After recordation, return to:

Instrument # 291585
REXBURG, MADISON, IDAHO
2001-09-26 12:01:00 No. of Pages: 27
Recorded for : SCOTT SPAULDING
MARILYN R. RASMUSSEN Fee: 81.00
Ex-Officio Recorder Deputy

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Owner Association Bylaws)

PARKSIDE

A Planned Residential Development

City of Rexburg, Madison County, Idaho

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 13th day of September, 2001, by **PARKSIDE DEVELOPMENT, L.L.C.**, an Idaho limited liability company ("Declarant"), in its capacity as the owner and developer of Parkside, an expandable planned residential development in the City of Rexburg, Madison County, Idaho.

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 **Purpose.** The purpose of this instrument is to provide for the preservation of the values of Lots, residential Units and Common Areas within Parkside, an expandable planned residential development in the City of Rexburg, Madison County, Idaho (the "Development"), and for the maintenance of the private roadways, driveways, sidewalks, parking, amenities, open spaces, landscaping, trees and all other Common Areas therein.

1.02 **Effectiveness.** From and after the effective date hereof: (a) each part of the Development and each Lot and Unit lying within the boundaries of the Development shall constitute constituent parts of a single planned residential development; (b) the Development shall consist of the Lots and of the Common Areas which are described and depicted on the initial Plat, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions hereof relating to annexation or expansion of the Development; (c) the Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) the initial Plat of the Development shall consist of the instrument which is identified as **Parkside, Planned Residential Development, Plat A, City of Rexburg, Madison County, Idaho,** recorded concurrently with this Declaration in the Public Records, as the same may be thereafter amended, and any subsequent plats which may be filed for record pursuant to the provisions hereof relating to annexation or expansion of the Development.

ARTICLE II

DEFINITIONS

When used throughout this Declaration each of the following terms shall have the meaning indicated:

Additional Land shall, at any point in time, mean all of the land in the City of Rexburg, Madison County, Idaho, set forth and described in **Exhibit A**, attached hereto and made a part hereof.

Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed with the Secretary of State of the State of Idaho, as they are amended from time to time.

Assessment shall mean the amount which is to be levied and assessed against each Owner and the Owner's Lot (whether an Annual, Special or Specific Assessment, as described in the Bylaws) and paid to the Association for Common Expenses and other expenses.

Association shall mean Parkside PRD Owners Association, Ltd., an Idaho nonprofit corporation, its successors and assigns, which shall own and manage the Common Areas. Each Owner shall hold an appurtenant membership interest in the Association, as set forth in the Bylaws.

Board shall mean the Board of Directors of the Association.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES XI, XII and XIII.

Common Areas shall mean all portions of the Development except the Lots and Units, and shall include all property to be owned by the Association for the common use and enjoyment of the Owners such as all private undedicated roadways, driveways, parking, recreational amenities, open spaces, landscaping, structural common areas, and the like, together with all easements appurtenant thereto, whether or not reflected on a Plat.

Common Expenses shall mean and refer to those sums expended by the Association in carrying out its duties and responsibilities of ownership, operation and management of the Common Areas.

DRC shall mean and refer to the Design Review Committee referred to in ARTICLE VII.

Declarant shall mean Parkside Development, L.L.C., an Idaho limited liability company, its successors and assigns, if any, as developer of the Development.

Declaration shall mean this Declaration of Easements, Covenants, Conditions and Restrictions for Parkside, a planned residential development in the City of Rexburg, Madison County, Idaho, as the same may be supplemented or amended from time to time. **Supplemental Declaration** shall mean and refer to an instrument which supplements the Declaration and which is recorded in the Public Records concurrently with a Plat for a subsequent phase of the Development pursuant to the annexation provisions of ARTICLE III of this Declaration.

Development shall mean the expandable planned residential development known as Parkside in the City of Rexburg, Madison County, Idaho, as it exists at any given time.

Limited Common Area shall mean any Common Area designated for exclusive use by the Owner of a particular Townhouse Unit, whether or not designated as such on a Plat. Any Limited Common Areas that are identified on a Plat with the same number or other designation by which a Townhouse Unit is identified thereon shall be Limited Common Area for the exclusive use of the Owner of the Townhouse Unit bearing the same number or designation.

Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Development, as designated within numbered Blocks on a Plat, and intended for single family residential use. **Townhouse Lot** shall mean any numbered Lot on a Plat included within a numbered Block and upon which an attached Townhouse Unit is constructed, or is to be constructed; and **Detached Residential Lot** shall mean any numbered Lot on a Plat included within a numbered Block and upon which a Detached Residential Unit is constructed, or is to be constructed.

Managing Agent shall mean any person or entity appointed or engaged as Managing Agent of the Development by the Association.

Mortgage shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean any mortgagee or beneficiary named in a Mortgage.

Owner shall mean any person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple Owners of a particular Lot shall be jointly and severally liable as to all responsibilities and obligations of an Owner.

Plat shall mean and refer to a recorded subdivision plat within the Development. The initial Plat is entitled **Parkside, Planned Residential Development, Plat A, City of Rexburg, Madison County, Idaho**, prepared and certified by Boyd L. Cardon (a duly registered Idaho land surveyor holding Certificate No. 1027), executed and acknowledged by Declarant, accepted by the City of Rexburg, and recorded in the Public Records concurrently with this Declaration. Such term shall also include any subdivision plat or plats pertaining to all or any portion of the Additional Land, as and when the same is annexed and added to the Development pursuant to the annexation provisions of ARTICLE III of this Declaration.

Property shall mean all land covered by this Declaration, including Common Areas and Lots, and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Section 3.01 of ARTICLE III hereof.

Public Records shall mean the Office of the Madison County Recorder in Rexburg, Idaho.

Rules and Regulations shall mean and refer to those Rules and Regulations authorized, adopted, and promulgated to the Owners from time to time by the Board pursuant to the provisions of Section 12.03.

Unit shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as detached garage, patios, fences, decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, if any. **Townhouse Unit** shall mean a Unit constructed on a Townhouse Lot and **Detached Residential Unit** shall mean a Unit constructed on a Detached Residential Lot. Townhouse Units shall specifically exclude roofs and exterior surfaces of Units (and/or the buildings in which Townhome Units exist) and fences, all of which roofs, surfaces and fences shall be treated as Limited Common Areas designated for the exclusive use of the particular Townhome Units to which such roofs, surfaces and fences appertain, even if not designated as Limited Common Areas on a Plat.

ARTICLE III

PROPERTY DESCRIPTION AND ANNEXATION

3.01 **Submission.** The Property which initially is and shall be held, transferred, sold, conveyed, and occupied, subject to the provisions of this Declaration, consists of the following described real property in the City of Rexburg, Madison County, State of Idaho:

A tract of land lying in Madison County, State of Idaho, in the Northwest One Quarter of Section 25 Township 6 North, Range 39 East of the Boise Meridian, and more particularly described as follows:

Beginning at the center one quarter corner of Section 25, thence N 00 17 06 W along the meridional centerline of said Section 659.95 feet to the CSN 1/64 corner; thence N 00 17 06 W a distance of 695.95 feet to the true point of beginning; thence S 89 48 58 W a distance of 714.68 feet to the easterly right of way of Highway 20; thence S 00 08 31 E a distance of 166.97 feet; thence N 89 42 54 E a distance of 437.50 feet; thence S 00 17 06 E a distance of 257.66 feet; thence N 89 42 54 E a distance of 118.58 feet; thence S 49 59 06 E a distance of 65.60 feet; thence N 89 42 54 E a distance of 108.98 feet; thence N 00 17 06 W a distance of 465.79 feet to the true point of beginning. Contains 4.50 acres, more or less.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on a Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (including buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the buildings and Units and all of the other

improvements described in this Declaration or in a Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land, or any portion thereof, such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is recorded in the Public Records.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on, or revealed by, a Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

3.02 **Division into Lots and Blocks.** The Development is hereby divided into 25 Lots and five Blocks as set forth and described on the Development's Plat A, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to Assessments, maintenance, insurance, etc., unless otherwise set forth in this Declaration.

3.03 **Annexation by Declarant.** Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.04, the annexation of any such land shall become effective upon the recordation in the Public Records of a Plat of such Additional Land signed by the owner thereof, and of a Supplemental Declaration which (a) is signed by the then owner(s) of such Additional Land, as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Development, subject to this Declaration; and (d) sets forth such additional information, limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as may be applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration, as amended or supplemented by any amendment or by any Supplemental Declaration.

3.04 **Limitation on Annexation.** Declarant's right to annex land to the Development shall be subject to the following limitations:

(a) The annexed land must be part of the Additional Land set forth and described herein;

(b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing in the Development to exceed 90.

(c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land at the time of its annexation into the Development must consent, through appropriate instruments recorded in the Public Records, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all Units and Lots being similar in concept to that of such Units, Lots and uses in Plat A of the Development; provided that future Plats need not contain any Detached Residential Lots or Units; and, provided further, that in each succeeding Plat of the Development the architectural style of the Townhouse Units within such Plat shall remain consistent throughout such succeeding plat and in harmony with that of prior Plats, unless a change is authorized by the appropriate agency of the City of Rexburg; and

(e) All Common Areas covered by a Supplemental Declaration and designated on the Plat related thereto shall be conveyed to the Association pursuant and subject to the provisions of Section 5.03 of this Declaration.

3.05 **No Obligation to Annex or Develop.** Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any Plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including **Exhibit A** to this Declaration.

3.06 **Other Annexation.** To the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.04 of this ARTICLE III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordation and comply with all the other requirements referred to in Section 3.03 of this ARTICLE III.

(The remainder of this page has purposely been left blank.)

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 **Maintenance and Repairs.** Each Owner shall at his own cost maintain his Lot and any improvements (i.e. Townhouse Unit or Detached Residential Unit) constructed thereon in good condition and repair at all times; provided however, that Townhouse Unit exteriors, roofs, and fences shall be maintained by the Association as provided in Section 12.01(d) of this Declaration. In the event of the damage or destruction of any Unit, the Owner of the Lot upon which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed structure in the Development. The painting or repainting, remodeling, rebuilding or modification of any Unit exteriors or parts thereof must be submitted to and approved by the DRC pursuant to its procedures. Notwithstanding the obligations of the Association to maintain Townhouse Unit exteriors, roofs and fences as provided herein, no Owner of such Units shall openly or wantonly neglect or fail to do all within such Owner's power to help keep such items in good and attractive condition at all times.

4.02 **Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Townhouse Unit Owner shall procure and maintain in force hazard insurance on personal contents, and liability coverage as is customary in projects such as the Development and which is consistent with each such Owner's individual circumstances. Owners of Detached Residential Units shall procure at their expense, and shall maintain in force, hazard insurance on their particular Unit, and contents and personal liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances.

4.03 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration, and for the observance of the Rules and Regulations promulgated by the Association's Board from time to time. Owners in violation of the provisions of this Section 4.03 will not be deemed to be in good standing for Association voting purposes.

4.04 **Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

ARTICLE V

PROPERTY RIGHTS AND CONVEYANCES

5.01 **Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes; subject, however to the provisions of Section 5.04, below. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

5.02 **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot___ Block___ as identified in official Plat of **Parkside, Planned Residential Development, Plat___, Rexburg, Madison County, Idaho,** recorded in Office of Madison County Recorder as Instrument No._____ on _____, 20____, **SUBJECT TO** the Declaration of Easements, Covenants, Conditions and Restrictions of Parkside, A Planned Residential Development, recorded in the Office of the Madison County Recorder as Instrument No._____ (as said Declaration may have heretofore been amended or supplemented), **TOGETHER WITH** a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.03 **Transfer of Title to Common Areas.** As soon as possible following the recordation of this Declaration and the initial Plat, Declarant shall convey to the Association title to the various Common Areas described in such Plat, free and clear of all liens other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities. The same procedure shall be followed with respect to the Common Areas contained in subsequent Plats following their concurrent recordation with accompanying Supplemental Declarations in the Public Records.

5.04 **Limitation on Easement.** Each Lot's appurtenant right and easement of use and enjoyment of the Common Areas shall be subject to the following:

(a) The appurtenant right and easement of use and enjoyment of the Common Areas pertaining to the Detached Residential Lots shall be limited to the Association's Clubhouse (when constructed), the amenities pertaining thereto and the use of any Common Areas required to provide ingress and egress thereto. Assessments made to such Lots and the Owners thereof shall be adjusted accordingly.

(b) The right of the Association as provided in Section 12.03 below, to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment thereof in a manner consistent with the collective rights of all of the Owners;

(c) The right of the City of Rexburg, Idaho, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any private street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the Mortgagee of each and every

Mortgage that encumbers any Lot and (ii) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain. The assenting provisions of this Section 5.04 (d) shall only apply to the Mortgagees and Owners of the Detached Residential Lots if the Common Areas in question are the Clubhouse and amenities thereto.

5.05 **Utility Easements.** Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot or Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

5.06 **Easements for Encroachments: Townhouse Lots.** If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot to which this Section 5.06 applies, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

ARTICLE VI

USE RESTRICTIONS

6.01 **Use of Common Area.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Units set forth in this Declaration.

6.02 **Residential Use.** The Property is zoned for and restricted to single family residential use pursuant to applicable zoning ordinances of the City of Rexburg. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning, including, but not limited to occupancy and parking restrictions. No Lot or Unit shall be used, occupied, or altered in violation of such ordinances so as to create a nuisance or to interfere with the rights of any other Owner.

6.03 **Prohibited Use and Nuisances.** The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 12.03 of this Declaration:

(a) No Unit or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the zoning ordinances of the City of Rexburg as of the date hereof.

(b) No lease of any Unit shall be for less than the whole thereof.

(c) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board pursuant to Section 12.03 of this Declaration.

(d) No parking of vehicles of any kind on the streets, private drives or parking areas within the Development shall be permitted except as set forth in Rules and Regulations adopted by the Board pursuant to Section 12.03 of this Declaration.

(e) No outside television or radio aerial or antenna, satellite dish or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any Unit except pursuant to written approval of the DRC pursuant to Rules and Regulations adopted by the Board pursuant to Section 12.03 of this Declaration.

(f) No Townhouse Unit within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a swamp cooler.

ARTICLE VII

DESIGN REVIEW

7.01 **Design Review Committee.** The Board of Directors of the Association shall appoint a three-member Design Review Committee (the "DRC"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The DRC need not be composed of Owners. If the DRC is not appointed, the Board itself shall perform the duties required of the DRC.

7.02 **Submission to DRC.** Except for original construction by Declarant, no Unit, or accessory of or addition to a Unit which is visible from the Common Areas, shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the DRC.

7.03 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the DRC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the DRC must approve the same.

7.04 **Approval Procedure.** Except as provided in Section 7.03, any plans and specifications submitted to the DRC shall be approved or disapproved by it in writing within 30 days after submission. In the event the DRC fails to take any action within such specified period, it shall be deemed to have

approved the material submitted except in those respects to which such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

7.05 **Detached Residential Units.** Detached Residential Units constructed on Detached Residential Lots shall meet the following minimum size requirements, exclusive of garages, decks, patios or basements (if any):

Single level	(Rambler)	1400 sq. ft.
Two level		800 sq. ft. main level 800 sq. ft. second level

Quality of building materials, color schemes, and landscaping plans shall be as required by the DRC.

7.06 **Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the DRC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity, provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

7.07 **Liability for Damages.** Neither the DRC nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the DRC with respect to any request made pursuant to this ARTICLE VII.

7.08 **Declarant's Obligation.** Declarant hereby covenants in favor of each Owner (a) that all Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the Public Records all Lots and Common Areas of the Development will be located approximately in the locations shown on the applicable Plat.

ARTICLE VIII

INSURANCE

8.01 **Hazard Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Common Areas owned by the Association and of all the Townhouse Units (and/or buildings in which such Units exist, including all building service equipment, if any, and the like), but not the contents thereof, and all roofs, surfaces and structures comprising Townhouse Units (regardless of any definition thereof in ARTICLE II) with an Agreed Amount Endorsement, or its equivalent, if available, or an Inflation Guard Endorsement, and such other endorsements as the Board may deem to be warranted and reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners as their interests appear, and shall afford protection, to the extent applicable, against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) such other risks as are customarily be covered with respect to facilities similar in construction, location and use.

8.02 **Liability Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best's Key Rating Guide a policy or policies of public liability insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas, or activities conducted thereon, under a comprehensive general liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in Madison County, Idaho, nor less than $1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others, and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners, and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least 30 days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

8.03 **Additional Insurance; Further General Requirements.** The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

(a) a waiver of the insurer's right of subrogation against the Association, the Owners, and their respective directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

8.04 **Fidelity Coverage.** The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

(a) name the Association as an obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured.

8.05 **Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

8.06 **Other Insurance Provisions.** All insurance required pursuant to this ARTICLE VIII shall be written by insurers licensed in the State of Idaho. Notwithstanding anything in this ARTICLE VIII to the contrary, any insurance required to be obtained by the Association pursuant to Sections 8.01, 8.02, 8.03 or 8.04 of this ARTICLE VIII shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates, and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas and Townhouse Units or risks being insured.

8.07 **Insurance on Detached Residential Units.** Owners of Detached Residential Units shall procure at their sole cost and expense, and shall maintain in force, hazard insurance on their particular Unit and contents and personal liability coverage as is customary in projects such as the Development, and which is consistent with each such Owner's individual circumstances.

8.08 **Townhouse Units: Owners Contents Policies.** Townhome Unit Owners shall be responsible to purchase and maintain in force a condominium owner type contents policy (State Farm HO6 or equivalent) with respect to their individual Units. All claims for damage to any such Unit must first be submitted by the Owner to his insurer under his contents policy. The Board shall not be required to submit claims under any of its Development policies required by this Declaration for any damage or liability claims that should or would have been covered under an Owner's contents policy.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 **Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title, or of any other

interest in a Lot, or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of, or other rights under, any Mortgage. Unless and until it enters into possession, or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee if such Mortgagee's failure to do so is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee named in a Mortgage which is in effect at the time of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

9.02 **Preservation of Common Area.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) at least two-thirds (2/3) of the outstanding votes in the Association, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

9.03 **Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

(a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration, or the Articles of the Association, which is not cured within 60 days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds $10,000; or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

9.04 **Notice of Meetings.** The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

9.05 **Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association, and receive financial statements, as the Owner of the Lot securing the Mortgage.

9.06 **Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may, or have, become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

9.07 **No Priority Accorded.** No provision of this Declaration gives, or may give, a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

9.08 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this ARTICLE IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ARTICLE X

PARTY WALLS - TOWNHOUSE UNITS

10.01 **General Rules of Law to Apply.** Each wall to be built as a part of the original construction of the Townhouse Units and placed substantially on a dividing line between Townhouse Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

10.02 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

10.03 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; the foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

10.04 **Weatherproofing.** Notwithstanding any other provision of this ARTICLE X, an Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

10.05 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this ARTICLE X shall be appurtenant to the land and shall pass to such Owner's successors in title.

(The remainder of this page has purposely been left blank.)

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII AND XIII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE, TO THE EXTENT NOT IN CONFLICT WITH LAW.

ARTICLE XI

BYLAWS

BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

11.01 **Membership.** Every Owner, upon acquiring title to a Lot, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association, with respect to such Lot, shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from, the ownership of a Lot.

11.02 **Voting Rights.** The Association shall initially have two classes of voting memberships, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights:

(a) **Class A.** Each Owner, including Declarant, shall be a Class A member entitled to one vote for each Lot in which such member holds the interest required for Association membership.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to one vote for each Class A voting right outstanding at the time (including any to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of:

(i) the expiration of 90 days following the date on which the total outstanding Class A voting rights, other than those held by Declarant, equal the total number of Class B voting rights to which Declarant is entitled pursuant to the provisions of Section 11.02(b); or

(ii) on December 31, 2006; or

(iii) upon surrender of the Class B voting rights by Declarant in writing to the Association.

Upon the termination of the Class B voting rights, all members, including Declarant, shall have equal voting rights as to all matters except as they may be limited in Section 5.04(d).

11.03 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting, or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot unless an objection is made at the meeting, or in writing, by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

11.04 **Records of Ownership.** Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots.

11.05 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice therefor.

11.06 **Annual Meetings.** Annual meetings of the membership of the Association shall be held in each year beginning in the year 2002 on such month, day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected Directors of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

11.07 **Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

11.08 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail, or by delivery in person, shall be considered notice served.

11.09 **Quorum.** Except as provided in Section 13.10, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

11.10 **Adjourned Meetings.** If a meeting of Owners cannot be organized because a quorum is lacking pursuant to Section 11.09, the Owners present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

11.11 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer, if needed. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board are to be elected; provided that until Board members are elected by Owners pursuant to Section 11.13, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President is absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

11.12 **Initial Composition of Board: Declarant Control.** Declarant alone shall have the right to select the initial Board which may be composed of three members, none of whom need be Owners, or to perform the duties of the Board in place of the Board. Such right of the Declarant to appoint the Board, or to perform its duties, shall remain in Declarant until the termination of the Class B voting rights as provided in Section 11.2(b) at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 11.13.

11.13 **Board of Directors or Trustees: Owner Control; Composition, Election, Vacancies.** Subject to the provisions of Section 11.12, the Board shall be composed of five members, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first meeting of Owners to elect the Board, two members shall be elected to a three-year term, two to a two-year term, and one to a one-year term. As members' terms expire, new members shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Board members from among the Owners, and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the member they were

appointed to replace. The Owners may increase the number of Board members to seven at any meeting of Association members at which such increase is properly placed on the agenda and meeting notice.

11.14 **Indemnification of Board.** Each of the members of the Board shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Board member may become involved by reason of being, or having been, a member of said Board.

11.15 **Board Meetings, Quorum, Board Action.** The Board shall establish rules for its meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority of those Board members attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous written consent of all current Board members.

ARTICLE XII

BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

12.01 **Duties of the Association.** The Association, through its Board, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Development:

(a) Accept all Owners as members of the Association.

(b) Accept title to all Common Areas conveyed to it, whether by Declarant or by others, but may refuse if the same is not free and clear of liens and encumbrances.

(c) Maintain, repair and replace any structural Common Areas.

(d) In connection with its duties to maintain and repair Common Areas, to provide maintenance and repair upon the exterior surfaces and roofs of the Townhouse Units (and/or the buildings in which such Units exist), and fences, including but not limited to, painting, staining, replacing, and caring for roofs, gutters, downspouts, exterior surfaces, window casings, trim, fences and other exterior improvements except glass surfaces.

(e) To the extent not assessed to or paid by the Owners directly, pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments; and further, to make a prorata Specific Assessment to all Lots and the Owners thereof for the total amount so levied and paid by the Association.

(f) Obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

The Association may engage (but is not required to do so) a responsible corporation, partnership, firm, person or other entity, as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof. Any Managing Agent shall be an independent contractor.

12.02 **Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time, and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required by the provision of the Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction, or otherwise, all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots to the extent necessitated by the failure to do so of the Owners of such Lots, or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board, and the Owners;

(iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys, certified public accountants, and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

12.03 **Association Rules and Regulations.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Areas; (b) the collection and disposal of refuse; (c) uses and nuisances pertaining to the Development; and (d) all other matters concerning the use and enjoyment of the Common Areas and the conduct of Owners and their invitees within the Development.

12.04 **Limitation of Liability.** No member of the Board, acting in good faith, shall be personally liable to any Owner, guest, tenant or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE XIII

BYLAWS - ASSESSMENTS

13.01 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant with, and agree to pay to, the Association the Assessments described in this ARTICLE XIII, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

13.02 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from Assessments may include, but shall not be limited to, payment of the Common Expenses and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, its Articles and Bylaws or the Rules and Regulations.

13.03 **Annual Assessments.** Annual Assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of Common Expenses.

13.04 **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year, the Board shall prepare and furnish

to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

13.05 **Notice and Payment of Annual Assessments.** Except with respect to the fiscal period ending December 31, 2001, the Association shall notify each Owner as to the amount of the Annual Assessment against his Lot on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly instalments, each such instalment due on the first day of each calendar month during the fiscal year to which the Annual Assessment relates; provided that the Annual Assessment for the first fiscal period shall be based upon such portion of such fiscal period as follows the recordation of the Declaration in the Public Records and shall be payable in such instalments and at such times as the Association, in the sole discretion of its Board, may determine. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment, or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Annual Assessment shall have been given to the Owner in the manner provided in Section 14.01.

13.06 **Initial and Transfer Fees.** Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Lot, **whether as a first time or subsequent Owner**, the sum of $200, which sum shall be in addition to any proration of the Annual Assessment which may be due for the current fiscal year in which a new Owner purchases his Lot. Such fees shall become part of the Association's general fund to be utilized as necessary for payment of Common Expenses.

13.07 **Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall not exceed the amount per Lot that is determined by the Board pursuant to Section 13.04. From and after January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased by the Board each calendar year thereafter (non-cumulatively) by not more than fifteen percent (15%) above the maximum Annual Assessment for the previous year, without the vote of Owners entitled to cast a majority of the Association votes.

13.08 **Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to, or replacement of, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Lots in the same manner as Annual Assessments. Such Special Assessments must be assented to by at least sixty percent (60%) of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

13.09 **Uniform Rate of Assessment.** All Annual and Special Assessments authorized by Sections 13.03 and 13.08, respectively, shall be fixed at a uniform rate for all Townhouse Lots and at a

uniform rate for all Detached Residential Lots (having in mind the difference in Common Expense attributable to each category); provided, however, that no Annual or Special Assessments shall be due and payable until a Lot has been both fully improved with a completed Unit and occupancy taken for the first time by an Owner or tenant. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay any shortfall.

13.10 **Quorum Requirements.** The quorum at any Association meeting required for any action authorized by Section 13.08, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting, or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in said Section 13.08) at which the quorum requirement shall be one-half (½) of the quorum which was required at the immediately preceding meeting.

13.11 **Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 13.03 and 13.08, the Board may levy at any time Specific Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit, or cause of damage, or maintenance, or repair work, or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots benefitted.

13.12 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payment of all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.13 **Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it or any instalment thereof becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor, or may foreclose its lien against the Lot pursuant to provisions of the Idaho Statutes applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment obtained by the Association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights.

Failure of the Association to promptly enforce any remedy granted pursuant to this Section 13.13 shall not be deemed a waiver of any such rights.

13.14 **Subordination of Lien to Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or a purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment instalment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a Mortgage shall relieve any Lot from the lien of any Assessment instalment thereafter becoming due.

13.15 **No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance, or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Areas of the Development; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XIV

GENERAL PROVISIONS

14.01 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Board member of the Association or to the Association's Registered Agent as reflected in the Association's records at the Office of the Secretary of State of the State of Idaho. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the Managing Agent of the Association or any member of the DRC.

14.02 **Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association, or by the Association's President and Secretary, who shall certify that the required sixty percent (60%) vote was obtained in a Member meeting , or by consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.03 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association, or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.03:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

14.04 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Development, may be assigned without the consent of any Owners.

14.05 **Interpretation.** The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Idaho shall govern the validity, construction and enforcement of this Declaration.

14.06 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

14.07 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.08 **Enforcement of Restrictions.** The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of, this Declaration. The prevailing party in any such action shall be entitled to collect court costs and reasonable attorney's fees.

14.09 **Duration/Termination:** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the City of Rexburg authorizing such termination, an instrument of termination which is executed by eighty percent (80%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Lot.

14.10 **Effective Date.** This Declaration, and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

EXECUTED by Declarant on the day and year first above written.

PARKSIDE DEVELOPMENT, L.L.C.

By: _____
John Dester, Manager

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

The within instrument was acknowledged before me this 13th day of September, 2001, by **John Dester** in the capacity indicated.

_____
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
December 3, 2001
PAUL A. JEPPESEN
2230 N. University Pkwy, S.B. #70
Provo, Utah 84604

d:clients/parkside/parkside.dec

EXHIBIT A

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

PARKSIDE
A Planned Unit Development

City of Rexburg, Madison County, Idaho

THIS DESCRIPTION OF THE ADDITIONAL LAND IS SET FORTH AND ATTACHED IN THIS EXHIBIT A TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF THE ADDITIONAL LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

A tract of land lying in Madison County, State of Idaho, in the Northwest One Quarter of Section 25 Township 6 North, Range 39 East of the Boise Meridian, and more particularly described as follows:

Beginning at the center one quarter corner of Section 25, thence N 00 17 06 W along the meridional centerline of said Section 659.95 feet to the true point of beginning, the CSN 1/64 corner; thence S 89 48 44 W a distance of 716.32 feet to the easterly right of way of Highway 20; thence N 00 08 31 W a distance of 493.03 feet along said right of way; thence N 89 42 54 E a distance of 437.50 feet; thence S 00 17 06 E a distance of 257.66 feet; thence N 89 42 54 E a distance of 118.58 feet; thence S 49 59 06 E a distance of 65.60 feet; thence N 89 42 54 E a distance of 108.98 feet; thence S 00 17 06 E a distance of 194.16 feet to the true point of beginning. Contains 6.34 acres more or less.