

Instrument # 336734

VALLEY COUNTY, CASCADE, IDAHO

11-20-2008

11:25:14 No. of Pages: 27

Recorded for: MULLEMANN, PITTENGER, MCMAHAN

ARCHE N. BANBURY

Fee: \$1.00

Ex-Officio Recorder Deputy

Index to: RESTRICTIVE COVENANT

*Randy Aguirre*

**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
LITTLE PEARSOL ESTATES SUBDIVISION**

THIS AMENDED DECLARATION ("Declaration") is made this 10<sup>th</sup> day of NOVEMBER, 2008, by DAN R. BRUMWELL, ("Declarant"), and shall replace and supercede in its entirety that certain Declaration of Protective Covenants, Conditions, and Restrictions for Little Pearsol Estates Subdivision recorded with the Valley County, Idaho Recorder on June 12, 2006 as Instrument No. 309724 ("Original Declaration").

**ARTICLE 1 - GENERAL**

**Section 1.1: Common Interest Community:** The name of the common interest community created by this Declaration is "Little Pearsol Estates Subdivision". All of the community is located in Valley County, Idaho.

**Section 1.2: Property Affected:** The real property affected by and subject to this Declaration is that certain real property which is the subject of the plat for Little Pearsol Estates recorded with the Valley County, Idaho Recorder on June 12, 2006 as Instrument No. 309722. Such property, together with any property which is annexed thereto by Declarant, pursuant to the terms of this Declaration, shall be referred to in this Declaration as "the Property". The "Existing Property", when used in this Declaration, refers to only that property identified in above-described plat for Little Pearsol Estates. Declarant owns all but one of the Lots in the Existing Property.

**Section 1.3: Purpose of Declaration:** This Declaration is executed and recorded (a) to provide for the Property Owners Association to maintain non-public roads within the Property and to perform certain functions for the benefit of Owners of land within the Property; (b) to define the duties, powers and rights of the Property Owners Association; and, (c) to define certain duties, powers and rights of Owners.

**Section 1.4: Declaration:** Declarant hereby declares that each lot, parcel or portion of Little Pearsol Estates Subdivision, is and shall be held, sold conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: (i) shall run with the land constituting the Property, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; (ii) shall inure to the benefit of every lot, parcel or portion of the Property and interest therein; (iii) shall inure to the benefit of and be binding upon Declarant, Declarant's successor in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest; and, (iv) may be enforced by Declarant, by any Owner or such Owner's successors in interest, or by the Association as hereinafter described.

62

## ARTICLE 2 - DEFINITIONS

**Section 2.1: Architectural Control Committee:** "Architectural Control Committee" shall mean the committee created pursuant to Article 6.

**Section 2.2: Articles:** "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

**Section 2.3: Assessments:** "Assessments" shall mean those payments required of Association Members, including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.

**Section 2.4: Association:** "Association" shall mean the Little Pearsol Estates Subdivision Owners' Association.

**Section 2.5: Association Documents:** "Association documents" shall mean the various operative documents of the Association, including: (a) the Articles of Incorporation of the Association; (b) the Bylaws of the Association; and, (c) this Declaration, and all Amendments to any of the aforementioned documents.

**Section 2.6: Board of Directors:** "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

**Section 2.7: Bylaws:** "Bylaws" shall mean the Bylaws of the Association.

**Section 2.8: Committee:** "Committee" shall mean the Architectural Control Committee.

**Section 2.9: Community:** "Community" as used herein shall refer to the Existing Properties considered as a whole.

**Section 2.10: Declarant:** "Declarant" shall mean Dan R. Brunwell, and any successor bulk purchaser of the subdivision lots whom is designated in writing recorded with the Office of Recorder of Valley County, Idaho by the Dan R. Brunwell as a successor Declarant.

**Section 2.11: Declaration:** "Declaration" shall mean this Declaration of Covenants.

**Section 2.12: Existing Property:** "Existing Property" shall mean the real property which is the subject of the plat for Little Pearsol Estates recorded with the Valley County, Idaho Recorder on June 12, 2006 as Instrument No. 309722. "The Property" or the "the Subdivision" shall mean the Existing Property, together with any additional properties which are annexed to the Existing Property pursuant to Section 8.2(A) herein. Either term shall include any improvements now or hereafter made on such real property and appurtenances and rights to such real property.

**Section 2.13: Improvements:** "Improvements" shall include buildings, outbuildings, roads driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

**Section 2.14: Lot:** "Lot" shall mean a parcel of land subject to this Declaration which is identified as a Lot in any plat subsequently recorded against the Existing Property or the Property. A lot may also be referred to herein as a "parcel".

*cel*

**Section 2.15: Member:** "Member" shall mean a member of the Association, who must be an Owner. Membership in the Association shall be appurtenant to and may not be severed from ownership of a Lot.

**Section 2.16: Owner:** The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot as shown on the records of the County Recorder, Valley County, Idaho; such term shall also include any person, persons, entity or entities who succeed to such recorded interest by any means, including buyers under executory contracts of sale and excluding those holding an interest merely as security for the performance of an obligation.

**Section 2.17: Person:** "Person" shall mean a natural person, a corporation, a partnership, or any other entity recognized as being capable of owning real property under Idaho law.

**Section 2.18: Plat:** "Plat" shall mean the final plat, filed of record with the Valley County Office of Recorder.

**Section 2.19: Record, Recorded:** "Record" and "Recorded" shall mean, with respect to any documents, the recordation of said document in the Office of the County Recorder, Valley County, Idaho.

**Section 2.20: Rules and Regulations:** "Rules and regulations" shall mean the rules and regulations adopted by the Board of Directors concerning the operation of the Association.

**Section 2.21: Structure:** "Structure" shall include buildings, outbuildings, fences, walls, stairs, decks and poles.

### ARTICLE 3 - LAND USES AND IMPROVEMENTS

**Section 3.1: Land Use and Living Units:** All of the subject lots in the Existing Property shall be used and occupied solely for single-family residential purposes. None of the subject lots or parcels shall be split, divided or subdivided into a smaller lots or parcels than indicated on the Final Plat of Little Pearsol Estates Subdivision, as filed with the office of the County Recorder of Valley County, Idaho. All single family residences shall be subject to the following conditions and limitations:

A. No buildings other than one residence, an attached or detached guest/caretaker residence (i.e. either incorporated into the primary residence or freestanding, but not both) and associated accessory buildings incidental and appurtenant to a private residence, shall be erected or maintained on any lot, provided, (1) a garage sufficient in size for Owner's vehicles must be constructed either as part of the primary residence or, if detached, within one year after the construction of the residence; and, (2) no more than a total of four (4) buildings, or five (5) buildings if a guest/caretaker residence is constructed and if the garage is detached, shall be allowed on any lot. No use whatsoever shall be made of any parcel herein other than as the site and grounds of a private residence. The term "private residence" as used herein is intended to exclude every form of multi-family dwelling, boarding or lodging house, and the like; and, any separate rental of any separate dwelling unit shall be specifically determined to be multi-family dwelling. This is not, however, intended to exclude an attached or detached

68

guest/caretaker residence, as provided above, if such guest, family member's, or caretaker's housing is allowed by applicable Valley County Ordinances, and Central District Health. All building exteriors must be of similar materials and colors as others located on the same Lot. An owner may rent or lease their residence; provided: the Owner shall assure that the renters/lessees are aware of these Covenants and shall incorporate these Covenants into any rental or lease agreement; the Owner shall be responsible for any violations by renters/lessees of any of the provisions of these Covenants; and, the minimum rental period shall be thirty (30) days.

B. No modular homes, basement, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently except during the period of construction as defined and limited by Section 6.8; nor shall any residential structure be moved on to any lot from any other location, unless the prior written approval of the Architectural Control Committee is obtained, such approval to be obtained in the same manner as for new construction.

C. Visitors and guests may park a camper, motor home or trailer on a Lot for a reasonable term, not to exceed fourteen (14) days consecutive duration with a minimum of 48 hours between stays, nor more than a total of sixty (60) days each calendar year. An Owner shall have the same rights, prior to the commencement of construction. An Owner shall also have the right to park a camper, motor home or trailer on a lot during the period of construction as defined and limited by Section 6.8.

D. A residence shall contain no less than 1,200 square feet, if single storied, or 1,600 square feet, if more than one story, of heated floor area devoted to living purposes (i.e. exclusive of roof or unroofed porches, terraces, basements or garages); and, all construction must be of good quality and done in a good workmanlike manner.

E. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specification, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Control Committee, and the same have been approved in writing. The procedures for review are as more fully set forth in Article 6.

F. The planting of trees shall not require prior approval by the Architectural Control Committee. Existing trees shall be managed according to best management silviculture practices and according to the following principles:

1. Trees may be cleared for preparation of building sites, driveway construction, view enhancement, removal of dead or diseased trees, and prevention of overcrowding;
2. Otherwise, removal of trees shall require prior approval of the Architectural Control Committee; and,
3. Timber management goals within the subdivision shall be to preserve healthy timber stands; to thin and remove diseased, dead or dying trees, except where essential to wildlife habitat, to

maintain appropriate crown spacing for fire prevention purposes, and to maintain the visual aesthetic forest appearances.

In the event that overcrowding or excessive fuel load on a Lot create a clear and present danger to the safety of other Lot Owners and/or their structures, then the Board shall have authority to remove such trees as follows:

1. The Board shall secure a written opinion from an independent forester confirming the clear and present danger as aforesaid;
2. The opinion, together with a written demand from the Board, must be served on the Owner, personally or by certified mail;
3. The Owner must be allowed a reasonable period of time to remove the trees which shall, in no case, be less than thirty (30) days during the snow-free season; and,
4. The Owner shall be entitled to the net proceeds from the timber which is removed, after deduction by the Board of all actual costs incurred by the Board associated with the removal of the trees.

G. Detached garages, guest quarters, barns, outbuildings and storage sheds shall be allowed if in conformity with the provisions of this Declaration and the applicable ordinances of Valley County. Garages, storage sheds, patio covers, and all other structures shall be constructed of, and roofed with, the same or compatible materials, and with similar colors and design, as the residential structure on the applicable Lot, or as otherwise approved by the Architectural Control Committee.

H. All access driveways shall have an all weather wearing surface approved by the Architectural Committee and shall be constructed to assure proper drainage. The intent of this section is to create a surface that will reduce dust, which surface could consist of natural materials, road base gravel, paving, concrete, or such other surface as may be approved by the Architectural Committee. The foregoing is not a requirement that driveways be paved.

I. Exterior lighting shall be part of the architectural concept of the improvements on a Lot, and shall be in compliance with the Valley County Lighting Ordinance. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Architectural Control Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided. For instance, flood lights and other similar bright lights shall not be allowed; and all lighting shall be shielded and directed downward.

J. The maximum height of any building shall be in compliance with the applicable Valley County land use or zoning ordinances, but shall not exceed thirty-five (35) feet in height, measured from the grade which pre-existed construction to the highest point of any roofline. Height shall be measured as provided in the 1997 Uniform Building Code or any subsequent re-codification or replacement thereof.

K. Roofs shall be required to be of pitched design and shall be covered with nonflammable materials (e.g. non-reflective metal, tile, fiberglass shingles, fire retardant

wood shingles or shakes). No galvanized metal roofs shall be allowed. Metal roofs shall be of earth tone colors which are compatible with the Property. Owners desiring to use non-metal roofs must demonstrate to the Architectural Control Committee that the desired material is fire resistant.

L. The color and type of the exterior surfaces of any structure shall be subject to approval by the Architectural Control Committee. Exteriors must be of natural materials (i.e. wood or stone); provided, the Architectural Control Committee may, upon petition from an Owner, allow a non-natural material if, after reviewing samples, the Committee is convinced that the appearance of the material is indistinguishable from natural materials (as viewed from the nearest lot line) and is consistent with these covenants. Earth tone colors shall be preferred, except for trim.

M. No TV Satellite dishes larger than thirty-six inches (36") in diameter shall be allowed.

N. All setbacks shall comply with Valley County Ordinances.

**Section 3.2: In Home Businesses:** "In home business," which involve the coming and going of clients or customers or the parking or storage on a Lot of vehicles, machinery, equipment or materials shall not be allowed, except by permission of the Board granted following the process for variances specified in Section 6.10 below. The Board shall not grant the request from an Owner to conduct an in home business which involves the coming and going of customers or clients or the parking or storage on the Lot of vehicles, machinery, equipment or materials unless the Board determines that the impacts on other lot owners will be negligible.

**Section 3.3: Storage of Building Materials:** No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, or unless completely screened from view from any other Lot or road within the Subdivision.

**Section 3.4: Storage of Owners' Vehicles and Equipment:** The parking and storage of automobiles, trucks, snowmobiles, boats, boat trailers, travel trailers, camper trailer, motor homes, automotive campers, or other vehicles or equipment shall be favored in a garage or other enclosed building, or in an area which is completely screened from view from other Lots or roads within the Subdivision. Owners may, however, park such vehicles or equipment outside in a neat and orderly manner.

**Section 3.5: Wild Game:** Nothing shall be done or kept on any Lot which will inhibit, interfere with, or endanger the wild game which enter onto any Lot, or anywhere in the Subdivision. All Lot Owners must understand and accept the fact that the wild game will eat landscaping, plants and trees. Lot Owners may use only game-friendly means of protecting their landscaping. Wild game shall not be fed within the Property.

**Section 3.6: Animals:** No animals, of any kind, except for large animals as specified at Section 3.6(C) and household pets (it is specifically noted that livestock, poultry and wild animals are not to be considered household pets), shall be raised, bred, or kept on any portion of the property. The following additional provisions shall apply to animals within the subdivision:

68

A. Pets: Household pets may be kept for personal or non-commercial recreational purposes only if the presence of such pets does not constitute a nuisance. Pets must be kept within the boundaries of the Lot unless accompanied by and under the control of the Owner.

B. Dogs: Consistent and/or chronic barking by dogs shall be considered a nuisance. Fenced dog runs are permitted with prior Committee approval. Underground electrical devices are encouraged.

C. Large Animals: Horses, cattle, llamas, sheep, and comparable sized animals shall be allowed to be kept on any Lot; provided horses, llamas or mules for use by an Owner may be allowed on a Lot for up to, but not exceeding, twenty (20) days within any calendar year, as long as such animals are kept in an enclosure which has been approved by the Architectural Control Committee. The enclosure cannot be constructed of barbed wire or chain link. Fencing shall be constructed in accordance with Section 3.7. below.

**Section 3.7: Fences**: No fence, wall or hedge higher than four (4) feet, six (6) inches shall be erected or maintained on any Lot, save and except, however, with the previous written consent of all adjoining Lot Owners and the Architectural Control Committee. The Architectural Control Committee shall have complete control over the allowance of a fence over the four foot six inch height limit. No fence, except exterior Property perimeter fencing, may be constructed of wire or metal. Property perimeter fences may be constructed of barbed wire. Wood fencing shall be preferred.

All fencing shall first be approved by the Architectural Control Committee. Fencing on the perimeter (i.e. external boundaries) of the Property may be wire.

**Section 3.8: Rebuilding or Restoration**: Any dwelling unit or other improvement which may be destroyed in whole or in part must be rebuilt, or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding, restoration or removal shall be completed within reasonable promptness and in any event within two (2) years from the time the damage occurred.

**Section 3.9: Drainage**: There shall be no interference with the established drainage pattern over any portion of the Property. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time that road construction and installation of utility lines is completed by Declarant.

**Section 3.10: Utilities**:

A. Telephone, Electrical: The Declarant shall provide underground electrical power and telephone service to the Subdivision. The purchaser and owner of each Lot agrees to use the service so provided. Private electrical generating systems shall not be permitted for domestic electrical service, except as a backup system in case of primary electrical service failure. All electrical power lines, telephone lines and other utility service lines shall be underground from each individual parcel line to the point of use on each parcel. Overhead lines and utility poles shall not be permitted, except during the construction phase.

B. Water: Water for each Lot shall be supplied by means of individual wells, installation and maintenance of which shall be the sole and exclusive responsibility of Lot Owners.

C. Septic: Sewage disposal for each Lot shall be supplied by means of individual septic/drainfield systems. Permits therefor shall be required from the Central District Health Department.

D. Solar Panels: With the prior approval of the Architectural Control Committee, solar panels shall be allowed, provided that they are unobtrusive and do not detract from the architectural appearance and features of the residence.

**Section 3.11: Obstructions on Common Easements**: No gates or obstructions shall be placed upon or block any access road unless the access road terminates on the Lot Owner's property, and the gate or obstruction is placed within the Lot Owner's property. Under no circumstances shall any acts be taken by any Lot Owner which unreasonably degrade or impair the rights possessed by any third-parties to traverse any roads or easements on or across the Property.

**Section 3.12: Snow Machines, Motorcycles, and All Terrain Vehicles**: All terrain vehicles, snow machines, motorcycles and other similar motorized vehicles may not be operated within the Subdivision, except for direct ingress/egress to the Owner/Operator's Lot, or for property maintenance, upkeep and repair.

**Section 3.13: Prohibited Lot Uses**:

A. There shall be no mining, smelting or milling of ores or similar mineral operations within the Community.

B. No outdoor privy or any common cesspool shall be installed on any lot at any time.

C. Nothing shall be done or kept on any Lot by any person which will increase the rate of insurance on any other Lot or which will result in the cancellation of any insurance or which constitutes a violation of any law.

D. No excavation shall be made on any Lot except as is necessary for the erection of approved structures, and the construction of a driveway. Excavation which is not covered by a structure shall be properly filled within thirty (30) days of the completion of the underground work.

E. No hunting or discharging of firearms shall be allowed within the Property.

**Section 3.14: Building and Grounds Conditions**: Each Owner shall maintain the exterior of his or her dwelling unit and all other improvements in good condition and shall cause them to be repaired as the affects of damage or deterioration become apparent. Each Owner shall maintain his or her Lot in good appearance at all times.

**Section 3.15: Landscaping**: Of critical concern with regard to landscaping in the Subdivision is the preservation of the stability of hill sides and the prevention/control of wild



fires. Native, drought resistant plant species shall be preferred; however, lawns and other landscaping shall be allowed.

**Section 3.16: Refuse:** No unsightly objects or materials, including but not limited to abandoned or inoperative vehicles, trash, rubbish, garbage, grass or shrub clippings, construction debris, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street except during refuse collections.

In the event that any Owner shall permit the accumulation of such materials, aforesaid, so as to create a dangerous, unsafe, unsightly or unattractive condition, or damage to property or facilities on or adjoining their Lot, the Board, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, by removing such materials, and to enter upon such Owner's Lot for the purpose of doing so. Such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be an Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Article 9 of this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

**Section 3.17: Burning:** No burning of any household garbage, trash or other noxious refuse shall be permitted within the Subdivision. Burning of natural materials such as grass/tree trimmings shall take place only with required permits from the local Fire Department and any other agency or authority with jurisdiction. The policies, practices and instructions of such entity shall be strictly followed.

**Section 3.18: Nuisances:** No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any dwelling unit.

**Section 3.19: Inoperative Vehicles:** No unused, stripped-down, partially wrecked or otherwise inoperative motor vehicles or parts thereof shall be permitted to be parked on any common easement or road within the Property, nor shall such vehicles be allowed to be parked on any Lot.

**Section 3.20: Signs:** The only signs permitted on any Lot or improvement shall be:

- A. One sign of customary size for identification of the occupant and the address of any dwelling;
- B. Signs for sale and administration purposes installed by the Declarant during development;
- C. Standard Real Estate signs advertising a lot for sale, not to exceed 9 square feet in surface size;

D. Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and,

E. Such signs as may be required by law.

**Section 3.21: No Further Subdivision:** No Lot may be further subdivided.

**Section 3.22: Roads:** All roads within the Subdivision shall be private unless accepted by Valley County as a County road. Maintenance, repair, replacement and/or plowing thereof shall be the responsibility of the Property Owner's Association unless accepted by the County.

**Section 3.23: Future Development:** Each purchaser of a Lot in the Subdivision and their heirs and assigns, acknowledges that Declarant or Declarant's successors may subdivide or develop Declarant's property which adjoins or is proximate to the Subdivision. Such development may be of a higher or lower density than Little Pearsol Estates Subdivision and may involve some recreational commercial uses.

**Section 3.24: Exemption of Declarant:** Nothing contained herein shall limit the right of Declarant to complete excavation, grading and construction of improvements to and on any portion of the Property owned by Declarant or to construct such additional improvements as Declarant deems advisable in the course of development of the Property, so long as any Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing, and maintaining on the Property, such structures and displays as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall have the right at any time prior to acquisition of title to a Lot by a purchaser from Declarant to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to Declarant, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant need not seek or obtain Architectural Committee approval of any such improvements constructed or placed by Declarant on any portion of the Property owned by Declarant or an affiliate of Declarant. The rights of Declarant hereunder may be assigned by Declarant to any successor in interest in connection with Declarant's interest in any portion of the Property by an express written assignment recorded in the Office of the Valley County Recorder.

**Section 3.25: Noxious Weeds:** Any Lot disturbed as a result of grading or construction shall be revegetated to at least its original state no later than one construction season after being disturbed. Additionally, each Owner shall follow the guidelines provided in the Valley County Comprehensive Noxious Weed Management Plan.

**Section 3.26: Fire Hazard Mitigation:** All lots shall be maintained in accordance with the Wildland-Urban Interface Fire Code, as it now exists or may be subsequently modified. Should the Owner fail to do so then, after thirty (30) days' prior written notice to the Owner, the Board shall have the authority to perform the necessary work and collect all expenses or fees related thereto as a limited assessment. The Board may, in addition, use its enforcement powers provided in Section 6.11 below.

**Section 3.27: Wood Burning Devices:** Wood burning devices shall be limited to one per household.

CR

#### ARTICLE 4 - ASSOCIATION OPERATION

**Section 4.1: Organization:** The Association (Association) shall be initially organized by Declarant as an Idaho, non-profit corporation. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or By-Laws, then such provision shall be construed, to the extent possible, so that such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

**Section 4.2: Membership:** Each Owner shall be a member of the Association. An Owner shall automatically be a holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that the Owner may assign some or all of the Owner's rights as an Owner and as a member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for full fulfillment of the obligations of the Owner under the Association Documents.

**Section 4.3: Classes of Membership/Voting Rights:** The Association shall have one (1) class of membership, which shall be a voting membership.

**Section 4.4: No Fractional Votes.. No Severance of Voting Rights:** Fractional votes shall not be allowed. In the event that joint Lot Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Lot concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the new Owner, subject to any assignment of the right to vote to a lessee, mortgage, or beneficiary as provided herein.

**Section 4.5: Board of Directors and Officers:** The affairs of the Association shall be conducted and managed by the Board of Directors ("Board") and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time. The Board of Directors shall be elected in accordance with the provisions set forth in the Association By-Laws.

60

**Section 4.6: Declarant's Transfer of Control of Association:** Declarant's right to control the Association and the selection of a majority of its Board of Directors shall terminate upon the occurrence of the *first* of the following events:

A. By written notice from the Declarant to the President or Secretary of the Association of the Declarant's intention to terminate its right to appoint the majority of the members of the Board of Directors; or

B. Upon that date which is sixty (60) days after eighty percent (80%) of all lots within the Property (including any property which is annexed into the Property pursuant to the terms of this Declaration) have been sold to persons other than Declarant.

Such date is herein referred to as "the Transfer of Control Date".

#### **ARTICLE 5 - DUTIES AND POWERS OF THE ASSOCIATION**

**Section 5.1: General Duties and Powers of Association:** The Association has been formed to further the common interest of the Members. The Association shall have the duties and powers to take such action as is necessary to perform its obligations under the Association documents.

**Section 5.2: Powers of the Association:** The Association shall have all the powers of a corporation organized under the non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws, and Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and By-Laws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Association's affairs and the performance of the other responsibilities herein assigned, including, without limitation:

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

B. **Right of Enforcement:** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the By-Laws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

C. **Delegation of Powers:** The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by any person or entity of any such duty or power so delegated.

D. **Association Rules:** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. Provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the

Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any provisions of this Declaration, or the Articles or By-Laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-Laws to the extent of any such inconsistency.

**E. Emergency Powers:** The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance of construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

**F. Power to Engage Employees, Agents and Consultants:** The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain in paper such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association documents.

**Section 5.3 Duties of the Association:** In addition to duties necessary and proper to carry out the powers delegated to the Association by this Declaration, and the Articles and By-Laws without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

**A. Insurance:** Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation, directors and officers liability insurance.

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

**C. Architectural Control Committee:** Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration. The Board shall also have discretion to itself serve as the Architectural Control Committee, in lieu of appointing an independent Committee.

**D. Duty to Accept Property and Facilities Transferred By Declarant:** The Association shall accept title to any property, including without limitation, any improvements thereon, any easement or other right, and personal property transferred to the Association by the Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration.

E. Duty to Manage and Care for Roads: The Association shall manage, operate, care for, and maintain and repair all non-public, common easement and access roads within the Property which are identified on the recorded plat of the Property and which are necessary to provide access to the Lots within the Property. The Association shall have the discretion to not plow snow on subdivision roads, or portions thereof, which service unimproved Lots. In the event that neighboring property owners outside Little Pearsol Estates Subdivision utilize the roads pursuant to existing easements or future easements, the Association shall have the right to work with such owners to share in the cost of repair and maintenance of the roads.

#### ARTICLE 6 - ARCHITECTURAL CONTROL

**Section 6.1: Purpose and Theme of Controls:** It is the desire of the Declarant that design controls be implemented for all building improvements to insure that the overall excellence of Little Pearsol Estates Subdivision shall be maintained throughout its development. To this end, an Architectural Control Committee (hereinafter referred to as the "Committee") will be established pursuant to Section 6.2 of this Article 6 to guide the site development and design of all structures and to aid the residential home builders to discover the opportunities and limitations of their building sites. All of the residential improvements will be encouraged to offer a diversity of types, sizes and styles of architecture and yet will be required to conform to a total visual homogeneity.

The discretion hereinafter invested in the Architectural Committee will be exercised towards the end that high standards of workmanship and quality of materials will be maintained throughout the Development and that all improvements will be in harmony with and complement the natural landscape, topography and flora.

**Section 6.2: Architectural Control Committee:** No building, fence, wall, structure or other improvement shall be commenced, erected, altered, placed or maintained upon any lot nor shall any exterior addition to or change or alteration therein be made, until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the Architectural Control Committee, which shall be composed initially of the Board of Directors. If any member of the Committee resigns or is unable to act, the remaining members shall appoint his or her successor. Pending such appointment, the remaining members shall discharge the functions of the Committee. The Committee shall be comprised of no less than three (3) nor more than five (5) members, who shall be appointed annually by the Board. A majority of the members shall constitute a quorum. Meetings may be held by telephone or other electronic conference. The Committee shall designate a Chairperson. The Board may elect to act as the Committee.

**Section 6.3: Documentation Required for Architectural Approval:** No structure or improvement shall be considered or approved by the Committee until the parcel owner has submitted the following information to the Committee:

- A. Two (2) sets of plans and specifications for the proposed improvements;
- B. A site plan of the lot showing the location of all existing and proposed improvements, and which also identifies the location, size and type of all trees proposed to be removed;

- C. Drawings showing all exterior building elevations;
- D. A schedule of exterior materials and colors to be used on the proposed improvement; and,
- E. The owner's proposed construction schedule.

**Section 6.4: Basis for Approval or Disapproval:** The Committee shall give its approval for the requested improvement only if:

- A. The owner or applicant shall have strictly complied with the requirements of Section 6.3 hereof;
- B. The Committee finds that the plans and specifications conform to the requirements of Article 3 of this Declaration, and furthermore that the owner or applicant is in compliance with all of the provisions and requirements of this Declaration in its entirety; and,
- C. The Committee, in its sole and reasonable discretion, finds that the proposed improvement is compatible with the theme of this Development and with the purposes and intent of this Declaration as a whole as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to topography and finished grade elevations.

The Committee may waive submission of plans and specifications for approval where minor construction or a minor addition to an existing structure is involved which does not appear to materially affect the Development.

**Section 6.5: Form of Approval or Disapproval:**

- A. All approvals given under Section 6.4 shall be in writing; provided, however, that as to any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Committee, such approval will not be required and the provisions of this Section will be deemed to have been fully complied with.
- B. In disapproving any plans and specifications or other documents the Committee shall specify, in writing, the deficiencies it has relied upon in rendering such disapproval and shall give the applicant the right and opportunity to resubmit his plans and specifications or other documents in amended form. The Committee shall thereafter reconsider such documents as if they were being submitted for the first time.
- C. One set of plans and specifications as finally approved or disapproved shall be retained by the Committee as a permanent record.
- D. Nothing contained in this Section shall be deemed to relieve the owner of any parcel from complying with all of the provisions of this Declaration or with the provisions of all applicable building codes, zoning regulations, or other governmental regulations or laws governing the lands within this development

**Section 6.6: Arbitration:** In the event an owner or applicant disputes the decision of the Committee, said dispute shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the

622

Committee and the owner or applicant mutually agree otherwise. The Arbitrator shall be governed and guided in their decision by this Declaration. If so, the award rendered by the Arbitrator shall be final, non-appealable and binding upon the parties, to the same extent as if it had been finally rendered by a court of proper jurisdiction. The owner or applicant shall file demand for arbitration with the Committee and with the American Arbitration Association. Such demand shall be made within a reasonable time after the dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings on such dispute would be barred by the applicable statute of limitations. The cost of arbitration shall be divided equally between the parties, unless the Arbitrator finds that one party has prevailed in arbitration. In such case, the non-prevailing party shall pay the cost of arbitration, which shall be limited to the Arbitrator's fee.

**Section 6.7: Proceeding with Work:** Upon receipt of approval from the Committee pursuant to Section 6.5 above, the owner shall, as soon as practicable, satisfy all the conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations authorized by such approval, said commencement to be in all cases within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section, the approval given pursuant to Section 6.5 shall be deemed revoked, unless the Committee upon written request of the Owner made prior to the expiration of said one (1) year-period extends the time for such commencement. No such extensions shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

**Section 6.8: Completion of Construction:** The Owner shall complete all exterior elements of the construction within one (1) year after the commencement of construction thereof; except, and only for so long, as such completion is rendered impossible or would result in great hardship to the owner due to strikes, fires, acts of God, unusual wintertime conditions, actual inability of the owner to procure deliveries of necessary material, or by other forces or persons beyond the control of the Owner; and, except as otherwise permitted by the Architectural Control Committee in writing. Financial inability of the Owner or his contractor to secure labor or materials or to discharge liens or attachments shall not be deemed a cause beyond his control. For the purposes of this Section 6.8, "Commencement of Construction" for new improvements is defined as the obtaining of the necessary building permits and the excavation of earth for a foundation, and for all other improvements is defined as the undertaking of any visible exterior work. Under no circumstances shall the aforesaid one (1) year completion deadline be extended for more than one (1) additional year, except upon a vote of a majority of the members who are present or represented by proxy at a duly noticed membership meeting at which a quorum is present.

**Section 6.9: Failure to Complete Work:** Any construction which is not completed in a good and workmanlike manner, or in substantial conformity to the plans and specifications approved for it by the Committee, within the time limits provided by this Article, and where such failure is not excused by the provisions hereof, shall be deemed a nuisance, and the Board shall have the right, at its sole option, to enter upon the premises and to have such incomplete construction removed or to carry such construction forward to completion. In such case, the costs and expenses incurred in such removal or completion shall constitute a lien upon the property under the Mechanic's Lien Law of the State of Idaho, such lien to attach as of the time of



the commencement of the work involved in removing or completing the incomplete construction. Such lien may be enforced in the same manner as provided for the enforcement of mechanic's liens.

**Section 6.10: Variances:** Upon written request from an Owner, the Board may grant a variance from any of the provisions of Article 3, except those limiting land use in the Subdivision to single-family residential uses, as follows:

A. The request shall be submitted to each Board member and must explain the precise nature of and reasons for the requested variance.

B. At least fifteen (15) days prior to the Board's review of the variance request, at the Applicant's expense, written notice of the request and the time and place at which the Board will consider the request shall be mailed, via certified mail, to all record Owners of Lots in the Subdivision;

C. The Board's review of the request shall be open to all Owners, who shall be entitled to comment;

D. The request shall be denied unless the Applicant establishes compelling reasons for the request. Neither the cost of compliance with these Covenants, nor the convenience of the Applicant shall in and of themselves be grounds for a variance;

E. If a Committee review of building/improvement plans involves a variance request, then the thirty (30) day time frame contained in Section 6.5 A. above shall be extended to sixty (60) days; and,

F. The decision of the Board can be overruled or modified only by a vote of sixty-seven percent (67%) of those Owners who are present or represented by proxy at a meeting of the membership, scheduled for the purpose of considering such decision, at which a quorum is present.

**Section 6.11: Enforcement:** The provisions of this Declaration may be enforced by Declarant, by a Successor Declarant, by the Board, or by any Lot Owner. The prevailing party in such enforcement action shall be entitled to recover his/her fees under Section 10.8. In addition, to specific enforcement judicially, the Board shall be entitled to impose a fine for violations of this Declaration of not to exceed \$500.00 per incident or \$50.00 per day, in the case of a continuing violation. The fine may be assessed only against the Owner, and only if the violator is the Owner or a member of the Owner's family or a guest, invitee, lessee, contractor, subcontractor, employee or agent of the Owner. In the case of a continuing violation, the fine may not be assessed unless the Owner has failed to abate the violation within the time allowed therefor by the Board in written notice to the Owner. In the case of a single incident, the fine may not be assessed unless the Owner has received at least one prior written notice from the Board that the violation may subject the Owner to fine(s). Fines imposed pursuant to this Section may be collected as provided in Section 9.12 A and B below. Non-payment of assessments shall not subject an Owner to fines; rather, the remedy therefore shall be as provided in Article 9, below.

## ARTICLE 7 - EASEMENTS

**Section 7.1: Easement for Access Roads:** The Declarant shall construct the roads depicted on the plat of the Property. Satisfaction of such specifications shall fulfill Declarant's responsibility to the Association and Owners. Upon completion, Declarant shall convey the non-exclusive road easements, as platted, to the Association. No formal acceptance by the Association shall be required. Upon conveyance, the Association shall thereafter be solely responsible for the maintenance, repair and upkeep of such roads, except as provided below. The aforesaid responsibilities and process of completion and conveyance shall apply to all private roads platted within property which is annexed to the Existing Property, pursuant to Section 8.2, A below.

**Section 7.2: Declarant's Reservations:**

A. Declarant hereby creates and reserves to itself, in perpetuity, the right to grant additional easements on such roads to provide access to additional properties in the vicinity of the Existing Property, whether or not said properties are annexed into the Existing Property, and whether or not Declarant is the owner of said properties. Declarant also hereby creates and reserves to itself an unrestricted, perpetual easement in and right of use of all roads and easements shown on the Plat for the extension of utilities to adjoining properties and for uses which may include, but not be limited to all vehicles and uses reasonably associated with: personal use; residential use; agricultural use; commercial agriculture; timber transport, including commercial timber harvesting; and, use by assignees, purchasers and successors of Declarant, including purchasers of Lots in any subsequently approved Subdivision or neighboring property. Thus, the aforesaid reserved rights/easement shall not be restricted in terms of amount or type of use; provided, it shall be the responsibility of commercial agricultural or timber users to promptly repair any damage to the road caused by their use; and, residential users shall share pro-rata in the cost of maintaining the roads.

B. Upon the granting of any easement or other right of use in the roads pursuant to this Section 7.2(A) above, the grantee shall be required to share in the cost of repair and maintenance of the road generally in proportion to said grantee's use of the road (for example, if a road within the Existing Property is used as a main entrance to further residential users, they shall share pro-rata in the maintenance of the road used; and, if a road within the Existing Property is used as an emergency access to further residential users, they shall share in less than pro-rata, in a percentage to be determined by Declarant). Additionally, such grantee shall comply with the covenants and restrictions herein for the use, maintenance and repair of such road.

C. If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Property to the first Owner thereof other than Declarant. The easement(s) provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property.

## ARTICLE 8 - DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

**Section 8.1: Period of Declarant's Rights and Reservations:** In addition to those easements and rights reserved by Declarant in Article 7 above, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association properties. The rights and reservations reserved above and hereinafter set forth shall be deemed accepted and reserved in each conveyance of the Property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights, reservations and easements reserved above and hereinafter set forth shall be prior and superior to any other provisions of the Association documents and may not, without Declarant's written consent, be modified, amended or rescinded or affected by any amendment of the Association documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment. Declarant's said rights shall survive the Transfer of Control Date, as defined at Section 4.6.

**Section 8.2: Declarant's Future Development Rights:** For a period of fifty (50) years after the date on which this Declaration is first recorded with the Office of Recorder of Valley County, Idaho, Declarant shall have the following development rights: Declarant may add or annex any real property owned by Declarant to the Existing Property. The additions authorized under this Section shall be made by filing of record a Supplementary Declaration of Protective Covenants with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as not inconsistent with the scheme of this Declaration. Upon recordation of such Supplementary Declaration, the additions authorized under this Section shall thereafter be treated in all respects as Existing Properties. No permission shall be necessary from the owners of Existing Property before the Declarant may bring such lands within the scheme of this Declaration.

Such annexation(s) and Supplemental Declaration(s) may alter the rights and responsibilities of the Association and owners in the following ways:

1. Additional owners may be added to the Association, thereby diluting the relative effect of an Existing Property Owner's vote;
2. Additional private roads may be conveyed to the Association, thereby affecting the Association's road maintenance and repair budget;
3. Additional common areas and amenities may be created and, upon acceptance by the Association, may be either conveyed, leased or made available to the Association, in which case the Association may incur expenses related to upkeep, improvement and/or maintenance; and,
4. The Association may incur other expenses as a result of such annexation.

**Section 8.3: Successor Declarant:** For purposes of the rights, reservations and easements reserved and created in favor of Declarant herein, Declarant shall have the option of

notifying the Association in writing of an assignee or successor who will hold and exercise Declarant's aforesaid rights and whom the Association shall notify as required by this Declaration.

## ARTICLE 9 - ASSESSMENTS

**Section 9.1: Covenant to Pay Assessments:** By acceptance of a deed to any lot in the Property each Owner of such lot hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

**A. Assessment Constitutes Lien:** Such Assessments and charges together with interest at a rate established by the Board, 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 lot against which each such Assessment or charge is made.

**B. Assessment is Personal Obligation:** Each such Assessment, together with interest at a rate established by the Board, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall remain such Owners personal obligation regardless of whether he remains an Owner.

**Section 9.2: Uniformity of Assessments:** Regular assessments, including expenses of road maintenance and repair, shall be uniform as to all Owners.

**Section 9.3: Regular Assessments:** The regular assessments may include, and shall be limited to, the following regular expenses:

- A. Repairs and maintenance for non-public roads within the Property;
- B. Expenses of the management of the Association and its activities;
- C. Taxes and special assessments upon the Association's real and personal property;
- D. Premiums for all insurance which the Association is required or permitted to maintain;
- E. Common services to Owners as approved by the Board;
- F. Legal and accounting fees for the Association;
- G. Expenses related to the maintenance and operation of common area facilities;
- H. Any deficit remaining from any previous assessment year; and,
- I. The creation of reasonable contingency reserves for the future road maintenance or improvement, administration expenses, or legal expenses.

Regular assessments shall be paid annually as provided in Section 9.6.

**Section 9.4: Declarant's Obligations:** Prior to the transfer of control date, the Declarant shall have the following options regarding assessments on Lots owned by Declarant:

Declarant may pay such assessments; or, Declarant shall be deemed to have met its obligation regarding assessments by the contribution of such funds and/or services to the Association as are necessary to permit the Association to perform its responsibilities and meet its financial needs. After the transfer of control, Declarant shall be subject to the Association's assessment on any Lots owned by Declarant and located within the Existing Property or property which has been annexed and made subject to the Association documents.

**Section 9.5: Maximum Regular Assessments:**

A. The Board may prorate the assessment for any Lot Owner in the year of purchase of such Lot on the basis of the actual months of ownership of such Lot by the Lot Owner during such year.

B. Effective 2008, and for each subsequent year thereafter until the transfer of the control date has occurred, assessments shall be set by the Declarant, as necessary to meet the Association's financial needs and pursuant to the terms and restrictions of this Article.

C. Effective with the transfer of control from Declarant to the Association, then the annual regular assessment may be increased by the Board by a sum not to exceed twenty percent (20%) of the prior year's regular assessment. Any increase in the regular assessment which exceeds twenty percent (20%) of the prior year's regular assessment shall require the approval of sixty-seven percent (67%) of those members present at or represented by proper proxy at a meeting of the membership conducted pursuant to notice and at which a quorum is present. Notice of such meeting shall set forth the purpose therefore and shall be sent to all members not less than thirty (30) days' nor more than sixty (60) days in advance of such meeting.

**Section 9.6: Regular Assessment Procedure:**

A. The Association's Board of Directors shall set the total annual regular assessment based upon an advanced budget of the Association's requirements for the following assessment year. A summary of that budget shall be mailed by ordinary first class mail or otherwise delivered to all Owners by no later than December 1 of the current budget year (i.e. to take effect on January 1 of the next assessment year). Subject to the voting requirements for any increase in the annual regular assessment which exceeds twenty percent (20%) of the prior year's regular assessment, the budget shall take effect on January 1 of the assessment year to which it applies.

B. The Board shall cause to be prepared, delivered, or mailed to each Owner, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual regular assessment. All payments of regular assessments shall be due and payable without any notice or demand, on the due dates declared by the Board. Regular assessments shall be applicable to all Lots, provided that the Declarant shall have no liability for regular assessments until the transfer of control date as aforesaid. Each owner other than the Declarant shall become responsible for the regular assessment on a Lot as of the date the Lot is transferred to such owner. The first annual regular assessment for each Owner shall be adjusted according to the number of months remaining in the year.

60

**Section 9.7: Special Assessments:** In the event that the Board shall determine that its Regular Assessments for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the amount necessary to defray such Expenses and levy a Special Assessment which shall be computed in the same manner as Regular Assessments. After the transfer of control, no Special Assessment shall be levied without the vote or written consent of a majority of the votes of the Members of the Association, which are present at a properly scheduled meeting of the Members or represented by proxy. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Association.

**Section 9.8: Limited Assessments:** Notwithstanding the above provisions with respect to regular and special assessments, the Board may levy a limited assessment against a member as a remedy to reimburse the Association for costs incurred in bringing the member and/or such member's Lot into compliance with the provisions of the Association Documents.

**Section 9.9: Uniform Rate of Assessment:** Unless otherwise specifically provided herein, regular and special assessments shall be fixed at a uniform rate per Lot for all members of the Association.

**Section 9.10: Assessment Period:** Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year.

**Section 9.11: Notice of Default and Acceleration of Assessments:** If any assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date of the mailing of the notice by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for assessment against the Lot of the Owner and the exercise by the Board of any other remedies either provided herein or allowed by law. In such case, and as a condition of the cure of the delinquent assessment, the Owner may be obligated by the Board, at the Board's sole discretion, to additionally pay all costs of enforcement, including without limitation reasonable attorneys fees, costs and related expenses and to pay a reasonable late charged to be determined by the Board.

**Section 9.12: Enforcement of Assessments:** Each Owner is and shall be deemed to covenant and agree to pay to the Association each and every assessment provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments

provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit: By commencement of a suit at law against any Owner or Owners personally obligated to pay assessments, for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

B. Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners, together with interest thereon as provided for in this Declaration, fines imposed for violation of these Covenants, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. The Board or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Association against the Lot of the defaulting Owner who has not cured the default, as provided in Section 9.12 above. The amount of the assessment, plus any costs of collection, expenses attorney's fees and interest assessed in accordance with this Declaration shall be a lien on the Owner's Lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to this Declaration;
2. The name of the record Owner,
3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorney's fees (with any proper offset allowed); and,
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conduction such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and

payable in accordance with this Declaration after the date of recordation of said Notice. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot.

Each Owner hereby expressly waives any objection to the enforcement and foreclosure of assessment liens in this manner. Upon the timely curing of any default for which a Notice was filed by the Board, the Board shall cause an officer of the Association to file and record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his Lot.

#### ARTICLE 10 - GENERAL PROVISIONS

**Section 10.1: Binding Effect:** The various restrictive measures and provisions of these covenants and restrictions are declared to constitute mutual equitable servitudes for the protection and benefit of each parcel in the Community and of the owners thereof and for the benefit of the Community as a whole. Each grantee of a conveyance or purchaser under a contract of sale, by accepting a deed or contract of sale, accepts such subject to all of the covenants, conditions and restrictions set forth in this Declaration and specifically agrees to be bound by each and all of them.

**Section 10.2: Term of Declaration:** Unless amended as herein provided, all provisions covenants, conditions and restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date upon which this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners as provided for herein below.

**Section 10.3: Amendment of the Declaration:** Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting for such amendment or termination.

**Section 10.4: Amendment of Declaration by Members:** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time, upon approval of the amendment or repeal by at least sixty-seven percent (67%) of those members present or represented by proxy at a meeting of the membership, scheduled for the purpose of considering such amendments, at which a quorum is present; provided:

- A. This Declaration may not be terminated except upon approval by at least ninety percent (90%) of the membership of the Association; and, in case of termination, all rights, reservations, and easements granted to or reserved by Declarant herein shall survive any such termination; and,
- B. The provisions of this Declaration which limit the allowable land uses in the Subdivision to single-family residential use may be amended only with the approval of ninety percent (90%) of the Membership and the approval, as required, by Valley County, in the same manner as would be required



for an approval of a material change to the Conditional Use Permit/Preliminary Plat for the Subdivision.

**Section 10.5: Required Consent of Declarant to the Amendment:** None of the rights, reservations, or easements granted to or reserved by Declarant herein may ever be modified or amended without the prior written consent of Declarant or Declarant's successor as identified in Section 8.3 above, which consent may be withheld by Declarant for any reason whatsoever. For the period specified in Section 8.2 above, any proposed amendment or repeal of any other provision of this Declaration (i.e. a provision not involving any of the rights, reservations or easements granted to or reserved by Declarant) shall require the prior written consent of Declarant, or Declarant's aforesaid successor.

**Section 10.6: Priority of First Mortgage Over Assessments:** Each lender who recorded its mortgage or deed of trust before assessments have become delinquent and who obtains title to the Lot encumbered by the first mortgage whether pursuant to remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the lot free and clear of any claims for unpaid assessment or charges against such Lot which accrued prior to the time such first mortgage acquires title.

**Section 10.7: Remedies Cumulative:** Each remedy provided under the Association documents is cumulative and not exclusive.

**Section 10.8: Costs and Attorneys Fees:** In any action or proceeding under the Association documents, the party which seeks to enforce the Association documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys fees and expert witness fees. "Action or proceeding" as herein stated shall include, without limitation, any arbitration, mediation, or alternative dispute resolution proceeding.

**Section 10.9: Limitation of Liability:** The Association, Board of Directors, the Architectural Control Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Idaho, including without limitation, circumstances in which indemnification is otherwise discretionary under Idaho law, in accordance with and subject to the terms and limitations contained in the Bylaws.

**Section 10.10: Governing Law:** The Association documents shall be construed and governed under the laws of the State of Idaho.

**Section 10.11: Severability:** Invalidation of any one or more of the covenants, conditions and restrictions contained herein by judgment or otherwise shall in no way affect the validity of any of the other provisions, which shall remain full force and effect.

**Section 10.12: Number and Gender:** Unless the context requires a contrary construction, as used in the Association documents, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

**Section 10.13: Captions for Content:** The titles, headings and captions used in the Association documents are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

**Section 10.14: Mergers or Consolidations:** The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property together with the covenants and conditions established upon any other property, as one plan.

**Section 10.15: Conflicts in Documents:** In case of any conflict between this document and the Articles of Incorporation, or the Bylaws of the Association, this Declaration shall control.

### CERTIFICATION

Dan R. Brumwell owns all of the property within the Existing Property, except for the following: Lot 3 Block 1 is owned by George Qsar and Jennifer Wroblewski; and, Lot 1 Block 2 is owned by Edward J. Cimbalik III and Sara Cimbalik. The owners of Lot 1 Block 2 approved this Declaration prior to their purchase of such property. All other parties approve and vote to adopt this Declaration, as confirmed by their signatures below. This Declaration shall replace and supersede the Original Declaration in its entirety.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

  
\_\_\_\_\_  
DAN R. BRUMWELL

STATE OF IDAHO,     )  
                                  (ss.  
County of Blaine     )

On this 10<sup>th</sup> day of November - , 2008, before me, Monica L. Sale, a Notary Public in and for said State, personally appeared DAN R. BRUMWELL, known or identified to me to be the person that executed the instrument, and acknowledged to me that he executed the same.

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



  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
My Commission Expires: 02/27/2012

OK

APPROVED AND CONSENTED TO BY  
THE OWNERS OF LOT 3 BLOCK 1

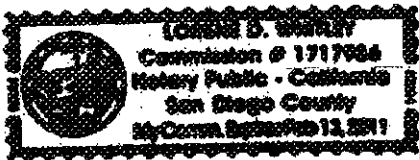
George Qsar (Signature)  
GEORGE QSAR

Jennifer Wroblewski (Signature)  
JENNIFER WROBLEWSKI

STATE OF CA,  
County of San Diego (ss.)

On this 21st day of October, 2008, before me, Lorene D. Whitley, a Notary Public in and for said State, personally appeared GEORGE QSAR, known or identified to me to be the person that executed the instrument, and acknowledged to me that he executed the same.

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

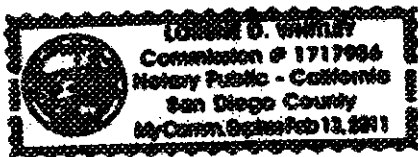


Lorene D. Whitley  
NOTARY PUBLIC FOR CA (State)  
My Commission Expires: 2/13/2011

STATE OF CA,  
County of San Diego (ss.)

On this 21st day of October, 2008, before me, Lorene D. Whitley, a Notary Public in and for said State, personally appeared JENNIFER WROBLEWSKI, known or identified to me to be the person that executed the instrument, and acknowledged to me that she executed the same.

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



Lorene D. Whitley  
NOTARY PUBLIC FOR CA (State)  
My Commission Expires: 2/13/2011