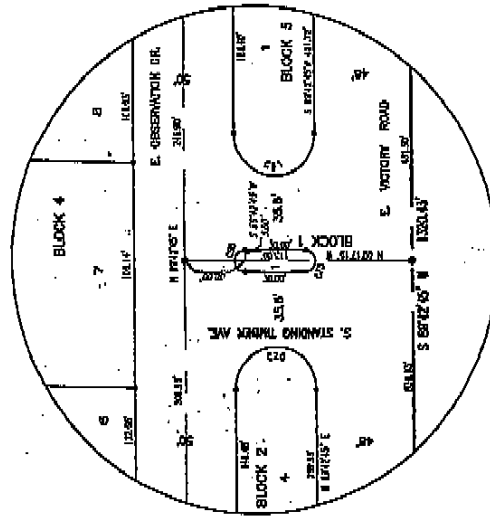




EX 8A 92.77

# PLAT OF OBSERVATION POINT SUBDIVISION

LOCATED IN THE SE 1/4 OF THE SW 1/4,  
SECTION 19, T.24. N. R.1E., S.14.  
MERIDIAN, ADA COUNTY, IDAHO  
2002



DETAIL "A"

CURVE TABLE	CHORD BEG	CHORD END	ARC	PERCENT	DELTA	CHORD BEG	CHORD END	ARC	PERCENT
C1	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C2	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C3	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C4	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C5	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C6	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C7	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C8	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C9	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C10	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C11	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C12	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C13	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C14	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C15	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C16	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C17	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C18	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C19	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C20	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C21	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C22	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C23	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C24	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C25	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C26	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C27	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C28	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C29	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C30	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C31	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C32	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C33	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C34	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C35	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C36	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C37	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C38	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C39	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C40	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C41	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C42	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C43	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C44	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C45	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C46	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C47	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C48	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C49	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C50	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C51	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C52	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C53	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C54	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C55	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C56	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C57	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C58	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C59	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C60	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C61	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C62	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C63	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C64	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C65	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C66	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C67	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C68	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00
C69	100.00	100.00	180.00	100.00	180.00	100.00	100.00	180.00	100.00

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 04°24'12" E	24.00
L2	S 04°24'12" E	24.00
L3	S 04°24'12" E	24.00
L4	S 04°24'12" E	24.00
L5	S 04°24'12" E	24.00
L6	S 04°24'12" E	24.00
L7	S 04°24'12" E	24.00
L8	S 04°24'12" E	24.00
L9	S 04°24'12" E	24.00
L10	S 04°24'12" E	24.00
L11	S 04°24'12" E	24.00
L12	S 04°24'12" E	24.00
L13	S 04°24'12" E	24.00
L14	S 04°24'12" E	24.00
L15	S 04°24'12" E	24.00
L16	S 04°24'12" E	24.00
L17	S 04°24'12" E	24.00
L18	S 04°24'12" E	24.00
L19	S 04°24'12" E	24.00
L20	S 04°24'12" E	24.00



BRIGGS ENGINEERING, INC.  
Consulting Engineers  
Boise, Idaho  
SHEET 2 OF 3  
DATE PREPARED BY FILED

VICTORY 41, LLC  
Developer  
Boise, Idaho



ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 01/27/03 12:54 PM  
DEPUTY Michelle Turner  
RECORDED - REQUEST OF  
Title One  
AMOUNT 66.00

22



22

**Declaration of  
Protective Restrictions and Covenants of  
Observation Point Subdivision**

KNOW ALL PERSONS BY THESE PRESENTS:

That Victory 41 LLC, a Limited Liability Company, hereinafter referred to as "Grantor" does hereby certify and declare:

That it is the owner of that certain real estate situated in the city of Meridian, county of Ada, State of Idaho, hereinafter referred to as "Subdivision," more particularly described as follows:

Observation Point Subdivision, according to the Official plat thereof on file in the office of the County Recorder of Ada County, State of Idaho, recorded as Instrument No. \_\_\_\_\_ in Book 84 of plats at page 927, and ~~727~~ 727B, which real property is hereinafter referred to as the "Property".

These covenants shall attach to and run with the real property of Observation Point Subdivision, and shall be binding on all persons who at any time hereafter and from time to time own or claim any right, title or interest in and to said real property, any and all whom shall hereinafter sometimes be referred to as "Owner".

WHEREAS, Grantor desires to assure the attractiveness of the individual lots and community facilities within the Property; to prevent any future impairments thereof; to prevent nuisances; to preserve, protect and enhance the values and amenities of the Property; and to provide for the maintenance of said open spaces and walkways. In order to achieve these objectives, the Grantor is desirous of subjecting the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein, each and all of which is and are for the benefit of the Property, the Grantor and each Owner thereof.

**Article I  
Definitions**

"Association" shall mean and refer to Observation point Subdivision Homeowners' Association, Inc., a non-profit corporation organized under the laws of the State of Idaho, or any successor or assign of the Observation Point.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract seller, but excluding those having an interest merely as security for the performance of an obligation.

"Property" shall mean and refer to the real property constituting Observation Point Subdivision according to the official recorded plat thereof (the plat), and every part, parcel and lot thereof, and such additions thereto as may hereafter be made subject to this Declaration of

Covenants, conditions and restrictions. Lots shall be references to the lots as defined and depicted on the Plat.

"Common Area" shall mean and refer to Lot 1 Block 1, Lot 3 Block 2, Lot 4 Block 2, Lot 1 Block 5, Lot 18 Block 5 as entrance landscaping maintained by the Observation Point Homeowner's Association; Such term shall include all improvements, which are within the Common Area. Said areas are intended to be devoted to the common enjoyment of the Owners (subject to the provisions hereof) and are not dedicated for use by the general public.

"Common facilities" shall mean all improvements, structures, equipment and personal property (whether movable or immovable) constructed or placed upon the Common Areas, or upon any walkway or easement set forth on the recorded plat for Observation Point Subdivision and shall include but not be limited to fencing, landscaping, sprinkler systems, exterior lighting, and walkways.

"Lot" shall mean and refer to all Lots within and shown upon the official recorded plat of Observation Point Subdivision (the "plat").

"Declarant" shall mean and refer to Victory 41 LLC, its successors and assigns.

"Front Lot Line" shall mean the line represented by the connection of the most distant corners of a lot, including flag lots, where said corners are in common with the boundary of a public or private road.

"Grantor," wherever used herein, shall refer to Victory 41 LLC or any person or persons or corporation to whom the rights of the Grantor, as set forth in these Restrictions, shall be specifically transferred.

"Project" shall mean and refer to the Property and all contemplated improvements thereto.

Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

## **ARTICLE II**

### **OBSERVATION POINT No. 1 HOMEOWNERS' ASSOCIATION**

It is contemplated that simultaneously with the execution and recordation of this Declaration of Covenants, Conditions and Restrictions (the "Declaration"), the Association will be incorporated, and the Association will adopt Bylaws for its governance. To the extent the Articles of Incorporation or Bylaws of the Association may conflict with the provisions of this Declaration, the provisions of this Declaration shall control. The Association may not be dissolved without the express written consent of the City of Meridian.

## **ARTICLE III**

### **Property Rights**

**Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provision:

The Association shall have the right to suspend the voting rights and right to use the Common Area of an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

#### **ARTICLE IV** **General Restrictions**

The Grantor hereby covenants for all of said property; and each Owner by ratification of these covenants, conditions, and restrictions, or by acceptance of a deed or contract of purchase thereof, whether or not it shall be so expressed in any such deed or other conveyance or agreement or conveyance is deemed to covenant and agree to comply with and abide by these covenants, conditions and restrictions and agrees for himself, his heirs, administrators, and assignees to be personally bound by each of such covenants, restrictions, reservations and servitudes jointly, separately and severally.

Should Owner violate or attempt to violate any of the provisions of these Restrictions, Grantor, Architectural Control Committee, or any other person or persons owning any real property embraced in the Plat, at its or their option, shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Restrictions, either to prevent him or them from so doing, to mandate compliance, or to recover damages sustained by reason of such violation.

Should the Grantor employ counsel to enforce any of these restrictions, or right of repurchase, by reason of such violation, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots, and the Grantor shall have a lien upon such Lot or Lots to secure payment of all such accounts.

The breach of any of these covenants, conditions, restrictions, or any repurchase by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Lot or Lots or portions of Lots in such premises, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgagee or trustee or Owner thereof, whose title thereto or whose title is or was acquired by foreclosure, trustee's sale, or otherwise.

No delay or omission on the part of the Grantor or the Owners or other Lots in the Properties in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action can be brought or maintained by anyone whatsoever against the Grantor for or on account of these covenants, conditions, or restrictions herein which may be unenforced by the Grantor.

Invalidation of any provisions, sentence, or paragraph contained in the Restrictions by judgment or court order shall in no wise affect or invalidate any of the other provisions, but the same shall be and remain in full force and effect. Approval by the City of



Meridian, vested with the responsibility of reviewing planning and zoning and building codes having jurisdiction over this Subdivision, of an application made by any Owner which is in conflict with any covenants, conditions, or restrictions of this Declaration shall in no wise affect or invalidate this Declaration, but this Declaration shall remain in full force and effect, and subject to enforcement and remedies for violation hereof.

#### ARTICLE V

##### Land Definitions and Restrictions

#### 1. Lot:

All Lots of the above recorded plat shall be known and described as single family residential Lots and shall be used exclusively for single family residential living purposes and such uses as are customarily incidental thereto, except those Lots designated as Common Area Lots. No residential Lot shall be divided into two or more building sites, except Lots 1 and 2 Block 2 which said Lots are south and west of the Ridenbaugh canal which Grantor or its assignees, retain said rights to rezone and /or replat.

- a. A single family is an individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collection or body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

#### 2. Building Restrictions:

- a. Except as may be provided within this Declaration of Protective Restrictions and Covenants of Observation Point Subdivision for Common Area Lots, no Lot shall be improved except with a dwelling or residential structure to accommodate no more than a single family and its servants and occasional guests as customarily incidental to a single family residence designed and constructed in accordance with the provisions of these covenants relating to approval by the Architectural Committee and containing a floor area of not less than 2,100 square feet for a single level residence nor less than 1,800 square feet on the ground level for a two-story residence. Because of the natural slopes, split entry residences would be allowed on certain Lots only upon the approval of the Architectural Control Committee. Because of sight lines the Architectural Control Committee May restrict certain lots to a single level residence.
- b. No structure or aboveground improvements shall be permitted, except as expressly allowed below, on any Lot that is detached or separated from the principal structure. Swing sets, play and/or sports equipment must be submitted to the architectural control committee prior to its installation or placement on any Lot. The architectural committee at its own disgression will approve or disapprove said submittals based on Sight lines, location, height, front, rear and side setbacks and other criteria.

- c. No dwelling or above-ground improvements shall rise more than two stories from the existing ground level unless approved in advance by the Architectural Control Committee.
- d. No house trailer, tent, shack, unattached garage, barn or other outbuildings or structures shall be erected or placed on any lot within said subdivision, except Grantor or its agent may place a structure for the marketing and sale of Lots and newly constructed homes.
- e. No house, garage, outbuildings, fence or other structures shall be built, erected, placed, materially altered or materially repaired including without limitation the altering or repair of surface colors or textures on any lot in the Subdivision unless and until the building plan specifications and plot plan have been reviewed in advance by the Architectural Control Committee and the same has been approved conditionally or otherwise. Said review and approval shall include without being restricted, drainage, color, material design, artistic conformity to the terrain and other residences in the area, and architectural improvements. It shall not be the intent of this paragraph to control the interior layout or design of said structures. It shall be the responsibility of the homeowner, when applying to the Architectural Control Committee for approval, to provide the Architectural Control Committee with a set of plans and specifications which plans and specifications shall become the property of the Architectural Control Committee and held by them. It is required that all approved plans and specifications for building be signed off by at least two members of the Architectural Control Committee prior to commencement of any construction.
- f. No building or structure shall be moved onto said real property from any land outside said plat including a new prefabricated structure.
- g. No dwelling shall be placed near the front, rear or side of the Lot than that which is allowed by any Ordinance, code provision, law or statute of the city of Meridian, Ada County, or any other governmental entity that may control such setback requirements.
- h. All dwellings shall be of wood or light gauge steel frame. Use of vinyl siding is prohibited on any dwelling in said subdivision. It is the intent of this paragraph that the front elevations of the dwellings are of brick, stone, stucco or a combination thereof with the addition of other materials which add architectural character to the dwelling. Said other materials shall be approved by the Architectural Control Committee at its sole discretion. All dwellings and property shall be used in such a manner as to be inoffensive to other property owners. Roofing shall be cement tiles, cedar shakes or cedar shingles, or architectural grade composition shingles with a minimum weight of 340 pounds per square. (40 year architectural shingles) In all cases the Architectural Committee must approve roofing materials at the time of plan review. No asphalt shingles are permitted.



- i. The Architectural Control Committee is hereby empowered to adopt rules to govern its procedures, including such rules the Committee may deem appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties due to be heard on any matter before the Committee. The Architectural Control Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration, with regard to matters subject to the Committee's approval, including matters of design and aesthetic interest. Such rules, after adoption, shall be of the same force and effect as if set forth in full herein.

3. **Approval of Plans:**

*Plans of all dwellings, landscaping and fencing to be erected on any building site embraced in the plat must be submitted to the Architectural Control Committee of not less than three (3) members, hereinafter called "Committee" which shall exercise the rights herein reserved. Complete plans and specifications of each dwelling, together with a detailed landscape and site plan shall be submitted to the Committee along with a \$400. Architectural review fee before any construction or alteration is started and such construction or alteration shall not be commenced until written approval therefore is given by the Committee. All plans and specifications submitted to the Committee shall belong to the Committee and kept by them. Upon approval of said plans \$300.00 shall be released back to the applicant.*

*No plans shall be deemed to have been approved by the Committee unless its approval is in writing executed by at least two (2) members of the Committee, provided that approval shall be deemed given if the Committee fails to approve or disapprove a proposed change or to make additional requirements or request additional information within forty-five (45) days after a full and complete description of the proposed change has been furnished in writing to the Committee with a written and specific request for approval. The Committee or Grantor, however, will not be responsible for application of local or state building codes of structural fitness.*

*As to all improvements, construction and alterations upon any building site, the Committee shall have the right to refuse improvements, construction or alterations, which, in its sole opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing upon such design, the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed building or other structure, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Committee may also consider whether the proposed dwelling and design shall be in harmony with the surroundings, the effect of the dwelling or alterations therein as planned when viewed from the adjacent or neighboring property, effect or impairment that said dwelling will have on the view of surrounding building sites, and any and all other desirability of such proposed structure, improvements or alterations. Actual construction shall comply with the plans and specifications as approved.*

After approval by the Committee of any proposed change of designation for property within the Subdivision, the proposed change shall be accomplished as promptly and diligently as possible and in complete conformity with the description therefore given to the Committee. Failure to accomplish the change within six months after the date of approval (subject to strikes or acts of God) or to complete the proposed change strictly in accordance with the description thereof and plans and specifications therefore shall operate to automatically revoke the approval of the proposed change and, upon demand by the Committee, such property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Committee shall have the right and authority to record a notice to show that any particular change in the existing state of the property has not been approved or that any approval given has been automatically revoked.

In addition to the costs and expenses to be reimbursed by the Owner of any Lot, all other costs, expenses and damages determined by the Architectural Control Committee to be proximately caused by any violation of the covenants, as well as the costs and expenses incurred by the Declarant and the Association to correct any violation, shall be assessed as a special assessment against the Owner of the Lot and such charge shall be a lien upon the Property and shall be due and payable at such time or in such installments as may be determined by the Architectural Control Committee in its sole discretion. The Architectural Control Committee shall have the right to enforce such special assessment as provided herein for special assessments without further action or vote of the Association or its membership.

The Architectural Committee, or its authorized agent, shall have the right at all times to enter on or upon any Lot or building site that is vacant or unplanted or untenanted by the owners thereof, and to plant or replant, trim, cut back, remove, replace and/or maintain hedges, trees, shrubs, flowers and any other landscaping on said property, and/or to keep cultivated and/or remove plants on any portion of any lot or building site of said property, and the Architectural Control Committee, or any agent thereof shall not thereby be deemed guilty in any manner of trespass. When the owner of a parcel or Lot so planted, maintained by the Architectural Control Committee, shall give written notice to the Architectural Control Committee, of his intentions to improve the same within thirty (30) days, and upon the approval of the Owner's proposal by the Architectural Control Committee, the Committee may, within thirty (30) days, and thereafter until work on said improvements is commenced, transplant, remove or dispose of any and all of the plantings which may have been made by it.

The Architectural Control Committee shall be composed of Jerry Caven, Steve Teed and Michael Caven, and their successors, and shall serve for the time and on conditions as the Grantor, in its sole discretion, shall prescribe, provided that the Grantor may appoint successor members who shall serve for the time and on the conditions as the Grantor, in its sole discretion, shall prescribe. The Architectural Control Committee will exercise all of the powers set forth in these covenants as they apply to the construction of the new improvements in the Subdivision.

Owner specifically agrees with Grantor that such Architectural Control Committee, its members, and the grantor shall incur no liability for any omission or act by any of said above-named parties under these Restrictions. In the event of death or resignation of a member, the remaining two (2) members shall have full authority to act, and within a reasonable time after the occurrence of such vacancy, the grantor shall appoint a replacement.

Grantor reserves the right to construct residences and other improvements upon any residential lot or building site in said Subdivision, and to offer said Lots, together with or without the completed residence and structures thereon, for sale to individual owners.

**4. Temporary Structures:**

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. However, for construction and/or sales office of a size, character and design approved by the Architectural Control Committee, may be placed upon a lot within said subdivision by the Grantor during the period the Grantor or its authorized agent is selling building sites in the Subdivision.

**5. Prosecution of Construction Work:**

The Construction of a dwelling house shall be prosecuted diligently, continuously and without delays from time of commencement thereof until such dwelling house are fully completed and painted. All structures shall be completed as to external appearance, including finished painting, lawn and landscaping, within six (6) months from the date of commencement of construction unless prevented by causes beyond the control of the Owner and only for such time that such cause continues.

**6. Landscaping:**

The following provisions shall govern the landscaping of Lots within the Subdivision:

- a. The Owner shall prepare a landscape plan and shall submit two (2) copies of the same to the Architectural Control Committee. The Committee shall approve said landscape plan prior to the installation and/or construction of the landscaping on a Lot. Landscaping of a Lot shall be in accordance with the approved plan.
- b. A desire for an open spacious and green growing appearance will control the decisions of the Architectural Control Committee. The Committee shall consider overall design features of the improvements to be constructed on the lot in reviewing and approving or disapproving the landscaping plan.
- c. The minimal landscaping requirements shall be as follows:

- (i) Innovative landscape design, including sculptured planting areas, berms or other features with screening or bordering of foundations, fences (if any), curbs and other similar elements of the improvements on the Lot.
- (ii) The initial landscaping shall include, as a minimum, the following: Sod in the front, side and rear yards; two (2) flowering trees of a least two inch (2") caliper in the front yard, provided, that evergreen trees of at least six feet (6') in height may be substituted for one (1) of the flowering trees required in each of the front yard; five (5) five-gallon plants, and ten (10) one-gallon plants in the front yard.
- (iii) The yards shall be irrigated with an automatic underground sprinkler system.
- (iv) Additional landscaping may be required in addition to the above minimum requirements if the Architectural Control Committee, in its discretion, determines necessary or desired to achieve the project objectives.

**7. Oil and Mining Operations:**

No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lots, nor shall oil wells, tanks, tunnels, mineral derricks or other structures designed for use in boring for oil or natural gas be erected, maintained or permitted upon any Lot.

**8. Bathroom, sink and Toilet Conveniences:**

All bathrooms, sinks and toilet facilities shall be connected by underground pipes to the collection system lines of the City of Meridian Sewer System, its successors or assigns, or such other corporation, association or company which may be legally qualified to operate and maintain such sewage collection system lines for the subdivision.

**9. Sewage Disposal:**

No individual sewage disposal system shall be permitted on any residential Lot or parcel in said Subdivision. All sewage disposal shall be through an underground collection system approved by the construction to the standards of State and local health authorities. Sewage effluent shall be collected from the Subdivision by the Meridian Sewer District System, the hookup fees, costs, charges and assessments for which shall be the responsibility of the Owner.

**10. Refuse Disposal, Storage of Materials:**

No machinery, vehicles, appliances or structures or unsightly materials may be stored upon the real property, nor shall trash, garbage, ashes, or other refuse be thrown, dumped, burned or otherwise disposed of upon the real property. No building material of any kind shall be placed or stored upon a building site until the Owner is ready to and able to commence construction, and then such materials shall be placed within the property line of the building site upon which structure is to be erected. The Grantor shall have the right to enter upon any vacant building site for the purpose of burning or

removing weeds, brush, growth or refuse at the expense of the Owner, which expense shall be collected as a delinquent assessment as provided in Article VIII hereof. Builders shall keep each job site clean of excess debris at all times.

**11. Fences and Hedges:**

No fence, hedge or boundary wall situated upon a building site shall be constructed except upon approval of the Committee as provided in these covenants. No fence shall be constructed so as to extend toward the front of the Lot past the front plan of the dwelling structure and constructed thereon unless a variance is issued by the Architectural Control Committee. Special restrictions may be imposed by the Architectural Control Committee on fences proposed that in the sole opinion of the Architectural Control Committee may be detrimental to the overall objectives and appearance of the project or neighborhood. No fence or hedge situated anywhere upon any building site shall have a height greater than six (6) feet or such other heights as the Architectural Control Committee may specify, above the finished graded surface of the ground upon which such fence or hedge is situated.

No fence, hedge or shrub planting which obstructs sight lines at elevations between three (3) and Eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines extended. The same sight-line limitations shall apply on any Lot with ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

The construction or maintenance of a spite fence or spite tree shall be prohibited upon any building site. The determination by the Grantor that all wall, fence, hedge, or tree falls within the latter category shall be conclusive upon all parties.

**12. Business Use or Other Noxious Use of Property:**

No portion of the Common Area, or any Lot or any structure thereon shall be used for the conduct of any trade or business or other commercial reason or professional activity, and noxious or undesirable acts or undesirable use of any portion of the Property is prohibited and shall not be permitted or maintained; provided, however, that an office or model home(s) for the purpose of the development, construction and sale of the Lots and homes in the Subdivision may be maintained by Declarant. The prohibition of use of any Lot or any structure thereon shall include but in no way be limited to a "half-way house" treatment center, shelter home, school, day-care center or other similar use, including use for the care and residence of unrelated physically mentally handicapped person (notwithstanding the provisions of Section 67-6530 and 67-6531, Idaho Code), swimming lessons or any other activity which will increase the traffic trips through the subdivision or require additional parking other than that provided for the dwelling structure. The occupancy of a dwelling structure on a Lot shall be limited to one or more persons related by blood, adoption or marriage, living together as a single housekeeping unit, or not more than two persons, though not related by blood, adoption or marriage, living together as a single housekeeping unit. It is not the intent of this paragraph to disallow a periodic non business get together.

**13. Billboards and signs:**

No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5) square feet in size advertising the Property for sale or rent, or signs used by a builder to advertise the Property during the construction and sales period. The Association may maintain Subdivision identification signs, and appropriate information signs upon the Common Area of a size and design approved by the Architectural Control Committee. No other signs shall be placed or maintained upon the Common Area, except those of the Grantor for the purpose of marketing the Subdivision, during the construction and the sales process. Nothing herein shall prohibit the Grantor from using signs to advertise the Subdivision and sale of homes in the Subdivision.

**14. Restriction Against Use Detrimental to the Neighborhood:**

No part of any building shall be used or occupied, as a residence or other, so as to have any injurious effect upon the use, occupancy or value of any adjacent premises for the usual and customary residential purpose as established by the manner of use in the general area or the neighborhood. As to whether any use or occupancy violates the provisions of these covenants, Grantor and the Architectural Control Committee, in its sole discretion, may make such determination based upon any reason, aesthetic or otherwise, including failure to maintain the premises. This covenant shall run with the land and pass with all property in said plat and is binding upon all persons who may from time to time own or claim any right, title, or interest in and to any of said property.

**15. Utilities and Easements:**

Telephone, electric, sewer, water and gas service: All Lots shall be served by underground electrical, telephone lines, sewer, water and gas. The services shall be installed in roads or easements as platted. Each Owner agrees at his sole expense to pay for costs and hook on charges as established by the utility companies or public works. Grantor shall not be liable for the cost thereof but may recover funds advanced, if any, to obtain preliminary installation.

The Grantor reserves such easements as shown and noted on said plat for the purpose of the construction of water mains, drainage, electric distribution lines, sewer lines, gas pipelines and such other public utilities as shall be necessary, convenient and desirable for the Owners.

The easement areas of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of drainage channels in the easements.

**16. General Covenants:**



**Occupancy Limitations:** No dwelling or residence on any Lot or other property area created under any Supplemental Declaration shall be used for living purposes by more persons than it was designed to accommodate comfortably.

**Maintenance of Property:** All property within the Subdivision and all improvements on any such property shall be kept and maintained by the Owner thereof in a clean, safe, attractive, and sightly condition and in good repair.

**No hazardous Activities:** No activities shall be conducted on any property within the Subdivision and no improvements constructed on any such property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon such property; and no open fires shall be lighted or permitted on such property except in a self-contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

**Vehicles and Equipment Parking:** No campers, recreational vehicles, trailers, boats, motorcycles, snowmobiles, snow removal equipment, golf carts, or similar equipment or vehicles, except those owned and/or leased by the Owner and for the personal use of the Owner and/or his family, shall be kept or stored upon any Lot. Such vehicles or equipment shall not be parked on any street, nor shall they be parked or stored in the area between the front plane of the dwelling unit and the street. Such vehicles or equipment as permitted hereunder shall be appropriately screened from the street view and enclosed in away not to be offensive or unsightly to any other Lot or Dwelling or those who would be visiting the subdivision. Said enclosure shall be attached to the dwelling and shall be constructed with the same materials as the dwelling. All enclosures shall be approved by the Architectural Control Committee prior to the start of construction. No working or commercial vehicles larger than three-quarter (3/4) ton, and no junk cars, shall be parked upon any Lot.

**No Annoying Lights, Sounds, or Odors:** No light shall be emitted from any property within the Subdivision which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying; and no odor shall be emitted on any property which is noxious or offensive to others.

**Animals:** No animals, livestock, pot-belly pigs or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets excluding pot-belly pigs may be kept, provided that such pets are not kept, bred or maintained for any commercial purpose. Not more than two (2) dogs, cats or other household pets shall be kept by any individual household; nor shall any domesticated animals be kept which unreasonably bother or constitute a nuisance to other Owners of other Lots. Any such household pets shall be kept on leashes at all times that they are within the Subdivision and outside the boundaries of the Owner's Lot. It shall be the obligation of each Owner to control his pet in accordance with the rules and regulations of the Association. In the event an Owner constructs or maintains a kennel upon his Lot, such kennel shall:

- (a) Be screened from view so as not to be visible from the Common Area or adjacent Lots;
- (b) Be located on the Lot in a manner to avoid any endangerment or of nuisance to, adjacent Lot Owners, and be located behind the front plane of the

dwelling structure and no closer than ten (10) feet to any building site line;  
and

(c) Be kept in a clean and odor-free manner.

**Other Restrictions for Additional Areas:** Grantor, by any Supplemental Declaration, may impose other restrictions or alter these restrictions as to the property within the Subdivision or property to be added to the Subdivision hereafter.

**Construction Period Exception:** During the course of actual construction of any dwelling or improvements, the restrictions contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and provided that, during the course of such construction, nothing is done which will result in a violation of these restrictions upon completion of construction.

**Exterior Antennas:** No outside television antennas, satellite dishes, radio aerials or similar devices or structures shall be installed on any Lot or the exterior of any structure located thereon. Except a satellite dish not to exceed 20" in diameter may be approved by the Architectural Control Committee prior to installation.

**Mailbox Post:** Mailbox post shall be provided for by the developer. Any replacement mailbox shall be approved by the Association.

**19. Term of Restrictions:**

These restrictions shall run with the land described herein, and shall be binding upon the parties hereto and all successors in title or interest to said real property or any part thereof, twenty (20) years from the date of recordation in Ada County, Idaho, at which time said restrictions shall be automatically extended for successive periods of ten (10) years unless the then Owner or then Owners of the legal title to not less than two-thirds of the platted residence tracts or platted Lots, or building sites by an instrument or instruments in writing, duly signed and acknowledged by them, shall then terminate or become effective upon the filing of such instrument or instruments for record in the office of the recorder of Ada County, Idaho. Such instrument or instruments shall contain proper references by volume and page numbers to the records of the plats and record of this deed in which these restrictions are set forth, and all amendments thereof.

**20. Reserved Easements:**

The Grantor, for itself, its licensees and assigns, does hereby reserve all right, title and interest in, and full power to vacate and relocate by instrument filed of record in platted land in Grantor's name, a right-of-way and easement for installation, maintenance, and operation of utilities of any type and drainage and all incidences and appurtenances thereof, over, on and across the above described real property as shown on the plat or reserved in any deed of Grantor, together with all rights of ingress and egress necessary for full and complete use, occupation and enjoyment of the easement hereby reserved, and all rights, and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved

easement and the operation, maintenance and repair of the electrical, telephone or other utility system. Grantor further reserves to itself, its licensees, successors and assigns, the right and power to locate new, or to vacate and relocate any existing street or easement herein platted, as long as the Grantor owns each of the parcels which are adjacent to such street or easement and provides an adequate roadway in place of any vacated as may be required for ingress or egress by adjacent Lot. Provided, nevertheless, vacations and relocations of easements, right-of way and streets allowed hereunder shall be made in accordance with the minimum standards of the State of Idaho, Ada County, Idaho, laws, ordinances and regulations thereunder in relation to improvements, and shall be effected only by instrument duly filed of record in said Ada County. Owner waives any right, which he may have by statute, or otherwise to object to any vacancies, relocations, vacations and dedications effected by Grantor in accordance with the provisions of this section.

#### **ARTICLE VII**

##### **Association Membership and Voting Rights**

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two (2) classes of voting membership:

Class A: The class A members shall be all Owners, with the exception of the Declarant (during the period when the Declarant is a Class B member). Each class A member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The sole class B member shall be the Declarant, who shall be entitled to four (4) votes for each Lot owned. The class B membership shall cease and be automatically converted to Class A membership (one Class A membership for each Lot owned) upon the happening of either one of the following events, whichever occurs earlier:

- (a) When the total votes outstanding within all of the Subdivision Units, in Class A memberships exceed the total votes outstanding in the Class B membership; or
- (b) On January 1, 2020.

#### **ARTICLE VIII**

##### **Covenant For Assessments**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each

Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments;

Such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs of collection and reasonable attorney's fees incurred in collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall also pass to his successors in title and shall constitute a continuing lien against the Lot until paid.

**SECTION 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project, and to pay all authorized Association expenses, including but not limited to the improvement and maintenance of the Common Area and Common Facilities.

**SECTION 3. Annual Assessment.** Until there is a conveyance of the first Lot by Declarant to an Owner, there shall be no assessments on the Lots in the in this Subdivision. It is also understood that Declarant and Grantor are exempt from paying any assessment on Lots which Declarant or Grantor owns unless said Lots are in use and occupied. Upon the sale of each Lot, after the residence has been built thereon, and prior to Owner moving in, Owner must make a Three hundred dollar (\$300.00) assessment payment to the Association. Thereafter, the amount of assessment shall be determined by the Board of Directors of the Association, taking into consideration the needs of the Association as from time to time they may exist.

- (a) For the calendar year beginning January 1, immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective as of January 1 (and each year thereafter) by action of the board of Directors of the Association without a vote of the membership, in an amount equal to twenty percent (20%) of the prior year's assessment. It is understood that the first year's assessment for the Association is Three hundred dollars (\$300.00) per Lot.
- (b) For the calendar year beginning January 1, immediately following the conveyance of the first Lot to an Owner, or any subsequent year, the maximum annual assessment may be increased in excess of the amount set forth in subsection (1), hereinabove, only by a vote of the members of the homeowners' association. Any such increase shall have the assent of two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for the purpose. The limitations hereof shall not apply to any change in the maximum basis of the assessments undertaken as the Association is authorized to participate under its Articles of Incorporation.

**SECTION 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any

construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the defrayal of any other extraordinary Association expense, provided that by such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Notice and Quorum for any Action Authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article VIII shall be sent to all members not less than thirty (30) days nor more than (60) days in advance of the meeting. At such meeting the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting shall be adjourned and rescheduled for a time and place not less than ten (10) days nor more than thirty (30) days subsequent. Written notice of the rescheduled meeting shall be mailed to all members not less than five (5) days in advance of the rescheduled meeting date. The required quorum at the subsequent meetings shall be satisfied by the presence in person or by proxy of twenty-five percent (25%) for each class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. Uniform rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis (One-twelfth each month), or on a quarterly basis (one-fourth each quarter) as determined by the Association Board of Directors.

SECTION 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots, except those Lots owned by the Grantor, on the first day of the month following the conveyance of the Lot by Grantor. The first annual assessment shall be adjusted (pro rata) according to the number of months remaining in the calendar year. The calendar year shall be assessment period. The Board of Directors shall fix the amount of the annual assessment at least ten (10) days in advance of each annual assessment period; provided, however, that the first annual assessment shall be fixed by the Board within thirty (30) days of the conveyance of the first Lot by Declarant to an Owner; and provided further that in the event of an assessment proposed in excess of the authority of the Board authority shall not be effective until membership approval. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

SECTION 8. Effect of Nonpayment of Assessments; remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or at such other interest rate as may be established annually by the Board of Directors. Each assessment, when levied, shall automatically constitute a lien on and against the Lot to which the assessment pertains, without any requirement of filing any documentation of such lien. Nonetheless, the Association may file a claim of lien evidencing such thirty (30) days after the due date of the assessment lien against the Property, in the same manner as

provided by law as to statutory liens. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of common area or abandonment of his Lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage provided that such first mortgage is held by a person or entity unrelated to the Lot Owner. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

### ARTICLE IX

**Section 1. Special Easements, Use Restrictions and Association Authority.** The Association shall provide for perpetual maintenance, repair and replacement of all Common Areas, to Improvements thereon, located within the Project identified as follows:

- Lot 1 Block 1, Lots 3 and 4 Block 2, Lots 1 and 18 Block 5

**Section 2. Persons Entitled to Enforce.** The provisions of this Declaration may be enforced by any of the following persons or entities in accordance by any of the following persons or entities in accordance with the procedures outlined herein:

- (a) The Association;
- (b) The Owner or Owners of any Lot adversely affected, but only after demand made upon the Association and its failure to act, except that no such Owner shall have the right to enforce independently of the Association any assessment or lien herein;
- (c) The Declarant.

**Section 3. Methods of Enforcement.** Subject to the provisions of Section 4 herein, the following methods of enforcement may be utilized:

- (a) Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, or cancellation of any contracts or any executory nature;
- (b) Eviction for trespass by police action;
- (c) Monetary penalties and temporary suspension from Association membership rights and privileges, in accordance with the Bylaws of the Association, provided that, except for late charges, interest, and other penalties for failure to pay as due assessments levied by the Association as provided in this Declaration, no discipline or sanction shall be effective against a member unless:
  - (1) The member is given fifteen (15) days' written notice of proposed disciplinary action and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such member, be oral or in writing. The notice



shall be given personally to such member or sent by first-class or registered mail to the last address of such member as shown on the records of the Association, and shall state the place, date and time of the hearing, which shall not be less than five (5) days before the effective date of the proposed expulsion, termination, or suspension.

- (2) The hearing shall be conducted by a committee composed of not less than three (3) persons, appointed by the President of the Association, which shall conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding discipline until the conclusion of the meeting.
- (3) Any member challenging the disciplinary measures taken by the board, including any claim alleging defective notice must commence Court action within one (1) year after the date of the contested disciplinary measure taken by the Board.

**Section 4. Limitations on Enforcement.** All methods of enforcement and discipline authorized by this Declaration are limited as follows:

- (a) The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot on account of the failure of the Owner to comply with provisions of this Declaration except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure for failure of the Owner to pay annual or special assessments duly levied by the Association.
- (b) A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the provisions of this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Areas for which the member was allegedly responsible, or in bringing the member and his Lot into compliance with this Declaration, may not be treated as an assessment which may become a lien against the members' Lot, enforceable by a sale of the interest. This provision does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and for charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

**Section 5. Fees and Costs.** Any person or the Association entitled to enforce any of the terms hereof by any of the means contained herein, who obtains a decree from any court or arbitrator enforcing any of the provisions hereof, shall be entitled to reasonable attorney's fees and all costs incurred or anticipated to be incurred or anticipated to be incurred in remedying or abating the offensive condition as a part of his or its judgment or decree against the party in violation hereof.

**Section 6. Non-liability for Enforcement or for Non-enforcement.** Neither the Architectural Control Committee nor the Association shall be liable to any

person under any of these covenants for failure to enforce any of them, for personal injury, loss of life, damage to property, economic detriment, or for any other loss caused either by their enforcement or non-enforcement. Failure to enforce any of the covenants contained herein shall in no event be deemed a waiver of the right to do so thereafter.

#### **ARTICLE X. Protection of Mortgagees**

**Section 1. Purpose.** Notwithstanding any and all provisions of these covenants to the contrary, to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Governmental National Mortgage Association ("GNMA"), the Federal National Mortgage Association (FNMA) to participate in the financing of the purchase of Lots within Observation Point Subdivision (Observation), the provisions of this Article are added hereto. To the extent the following sections of this Article conflict with any other provisions of these covenants or the provisions of any supplemental covenants, this Article shall control.

**Section 2. Restriction on Amendments.** No amendment of these covenants shall operate to defeat or render invalid the rights of a mortgagee or beneficiary under any first mortgage or first deed of trust upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such mortgage or deed of trust such Lot shall remain subject to these covenants, as amended.

**Section 3. Mortgage defined.** For the purposes of this Article only, a "Mortgagee" shall refer only to FHLMC, GNMA and FNMA as described in Article X, section 1 above.

**Section 4. Right to Notice.** Each Mortgagee, upon filing a written request for notification with the Association in accordance with these covenants is entitled to written notice from the Association of any default by the Owner of the Lot encumbered by the mortgage held by said Mortgagee in the performance of such Owner's obligations under these covenants and under any supplemental covenants applicable to the Lot, the Articles or the Bylaws of the Association (hereafter collectively referred to as "Project Documents") which default is not cured within thirty (30) days after the Association has notice of such default.

**Section 5. Exemption From Right of First Refusal.** Every Mortgagee encumbering a Lot which obtains title to a Lot by foreclosure or otherwise shall be exempt from any "right of first refusal," if any, in favor of the Grantor or the Association.

**Section 6. Exemption From Prior Assessments.** Each Mortgagee which comes into possession of a Lot by virtue of foreclosure, or otherwise, shall take title to such Lot free from any claims for unpaid assessments and charges against the Lot, which accrue prior to the time such Mortgagee comes into possession, except for claims for a share of such assessments or charges resulting from a re-allocation thereof to all Lots including the mortgaged Lot.

**Section 7. Changes Requiring Unanimous Approval.** Without the prior unanimous approval of all Mortgagees of Lots within Timberview, neither the Association nor the Owners shall:

- (a) By act or omission see, to abandon, partition, subdivide, encumber, sell or transfer the Common Area which are owned, directly or indirectly, by the Association provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association, or the transfer of the Common Area to an unincorporated association of the Owners in accordance with the Articles of the Association shall not be deemed a transfer within the meaning of this section.

**Section 8. Right to Pay Charges.** Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay any overdue premiums on hazard insurance policies covering said Common Area, and said Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

**Section 9. Liability for Taxes.** All taxes levied and assessed on the Common Area must be assessable against the Common Area only and the Association shall be solely responsible for the payment thereof.

**Section 10. Waiver of Liability and Subrogation.** Any provision in these covenants which requires Owners to indemnify the Association or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

**Section 11. Additional Contracts.** In addition the foregoing provisions of this Article, the Association may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA or by similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots within improvements thereon. Each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots, if such agencies approve Timberview as a qualifying subdivision under applicable policies, rules and regulations, as adopted from time to time.

**Section 12. Consent to Release of Information by Mortgagee.** Mortgagees are hereby authorized to furnish information to the Association concerning the status of any mortgage encumbering a Lot and each Owner of a Lot encumbered by such Mortgage hereby consents thereto.

**Section 13. Restricted Application.** It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA OR GNMA purchases, guarantees or insures a mortgage on a Lot within Timberview and then only to the extent the same are required by said purchaser, guarantor or insurer. In the event the

standards and guidelines of FHLMC, FNMA or GNMA do not require, as a condition of approval of Timberview as a qualifying subdivision, the inclusion of one or more of the provisions shall be of no further force or effect.

**ARTICLE XI**  
**General Provisions**

Section 1. **Common Area Title and Improvements.** The Common Areas shall be conveyed to the Association by Declarant within ninety (90) days of the conveyance of the first Lot in the Project by Declarant to an Owner. Notwithstanding such conveyance, Declarant shall have the right of continuing access to the Common Areas to complete such improvements thereon or thereto as Declarant intends to construct.

Section 2. **Severability.** Invalidation of any one of these covenants or restriction by judgment or court order shall not affect any other provisions hereof, which shall remain in full force and effect.

Section 3. **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of then (10) years unless a document terminating the covenants and restrictions of this Declaration, signed and acknowledged by two-thirds (66.66%) of the then Owners, is recorded in the official records of Ada County, Idaho.

This Declaration of Protective Restrictions and Covenants of Observation Point Subdivision are executed this 16<sup>th</sup> day of January, 2003.

Declarant:

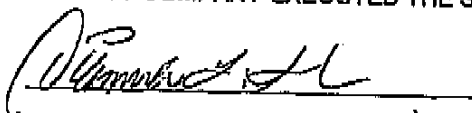
Victory 41 LLC

By   
Michael D. Caven, Its Agent

STATE OF IDAHO

COUNTY OF ADA

ON THIS 18TH DAY OF JANUARY, 2003, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED, MICHAEL D. CAVEN, KNOWN OR IDENTIFIED TO ME TO BE THE AUTHORIZED SIGNER OF THE LIMITED LIABILITY COMPANY THAT EXECUTED THE INSTRUMENT OR THE PERSON (S) WHO EXECUTED THE INSTRUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT SUCH LIMITED LIABILITY COMPANY EXECUTED THE SAME.



NOTARY PUBLIC  
RESIDING AT: MERIDIAN, ID  
COMMISSION EXPIRES: 01/23/08

