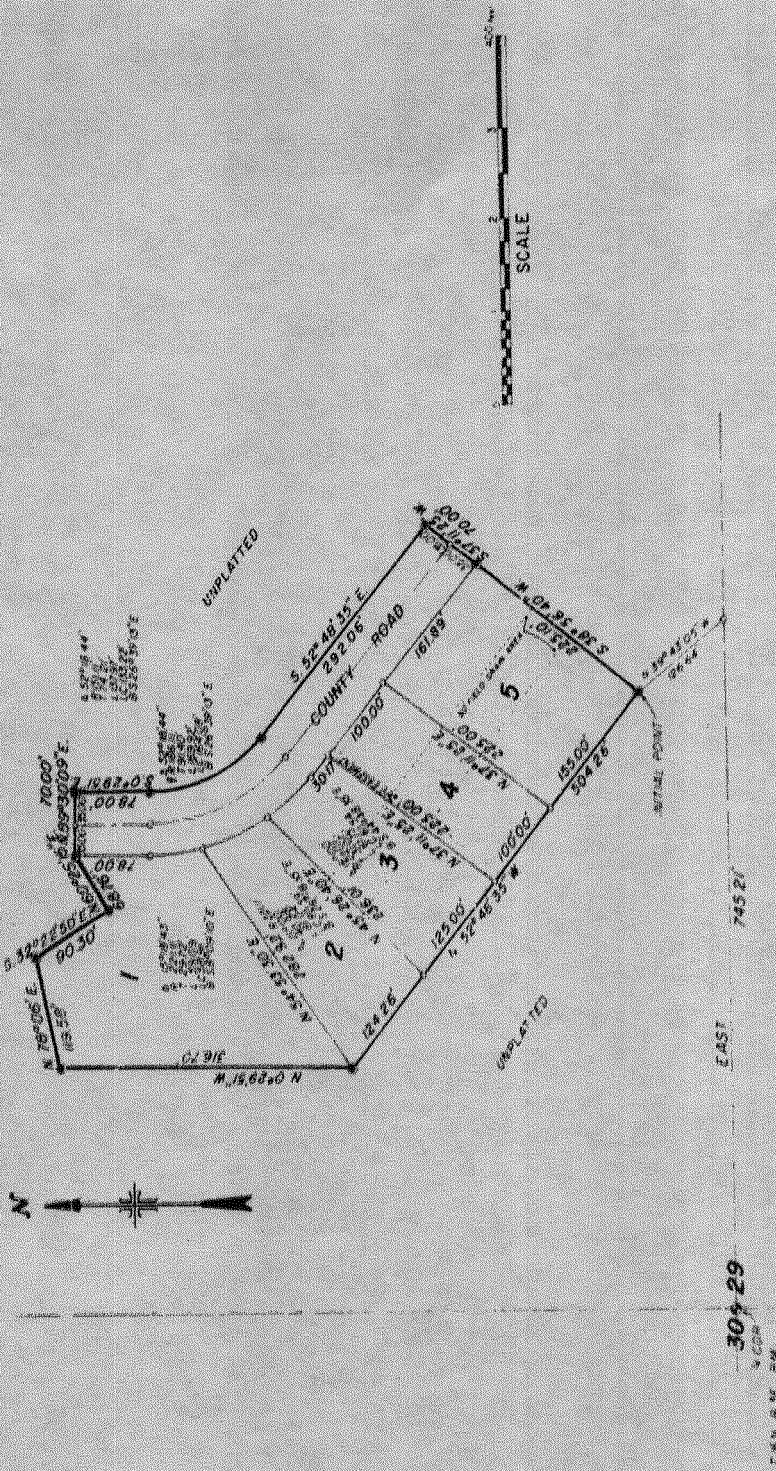
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# ROYAL SCOT SUBDIVISION NO. 7

PART OF THE SW 1/4 NW 1/4 SECTION 29, T.16 N., R.3 E., B.M.  
VALLEY COUNTY, IDAHO

HOFFMANN, FISKE & WYATT  
CONSULTING ENGINEERS



**SANITARY RESTRICTIONS**  
 No building or shelter which will require a water supply or sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the State Board of Health by its administrator or his delegate approving plans and specifications for public water and/or sewage facilities, or individual parcel water and/or sewage facilities.

- 3/8" x 30" Steel Pin at Angle Points and Points of Curvature on Boundary
  - 1/2" x 24" Steel Pin at Lot Corners and Points of Curvature
- 3 Lot Number





**Instrument # 296590**

VALLEY COUNTY, CASCADE, IDAHO

2005-06-15 09:58:25 No. of Pages: 27

Recorded for : MARV QUENZER

LELAND G. HEINRICH

Fee: 81.00

Ex-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

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**DECLARATION**

**OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS**

**FOR**

**PINE RIDGE AT WEST MOUNTAIN**

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## NOTICE

THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH AND EVERY POTENTIAL RESIDENT AND OWNER OF AN INTEREST WITHIN THE PROPERTY SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND RESPONSIBILITIES IMPOSED UPON ALL OWNERS AND OCCUPANTS OF THE PROPERTY.

THE DECLARANT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY DECLARANT. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING ANY ASPECT OF THE PROPERTY, INCLUDING THE TOTAL OR TYPE OF EXPENSES TO BE LEVIED AGAINST AN OWNER SHOULD BE DISREGARDED IN THEIR ENTIRETY. IN ALL EVENTS THE TERMS OF THIS DECLARATION SHALL CONTROL.

POTENTIAL RESIDENTS AND OWNERS ARE ADVISED TO REVIEW THIS DECLARATION WITH THEIR LEGAL AND OTHER ADVISORS PRIOR TO ACQUIRING A RESIDENCE INTEREST IN THE PROPERTY.

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINE RIDGE AT WEST MOUNTAIN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINE RIDGE AT WEST MOUNTAIN (hereinafter referred to as the "Declaration") is made effective this 15<sup>th</sup> day of June, 2005, by MLCB Investments, L.P., an Idaho limited partnership ("Declarant").

**ARTICLE 1  
RECITALS**

1.1 Property Covered. The property subject to this Declaration consists of that certain real property legally described on Exhibit A attached hereto and made a part hereof by this reference (the "Property").

1.2 Plan of Residence Ownership. Declarant intends to sell the Property in fractional ownership interests subject to the Plan of Residence Ownership set forth herein.

1.3 Purpose. The purposes of this Declaration are as follows: (a) to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that will apply to the Property and the use of any and all portions of the Property; (b) to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; and (c) to guarantee adequate maintenance of the Property, in a cost effective and administratively efficient manner.

**ARTICLE 2  
DECLARATION**

Declarant hereby declares that the Property, and each Residence Interest therein, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to all of the covenants, conditions, easements, restrictions, and all provisions of this Declaration. The terms and Restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any Residence Interest therein; shall inure to the benefit of the Property and any Residence Interest therein; and shall inure to the benefit of and be binding upon Declarant, each Person or Owner having or holding an interest in the Property and such Person's or Owner's successors in interest, and may be enforced by Declarant, any Owner or Owner's successors in interest, any Person having or holding an interest in the Property or such Person's successors in interest, or by the Managing Owner.

### ARTICLE 3 DEFINITIONS

All terms appearing herein initially capitalized shall have the same meanings as are ascribed to such terms herein.

3.1 "Declarant" shall mean MLCB Investments, L.P., an Idaho limited partnership, or its successors in interest, or any Person to whom the rights under this Declaration are expressly transferred, in whole or in part.

3.2 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Pine Ridge at West Mountain, as it may be amended and supplemented from time to time.

3.3 "Discretion" or "discretion" shall mean the freedom or authority to act according to one's own judgment.

3.4 "Expenses" shall mean those payments required of Owners, including Regular, Special and Limited Expenses as set forth in Article 7.

3.5 "First Mortgage" shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

3.6 "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property or the Residence located thereon, including, without limitation, accessory buildings, fences, driveways, sidewalks, landscaping, walls, hedges, plantings, trees, living and/or dead vegetation, rocks, signs, lights, removal of trees and other vegetation, plantings, and landscaping, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

3.7 "Limited Expense" shall mean a charge against a particular Owner and such Owner's Residence Interest, directly attributable to the Owner, equal to the cost incurred by the Managing Owner in connection with corrective action or maintenance, repair, replacement, and operation activities performed pursuant to the provisions of this Declaration, including, without limitation, damage to or maintenance, repair, replacement, and operation activities performed upon the Property due to the failure of an Owner to keep the Residence in proper repair, and including interest thereon as provided in this Declaration or for any goods or services provided by the Managing Owner benefitting less than all Owners.

3.8 "Managing Owner" shall mean the Declarant until such time as Declarant no longer owns a Residence Interest or Declarant otherwise designates a successor Managing Owner (designated in a document executed and acknowledged by Declarant and recorded in the real property records of Valley County, Idaho). At such time as the Declarant no longer owns a Residence Interest and has not otherwise selected a successor Managing Owner, the Managing Owner shall be that Owner selected by the Owners in accordance with Section 5.2.

3.9 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or Residence Interest therein as security for the payment of a debt or obligation.

3.10 "Occupant" shall mean any resident or occupant of the Residence other than the Owner, including, without limitation, family members, guests, invitees and tenants.

3.11 "Owner" means the record owner, whether one or more Persons, including Declarant holding fee simple interest of record to a Residence Interest and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

3.12 "Person(s)" shall mean any individual, partnership, corporation, trust, estate or other legal entity, including Declarant.

3.13 "Plan of Residence Ownership" means the system of mutual use rights and mutual obligations created and established by Article 4 hereof.

3.14 "Project Documents" shall mean the basic documents creating and governing the Property including, without limitation, this Declaration, and any other procedures, rules, regulations or policies adopted under such documents by the Owners.

3.15 "Property" shall mean that certain real property described on Exhibit A, including the Residence located thereon.

3.16 "Regular Expense" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Property, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Plan of Residence Ownership which is charged against each Residence Interest by the Managing Owner and payable by each Owner, pursuant to the terms of this Declaration.

3.17 "Residence" means the residential improvement located on the Property.

3.18 "Residence Calendar" means the calendar prepared by the Managing Owner, establishing the dates of each Use Week for each Residence Interest for each calendar year.

3.19 "Residence Furnishings" means all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Residence.

3.20 "Residence Interest" means an undivided, fee simple interest as tenant-in-common in the Residence, together with an exclusive right to possession and occupancy of the Residence during a specified number of Use Periods reserved for each Owner by the Managing Owner pursuant to Article 5 hereof.

3.21 "Rules" shall mean those rules and regulations promulgated by the Declarant, as amended by the Managing Owner from time to time, governing conduct upon and use of the Property, the imposition of fines and forfeitures for violation of such Rules, and procedural matters for use and operation of the Property and the Plan of Residence Ownership.

3.22 "Special Expense" shall mean that portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Expenses which are authorized to be paid to the Managing Owner pursuant to the provisions of this Declaration.

3.23 "Use Right Easement" is defined in Subsection 4.7.1 of this Declaration.

3.24 "Use Period" or "Use Week" means a period of exclusive possession and occupancy of a Residence. Use Weeks for the Residence are established each year for the dates set forth in the Residence Calendar. Use Weeks will usually consist of seven (7) consecutive days beginning on a Thursday, Friday or Saturday. All Use Weeks (or portions thereof) in the Residence shall be computed on the same basis and shall commence and end at the same time, on the same day of the week.

#### **ARTICLE 4 PLAN OF RESIDENCE OWNERSHIP**

4.1 Submission of Residence to Plan of Residence Ownership. Declarant hereby submits the Residence to the Plan of Residence Ownership set forth in this Article 4. The provisions of this Declaration shall govern the ownership of Residence Interests in the Residence and the rights, duties and obligations of Owners.

4.2 No Right to Partition. By acceptance of a deed to a Residence Interest, each Owner waives the right to bring a suit for partition except in accordance with the provisions of this Declaration.

4.3 Conveyance by Purchaser. Each Residence Interest shall constitute an estate in real property separate and distinct from all other Residence Interests in the Residence, which estate may be separately conveyed and encumbered. A purchaser may acquire more than one Residence Interest and thereafter convey or encumber each Residence Interest so acquired separately. In no event, however, shall an Owner convey or encumber less than a Residence Interest as defined herein, or attempt to subdivide a Residence Interest into lesser interests. In the event all Residence Interests in the Residence are acquired by one Owner, the Residence may, at such Owner's election and by notice duly recorded, be withdrawn from this Plan of Residence Ownership.

4.4 Legal Description of a Residence Interest. A contract for sale of a Residence Interest written prior to the date this Declaration is filed in the County Records may legally describe a Residence Interest by reference to the Property, the purchaser's percentage interest in the Property and the purchaser's right to use and occupy the Property during those periods set forth in the Residence Calendar, or by completing the following legal description:

Residence Interest \_\_\_\_\_ (insert Residence Interest designation, e.g. 1-A, 1-B, etc.), consisting of an undivided \_\_\_\_\_% interest as tenant-in-common in the Property according to the Declaration of Covenants, Conditions, and Restrictions for Pine Ridge at West Mountain, to be filed for record in the office of the County Recorder of Valley County, Idaho, as subsequently amended, together with the exclusive right to possession and occupancy of the Residence during the Use Weeks reserved for such Residence Interest as set forth in the Residence Calendar.

After recordation of this Declaration in the County Records, every contract for sale, deed, lease, mortgage, trust deed, or other instrument relating to a Residence Interest will legally describe the Residence Interest as follows:

Residence Interest \_\_\_\_\_ (insert Residence Interest designation, e.g. 1-A, 1-B, etc.), consisting of an undivided \_\_\_\_\_% interest as tenant-in-common in the Property according to the Declaration of Covenants, Conditions, and Restrictions for Pine Ridge at West Mountain, recorded (date), at (Book, Page, or Reception No.) in the office of the County Recorder of Valley County, Idaho, as subsequently amended, together with the exclusive right to possession and occupancy of said Property during the Use Weeks reserved for such Residence Interest as set forth in the Residence Calendar.

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Residence Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Residence Interest and all appurtenances to such Residence Interest, including, without limitation, any easements appurtenant thereto.

4.5 Administration and Management. The administration and management of the Plan of Residence Ownership, and the operation and maintenance of the Property, shall be performed by the Managing Owner. The Managing Owner shall have all powers necessary or desirable to effectuate any of the purposes provided for herein.

4.6 Acceptance; Enforcement; Indemnification. By acceptance of a deed to a Residence Interest, each Owner agrees to be bound by the terms and conditions of this Declaration, specifically including, but not limited to, the provisions of the Plan of Residence Ownership. In addition to all remedies provided to the Managing Owner in this Declaration, the Managing Owner shall also have any of the following special remedies with respect to any Owner who fails to pay any Expenses or is otherwise in default of any provision of the Plan of Residence Ownership:

4.6.1 In the event any Owner fails to vacate a Residence after termination of a Use Week or otherwise uses or occupies or prevents another Owner from using or occupying a Use Week, that Owner shall be in default hereunder and shall be subject to immediate removal, eviction or ejection from the Residence; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Owner entitled to use the Residence during such wrongful occupancy, as liquidated damages for the wrongful use of the Residence, a sum equal to two hundred percent (200%) of the fair rental value per day for the Residence as determined by the Managing Owner in its sole discretion for each day, or portion thereof, including the day of surrender, during which the Owner wrongfully occupies the Residence, plus all costs of enforcement, which amounts may be collected by the Managing Owner in the manner provided herein for the collection of Expenses.

4.6.2 Any Owner who suffers or allows a mechanics' lien or other lien to be placed against his or her Residence Interest or the entire Residence shall indemnify, defend and hold each of the other Owners harmless from and against all liability or loss arising from the claim of such lien. The Managing Owner may enforce such indemnity by collecting from the Owner who suffers or allows such a lien the amount necessary to discharge the lien and all costs of enforcement incidental thereto. If such amount is not promptly paid, the Managing Owner may collect the same in the manner provided herein for the collection of Expenses.

4.6.3 The Managing Owner may withhold use or possession of the Owner's Residence Interest during such Owner's specified Use Weeks.

4.6.4 Except as to a transfer to a First Mortgagee by foreclosure or deed in lieu of foreclosure, no transfer of a Residence Interest shall be permitted unless and until the proposed transferor is current as to all Expenses due to the Managing Owner and is otherwise not in default under any other provision of the Declaration. Any purported transfer of a Residence Interest while an Owner is delinquent or is in default on any other obligation shall be null and void.

All of the remedies granted by the Project Documents, including the specific remedies provided for in this Article, are cumulative, and the exercise of one right or remedy by the Managing Owner shall not impair the Managing Owner's right to exercise any other remedy. The Managing Owner shall not be limited to the remedies set forth herein and may invoke any other or additional remedies provided for or allowed by law or in equity. The Managing Owner may pursue any of the remedies provided for in whatever order is determined by the Managing Owner. The failure by the Managing Owner to insist in any one or more instances upon the strict compliance with any provision of the Project Documents, to exercise any right or option contained therein, to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or relinquishment of any such provision, option or right.

4.7 Cross Use Easements Pertaining to Residence Interests. All Residence Interests are subject to the following cross Use Right Easement and Reservation Procedures:

4.7.1 Cross Use Right Easement.

The Residence shall be available for occupancy and use (the "Use Right Easement") by all Owners pursuant to the Residence Calendar established by the Managing Owner from time to time. Each deed conveying a Residence Interest shall be deemed to include a reservation of this Use Right Easement benefiting all Owners.

4.7.2 Reservation of Use Weeks. All Owners shall be entitled to use the Residence for those Use Weeks reserved for each Residence Interest by the Managing Owner as set forth in the Residence Calendar. Such Residence Calendar shall be established by allocating to the Owner of each Residence Interest the right to use the Residence for one week every eight weeks on a rotating basis. The right to use any Use Week so reserved, if unused in any year, is lost and does not accrue. The Rules shall contain such schedules, conditions, restrictions and limitations as are deemed necessary or desirable by the Managing Owner. The Managing Owner may from time to time, without the consent of the Owners or First Mortgagees, amend the rotating Residence Calendar and the Rules to include, by way of enumeration and without limitation, one or more of the following features:

4.7.2.1 Restrictions on use and occupancy of a Use Week if an Owner is not current on Expenses or is otherwise in violation of the provisions of the Plan of Residence Ownership;

4.7.2.2 Penalties, including forfeitures of reservation rights for the calendar year, for untimely cancellations;

4.7.2.3 A schedule of fees to be separately charged to Owners who use a portion of a Use Week to cover the additional expenses of such use, including but not limited to additional administrative, janitorial and housekeeping service costs.

4.7.2.4 Such other conditions, restrictions and limitations as the Managing Owner shall deem necessary under the circumstances to assure a manageable and fair system.

4.8 Rental. The Rules may prohibit or limit the right of Owners to rent or to allow use by an unaccompanied guest of any Use Week otherwise properly reserved for an Owner.

## **ARTICLE 5 MANAGEMENT OF PROPERTY**

5.1 Management. The Managing Owner shall be vested with the responsibility of managing and coordinating all day-to-day management and operating activities with respect to the Property and the administration of the Plan of Residence Ownership. The Managing Owner is hereby granted all authority and right to manage the Property, to arrange for all maintenance, repairs, replacement, insurance, utilities, janitorial and other services relating to the Property, to pay all taxes on real and personal property owned by the Owners as tenants in common, to establish an annual operating budget and to collect and account for all Expenses and Use Fees due from the Owners, and all rents and other receipts from the Property. The Managing Owner shall be responsible for enforcing the terms, covenants, conditions, restrictions and provisions of this Declaration as it applies to the Property. The powers, duties and all other rights and responsibilities of the Managing Owner shall be those enunciated in this Declaration. The Managing Owner shall provide to the Owners the statement of estimated annual Expenses not less than sixty (60) days before the beginning of each calendar year and an annual financial statement within ninety (90) days after the end of the calendar year.

5.2 Succession, Resignation and Appointment of Managing Owner. The Managing Owner shall be Declarant until such time as Declarant no longer owns a Residence Interest or Declarant otherwise resigns or designates a successor Managing Owner in a document executed and acknowledged by Declarant and recorded in the real property records of Valley County, Idaho. The Declarant or any such successor Managing Owner may resign at any time upon thirty (30) days notice to all of the Owners. Upon the resignation of the Declarant or any such successor Managing Owner, or in the event Declarant does not select a successor Managing Owner at such time as Declarant no longer owns a Residence Interest or otherwise resigns, the Owners holding seventy five percent (75%) or more of the Residence Interests shall elect a Managing Owner. The Owners may remove any Managing Owner elected by the Owners upon a vote of Owners holding seventy five percent (75%) or more of the Residence Interests.

5.3 Property Management Company. It is understood that the Managing Owner hereunder is not expected to be engaged in the day to day management of the Property or administration of the Plan of Residence Ownership. The Managing Owner will contract on behalf of the Owners with an outside property management company for customary property management, accounting and reservation functions. The fees and costs of such outside property management shall be on terms customary in Valley County, Idaho and shall be considered an operating expense of the Property, as shall out-of-pocket costs and expenses of the Managing Owner in managing the Property.

5.4 Powers of Managing Owner. Except for those situations in which the approval of the Owners is required by this Declaration, the Managing Owner shall have and exercise full, complete and exclusive authority, power and discretion to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper ownership, management and operation of the Property, and the performance of the other responsibilities herein assigned, including, by way of illustration and not limitation:

5.4.1 Expenses. The collect from the Owners all Expenses attributed to each Owner pursuant to the restrictions enunciated in this Declaration, and to force payment of such Expenses, all in accordance with the provisions of this Declaration.

5.4.2 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(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or other rules and regulations and to enforce by mandatory injunction or otherwise, all provisions thereof.

5.4.3 Delegation of Powers. The authority to delegate its power and duties to any Person to act as manager for the maintenance, repair, replacement and operation of any portion of the Property. The Managing Owner shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any portion of the Property shall be for a term not exceeding one (1) year, and shall be subject to review by the Managing Owner at such time as Declarant is no longer the Managing Owner.

5.4.4 Rules. The power to adopt, amend and repeal such rules and regulations, from time to time, as the Managing Owner deems appropriate. Notwithstanding the foregoing, at such time as the Owners elect a Managing Owner pursuant to Section 5.2 above, the power of such Managing Owner to adopt, amend and/or repeal any rules and regulations shall be subject to the approval of the Owners holding a majority of the Residence Interests. Such rules shall govern the use by Owners and Occupants or any other Person of the Property; provided, however, the Rules shall not discriminate among Owners and shall not be inconsistent with this Declaration. A copy of the Rules as they may from time-to-time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailing or delivery said Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between a Rule and any provision of this Declaration, the conflicting provisions of the Rules shall be deemed superseded to the extent of any such inconsistency.

5.4.5 Emergency Powers. The power, exercised by the Managing Owner or by any Person authorized by the Managing Owner, to enter upon any portion of the Property 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 Managing Owner is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by and at the expense of the Owners, unless said entry was necessitated by a condition caused by a particular Owner or Occupant.

5.4.6 Cure of Defaults. If any Owner defaults in the performance of any of its obligations set forth herein, the Managing Owner shall have the right, but not the obligation to

cure such default at the expense of such Owner and shall be permitted to enter the Residence to effect such cure.

5.4.7 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to the Owners, the cost of which shall be included in Regular Expenses.

5.4.8 Implementation of Plan of Residence Ownership. The Managing Owner shall have the power to take such steps as are necessary to implement the Plan of Residence Ownership set forth in Article 4. By way of illustration and not of limitation, the Managing Owner shall have the following powers in duties in implementing the Plan of Residence Ownership:

(a) coordinate the plans of Owners for moving their personal effects into and out of the Residence with a view toward scheduling such moves, so that there will be a minimum of inconvenience to other Owners;

(b) cause the Residence to be maintained in a first class manner and condition. The Managing Owner shall determine the color scheme, decor, and furnishing of the Residence as well as the proper time for refurbishment, redecorating, and replacement thereof;

(c) acquire in the name of all Owners as tenants in common all Residence Furnishings. Notwithstanding the foregoing, no Owner shall have any right, title, or claim thereto, and the Managing Owner shall have the right to deal with Residence Furnishings for all purposes;

(d) bill each Owner for the expense of occupancy of the Residence during which occupancy the Managing Owner determines the individual expenses of the particular Owner, including, but not limited to long-distance and other extraordinary telephone charges, extraordinary repairs or charges for damage to the Residence, its furniture, furnishings, equipment, fixtures, appliances, and carpeting caused by the Owner or his or her guest, other charges rendered by the Managing Agent on behalf of the particular Owner and housekeeping services in addition to the standard housekeeping services provided for each Use Week and included within the Expenses provided for in this Article;

(e) collect the Expenses provided for in this Declaration;

(f) establish, subject to modification at any time, publish, and administer such rules and regulations as the Managing Owner deems necessary or desirable, specifically including but not limited to fines and restrictions on use and occupancy if an Owner is not current on Expenses or is otherwise in violation of the provisions of this Article;

(g) prepare the Residence Calendar;

(h) enforce the remedies for non-payment of the Expenses set forth in this Declaration; and

(i) administer the Property on behalf of the Owners.

5.5 Duties of Managing Owner. In addition to the powers delegated by this Declaration, without limiting the generality thereof, the Managing Owner or its authorized agents, if any, shall have the obligation to conduct all business affairs relating to the Property and to perform each of the following duties:

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

5.5.2 Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Property and/or any property owned by the Owners as tenants in common. Such taxes and assessments may be contested or compromised by the Managing Owner; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes.

5.5.3 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.

5.5.4 Insurance. Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:

5.5.4.1 Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all improvements, equipment, fixtures and other property owned by the Owners as tenants in common.

5.5.4.2 Comprehensive public liability insurance insuring the Managing Owner, the Declarant and the individual Owners, and agents and employees of each of the foregoing, against any liability incident to the ownership and/or use of the Property owned by the Owner as tenants in common. The limits of liability of such coverage shall be as determined by the Managing Owner.

5.5.4.3 The Managing Owner shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive such proceeds and to deal therewith.

5.5.4.4 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Expenses charged to the Owners.

5.5.5 Rule Making. Make, establish, promulgate, amend and repeal Rules.

5.5.6 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 costs of repair, replacement, maintenance and improvement of the Property;

5.5.7 Budgets and Financial Statements. Financial statements for the operation and maintenance of the Property shall be regularly prepared and copies made available to each Owner as follows:

5.5.7.1 A pro forma operating statement (budget) for each fiscal year shall be made available to the Owners not less than sixty (60) days after the beginning of each calendar year.

5.5.7.2 Within ninety (90) days after the close of each fiscal year, the Managing Owner, or its agent, shall cause to be prepared and made available to each Owner, a balance sheet as of the last day of the calendar year and an annual operating statement reflecting the income and expenditures of the Managing Owner in connection with the operation and maintenance of the Property for that calendar year.

## **ARTICLE 6 USE RESTRICTIONS**

6.1 Use Restrictions. Except as may be permitted by this Declaration or the Rules promulgated hereunder, no Owner shall install or place any item or Improvement on the interior or exterior of the Residence, or elsewhere upon the Property without the consent of the Managing Owner.

6.2 Smoking. The Rules as established by Declarant and amended from time to time by the Managing Owner may prohibit or limit the right of Owners to smoke or use other tobacco products within the Residence or elsewhere upon the Property.

6.3 Pets. The Rules as established by Declarant and amended from time to time by the Managing Owner may prohibit or limit the right of Owners to keep pets within the Residence or elsewhere upon the Property.

6.4 Inseparability. No part of the legal rights comprising ownership of a Residence Interest, may be separated from any other part thereof during the period of ownership prescribed herein, so that each Residence Interest and the legal rights appurtenant to such Residence Interest shall always be conveyed, devised, encumbered, transferred and otherwise affected only as a single interest.

## **ARTICLE 7 PAYMENT OF EXPENSES**

7.1 Covenant to Pay Expenses. Each Owner hereby, and by acceptance of a deed to a Residence Interest, covenants and agrees to pay such Owner's pro rata share of all Expenses, including all Regular Expenses, Special Expenses and Limited Expenses. All such Expenses, together with interest, costs and reasonable attorneys fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Residence Interest against which each such pro rata charge is made and shall also be the personal obligation of the Owner of such Residence Interest at the time when the pro rata share becomes due and payable. The Managing Owner shall determine the payment schedule for such Expenses. The lien shall not be affected by a conveyance of title. No Owner may waive or otherwise avoid liability for payment of any Expenses by non-use of the Property or by abandonment of such Owner's Residence Interest.

7.2 Owner's Proportionate Share. Each Owner shall pay an amount computed by multiplying the Managing Owner's total advance estimate of Expenses by each such Owner's undivided tenants in common interest in the Property.

7.3 Computation of Regular Expenses. The Managing Owner shall compute the Expenses on an annual basis. The Managing Owner shall compute the amount of Regular Expenses owed by the Owners for the first calendar year within six (6) months following the

month in which the closing of the first sale of a Residence Interest occurs ("Initiation Date"). Thereafter, the computation of Regular Expenses by the Managing Owner shall take place not less than sixty (60) days before the beginning of each calendar year. The computation of the Regular Expenses for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount that fairly reflects the fact that such period was less than one (1) year.

**7.4 Purpose of Regular Expenses.** The proceeds from Regular Expenses are to be used to pay for any and all costs and expenses incurred by the Managing Owner and shall include, but shall not be limited to, the following:

(a) maintenance, and regularly scheduled cleaning and housekeeping service and upkeep of the Residence;

(b) repair and replacement of the Residence Furnishings;

(c) any additional premium for property or liability insurance occasioned by the operation of the Plan of Residence Ownership;

(d) real and personal property taxes assessed against the Property;

(e) management fees incurred by the Managing Owner to cover the costs of operating the Plan of Residence Ownership that are in addition to the management fees for the management of the Plan of Residence Ownership;

(f) a reserve for refurbishment and replacement of Residence Furnishings; and

(g) any other expenses incurred in the normal operation of the Residence as part of the Plan of Residence Ownership and not otherwise within the definition of Expenses provided for herein.

**7.5 Special Expenses.** In addition to Regular Expenses, the Managing Owner may charge to the Owners at any time any Special Expenses payable over such period as the Managing Owner may deem appropriate for the following purposes:

7.5.1 To defray, in whole or in part, the cost of any construction or reconstruction of Improvements within or upon the Property, unexpected repair or replacement of the Property, the furnishing of a special service(s) or for any other expenses incurred or to be incurred as provided in this Declaration.

7.5.2 To defray a deficit in the common and ordinary expense of the Managing Owner for which Regular Expenses for a given calendar year are or will be inadequate to pay, as determined by the Managing Owner.

**7.6 Limited Expenses.** Notwithstanding the above provisions with respect to Regular and Special Expenses, the Managing Owner may charge to an Owner a Limited Expense as a remedy for reimbursement of the Managing Owner for costs incurred in bringing the Owner and/or such Owner's Residence Interest into compliance with the provisions of the Project Documents, for damage caused by the Owner, or any member of the Owner's family,

representatives or invitees, to any portion of the Property, or for otherwise providing any goods or services benefiting less than all Owners or Residence Interests.

**7.7 Lien Rights.** The Managing Owner shall have a lien on the Residence Interest of a defaulting Owner for the amount of any Expenses not paid by such Owner plus accrued interest at the rate of twelve percent (12%) annum.

**7.7.1 Establishing Lien.** The lien provided for above shall only be effective when filed of record by the Managing Owner as a claim of lien against the Residence Interest of the defaulting Owner in the office of the recorder of the county in which the Property is located, signed and verified, which shall contain the following:

7.7.1.1 An itemized statement of all amounts due and payable pursuant hereto;

7.7.1.2 A description of the Residence Interest of the defaulting Owner which is/are the subject of the lien;

7.7.1.3 The name of the defaulting Owner; and

7.7.1.4 The name and address of the Managing Owner.

**7.7.2 Priority.** The lien, when so established, shall be prior and superior to any right, title, interest, lien or claim which may be attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Managing Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

**7.7.3 Release of Lien.** Upon payment of the sum secured by a lien, the Managing Owner shall promptly file of record a release of such lien.

## **ARTICLE 8 MAINTENANCE RESPONSIBILITY**

**8.1 Responsibility of the Managing Owner.** To provide a uniform, clean and neat appearance of the Property, the Managing Owner, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace and improve all of the Property, the exterior and interior surfaces of the Residence and all Residence Furnishings. The cost of such maintenance pursuant hereto shall be paid for as a Regular Expense of the Managing Owner and charged to all Owners. Anything to the contrary herein notwithstanding, in the event that the need for maintenance or repair of the Residence is caused by the willful or negligent acts of an Owner (or the family, guests, licensees or invitees of the Owner), the cost of such maintenance shall be paid solely by such Owner as a Limited Expense.

**8.2 Maintenance Easement.** An easement is hereby reserved for the Managing Owner, its contractors, employees, and agents, to enter the Residence for the purpose of exterior or interior maintenance of the Property.

## ARTICLE 9 INSURANCE

9.1 Master Policy. The Managing Owner shall obtain and keep in full force and effect at all times a master or blanket policy or policies of property insurance (hereinafter "Master Policy") in an amount equal to the full replacement value (that is, 100% of then current replacement cost exclusive of land, foundation, excavation and other items normally excluded from such coverage) of the Residence and other Improvements located on the Property or within the Residence, with an Inflation Guard Endorsement and such other endorsements as may be required by any holder of a First Mortgage and such other endorsements as the Managing Owner deems appropriate. The Master Policy shall afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, vandalism, malicious mischief, windstorm, water damage, debris removal, cost of demolition and such other risks as are customarily covered in extended coverage or special form property insurance policies for similar projects. In addition, the Master Policy shall contain the following provisions: (i) the named insured shall be the Managing Owner as trustee for the Owners in the Property; (ii) insurance coverage obtained and maintained pursuant to this Section 9.1 may not be brought into contribution with insurance purchased by such Owners or their mortgagees; (iii) coverage may not be prejudiced by (A) any act or neglect of an Owner when such act or neglect is not within the control of the Managing Owner or (B) any failure of the Managing Owner to comply with any warranty or condition regarding any portion of the Property over which the Managing Owner has no control; (iv) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Managing Owner, each Owner and each holder of a First Mortgage; (v) the policy shall contain a waiver of subrogation by the insurer as to any claim against the Managing Owner, the Owners or their respective agents, and shall contain a provision which guarantees that the insurer's obligation to pay under the policy shall not be diminished by any recovery or payment received by the insured from any other carrier or under any policy of co-insurance; and (vi) the policy must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Managing Owner or when such exercise would be in conflict with any requirement of law.

9.2 The Managing Owner. The Managing Owner shall apportion the total premium costs among each Residence Interest. The amount so apportioned shall be assessed as a Regular, Special or Limited Expense of the Managing Owner, whichever the Managing Owner shall deem appropriate in the circumstances, against the Residence.

9.3 Owner's Own Insurance. Notwithstanding the provisions of Section 9.1, each Owner shall be responsible for such Owner's own liability insurance coverage with respect to its Residence Interest as well as all insurance relating to such Owner's personal property and personal liability. Any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies that the Managing Owner obtains pursuant to this Declaration. All such insurance on the Owner's Residence Interest shall waive the insurance company's right of subrogation against the Managing Owner, the other Owners, and the servants, agents and guests of any of them.

**ARTICLE 10**  
**RESTORATION UPON DAMAGE OR DESTRUCTION**

10.1 Duty to Restore. Any portion of the Property insured by the Master Policy described in Article 9, above, or otherwise insured by the Managing Owner, that is damaged or destroyed must be repaired or replaced promptly by the Managing Owner unless:

10.1.1 repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or

10.1.2 one hundred percent (100%) of the Owners within the Property vote not to rebuild.

If the Property is neither repaired nor replaced after any damage or destruction pursuant to Subsections 10.1.1 and 10.1.2, above, then the Property shall be sold and the proceeds distributed as set forth in Section 10.2 below.

10.2 Distribution of Proceeds Upon Liquidation. If the Property is sold in accordance with Section 10.1, then the proceeds of such sale, and the proceeds of any insurance, shall be distributed as follows:

10.2.1 Any insurance settlement proceeds shall be divided by the Managing Owner according to each Owner's undivided interest as tenant in common in the Property. Such divided proceeds shall be paid into separate accounts, each such account representing one of the Residence Interests. Each such account shall be in the name of the Managing Owner, and shall be further identified by the designation of the Residence Interest and the name of the Owner or Owners thereof. From each separate account the Managing Owner, as attorney-in-fact, shall disburse up to the total amount of each such account, without contribution from one account to another, in the following order:

10.2.1.1 for payment of taxes and special assessment liens in favor of any assessing entity, and for customary expenses of sale;

10.2.1.2 for payment of the lien of any First Mortgagee;

10.2.1.3 for payment of unpaid Expenses and all costs, expenses and fees incurred by the Managing Owner;

10.2.1.4 for payment of junior liens and encumbrances in the order of and to the extent of their priority; and

10.2.1.5 the balance remaining, if any, shall be paid to the Owner or Owners of the Residence Interest, as their interests may appear.

10.3 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is an Expense of the Managing Owner payable by all Owners as set forth in this Declaration.

10.4 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by all Owners of the Property.

10.5 Insurance Proceeds. The Managing Owner shall hold any insurance proceeds in trust for the Owners and holders of Mortgages as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Managing Owner, Owners and holders of Mortgages are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or sold, in which event the proceeds will be distributed as provided in Section 10.2 above.

10.6 Certificates by the Managing Owner. The insurance trustee, if any, may rely on the following certifications in writing made by the Managing Owner:

10.6.1 whether or not damaged or destroyed Property is to be repaired or restored; and

10.6.2 the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

10.7 Certificates by Attorneys or Title insurance Companies. If payments are to be made to Owners or holders of Mortgages, the Managing Owner, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the County Records from the date of recording of this Declaration stating the names of the Owners and the holders of Mortgages.

## **ARTICLE 11 CONDEMNATION**

11.1 Condemnation. If at any time all or any part of the Property is taken by any power having the authority of eminent domain, the provisions of this Article 11 shall apply. A voluntary sale or conveyance of all or any part of the Property in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If all or any part of the Property is subject to any eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Managing Owner shall give prompt written notice of such proceeding or proposed acquisition to each Owner of a Residence Interest within the Property. Negotiations, settlements and agreements with any condemning authority shall be conducted by the Managing Owner in connection with a taking by eminent domain proceeding or other acquisition of any interest in the Property, including, without limitation any severance or other damages to the remainder of the Property arising from the taking of all or any part of the Residence by eminent domain proceeding.

Each Owner hereby appoints the Managing Owner as such Owner's attorney-in-fact for the purposes of representation in accordance with this Section 11.1.

11.2 Proceeds. All compensation, damages and other proceeds from any taking by power of eminent domain, and all proceeds to the Managing Owner from sale in lieu of or avoidance of condemnation (collectively, the "Award") shall be made payable to the Managing Owner and shall be distributed by the Managing Owner as provided in this Article.

11.3 Complete Taking. If the entire Property is taken by power of eminent domain, the Plan of Residence Ownership established by this Declaration shall terminate and the Award shall be apportioned among the Owners on the basis of each Owner's interest in the Residence

in accordance with the procedures set forth in Article 10 for the distribution of proceeds upon damage or destruction of the Property.

11.4 Partial Taking. If less than the entire Property is taken by power of eminent domain:

11.4.1 As soon as practicable, the Managing Owner, reasonably and in good faith, shall apportion any Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

11.4.1.1 The total amount apportioned to taking of or injury to the Property, shall be divided by the number of Residence Interests and the resulting proportionate share distributed to the Owners.

11.4.1.2 The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners.

11.4.1.3 The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Managing Owner determines to be equitable under the circumstances;

11.4.1.4 If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Managing Owner shall employ such apportionment and allocation to the extent it is relevant and applicable.

11.4.1.5 Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective First Mortgagees, as their interests may appear. No provision of this subsection 11.4.1 or any other provision of this Declaration shall entitle the Owner or other party to priority over any First Mortgagee holding a lien on such Residence Interest with respect to the distribution to such Residence Interest of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

## **ARTICLE 12 MISCELLANEOUS**

12.1 Term. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall be perpetual and shall run with the land forever, unless amended or extinguished by a written instrument executed by Owners holding one hundred percent (100%) of Residence Interests and such written instrument is recorded in the County Records as provided in Section 12.2, below.

12.2 Amendment.

12.2.1 By Declarant. Until the recordation of the first deed to a Residence Interest within the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively, an "amendment") by Declarant by recordation of a written instrument setting forth such amendment.

12.2.2 By Owners. After the recordation of the first deed to a Residence Interest, any amendment to any provision of this Declaration, other than to this Article 12, shall

be by an instrument in writing signed and acknowledged by all Owners, and such amendment shall be effective upon its recordation in the County Records.

12.2.3 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners within the Property.

12.2.4 Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by Declarant or by the Owners. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (a) the Owner(s) desiring such amendment; (b) the Declarant if amended in accordance with Subsection 12.2.1; or (c) in all other cases by the Managing Owner as a common Expense.

12.3 Notices. Any notices permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, by fax 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, first class, postage prepaid, addressed to any Person at the address given by such Person to the Managing Owner for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Managing Owner or to the address of such Person as contained in the Valley County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Managing Owner.

#### 12.4 Enforcement and Non-Waiver.

12.4.1 Right of Enforcement. Except as otherwise provided herein, any Owner, the Managing Owner or Declarant shall have the right to enforce any or all of the provisions of this Declaration against any Residence Interest within the Property and against the Owners thereof.

12.4.2 Violations and Nuisances. The failure of any Owner to comply with any provision hereof, is hereby declared a nuisance and will give rise to a cause of action in Declarant, the Managing Owner, or any Owner affected by such violation for recovery of damages or for negative or affirmative injunctive relief or both. Any violation of any federal, state, municipal or local law, statute, ordinance, rule or regulation pertaining to the ownership, occupation or use of 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.

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

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

12.5.1 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.

12.5.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Subsection 12.5.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

12.5.3 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.

12.5.4 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.

12.6 Successors and Assigns. All references herein to Declarant, Owners, Managing Owner or Person shall be construed to include all successors, assigns, partners and authorized agents of such Declarant, Owners, Managing Owner or Person.

[end of text]

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration effective as of the date first set forth above.

DECLARANT:

MLCB Investments, L.P., an Idaho limited partnership

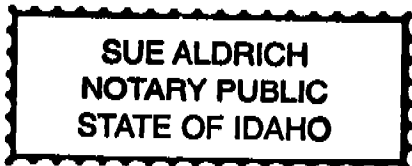
By: Four Q Farms, LLC, an Idaho limited liability company, its General Partner

By: *Marvin E. Quenzer*  
Marvin E. Quenzer, Manager

STATE OF IDAHO )  
County of ~~Ada~~ CANYON ) ss.

On this 14<sup>th</sup> day of JUNE, 2005, before me, a Notary Public in and for the State of Idaho, personally appeared MARVIN E. QUENZER, known or identified to me to be the manager of FOUR Q FARMS, LLC, an Idaho limited liability company, the general partner of MLCB INVESTMENTS, L.P., an Idaho limited partnership, who acknowledged to me that he executed the within and foregoing instrument for and on behalf of FOUR Q FARMS, LLC, in said company's name as the general partner of MLCB INVESTMENTS, L.P., and in said limited liability company's name.

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



*Sue Aldrich*  
Notary Public for Idaho  
Residing at: Caldwell, Idaho  
My commission expires: 9-30-09

EXHIBIT A

Legal Description of the Property

Lot 3, Royal Scot Subdivision #7, commonly known as 2323 West Mountain Road, Donnelly, Idaho 83615.

