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PIONEER TITLE COMPANY OF ADA COUNTY

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# **VALOR** **MAINTENANCE COVENANT**

*City of Kuna, County of Ada, State of Idaho*

**NOTE: NO PORTION OF THE ANNEXABLE LAND DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS MAINTENANCE COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE ANNEXABLE LAND IS RECORDED IN THE OFFICIAL RECORDS OF ADA COUNTY, IDAHO, IN ACCORDANCE WITH SECTION 12.05 BELOW.**

**Declarant: M3 ID FALCON CREST, LLC, an Arizona limited liability company**

**VALOR  
MAINTENANCE COVENANT**

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**VALOR**  
**MAINTENANCE COVENANT**

This Valor Maintenance Covenant (the “Covenant”) is made by M3 ID FALCON CREST, LLC, an Arizona limited liability company (the “Declarant”), and is as follows:

**RECITALS:**

A. Declarant is the present owner of certain real property located in Ada County, Idaho, as more particularly described on Exhibit “A” attached hereto (the “Annexable Land”).

B. Pursuant to *Section 12.05* of this Covenant, portions of the Annexable Land may be made subject to this Covenant upon the Recording of one or more Notices of Applicability.

C. Once a Notice of Applicability is Recorded, the portions of the Annexable Land described therein will constitute the Subject Property (as defined below) and will be governed by and fully subject to this Covenant, and the Subject Property in turn will be comprised of separate Tracts (as defined below) which will be governed by and subject to separate Tract Declarations (as defined below) in addition to this Covenant.

D. This Covenant serves notice that upon the further Recording of one or more Notices of Applicability, portions of the Annexable Land identified in such notice or notices will be subject to the terms and provisions of this Covenant.

**NOW, THEREFORE**, it is hereby declared that: (i) those portions of the Annexable Land (as further defined below) shall only as and when made subject to this Covenant by the Recording of a Notice of Applicability be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Annexable Land and will be binding upon all parties having right, title, or interest in or to such portions of the Annexable Land or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; (ii) all dedications, limitations, restrictions and reservations shown on a Plat (as defined below) and all grants and dedications of easements, rights-of-way, restrictions and related rights made prior to any portion of the Annexable Land becoming subject to this Covenant are hereby incorporated into this Covenant for all purposes as if fully set forth herein and shall be construed as adopted in each and every contract, deed or conveyance; and (iii) that each contract or deed conveying those portions of the Annexable Land which are made subject to this Covenant will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text will control.

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Covenant will have the meanings hereinafter specified:

**“Annexable Land”** means all of that certain real property described on Exhibit “A”,

### **Annexable Land versus Subject Property versus Tract**

<b>“Annexable Land”</b>	Described on <u>Exhibit “A”</u> . This is the land that <u>may be made</u> subject to this Covenant, from time to time, by the Recording of one or more Notices of Applicability. Declarant has no obligation to add all or any portion of the Annexable Land to this Covenant.
<b>“Subject Property”</b>	This is the portion of the land described on <u>Exhibit “A”</u> that <u>has been made</u> subject to this Covenant through the Recording of a Notice of Applicability.
<b>“Tract”</b>	This is a portion of the Subject Property. Each Tract may be made subject to a Tract Declaration.

**No portion of the Annexable Land is subject to the terms and provisions of this Covenant until a Notice of Applicability is Recorded. A Notice of Applicability may only be Recorded by the Declarant.**

attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 12.03* and *Section 12.04* of this Covenant.

**“Applicable Law”** means all statutes, public laws, ordinances, including but not limited to the requirements set forth in policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Subject Property and any other applicable building codes, zoning restrictions, permits and ordinances adopted by the City (defined below), or development agreements which are in effect at the time a provision of the Documents (defined below) is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are Applicable Law on the date of the Document, and are not intended to apply to the Subject Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

**“Articles”** means the Articles of Incorporation of VMC, filed with the Idaho Secretary of State, as the same may be amended from time to time.

**“Assessment”** or **“Assessments”** means assessments imposed by VMC under this Covenant.

**“Assessment Unit”** has the meaning set forth in *Section 6.09*.

**“Association”** means a property owners association created pursuant to a Tract Declaration to administer all or a portion of a Tract. The formation of an Association must be approved in advance and in writing by the Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period.

**“Association Representative”** means a board member of an Association appointed from time to time by the board of directors of such Association to act on behalf of the members of the Association for the purpose of receiving Member notices, attending annual and special meetings of the Members, and voting on any matter to be voted on by the Member who is also the member of the Association, except for the following situations in which this Covenant specifically requires Members to cast their vote individually: (i) changes to the term of the Covenant as described in *Section 14.01*; (ii) amendments to the Covenant as described in *Section 14.03*; or (iii) initiation of any judicial or administrative proceeding as described in *Section 14.04*, it being understood and agreed that any such change must be approved by a vote of the Members, with each Member casting their vote individually. For any Owners under the jurisdiction of an Association, VMC shall be required to deal only with the Association Representative and if no member of the board of directors of the Association is appointed by the board the Association, then the Owners under the jurisdiction of such Association shall not have any vote or ability to exercise any rights under this Covenant until such time as an Association Representative is appointed.

**“Benefited Common Area”** means any interest in real property or improvements which is designated by Declarant in a Notice of Applicability Recorded pursuant to *Section 12.05*, in a Tract Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Benefited Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefited Common Area Assessments attributable thereto, to one or more, but less than all of the Lots, Condominium Units, Owners or Tracts, and is or will be conveyed to VMC or as to which VMC will be granted rights or obligations, or otherwise held by the Declarant for the benefit of VMC. The Notice of Applicability, Tract Declaration, or other written notice will identify the Lots, Condominium Units, Owners or Tracts assigned to such Benefited Common Area and further indicate whether the Benefited Common Area is assigned to such parties for the purpose of exclusive use and the payment of Benefited Common Area Assessments, or only for the purpose of paying Benefited Common Area Assessments attributable thereto. By way of illustration and not limitation, Benefited Common Area may include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

**“Benefited Common Area Expenses”** means the estimated and actual expenses which VMC incurs or expects to incur to operate, maintain, repair and replace Benefited Common Area, which may include a reasonable reserve for capital repairs and replacements.

**“Board”** means the Board of Directors of VMC.

**“Bulk Rate Contract” or “Bulk Rate Contracts”** means one or more contracts which are entered into by VMC for the provision of utility services or other services of any kind or nature to the Lots and/or Condominium Units. The services provided under Bulk Rate Contracts may include, without limitation, security services, trash pick-up services, propane service, natural gas service, landscape maintenance services, cable television services, telecommunications services, internet access services, “broadband services,” wastewater services and any other services of any kind or nature which are considered by the Board to be beneficial.

**“Bylaws”** means the Bylaws of VMC, which may be initially adopted by Declarant or the Board of VMC as part of the initial project documentation for the benefit of VMC. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. During the Development Period, Declarant must approve any amendment to the Bylaws. After the Development Period, a Majority of the Board may amend the Bylaws.

**“City”** means the City of Kuna in Ada County, Idaho.

**“Club Documents”** means collectively, the Golf Club Documents and the Social Club Documents.

**“Club Parties” or “Club Party”** means collectively, the Golf Club Parties or Golf Club Party and the Social Club Parties or Social Club Party.

**“Club Property”** means collectively, the Golf Club Property and the Social Club Property.

**“Commercial Lot”** means a Lot within the Subject Property, other than Common Area or Benefited Common Area, that is intended and designated for business or commercial use. Business or commercial use shall include, but shall not be limited to, all office, retail, wholesale, manufacturing, and service activities, and shall also be deemed to include multi-family, duplex and apartment housing of various densities. A Commercial Lot, for the purpose of this Covenant, may also include a Lot on which Residential Lots will be platted or a residential condominium will be impressed.

**“Common Area”** means any property and facilities that VMC owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of VMC or its Members. No portion of the Subject Property may be designated as Common Area or otherwise conveyed or transferred to VMC without the advance written consent of Declarant during the Development Period, and thereafter a Majority of the Board. If requested by the Declarant, VMC will execute any instrument or document required by any

applicable governmental authority to evidence VMC's acceptance of all or any portion of the Subject Property or the Annexable Land for maintenance. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Annexable Land or the Subject Property being held by the Declarant for the benefit of VMC. Upon the Recording of such designation, the portion of the Annexable Land or the Subject Property identified therein will be considered Common Area for the purpose of this Covenant. Common Area also includes any property that VMC holds under a lease, license, or any easement in favor of VMC. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

**"Common Expenses"** means the actual or estimated expenses incurred, or anticipated to be incurred, by VMC, including all costs and expenses identified as Common Expenses in the Declaration.

**"Community Manual"** means the community manual, which may be initially adopted by the Declarant as part of the initial project documentation for the benefit of VMC. The Community Manual may include the Articles, the Bylaws, and any Rules and other policies governing roads, entry facilities and VMC. The Community Manual may be amended or supplemented, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

**"Community Systems"** means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennas, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant pursuant to any grant of easement or authority by Declarant within the Annexable Land or the Subject Property.

**"County"** means the County of Ada, State of Idaho.

**"Condominium Unit"** means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Subject Property. A Condominium Unit may be intended and designated in any Tract Declaration for residential, commercial, or live/work purposes.

**"Declarant"** means M3 ID FALCON CREST, LLC, an Arizona limited liability company, its successors or assigns. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person. Declarant may also, by Recorded written instrument,

permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Covenant.

**"Design Guidelines"** means the standards for design, construction of Improvements, landscaping, and exterior items proposed to be placed on any Lot, Condominium Unit, Tract, and/or any other portion of the Subject Property or Annexable Land adopted pursuant to *Section 9.04(b)*, as the same may be amended and/or supplemented from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific Lots, Condominium Units, Tracts, and/or any other portion of the Subject Property or Annexable Land. At Declarant's option, the Valor Reviewer may adopt, and amend from time to time, the Design Guidelines. Notwithstanding anything in this Covenant to the contrary, the Valor Reviewer will have no obligation to establish Design Guidelines for any or all Lots, Condominium Units, Tracts, and/or any other portions of the Subject Property or Annexable Land.

**"Development Period"** means the period of time beginning on the date when this Covenant has been Recorded, and ending fifty (50) years thereafter, unless earlier terminated by a Recorded instrument executed by the Declarant. The Development Period is for a term of years and does not require that Declarant own any portion of the Subject Property or Annexable Land.

**"Documents"** means, singularly or collectively, as the case may be, this Covenant, any applicable Tract Declaration, any applicable Notice of Applicability, any applicable Design Guidelines (if adopted), and the Club Documents, as each may be amended and/or supplemented from time to time, as well as the Articles, the Bylaws, the Community Manual and any Rules and Board resolutions promulgated by VMC pursuant to this Covenant, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See *Table 1* at the end of this Article for a summary of the Documents.

**"Golf Club"** means a private golf club that may include, without limitation, a clubhouse, locker rooms, a pro shop, dining facilities, food pavilions, and the Golf Course located or to be located in close proximity to the Annexable Land and Subject Property.

**"Golf Club Assessments"** means charges established and levied by the Golf Club Owner pursuant to *Article 8*, including without limitation, Golf Club Landscape Assessments.

**"Golf Club Documents"** means the covenants, conditions, restrictions, rules, regulations, requirements, and any other documents pertaining to the Golf Club, which may be initially adopted by Declarant or the Golf Club Owner.

**"Golf Club Landscape Assessments"** means charges established and levied by the Golf Club Owner pursuant to *Section 8.02*.

**"Golf Club Landscape Services"** means the following services which may be provided to the Golf Club Landscape Area on an as needed basis as determined by the Golf Club Owner with the advance written consent of the Declarant during the Development Period: (i) trimming all plant material (e.g. grass, trees, shrubs, flowers); (ii) removing all plant clippings; and (iii) replacing dead plant material. Notwithstanding the foregoing, the Golf Club Owner will have the right to discontinue or modify the Golf Club Landscape Services, provided hereunder from time to time and at any time. The costs associated with the Golf Club Landscape Services shall be discharged through Golf Club Landscape Assessments.

**"Golf Club Landscape Area"** means the landscaped areas within the Common Area and/or Benefited Common Area, including without limitation certain green belts and trails, which are within the landscape envelope of the Golf Course. In the event of a dispute concerning what constitutes the Golf Club Landscape Area for the purpose of providing the Golf Club Landscape Services, the Golf Club Owner's determination of such area will be final, binding and conclusive, with the advance written consent of the Declarant during the Development Period. The Declarant during the Development Period with the written consent of the Golf Club Owner, shall be permitted to further define and delineate the Golf Club Landscape Area (which definition and delineation may differ from the description set forth herein) by a Recorded instrument.

**"Golf Club Owner"** shall mean the owner of the Golf Club, and its successors and assigns.

**"Golf Club Parties"** or **"Golf Club Party"** means the Golf Club Owner, and any officer, owner, member, director, agent or partner of any of the Golf Club Owner, and any officer, owner or director of any of the foregoing, the Golf Club, Golf Club staff, employees, and contractors, the manager of the Golf Club, Golf Club members and their families, guests, and invitees, Golf Club guests, invitees and designees, Golf Club tournament participants, staff, sponsors and officials, and Golf Club function and party participants.

**"Golf Club Property"** means the real property adjacent to or in close proximity to the Annexable Land and Subject Property on which the Golf Course or other Golf Club facilities may be constructed. The Golf Club Property is not Common Area or Benefited Common Area.

**"Golf Course"** means a portion of the Golf Club Property from time to time used or utilized by the Golf Club for golf course operations, and includes any fairway, landscaped features, rough, waste area, trap, hazard, lake, water feature, irrigation facility, drainage facility, cart barn, driving range, parking lot, maintenance facility, food and beverage facilities, restrooms, and any other improvements or facilities related to the golf course operations.



**"Homebuilder"** refers to any Owner (other than Declarant) who is in the business of constructing single-family residences and acquires all or a portion of the Annexable Land to construct single-family residences for resale to third parties.

**"Improvement"** means any and all physical enhancements and alterations to the Subject Property, including grading, clearing, removal of trees, site work, utilities, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, water features, fences, walls, signage, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, awnings, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**"Lot"** means any portion of the Subject Property designated by Declarant in a Recorded instrument or as shown as a subdivided Lot on a Plat other than Common Area, Benefited Common Area, or a Lot on which a condominium regime has been established, and shall include both Commercial Lots and Residential Lots. A Lot, for the purpose of this Covenant, may also include a Lot on which a condominium will be impressed creating Condominium Units.

**"Majority"** means more than half.

**"Manager"** has the meaning set forth in *Section 3.08(h)*.

**"Members"** means every person or entity that holds membership privileges in VMC.

**"Mortgage"** or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot or Condominium Unit.

**"Mortgagee"** or **"Mortgagees"** means the holder(s) of any Mortgage(s).

**"Notice of Applicability"** means the Recorded notice executed by the Declarant for the purpose of adding all or any portion of the Annexable Land to the terms and provisions of this Covenant. In accordance with *Section 12.05*, a Notice of Applicability may also subject a portion of the Annexable Land to a Recorded Tract Declaration, and in accordance with *Section 4.01*, a Notice of Applicability may also designate any or all Owners of the Annexable Land or Subject Property described therein as a Mandatory Social Club Sub-Member (as defined in *Section 4.01*).

**"Occupant"** means a resident, occupant, tenant, or other similar non-Owner of a Lot or Condominium Unit.

**"Owner"** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit and in no event shall mean any Occupant. Mortgagees who acquire title to a Lot or Condominium Unit through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of VMC; provided, however, the Association Representative shall act on behalf of any Owner that is also a member of an Association created pursuant to a Tract Declaration, subject to the limitations in the definition of Association Representative set forth above.

**"Plat"** means a Recorded subdivision plat of any portion of the Subject Property, and any amendments thereto.

**"Record, Recording, Recordation and Recorded"** means recorded in the Official Records of Ada County, Idaho.

**"Representative System of Voting"** means the method of voting which may be established by Declarant pursuant to *Section 3.06* below.

**"Residential Developer"** means any Owner who acquires raw land, one or more Lots, or any portion of the Subject Property for the purpose of resale to a Homebuilder.

**"Residential Lot"** means a portion of the Subject Property shown as a subdivided lot on a Plat, other than Common Area and Benefited Common Area, which is intended and designated solely for single-family residential use.

**"Rules"** means any instrument, however denominated, which the Declarant may adopt as part of the Community Manual, or the Board may subsequently adopt for the regulation and management of the Subject Property, including any amendments to those instruments. Until expiration or termination of the Development Period, the Declarant must approve any amendment to the Rules.

**"Service Area"** means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for the purpose of receiving benefits or services from VMC which are not provided to all Lots and/or Condominium Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot and/or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.04*.

**“Service Area Expenses”** means the estimated and actual expenses which VMC incurs or expects to incur for the benefit of Owners within a designated Service Area, which may include a reasonable reserve for capital repairs and replacements.

**“Social Club”** means a private social club that may include, without limitation, a clubhouse, dining facilities, food pavilions, swimming pool(s), a spa and fitness center, etc. located or to be located in close proximity to the Annexable Land and Subject Property. There may be more than one private social club in close proximity to the Annexable Land or Subject Property. Notwithstanding any term herein to the contrary, the Social Club Owner may establish different levels of membership applicable to the Lots or Condominium Units, e.g., a membership that provides access only to food and beverage facilities within the Social Club, and a membership that provides access to all Social Club facilities.

**“Social Club Assessments”** means charges established and levied by the Social Club Owner pursuant to *Article 7*, including without limitation, Social Club Membership Assessments and Entry Fees, as applicable.

**“Social Club Documents”** means the covenants, conditions, restrictions, rules, regulations, requirements, and any other documents pertaining to the Social Club, which may be initially adopted by Declarant or the Social Club Owner.

**“Social Club Membership Assessments”** means charges established and levied by the Social Club Owner pursuant to *Section 7.02*.

**“Social Club Owner”** shall mean the owner of the Social Club, and its successors and assigns.

**“Social Club Parties”** or **“Social Club Party”** means the Social Club Owner, and any officer, owner, member, director, agent or partner of any of the Social Club Owner, and any officer, owner or director of any of the foregoing, the Social Club, Social Club staff, employees, and contractors, the manager of the Social Club, Social Club members and their families, guests, and invitees, Social Club guests, invitees and designees, Social Club staff and Social Club function and party participants.

**“Social Club Property”** means the real property adjacent to or in close proximity to the Annexable Land and Subject Property on which the Social Club facilities may be constructed. The Social Club Property is not Common Area or Benefited Common Area.

**“Subject Property”** means all or any portion of the Annexable Land made subject to this Covenant by the Recording of a Notice of Applicability. The term Subject Property shall not include any or all of the Club Property unless the Club Property or any portion thereof is transferred to VMC and made subject to this Covenant.

**“Tract”** means any part of the Subject Property (less than the whole), which Tract may be subject to a Tract Declaration in addition to being subject to this Covenant.

**“Tract Declaration”** means a declaration of covenants, conditions, and restrictions pertaining to a Tract which may, without obligation, provide for the creation of an Association. Each Tract Declaration must be approved in advance and in writing by the Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period. Each Tract Declaration will be subordinate to the terms and provisions of this Covenant. In the event of a conflict between the terms and provisions of a Tract Declaration and the terms and provisions of this Covenant, the terms and provisions of this Covenant will control.

**“Valor Reviewer”** means Declarant or Declarant’s designee(s) or appointee(s) until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Valor Reviewer will automatically be transferred to a design review committee created and appointed by the Board (the “DRC”), as set forth in *Section 9.02* below.

**“Village”** has the meaning set forth in *Section 3.02*.

**“Village Delegate”** means the representative elected by the Owners of Lots and Condominium Units in a Village pursuant to the Representative System of Voting (as further defined herein) which may be established by the Declarant to cast the votes of all Lots and Condominium Units in the Village on all matters requiring a vote of the Members, except for the following situations in which this Covenant specifically requires Members to cast their vote individually: (i) changes to the term of the Covenant as described in *Section 14.01*; (ii) amendments to the Covenant as described in *Section 14.03*; or (iii) initiation of any judicial or administrative proceeding as described in *Section 14.04*. Notwithstanding the foregoing, the Documents may set forth additional circumstances in which the Members are required to cast their vote individually, and voting by Village Delegates is prohibited.

**“VMC”** means Valor Maintenance Corporation, an Idaho nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of VMC to maintain its corporate charter from time to time does not affect the existence or legitimacy of VMC, which derives its authority from this Covenant, the Articles, the Bylaws, and Applicable Law.

**“Voting Group”** has the meaning set forth in *Section 3.07* below.

<b>TABLE 1: DOCUMENTS</b>	
<b>Covenant</b> (Recorded)	Creates obligations that are binding upon VMC and all present and future owners of the Subject Property.
<b>Tract Declaration</b> (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Subject Property which may provide for the creation of an Association.
<b>Notice of Applicability</b> (Recorded)	Describes the portion of the Annexable Land being made subject to the terms and provisions of the Covenant (the Subject Property) and/or any applicable Tract Declaration.
<b>Articles of Incorporation</b> (filed with Idaho Secretary of State and included in Community Manual)	Establishes VMC as a nonprofit corporation under Idaho law.
<b>Bylaws</b> (included in Community Manual)	Governs VMC's internal affairs, such as elections, meetings, etc.
<b>Community Manual</b> (adopted by Declarant)	Establishes rules and policies governing the VMC.
<b>Design Guidelines</b> (if adopted)	If adopted, governs the design and architectural standards for the construction of Improvements and modifications thereto. Declarant will have no obligation to establish Design Guidelines for the Subject Property.

**ARTICLE 2**  
**GENERAL AND USE RESTRICTIONS**

**2.01 General.**

(a) Conditions and Restrictions. All Lots and Condominium Units within the Subject Property to which a Notice of Applicability has been Recorded in accordance with *Section 12.05*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents. **NO PORTION OF THE ANNEXABLE LAND WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN RECORDED.**

(b) Compliance with the Documents and Applicable Law. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each restriction which may be applicable to a Lot or a Condominium Unit located within the Subject Property. Each Owner is advised to review all encumbrances affecting the use and improvement of such Owner's Lot or Condominium Unit. Furthermore, an approval by the Valor Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions

of all encumbrances which may affect the Owner's Lot or Condominium Unit. VMC, each Owner, Occupant or other user of any portion of the Subject Property must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

(c) Valor Reviewer Approval of Regulatory Submission Items. Each Owner is further advised that prior to submitting any application, zoning change, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to the preliminary plan and any development plan required to be submitted by an Owner pursuant to any zoning ordinance applicable to the Subject Property (the "**Regulatory Submission Items**"), to a regulatory authority for approval or issuance of a permit, as applicable, the Owner must first obtain approval from the Valor Reviewer of the Regulatory Submission Items (the "**Preliminary Regulatory Approval**"). Any Preliminary Regulatory Approval granted by the Valor Reviewer is conditional and no Improvements may be constructed in accordance with the Regulatory Submission Items until the Owner has submitted to the Valor Reviewer a copy of the Regulatory Submission Items approved by the regulatory authority and the Valor Reviewer has issued to the Owner a "Notice to Proceed". In the event of a conflict between the Regulatory Submission Items approved by the Valor Reviewer and the Regulatory Submission Items approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Items to the Valor Reviewer for approval. Each Owner acknowledges that no regulatory authority has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Subject Property.

(d) Valor Reviewer Approval of Project Names. Each Owner is advised that the name used to identify the Subject Property, a Tract or any portion thereof for marketing or identification purposes must be approved in advance and in writing by the Valor Reviewer.

(e) Development Amenities. A Tract may include Common Area, open space, parks, trails, landscape areas, roadways, driveways or easements which benefit the Subject Property, Annexable Land, and/or Club Property in addition to the Tract, as reasonably determined by the Declarant during the Development Period, and a Majority of the Board after termination or expiration of the Development Period (the "**Development Amenities**"). Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the Development Period, may require all or a portion of such Development Amenities be conveyed, transferred, or dedicated (by deed easement, or license) to: (i) VMC; or (ii) another entity designated by the Declarant or a Majority of the Board, as applicable. Alternatively, the Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the

Development Period, may require that all or a portion of such Development Amenities be owned and maintained by the Owner of all or a portion of a particular Tract, subject to an easement in favor of other Owner(s) and Occupants, as designated by the Declarant or a Majority of the Board, as applicable (e.g. ingress and egress over and across the driveways constructed within the Tract).

The Development Amenities may not be conveyed or otherwise transferred unless the conveyance and transfer is approved in advance and in writing by the Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period.

**2.02 Incorporation of Tract Declarations.** Upon Recordation of a Tract Declaration, such Tract Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to portions of the Annexable Land made subject to the Tract upon the Recordation of one or more Notices of Applicability.

**2.03 Conceptual Plans.** All site plans, brochures, illustrations, information and marketing materials related to the Annexable Land or the Subject Property, including any statements or projections as to Assessments, and expressly including any of the foregoing prepared by the Declarant (collectively, the “**Conceptual Plans**”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Annexable Land or the Subject Property may include uses which are not shown on the Conceptual Plans and such land uses may be changed from time to time and at any time by the Declarant without notice to any Owner. It is also understood and agreed that Assessments will change based on actual expenses incurred by VMC and no assurances are provided regarding the accuracy of any estimated Assessments. Neither Declarant nor any Homebuilder or other Residential Developer of any portion of the Annexable Land or the Subject Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Annexable Land or the Subject Property, and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Annexable Land or the Subject Property. Each Owner who acquires a Lot or Condominium Unit within the Subject Property acknowledges that the development of the Subject Property will extend over many years, and agrees that VMC will not engage in, or use VMC funds to support, protest, challenge, or make any other form of objection to development of the Annexable Land or changes in the Conceptual Plans as they may be amended or modified from time to time.

**2.04 Provision of Benefits and Services to Service Areas.**

(a) Designated by Declarant. Declarant, in a Notice of Applicability Recorded pursuant to *Section 12.05* or in any written Recorded notice, may assign Lots and/or Condominium Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that VMC provide benefits or services to such Lots and/or Condominium Units in addition to those which VMC generally provides to the Subject Property. Declarant may unilaterally amend any Notice of Applicability or any written Recorded notice to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

(b) Petitioned by Owners. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from VMC: (i) special benefits or services which are not provided to all Lots and/or Condominium Units; or (ii) a higher level of service than VMC otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot and/or Condominium Units among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the proposed Service Area, VMC will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Units within such Service Area as a Service Area Assessment.

**2.05 Streets Within the Property.** Any private streets designated as Common Area within the Subject Property shall be maintained and administered by VMC. VMC has the express authority to adopt, amend, repeal, and enforce Rules for use of private streets, including but not limited to: (i) identification of vehicles used by Owners, Occupants and their guests; (ii) designation of parking or no-parking areas; (iii) limitations or prohibitions on curbside parking; (iv) removal or prohibition of vehicles that violate applicable Rules; and (v) fines for violations of applicable Rules.

Notwithstanding the foregoing, Declarant reserves the right for itself during the Development Period, and the Board thereafter, to unilaterally Record one or more written



instruments from time to time (each, a "Road Notice"), which: (a) assigns all or any of the maintenance or administration rights or obligations for all or any portion of the private streets within the Subject Property to one or more Associations; and/or (b) specifies a maintenance standard for all or any portion of the private streets. Any Road Notice may be unilaterally amended, supplemented, or terminated by the Declarant during the Development Period and the Board thereafter. For avoidance of doubt, a Road Notice may be included in the Design Guidelines, if any, a Tract Declaration, Notice of Applicability, or any other Recorded instrument.

Private streets located within the Subject Property shall provide perpetual access for Club Parties, police and other emergency vehicles, public and private utility maintenance and service personnel, solid waste collection services, the U.S. Postal Service, and government employees in pursuit of their official duties. Access to the private streets for the persons and entities referenced in the preceding sentence shall be reasonably provided by VMC and/or the applicable Association.

**2.06 Golf Carts.** No golf carts other than electric-powered golf carts or other golf carts approved by the Golf Club Owner for use on the Golf Course shall be operated, parked or maintained within the Subject Property without the prior written approval of the Board and the Golf Club Owner. All golf carts operated, parked or maintained within the Subject Property shall be licensed and registered in accordance with Applicable Law and any Golf Club requirements, which may include without limitation, payment of a trail fee (the "**Golf Club Trail Fee**"). The Board shall be entitled to establish additional rules and regulations governing golf carts, including equipment required to be installed on golf carts, provided such rules and regulations shall not apply to the Golf Club Owner, the Social Club Owner, the Golf Club, or the Social Club or adversely affect the Golf Club, the Social Club, the Golf Club Owner, or the Social Club Owner. **UNDER NO CIRCUMSTANCES SHALL THE DECLARANT, THE CLUB PARTIES, VMC, ASSOCIATIONS AND ANY SUCCESSOR IN INTEREST TO THE FOREGOING PARTIES BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF OR RESULTING FROM THE USE OF GOLF CARTS WITHIN THE SUBJECT PROPERTY.**

**2.07 Golf Ball Restriction; Entry Onto Golf Course.** No Owner, Occupant or the guests of same shall hit golf balls or other projectiles from any portion of the Annexable Land or Subject Property onto any portion of the Annexable Land, Subject Property, or the Golf Course (unless otherwise permitted by the Golf Club Owner). Unless otherwise permitted by the Golf Club Owner, Owners, Occupants and the guests of same shall not enter upon the Golf Course, including walking upon, skateboarding upon, bicycling upon, scootering upon or driving any golf cart or other vehicle onto the cart paths or any other area of the Golf Course, for any purpose except as a customer/patron of the Golf Club, subject to all rules and regulations established within the Golf Club Documents, including all policies relating to fees, reservation

of tee times and other operating rules and procedures. The foregoing is not intended to restrict the Golf Club Owner, Owners, Occupants or the guests of same from accessing any trails that are designated as Common Area or Benefited Common Area under this Covenant or any Tract Declaration. Occupants shall not permit any pets to enter the Golf Course at any time.

**2.08 Wildlife.** Capturing, killing or trapping wildlife is prohibited within the Subject Property unless performed by a government official or licensed professional acting in his or her official capacity, except in any circumstance in which there is an imminent threat to the health or safety of persons or domestic household pets, as determined by a Majority of the Board.

**2.09 Cell Tower and Telecommunications Equipment.** Telecommunications, cellular, video and digital equipment, including without limitation, broadcast antennas and related equipment, cell towers, cell tower equipment, or other wireless communication antennas and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the "CTT Equipment") may be located on or near the Annexable Land and/or the Subject Property or may be constructed on or near the Annexable Land and/or the Subject Property. As more particularly described in *Section 11.10* of this Covenant, Declarant has reserved the right, for the benefit of itself and its assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the Common Area and/or the Benefited Common Area. Parties other than the Declarant or its assigns may also have easements for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment.

**2.10 Liability of Owners for Damage to Common Area or Benefited Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area or the Benefited Common Area without the prior written approval of the Board. Each Owner shall be liable to VMC for any and all damages to: (i) the Common Area, the Benefited Common Area and any Improvements constructed thereon; and (ii) any Improvements constructed on any Lot or Condominium Unit, the maintenance of which has been assumed by VMC, which damages were caused by the neglect, misuse or negligence of such Owner or Occupant, or their guests or invitees. The full cost of all repairs of such damage shall be levied as an Individual Assessment against such Owner's Lot or Condominium Unit, secured by a lien against such Owner's Lot or Condominium Unit and collectable in the same manner as provided in *Section 6.08*.

**2.11 Hazardous Activities.** No activities may be conducted on or within the Subject Property and no Improvements constructed on any portion of the Subject Property which, as determined by a Majority of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Subject Property unless discharged in conjunction with an event approved in advance by the Board. There shall be no open fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in

areas designated and approved by the Valor Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Subject Property which creates a fire hazard or otherwise violates Applicable Law. Unless otherwise approved by the Declarant, no portion of the Subject Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

### ARTICLE 3 VALOR MAINTENANCE CORPORATION

**3.01 Organization.** VMC will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of an Idaho nonprofit corporation under the Idaho Nonprofit Corporation Act, Idaho Code Title 30, Chapter 3. Neither the Articles nor the Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant.

**3.02 Villages.** Every Lot and Condominium Unit will be located within a "Village." A Village may be comprised of any number of Lots or Condominium Units and may include Lots or Condominium Units of more than one type, as well as Lots or Condominium Units that are not contiguous to one another. Each Notice of Applicability shall initially assign the portion of the Subject Property described therein to a specific Village which may then exist (being identified and described in a previously Recorded Notice of Applicability) or may be newly created. Notwithstanding the foregoing, in the event Declarant fails to designate a Village for any Lot or Condominium Unit subject to this Covenant, all such Lots and/or Condominium Units shall constitute a single Village. Declarant may Record an amendment to any previously Recorded Notice of Applicability to designate or change Village boundaries.

**3.03 Membership.**

(a) **Mandatory Membership.** Any person or entity, upon becoming an Owner, will automatically become a Member of VMC. Membership will be appurtenant to and will run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

(b) **Easement of Enjoyment – Common Area.** Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement, if applicable, by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board thereafter, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of VMC to suspend the Member's right to use the Common Area for such periods of time as determined by the Board for violations of any provisions of the Documents;

(iii) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iv) The right of the Declarant, during the Development Period, and the Board thereafter, to grant easements or licenses over and across the Common Area;

(v) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(vi) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of VMC to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

(c) Easement of Enjoyment – Benefited Common Area. Each Owner of a Lot or Condominium Unit which has been assigned use of a Benefited Common Area in a Notice of Applicability, Tract Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Benefited Common Area, and an access easement, if applicable, by and through such Benefited Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board thereafter, to cause such Improvements and features to be constructed upon the Benefited Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of Declarant during the Development Period to grant additional Lots or Condominium Units use rights in and to Benefited Common Area in a subsequently Recorded Notice of Applicability, Tract Declaration or other Recorded instrument;

(iii) The right of VMC to suspend the Owner's rights to use the Benefited Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due;

(iv) The right of the Declarant, during the Development Period, and the Board thereafter, to grant easements or licenses over and across the Benefited Common Area;

(v) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Benefited Common Area to any public agency, authority or utility for any purpose;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Benefited Common Area and, in furtherance thereof, mortgage the Benefited Common Area;

(vii) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Benefited Common Area and any Improvements thereon; and

(viii) The right of VMC to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

**3.04 Governance.** The Board will consist of at least three (3) persons. **Declarant will be entitled to appoint and remove all members of the Board, and until such right is terminated by Declarant, no Owners shall be entitled to elect any member of the Board.** Upon Recordation of a termination notice executed by Declarant, Declarant may terminate its right as to the appointment and removal of the Board members and call for the election of the

Board members by the Owners. At such time as Declarant no longer has the right to appoint and remove any Board members, the President of VMC will call a meeting of the Owners at which the Owners will elect one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term. Upon expiration of the term of a Director elected by the Owners as provided herein, his or her successor will be elected by the Owners for a term of two (2) years. A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

**3.05 Voting Allocation.** Notwithstanding any term or provision herein to the contrary, the vote attributable to any Member who is also a member of an Association created pursuant to a Tract Declaration will be exercised by the Association Representative. The method of voting and the number of votes which may be cast on any matter on which Members are entitled to vote are set forth below.

(a) **Residential Lot.** Each Owner of Residential Lot will be allocated one (1) vote for each Residential Lot so owned. In the event of the re-subdivision of any Residential Lot into two or more Residential Lots: (i) the number of votes to which such Residential Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Residential Lot resulting from such re-subdivision, *e.g.*, each Residential Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Residential Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the applicable Tract Declaration.

(b) **Commercial Lot or Condominium Unit.** Each Owner of a Commercial Lot or Condominium Unit will be allocated the number of votes for such Commercial Lot or Condominium Unit so owned as determined by Declarant, which determination will be set forth in the Notice of Applicability attributable to the Commercial Lot or Condominium Unit(s). Declarant will determine such votes in its sole and absolute discretion. Declarant's determination regarding the number of votes to which such Owners will be entitled will be final, binding and conclusive. The Notice of Applicability may include a provision with an alternative voting allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person not affiliated with Declarant)

the number of votes previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or the Improvements actually constructed on the Commercial Lot or Condominium Unit differ from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time a notice allocating votes thereto was originally Recorded. In the event of a modification to the votes allocated to a Commercial Lot or Condominium Unit, Declarant will Record an amended Notice of Applicability setting forth the revised allocation of votes attributable to such Commercial Lot or Condominium Unit.

(c) Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 3.05(a)* and *Section 3.05(b)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this Section and need not own any portion of the Annexable Land or Subject Property as a pre-condition to exercising such votes.

(d) Co-Owners. If there is more than one Owner of a Lot or Condominium Unit, the vote for such Lot or Condominium Unit shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot or Condominium Unit determine among themselves and advise the Secretary of VMC in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot or Condominium Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the vote allocated to such Lot or Condominium Unit shall be suspended if two or more co-Owners seek to exercise the vote independently. In no event will the vote for such Lot or Condominium Unit exceed the total votes to which such Lot or Condominium Unit is otherwise entitled pursuant to this *Section 3.05*.

**3.06 Representative System of Voting**. The Representative System of Voting shall only be established if the Declarant first calls for election of a Village Delegate for a particular Village **and shall only be applicable as to Villages whose Owners are not members of an Association**. The Declarant shall have no obligation to establish the Representative System of Voting. In addition, Declarant may terminate the Representative System of Voting at any time prior to expiration of the Development Period by Recorded written instrument.

(a) Election of Initial Village Delegate. In the event that the Declarant chooses to establish a Representative System of Voting for a Village, the Members of Lots and Condominium Units within such Village shall elect a Village Delegate and an alternate Village Delegate, in the manner provided below, to cast the votes of all Lots and Condominium Units in the Village on matters requiring a vote of the Members,

except where this Covenant specifically requires the Members to cast their votes individually as more particularly described in the definition of "Village Delegate" in *Article 1* of this Covenant. In the event that a quorum is not met to elect a Village Delegate and an alternative Village Delegate by the Members of Lots and Condominium Units within the Village, during the Development Period, Declarant shall have the right to appoint a Village Delegate until the next election is held as provided in *Section 3.06(c)* below. Notwithstanding the foregoing or any provision to the contrary in this Covenant, as provided in *Section 3.04* above, Declarant will be entitled to appoint and remove all members of the Board and until such right is terminated by Declarant, no Members shall be entitled to elect any member of the Board.

(b) Election of Successor Village Delegates. If the Declarant calls for the first election of a Village Delegate from a Village, subsequent elections shall, if necessary, be held within thirty (30) days of the same date each year.

(c) Term. The Village Delegate and the alternate Village Delegate shall be elected on a biennial basis (once every two years), by electronic or absentee ballot without a meeting of Members, or at a meeting of the Members within such Village where written, electronic, and absentee ballots (or any combination of the foregoing) may also be utilized, as the Board determines. If the Board determines to hold a meeting for the election of the Village Delegate and the alternate Village Delegate, the presence, in person or by absentee or electronic ballot, of Members representing at least ten percent (10%) of the total votes in a Village shall constitute a quorum at such meeting. Notwithstanding the foregoing provision, the Declarant during the Development Period, and the Board thereafter, may elect to extend the term of a Village Delegate and alternate Village Delegate to the extent Declarant or the Board, as applicable, determines that such extension will result in administrative efficiencies by allowing elections within different Villages to occur in close proximity to one another; provided, however, that the term of an existing Village Delegate and alternate Village Delegate shall not be extended for more than twelve (12) months.

(d) Election Results. At any Village election, the candidate for each position who receives the greatest number of votes shall be elected to serve as the Village Delegate and the candidate with the second greatest number of votes shall be elected to serve as the alternate Village Delegate. If only one candidate runs for Village Delegate, the Declarant during the Development Period, and a Majority of the Board thereafter, shall have the power to appoint the Village Delegate and an alternate Village Delegate, who need not be the candidate. The Village Delegate and alternate Village Delegate shall serve until his or her successor is elected. If the Village Delegate and/or the alternate Village Delegate resigns, the Declarant during the Development Period, and



after expiration or termination of the Development Period, a Majority of the Board, shall appoint a replacement Village Delegate and/or alternate Village Delegate.

(e) Voting by the Village Delegate. The Village Delegate or, in his or her absence, the alternate Village Delegate, attends VMC meetings and casts all votes allocated to Lots and Condominium Units in the Village that he or she represents on any matter as to which such Village Delegate is entitled to vote under this Covenant. A Village Delegate may cast all votes allocated to Lots and Condominium Units in the Village in such delegate's discretion and may, but need not, poll the Members of Lots and Condominium Units in the Village which he or she represents prior to voting. Neither the Village Delegate nor the alternative Village Delegate may cast votes allocated to Lots and Condominium Units not owned by such Village Delegate in the Village that he or she represents for the purpose of amending this Covenant.

(f) Qualification. Candidates for election as the Village Delegate and alternate Village Delegate from a Village shall be Members of Lots or Condominium Units in the Village, spouses of such Members, Occupants of the Village, or an entity representative where a Member is an entity.

(g) Removal. Any Village Delegate or alternate Village Delegate may be removed, with or without cause, upon the vote or written petition of Members holding a Majority of the votes allocated to the Lots and Condominium Units in the Village that the Village Delegate represents or by the Declarant, until the expiration or termination of the Development Period. If a Village Delegate is removed in accordance with the foregoing sentence, the alternate Village Delegate shall serve as the Village Delegate unless also removed.

(h) Subordination to the Board; No Simultaneous Positions. Village Delegates shall be subordinate to the Board and their responsibility and authority does not extend to policy making, supervising, or otherwise being involved in VMC governance. Further, in such event, a Member may not simultaneously hold the position of Village Delegate and be a member of the Board and a Village Delegate running for the Board shall resign his or her position prior to casting any vote for a member of the Board. Upon such occurrence, the alternate Village Delegate shall serve out the remainder of the term of the resigning Village Delegate, and an alternate Village Delegate shall be appointed by the Declarant during the Development Period, and after expiration or termination of the Development Period, a Majority of the Board.

**3.07 Voting Groups.** This Section 3.07 only applies: (i) in the event that Declarant's rights as to the appointment and removal of the Board members are ever terminated and Board members are elected by the Members; and (ii) **to Villages whose Owners are not members of an Association.** Only in such event, Declarant may designate Voting Groups consisting of one

or more Villages for the purpose of electing members of the Board. The purpose of Voting Groups is to provide groups with dissimilar interests the opportunity to be represented on the Board and to avoid a situation in which less than all the Villages are able to elect the entire Board. Voting Groups may be established by Declarant without regard to whether the Representative System of Voting has been implemented in accordance with this *Section 3.07* by the Declarant. If Voting Groups are established and the Representative System of Voting has been implemented, then a Village Delegate shall only vote on the slate of candidates assigned to the Village Delegate. If Voting Groups are established and the Representative System of Voting has not been implemented, then each Member of a Lot or Condominium Unit shall only vote on the slate of candidates assigned to their Village.

(a) Voting Group Designation. Declarant shall establish Voting Groups, if at all, not later than the expiration or termination of the Development Period or the earlier termination of its right as to the appointment and removal of the Board members by Recording a written instrument identifying the Villages within each Voting Group (the "Voting Group Designation"). The Voting Group Designation will assign the number of members of the Board which the Voting Group is entitled to exclusively elect.

(b) Amendment of Voting Group Designation. The Voting Group Designation may be amended unilaterally by the Declarant at any time prior to expiration or termination of the Development Period or the earlier termination of its right as to the appointment and removal of the Board members. Thereafter, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board and approval of Village Delegates representing a Majority of the Villages. Neither Recordation nor amendment of such Voting Group Designation shall constitute an amendment to this Covenant, and no consent or approval to modify the Voting Group Designation shall be required except as stated in this paragraph.

(c) Single Voting Group. Until such time as Voting Groups are established, all of the Subject Property constitutes a single Voting Group for purposes of this *Section 3.07*. After a Voting Group Designation is Recorded, any and all portions of the Subject Property which are not assigned to a specific Voting Group shall constitute a single Voting Group.

**3.08 Powers.** VMC will have the powers of an Idaho nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of VMC, will have the following powers at all times:

(a) Rules, Bylaws and Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact,

such Rules, policies, Bylaws and the Community Manual not in conflict with this Covenant, as it deems proper, covering any and all aspects of the Subject Property (including the operation, maintenance and preservation thereof) or VMC. Any Rules, and any modifications to existing Rules, or the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out VMC's functions.

(c) Records. To keep books and records of VMC's affairs.

(d) Assessments. To levy and collect Assessments as provided in *Article 6* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Occupant, upon any Lot or Condominium Unit and into any Improvement thereon for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Documents. The expense incurred by VMC in connection with the entry upon any Lot or Condominium Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein will be a personal obligation of the Owner of the Lot or Condominium Unit so entered, will be deemed an Individual Assessment against such Lot or Condominium Unit, will be secured by a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. VMC will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. VMC is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any VMC funds for the purpose of bringing suit against Declarant, or its successors or assigns. VMC may not alter or demolish any Improvements on any Lot or Condominium Unit, other than Common Area or Benefited Common Area, in enforcing this Covenant before a judicial order authorizing such action has been obtained by VMC, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT, VMC, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS,**

DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF VMC'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.08(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF VMC'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION RESULTED FROM VMC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of VMC, including an annual financial audit, review or compilation of VMC.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Benefited Common Area for the purpose of constructing, erecting, operating or maintaining the following:

(ii) Parks, parkways or other recreational facilities or structures;

(iii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;

(iv) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(v) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(vi) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Documents or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this Section 3.08(g) must be approved in advance and in writing by the Declarant. VMC (with the advance written approval of the Declarant during the Development Period) and the Declarant are also expressly authorized and permitted to convey easements over and across Common Area or Benefited Common Area for the benefit of property not otherwise subject to the terms and provision of this Covenant.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager"), which may include Declarant or any affiliate of Declarant, to manage and operate VMC, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by VMC or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees or any other fees associated with the provision of management services to VMC or the Members. **THE MEMBERS HEREBY RELEASE THE DECLARANT, VMC AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, security, cable, utility or telecommunication services, gardening, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes and all other utilities, services, repair and maintenance for any portion of the Subject Property, Common Area or Benefited Common Area.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that VMC or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

(k) Construction on Common Area and Benefited Common Area. To construct new Improvements or additions to Common Area and Benefited Common Area, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Benefited Common Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, VMC, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of VMC hereunder must be approved in advance and in writing by the Declarant.

(n) Authority with Respect to a Tract Declaration. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce a Tract Declaration. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 3.08(n)* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(o) Common Area Privileges. To establish Rules governing and limiting the use of the Common Area, Benefited Common Area, and any Improvements thereon by the Members.

(p) Relationships with Tax-Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to nonprofit, tax-exempt organizations, the operation of which confers some benefit upon the Subject Property, VMC, or the Members. VMC may contribute money, real or personal property, or services to such entity. Any such contribution shall be a Common Expense to be included in the assessments levied by VMC and included as a line item in VMC's annual budget. For the purposes of this *Section 3.08(p)*, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the IRC, such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the IRC may be amended from time to time. VMC may maintain multiple-use facilities within the Subject Property and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

**3.09 Acceptance of Common Area and Benefited Common Area.** VMC may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Annexable Land being held by the Declarant for the benefit of VMC. Upon the Recording of such designation, the portion of the Annexable Land identified therein will be considered Common Area or Benefited Common Area for the purpose of this Covenant. Declarant and its assignees may transfer or convey to VMC interests in real or personal property within or for the benefit of the Subject Property, or the Subject Property and the general public, and VMC will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of the Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Covenant. Such property will be accepted by VMC and thereafter will be maintained as Common Area or Benefited Common Area, as applicable, by VMC for the benefit of the Subject Property and/or the general public

subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to VMC. Upon Declarant's written request, VMC will re-convey to Declarant any real property that Declarant originally conveyed to VMC, as determined in the sole and absolute discretion of the Declarant. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Benefited Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Subject Property, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees shall have an easement over and across the Common Area and/or the Benefited Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

**3.10 Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of VMC, VMC will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is, or was, a director, officer, committee member, employee, servant or agent of VMC against expenses, including attorneys' fees, reasonably incurred by him or her in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (a) acted in good faith and in a manner he or she reasonably believed to be in, or should not be opposed to, the best interests of VMC; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of VMC or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**3.11 Insurance.** The Board may purchase and maintain, at the expense of VMC, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of VMC against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of VMC, or arising out of the person's status as such, whether or not VMC would have the power to indemnify the person against such liability or otherwise.

**3.12 Bulk Rate Contracts.** Without limitation on the generality of VMC powers set out in *Section 3.08* above, VMC will have the power to enter into Bulk Rate Contracts at any time and from time to time; provided however, that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant. VMC may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant,

and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. VMC may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Benefited Common Area, or Individual, as the case may be) against such Owner's Lot or Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then VMC will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract, VMC may, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of VMC and not paid for by such Owner (or the Occupant of such Owner's Lot or Condominium Unit) directly to the applicable service or utility provider in accordance with Applicable Law. Such notice will consist of a separate mailing or hand delivery, with the title "termination notice" or similar language prominently displayed on the notice sent in accordance with Applicable Law. The notice will include the office or street address where the Owner (or the Occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**3.13 Community Services and Systems.** The Declarant, or a designee of the Declarant, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (e.g. electricity, solar, gas, water), and related components, including associated infrastructure, equipment, hardware, and software to serve all or any portion of the Subject Property ("**Community Services and Systems**"). The Community Services and Systems may be located within or upon the Annexable Land, the Subject Property, Common Area or Benefited Common Area, and/or on or in any Improvements constructed within or upon the Annexable Land, the Subject Property, on Common Area or Benefited Common Area, and an easement is herein reserved in favor of Declarant or its designee for the purpose of installing, operating, managing, maintaining, upgrading and modifying the Community Services and Systems. Declarant may enter into an agreement with a third-party provider of any Community Services and Systems, which agreement may provide for payments to the Declarant, or a designee of the Declarant, for and in exchange for use of the Community Services and Systems, or otherwise, by Owners



or VMC. Any such fees, use charges, royalties, or other payments shall be the sole property of Declarant, unless transferred by Declarant by Recorded written instrument executed by the Declarant and the transferee, and neither VMC nor any Owner shall have any interest therein. In the event the Declarant, or a designee of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Subject Property, the Declarant or designee of the Declarant, may enter into an agreement with VMC with respect to such services. In the event Declarant, or any designee of the Declarant, enters into a contract with a third party for the provision of any Community Services and Systems to serve all or any portion of the Annexable Land or the Subject Property, the Declarant or the designee of the Declarant may assign any or all of the rights or obligations of the Declarant or the designee of the Declarant under the contract to VMC or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or its designee determines appropriate. In addition, during the Development Period, any contracts entered pursuant to this *Section 3.13* must be approved in advance and in writing by the Declarant. **Each Owner acknowledges that interruptions in Community Services and Systems will occur from time to time. The Declarant and VMC, or any of their respective affiliates, directors, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.**

**3.14 Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would treat Declarant differently than other Owners, that would treat Lots or Condominium Units owned by Declarant differently than other Lots or Condominium Units, or that would otherwise adversely discriminate against Declarant, or which would be detrimental to the sale of Lots, Condominium Units or any portion of the Annexable Land owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by the Declarant, the Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

**3.15 Administration of Common Area and Benefited Common Area.** The administration of the Common Area or Benefited Common Area by VMC shall be in accordance with the provisions of Applicable Law and the Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or

guarantor of mortgage loans designated by Declarant or by any governmental entity having regulatory jurisdiction over the Common Area or the Benefited Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**3.16 Right of Action by VMC.** VMC shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design or construction of Improvements on any Lot or Condominium Unit (whether one or more). This *Section 3.16* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of VMC, which must be part of the Recorded amendment instrument.

#### **ARTICLE 4 CLUB PROVISIONS**

**4.01 Club Membership.** EACH OWNER ACKNOWLEDGES AND AGREES THAT OWNERSHIP OF A LOT OR CONDOMINIUM UNIT DOES NOT ENTITLE THE OWNER TO MEMBERSHIP IN THE SOCIAL CLUB OR THE GOLF CLUB AND NEITHER OWNERSHIP NOR OCCUPANCY OF A LOT AND/OR CONDOMINIUM UNIT SHALL CONFER ANY OWNERSHIP INTEREST IN THE GOLF CLUB OR THE SOCIAL CLUB. VMC has acquired, or will acquire a membership in the Social Club. A Tract Declaration, a Notice of Applicability, or any other written instrument (each, a "**Social Club Sub-Member Designation**") that is executed by: (i) the Owner of the property described therein or the "Declarant" under the Tract Declaration applicable to such Lots or Condominium Units (if other than Declarant) during the Development Period; and (ii) the Declarant during the Development Period or the Social Club Owner thereafter, may designate any or all Owners of Lots, Condominium Units and/or any other portion of the Subject Property or Annexable Land described therein as mandatory sub-members in the Social Club (each, a "**Mandatory Social Club Sub-Member**"), with such rights, privileges, and obligations as may be determined from time to time by the Social Club Owner. Each Mandatory Social Club Sub-Member shall be required to pay the Social Club Assessments attributable to the Mandatory Social Club Sub-Member's membership in the Social Club. Each Mandatory Social Club Sub-Member is advised to contact the Social Club to obtain relevant information regarding all aspects of membership in the Social Club. Each Mandatory Social Club Sub-Member shall comply with and be bound by the terms and provisions of the Social Club Documents.

Notwithstanding any term or provision in this Covenant or the Documents to the contrary, Declarant, Homebuilders, Residential Developers, and Mortgagees, will not be Mandatory Social Club Sub-Members for any Lot or Condominium Unit owned by one of the foregoing parties unless a residence has been completed on the Lot or Condominium Unit, i.e., the residence may be occupied for residential purposes and either of the following conditions are met: (i) the Lot or Condominium Unit (other than Lots and/or Condominium Units being

used as model homes, sales, or development offices) is not being marketed for sale to third parties; or (ii) the Lot or Condominium Unit is occupied for residential purposes. For purposes of this Section: (a) a Lot or Condominium Unit is deemed "occupied" if the residence thereon is occupied for any duration whatsoever, no matter the length, except for occupancy as a model home or sales or development office in the ordinary course of development and marketing by Declarant, a Homebuilder, or Residential Developer; and (b) the exemption for Mortgagees is applicable only to Mortgagees that took title by foreclosure, trustee's sale, deed-in-lieu of foreclosure, or comparable means.

**4.02 Club Property Disclosures.** Portions of the Annexable Land and/or Subject Property abut or are in close proximity to the Club Property, and portions of the Club Property wind throughout the Subject Property. All Owners and Occupants acknowledge, understand and agree as follows:

(a) No representations or warranties have been or are made by Declarant, the Club Parties, VMC or any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Golf Club, the Social Club, or the Club Property.

(b) Water hazards, ponds, lakes, drainage features, sand traps, bunkers, waste areas, natural areas, irrigation facilities, driving range, landscape features, pools, clubhouses, camping areas (which may include tents, horse facilities and hiking trails), food and beverage facilities, restrooms, maintenance facilities, golf carts, maintenance equipment and machinery and other installations, personal property and other features located on the Club Property may be attractive nuisances to children and others and can pose a serious danger of injury or death.

(c) The operation, maintenance and use of the Golf Club and/or the Social Club will entail the operation and use of (i) noisy and odiferous power equipment such as tractors, lawn mowers and blowers on various days of the week, including weekends, during various times of the day, including early morning and late evening hours; (ii) sprinkler and other irrigation systems in operation during the day and at night; (iii) noisy and odiferous electric, gasoline or other power-driven vehicles and equipment used by Golf Club and/or Social Club members, guests, invitees, maintenance and operations personnel; (iv) application of odiferous pesticides, herbicides and fertilizing chemicals and bio-solids; and (v) noisy and odiferous refuse removal trucks, delivery trucks, vendor vehicles, construction trucks and equipment, member, guest and invitee vehicles and other vehicles entering and exiting the Club Property on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

(d) Both the Golf Club and the Social Club clubhouses, parking lots and other facilities have exterior lighting and amplified exterior sound, and will be regularly used for entertainment and social events on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

(e) Play on the Golf Course will be allowed during all daylight hours up to seven (7) days a week, and portions of the Golf Course, including the driving range, short game area, and putting green, shall be allowed during evening and night-time hours pursuant to posted days and times as may be established from time to time. Golf tournaments open to the public at large may be conducted at any time during the year. Large numbers of people will be entering and exiting the Subject Property and using the Golf Course during all daylight hours, and also may include evening and night-time hours, up to seven (7) days a week.

(f) Water used to irrigate the Club Property, Common Areas and Benefited Common Areas, and water which fills the water features and water retention areas within the Subject Property, Annexable Land, and Golf Club Property may be treated wastewater effluent, storm water and other ground or surface waters (the "**Subject Property Waters**"). The Subject Property Waters are not potable (drinkable) water and consumption of such Subject Property Waters by humans or animals may cause adverse reactions, severe illness or fatalities. The Subject Property Waters may cause objectionable odors and staining on buildings, streets, sidewalks and other real and personal properties and may cause erosion and undermining of Lots and Common Areas, including Benefited Common Areas.

(g) The Subject Property is subject to a Golf Club Easement as set forth in *Section 4.07* of this Covenant, and play on the Golf Course and driving range may result in incursion onto Common Areas, including Benefited Common Areas, Lots and Condominium Units and/or may cause damage to an Owner, Occupant or Improvements on Lots and/or Condominium Units as a result of golf balls leaving the Golf Course and golfers retrieving errant golf balls, including damage to windows and exterior areas of Improvements, automobiles and personal property of Owners and Occupants, whether outdoors or within a building, and injury to persons, and may cause interference with the quiet enjoyment of the Owner and Occupants of Lots and/or Condominium Units.

(h) Any Improvements on the Club Property, including without limitation, swimming pools, clubhouses, food and beverage facilities, restrooms, maintenance facilities, tee boxes, greens, driving range, water and sand hazards, lighting, camping areas, recreational areas, tennis courts, pickle ball courts, and course layout, may be relocated, reconfigured, eliminated, added or modified from time to time. Such relocation may additionally affect the risk associated with golf balls entering the Subject

Property from the Golf Club Property, and may adversely impact Owners and Occupants' views and peaceful enjoyment of a Lot and/or Condominium Unit.

(i) Certain Lots, Condominium Units and Common Areas, including Benefited Common Areas, may be more susceptible than others to incursions and damage by Subject Property Waters, golfers and golf balls.

(j) The Subject Property is subject to certain covenants, conditions, restrictions, easements and benefits contained in the Documents and the Club Documents, including easements for utilities, drainage and access that may affect the Lots, Common Areas and Benefited Common Areas, which may adversely impact peaceful enjoyment of a Lot or Condominium Unit by Owners and Occupants.

Each Owner and Occupant acknowledges, understands and agrees that the existence of the Golf Club and/or Social Club may cause inconvenience, disturbance and possible injury or damage to property and to the Owners and Occupants, including but not limited to: noise and odors from operations, noise from construction and maintenance equipment, noise and disturbance caused by golfers, noise and disturbance from golf tournaments, noise and disturbance from Golf Club or Social Club parties and functions, use of pesticides, herbicides and fertilizers on the Golf Course, view restrictions caused by planting and maturation of trees, shrubbery and Golf Course features, reduction in privacy caused by constant golf traffic, relocation of golf cart paths or removal and pruning of trees and shrubbery, and design and redesign of the Golf Course. Each of the Owners and Occupants has considered the location of the Subject Property and the Lot or Condominium Unit being purchased, leased, used, visited, or occupied and its proximity to the Club Property, including the Golf Course and other Improvements within the Club Property. **BY ACCEPTANCE OF A DEED, BY ACQUIRING ANY INTEREST IN ANY OF THE PROPERTY SUBJECT TO THIS COVENANT, OR BY USING, VISITING OR OCCUPYING A LOT, CONDOMINIUM UNIT, COMMON AREA, OR BENEFITED COMMON AREA, EACH OWNER AND OCCUPANT ACKNOWLEDGES AND ASSUMES THE RISKS OF THE AFORESAID NUISANCE, INCONVENIENCE, DISTURBANCE AND POSSIBLE INJURY, DEATH OR DAMAGE TO PERSONS AND PROPERTY BASED UPON, DUE TO, ARISING FROM OR OTHERWISE RELATED TO THE FOREGOING, AND AGREES TO HOLD VMC, THE DECLARANT AND THE CLUB PARTIES HARMLESS THEREFROM, INCLUDING ANY CLAIM ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CLUB PARTIES.**

**4.03 Clubs Not Governed by VMC. VMC DOES NOT GOVERN OR CONTROL THE GOLF CLUB, THE SOCIAL CLUB, THE GOLF CLUB OWNER, THE SOCIAL CLUB OWNER, OR THE CLUB PROPERTY.** Declarant, the Golf Club Owner, and the Social Club Owner make no representations, warranties, guaranties, commitments or promises that the Club Property, if any, will ever be improved with any golf or recreational facilities or operated in any particular manner. All information with respect to the Club Property can only be

obtained from the Golf Club or the Social Club, as applicable. By accepting title to any Lot or Condominium Unit, each Owner hereby acknowledges, accepts, covenants and agrees that the Owner has no right, title or interest in the Club Property.

**4.04 Intent to Develop Recreational Amenities.**

(a) Golf Club. The Golf Club Owner has indicated its intent to develop certain recreational amenities on the Golf Club Property for use by members of the Golf Club, a private recreational golf club that is intended to operate the Golf Course and other facilities on the Golf Club Property, which recreational facilities shall be determined by the Golf Club Owner in its sole discretion. Except as may be provided in the Golf Club Documents, Owners and Occupants have no right to use the Golf Club Property or gain membership to the Golf Club by virtue of their ownership or occupancy of a Lot or Condominium Unit.

(b) Social Club. The Social Club Owner has indicated its intent to develop certain recreational amenities on the Social Club Property for use by members of the Social Club, a private recreational social club that is intended to operate the facilities on the Social Club Property, which facilities shall be determined by the Social Club Owner in its sole discretion. Except as provided in the Social Club Documents or this Covenant, Owners and Occupants have no right to use the Social Club Property or gain membership to the Social Club by virtue of their ownership or occupancy of a Lot or Condominium Unit.

**4.05 Owner Acknowledgment.** Each Owner, by acceptance of a deed or contract of sale to a Lot or Condominium Unit acknowledges:

(a) That the right to use the Social Club Property shall be subject to the terms and conditions of the Social Club Documents and the right, if any, to use the Golf Club Property shall be subject to the terms and conditions of the Golf Club Documents.

(b) Notwithstanding the fact that all or any portion of the Club Property may be considered open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot or Condominium Unit releases and discharges forever VMC, the Declarant and the Club Parties from: (i) any claim that the Club Property is, or must be, owned and/or operated by VMC or the Owners, and/or (ii) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Lot or Condominium Unit without compliance with the applicable Club Documents, and without paying the applicable membership contribution or membership deposit and dues, fees and charges established by the Golf Club and/or Social Club from time to time, and complying with the terms and conditions of the applicable Club Documents. VMC and each Owner shall jointly and

severally indemnify, defend, and hold harmless Declarant and the Club Parties against and in respect of, and to reimburse Declarant and the Club Parties on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that Declarant and the Club Parties shall incur or suffer, which arise out of, result from, or relate to any claim that because all or any portion of the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by VMC or the Owners and/or that Owners may use the Club Property without compliance with the applicable Club Documents.

(c) That the Golf Club Owner, the Social Club Owner, and each of their designees, in their sole discretion, may add to, remove or otherwise modify the buildings, landscaping, trees, and other features of the applicable Club Property, including newly constructing or changing the location, configuration, design, size and elevation of buildings, bunkers, fairways, tee boxes, greens, berms, walls, fences and other facilities; that neither the Golf Club, Social Club, Golf Club Owner, Social Club Owner, Declarant, nor VMC shall have any liability to any Owner as a result of such additions to or modifications of the Club Property; provided, however, all such modifications or changes shall comply with Applicable Law authority and the drainage plans on file with or approved by Ada County or the City.

(d) The limitations, restrictions, responsibilities, obligations and liabilities imposed upon Owners by this Covenant, and the limitations, restrictions, responsibilities, obligations and liabilities imposed upon Owners and VMC under the Social Club Documents may adversely impact the number of potential future purchasers of an Owner's Lot or Condominium Unit, the ability of an Owner to re-sell his or her Lot or Condominium Unit, and the amount of consideration to be received by the Owner upon the re-sale of his or her Lot or Condominium Unit.

(e) That no representations or warranties which are inconsistent with this Section, either oral or written, have been made or are made by Declarant, VMC or any person acting on behalf of Declarant or VMC.

(f) EACH OF THE OWNERS AND OCCUPANTS HEREBY RELEASES AND AGREES TO INDEMNIFY DECLARANT, VMC, AND THE CLUB PARTIES FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES OR LIABILITIES (INCLUDING STRICT LIABILITY) BASED UPON, DUE TO, ARISING OUT OF, OR RELATING TO ANY NUISANCE, INCONVENIENCE, DISTURBANCE, INJURY, DEATH, DAMAGE, OR DIMINUTION OF VALUE, TO PERSONS AND PROPERTY ARISING OUT OF OR RELATING TO ACTIVITIES OR OCCURRENCES DESCRIBED IN THIS SECTION 4.05.

**4.06 Easement for Unintended Club Encroachments.** To the extent that any Improvements on the Club Property or any Improvements owned by the Golf Club Owner or Social Club Owner, including but not limited to cart paths, fairways, roughs, greens, tees, bunkers, traps, lakes, hazards, water features, waste areas, food and beverage facilities, half way stations, club house facilities, maintenance facilities, driveways, irrigation facilities, utility facilities, underground pipelines and conduits, drainage structures, surface water runoff or any other golf structure or Improvement as originally constructed or operated encroaches upon any Lot, Condominium Unit, Common Area or Benefited Common Area, it shall be deemed that the Owner of such Lot or Condominium Unit, or VMC, as the case may be, has granted a perpetual, alienable and transferable easement to the Golf Club Owner or Social Club Owner, as applicable, for the continuing maintenance and use of such encroaching Improvement, structure or impact (the "**Club Encroachment Easement**"). The Club Encroachment Easement shall further apply to any replacements or enhancements of such Improvements or structures if the same are constructed in substantial conformity with the original structure or Improvement.

**4.07 Golf Club Easement.** By recordation of this Covenant, Declarant does hereby reserve for the Golf Club Owner a perpetual, non-exclusive easement over, across and upon each and every Lot, Condominium Unit and the Common Area, to include Benefited Common Area, for the purpose of doing every act necessary and appropriate to the use and enjoyment of the Golf Club Property by the Golf Club Parties (the "**Golf Club Easement**"), which shall include the recovery of golf balls from any Lot or Condominium Unit, the flight of golf balls over and upon any Lot or Condominium Unit, the noise level created by the playing of golf, golf tournaments, and Golf Club functions and parties, and the activities associated with the operation and maintenance of the Golf Club Property. Such Golf Club Easement shall specifically constitute a part of the Golf Club Property.

(a) Without limiting the foregoing, the Golf Club Easement rights include the following:

(i) The Golf Club Owner shall have an unrestricted easement of access over the Subject Property for the purpose of retrieving golf balls from bodies of water, other than swimming pools, lying reasonably within range of golf balls hit from the Golf Course. All golf balls within such bodies of water not immediately retrieved by the owner of such golf balls shall be the property of the Golf Club Owner.

(ii) The Golf Club Owner shall have a perpetual, nonexclusive easement over, under and upon each and every Lot, Condominium Unit, Common Area and Benefited Common Area (but not through any structures thereon) for the purpose of installation, operation, service, repair, replacement, enhancement and maintenance of the Golf Club Property, including the installation of recreational and other facilities on the Golf Club Property and the



use of usual and common equipment for irrigation, maintenance and landscaping thereof. By way of example and not limitation, such easement shall permit, but shall not require, entry into any Lot and/or Condominium Unit for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash, debris and trees from the Golf Club Property.

(iii) The Golf Club Owner shall have a perpetual, nonexclusive easement over, under and upon the Subject Property to provide for (a) installation, service, repair and maintenance of the equipment and lines required to provide utility services to the Golf Club Property, including power, lights, telephone, cable television, telecommunications, gas, water, sewer, irrigation and drainage, and (b) governmental services, including police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

(iv) The Golf Club Owner shall have a perpetual, nonexclusive easement for drainage and flowage of Subject Property Waters over, under and upon the Subject Property, including the Lots, Condominium Units and the Common Area, including reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair drainage facilities, culverts, swales, pumps, canals, electrical boxes, flowage pipes and irrigation pipes. Additionally, the Golf Club Owner shall have a perpetual, nonexclusive easement for drainage, stormwater collection, retention and detention over, upon and within the Subject Property and all drainage and stormwater facilities serving the Subject Property, and use of all drainage and storm water easements shown on each Plat or otherwise reserved, declared or created pursuant to this Covenant. Notwithstanding anything herein contained to the contrary, all such easements granted pursuant to this Section shall be consistent and in accordance with the plans on file with or approved by Ada County or the City.

(v) The Golf Club Parties (regardless of whether such persons are Owners hereunder) shall at all times have a perpetual, nonexclusive, unrestricted easement for pedestrian, vehicular, golf cart, construction, service and maintenance vehicle traffic for access and use over, alongside and through all streets, roadways, paths, and entry and exit gates located within the Subject Property reasonably necessary to travel to and from each entrance and exit to the Subject Property, from, to and between Golf Club Property, respectively. Without limiting the generality of the foregoing, the Golf Club Parties shall have the right to enter and exit the Subject Property through any entry and exit gates

located within the Subject Property, to use the pedestrian and golf cart paths located throughout the Subject Property, and to park their vehicles on and alongside the streets and roadways located within the Subject Property, seven (7) days a week and fifty-two (52) weeks a year, including all holidays, at reasonable times before, during and after the operating hours of the Golf Club, tournaments on the Golf Club Property, and various other functions and parties held at the Golf Club Property (collectively referred to as the **"Golf Club Access Times"**). VMC shall not impose upon any Golf Club Party a fee or other requirement to exercise a Golf Club Party's rights under this subsection, except for such requirements as Golf Club Owner desires to impose upon the Golf Club Parties (e.g. identification) and unless as otherwise set forth in a Recorded instrument executed by the Golf Club Owner.

(b) The Golf Club Owner shall have an unrestricted easement for errant golf balls, projectiles, Subject Property Waters, grass cuttings, landscape clippings, herbicides, pesticides and fertilizer that enter upon the Subject Property, including each of the Lots, Condominium Units, Common Area and Benefited Common Area from the Golf Course (the **"Golf Projectile Easement"**).

(c) UNDER NO CIRCUMSTANCES SHALL DECLARANT, THE CLUB PARTIES, VMC AND ANY SUCCESSOR IN INTEREST TO THE FOREGOING BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF OR RESULTING FROM THE EXERCISE OF THE GOLF CLUB ENCROACHMENT EASEMENT, THE GOLF CLUB EASEMENT, AND THE GOLF PROJECTILE EASEMENT.

(d) Notwithstanding that one or more lakes or other retention areas constructed on the Golf Club Property may be constructed for the sole purpose of retaining and providing irrigation water for the Common Area, Golf Club Owner shall have a perpetual, nonexclusive easement to access and use any and all of the lakes and other retention areas located on the Golf Club Property for the purpose of withdrawing water for irrigation, construction and maintenance of the Golf Club Property with the result that the water levels in the lakes and retention areas may from time to time fluctuate upwards and downwards. Each Owner acknowledges that no representation has been made by VMC, the Declarant and the Club Parties regarding the establishment or maintenance of any particular water level in any portion of the lakes and other retention areas and that Golf Club Owner has the above rights. Each Owner agrees not to commence any cause of action or other proceeding involving the Golf Club based on the exercise of such right or otherwise interfere therewith or based upon water levels. In the event there are insufficient water levels within the lakes and other retention areas located within the Golf Club Property to provide the necessary irrigation needs of the

Golf Club Property and Common Area, subject to applicable governmental permits and requirements, the Golf Club Property shall have first priority of irrigation use of water from the lakes and retention areas, followed by the Common Area, Benefited Common Area, and other areas which VMC maintains that are not a part of the Golf Club Property.

**4.08 Social Club Easement.** By recordation of this Covenant, Declarant does hereby reserve for the Social Club Owner a perpetual, non-exclusive easement over, across and upon each and every Lot, Condominium Unit and the Common Area, to include Benefited Common Area, for the purpose of doing every act necessary and appropriate to the use and enjoyment of the Social Club Property by the Social Club Parties (the "**Social Club Easement**"), which shall include the noise level created by Social Club functions and parties, and the activities associated with the operation and maintenance of the Social Club and the Social Club Property. Such Social Club Easement shall specifically constitute a part of the Social Club Property.

(a) Without limiting the foregoing, the Social Club Easement rights include the following:

(i) The Social Club Owner shall have a perpetual, nonexclusive easement over, under and upon each and every Lot, Condominium Unit, Common Area and Benefited Common Area (but not through any structures thereon) for the purpose of installation, operation, service, repair, replacement, enhancement and maintenance of the Social Club Property, including the installation of recreational and other facilities on the Social Club Property and the use of usual and common equipment for maintenance thereof. By way of example and not limitation, such easement shall permit, but shall not require, entry into any Lot and/or Condominium Unit for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash, debris and trees from the Social Club Property.

(ii) The Social Club Owner shall have a perpetual, nonexclusive easement over, under and upon the Subject Property to provide for (a) installation, service, repair and maintenance of the equipment and lines required to provide utility services to the Social Club Property, including power, lights, telephone, cable television, telecommunications, gas, water, sewer, irrigation and drainage, and (b) governmental services, including police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

(iii) The Social Club Owner shall have a perpetual, nonexclusive easement for drainage and flowage of Subject Property Waters over, under and

upon the Subject Property, including the Lots, Condominium Units and the Common Area, including reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair drainage facilities, culverts, swales, pumps, canals, electrical boxes, flowage pipes and irrigation pipes. Additionally, the Social Club Owner shall have a perpetual, nonexclusive easement for drainage, stormwater collection, retention and detention over, upon and within the Subject Property and all drainage and stormwater facilities serving the Subject Property, and use of all drainage and storm water easements shown on each Plat or otherwise reserved, declared or created pursuant to this Covenant. Notwithstanding anything herein contained to the contrary, all such easements granted pursuant to this Section shall be consistent and in accordance with the plans on file with or approved by Ada County or the City.

(iv) The Social Club Parties (regardless of whether such persons are Owners hereunder) shall at all times have a perpetual, nonexclusive, unrestricted easement for pedestrian, vehicular, golf cart, construction, service and maintenance vehicle traffic for access and use over, alongside and through all streets, roadways, paths, and entry and exit gates located within the Subject Property reasonably necessary to travel to and from each entrance and exit to the Subject Property, from, to and between Social Club Property, respectively. Without limiting the generality of the foregoing, the Social Club Parties shall have the right to enter and exit the Subject Property through any entry and exit gates located within the Subject Property, to use the pedestrian and golf cart paths located throughout the Subject Property, and to park their vehicles on and alongside the streets and roadways located within the Subject Property, seven (7) days a week and fifty-two (52) weeks a year, including all holidays, at reasonable times before, during and after the operating hours of the Social Club and various functions and parties held at the Social Club Property (collectively referred to as the "**Social Club Access Times**"). VMC shall not impose upon any Social Club Party a fee or other requirement to exercise a Social Club Party's rights under this subsection, except for such requirements as the Social Club Owner desires to impose upon the applicable Social Club Parties (e.g. identification) and unless as otherwise set forth in a Recorded instrument executed by the Social Club Owner.

(b) UNDER NO CIRCUMSTANCES SHALL DECLARANT, THE CLUB PARTIES, VMC AND ANY SUCCESSOR IN INTEREST TO THE FOREGOING BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF OR RESULTING FROM THE EXERCISE OF THE SOCIAL CLUB ENCROACHMENT EASEMENT AND THE SOCIAL CLUB EASEMENT.

**4.09 Golf Club Landscape Services.**

(a) Generally. The Golf Club Owner may cause the Golf Club Landscape Services to be provided to the Golf Club Landscape Area, with the advance written consent of the Declarant during the Development Period. Accordingly, the Golf Club Owner is hereby granted an easement over and across the Subject Property and Annexable Land to the extent reasonably necessary or convenient for the Golf Club Owner or its designated landscaping contractor to perform the Golf Club Landscape Services. If the Golf Club Owner damages any Improvements located within the Subject Property and/or Annexable Land in exercising the easement granted hereunder, the Golf Club Owner will be required to restore such Improvements to the condition which existed prior to any such damage, at the Golf Club Owner's expense, within a reasonable period of time not to exceed ninety (90) days after the date the Golf Club Owner is notified in writing of the damage by VMC.

(b) Dates. The Golf Club Owner or its designated landscape company may, from time to time, provide VMC and/or each Owner with a schedule of dates on which the Golf Club Landscape Services will be performed.

(c) Termination or Modification. The Golf Club Owner will have the right to discontinue or modify the Golf Club Landscape Services from time to time and at any time.

(d) THE GOLF CLUB OWNER SHALL NOT BE LIABLE FOR INJURY OR DAMAGE TO PERSON OR PROPERTY CAUSED BY THE ELEMENTS, VMC, ANY OWNER, OR ANY OTHER PERSON OR RESULTING FROM PROVIDING THE GOLF CLUB LANDSCAPE SERVICES HEREUNDER. THE GOLF CLUB OWNER SHALL NOT BE LIABLE TO VMC, ANY OWNER, OR ANY OTHER PERSON FOR LOSS OR DAMAGE, BY THEFT OR OTHERWISE, OF ANY PROPERTY, WHICH MAY BE STORED IN OR UPON THE GOLF CLUB LANDSCAPE AREA. THE GOLF CLUB OWNER SHALL NOT BE LIABLE TO VMC, ANY OWNER, OR ANY OTHER PERSON FOR ANY DAMAGE OR INJURY CAUSED IN WHOLE OR IN PART BY THE GOLF CLUB OWNER'S FAILURE TO DISCHARGE ITS RESPONSIBILITIES UNDER THIS SECTION. NO DIMINUTION OR ABATEMENT OF GOLF CLUB ASSESSMENTS SHALL BE CLAIMED OR ALLOWED BY REASON OF ANY ALLEGED FAILURE OF THE GOLF CLUB OWNER TO PERFORM GOLF CLUB LANDSCAPE SERVICES OR TAKE SOME ACTION OR PERFORM SOME OTHER FUNCTION REQUIRED TO BE TAKEN OR PERFORMED BY THE GOLF CLUB OWNER UNDER THIS COVENANT.

**4.10 Perimeter Fencing Easement. Certain fencing which serves the Subject Property and/or Annexable Land shall be maintained, repaired, and replaced by Owners or VMC as set forth in this Covenant, which may include without limitation, designating**

certain Lots and Condominium Units as a Service Area for the purpose of maintaining the perimeter fencing and allocating the costs incurred or anticipated to be incurred therewith in accordance with *Section 2.04* of this Covenant. The Declarant, Golf Club Owner, or Social Club Owner, as applicable, may grant an easement to VMC and/or Owners extending ten feet (10') onto the Golf Club Property or the Social Club Property, as applicable, from the common boundary line of any portion of the Annexable Land and/or Subject Property (or such other areas as may be agreed upon in advance and in writing by Declarant and the Golf Club Owner or Social Club Owner, as applicable) for the purpose of allowing Owners and/or VMC, as applicable, to install, maintain, repair, and replace fencing adjacent to the Golf Club Property or the Social Club Property, as applicable.

**4.11 Club Approval Rights.**

(a) Golf Club Owner. The provisions contained in this Covenant benefiting the Golf Club and/or the Golf Club Owner may not be amended without the advance written approval of the Golf Club Owner, which approval may be withheld, conditioned, or delayed if the proposed amendment is reasonably likely to materially and adversely affect the business, operations, condition (financial or otherwise), or value of the Golf Club, at the discretion of the Golf Club Owner.

(b) Social Club Owner. The provisions contained in this Covenant benefiting the Social Club and/or the Social Club Owner may not be amended without the advance written approval of the Social Club Owner, which approval may be withheld, conditioned, or delayed if the proposed amendment is reasonably likely to materially and adversely affect the business, operations, condition (financial or otherwise), or value of the Social Club, at the discretion of the Social Club Owner.

**ARTICLE 5,  
INSURANCE AND RESTORATION**

**5.01 Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. VMC will not maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. VMC may, however, obtain such other customary insurance as it may deem necessary, including but not limited to such policies of liability, property damage, and pollution insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a Common Expense to be included in the Assessments levied by VMC. The acquisition of insurance by VMC will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**ARE YOU COVERED?**

**VMC will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or Condominium Unit.**

**5.02 Restoration.** In the event of any fire or other casualty, the Owner will either: (i) unless otherwise approved by the Valor Reviewer, promptly commence the repair, restoration and replacement of any damaged or destroyed Improvements to their same exterior condition existing prior to the damage or destruction thereof within one hundred and eighty (180) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Subject Property within sixty (60) days after the occurrence of such damage. Unless otherwise approved by the Valor Reviewer, any repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the Improvements damaged or destroyed. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this *Section 5.02*, VMC may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by VMC will be levied as an Individual Assessment against such Owner's Lot or Condominium Unit; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of VMC under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by VMC, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be levied as an Individual Assessment chargeable to the Owner's Lot or Condominium Unit. EACH SUCH OWNER AND OCCUPANT WILL INDEMNIFY AND HOLD HARMLESS THE DECLARANT, VMC AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF VMC'S ACTS OR ACTIVITIES UNDER THIS *SECTION 5.02*, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE DECLARANT AND/OR VMC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

**5.03 Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned-up by VMC pursuant to the rights granted under this *Article 5*, hereby grants to VMC an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up

which are delivered to VMC. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of VMC.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS**

#### **6.01 Assessments.**

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot and Condominium Unit in amounts determined pursuant to *Section 6.09* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article 6*.

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and upon recordation of this Covenant will be secured by a lien hereby granted and conveyed by Declarant to VMC against each such Lot and all Improvements thereon and each such Condominium Unit unless otherwise set forth in *Section 6.12* below (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). VMC may enforce payment of such Assessments in accordance with the provisions of this Article and Applicable Law.

(c) Collection by Association. Unless the Declarant during the Development Period, and after expiration or termination of the Development Period, a Majority of the Board, elects otherwise, each Association will collect all Assessments levied by VMC pursuant to this Covenant which are attributable and allocated to each Owner of a Lot or Condominium Unit subject to the jurisdiction of an Association. The Associations will promptly remit all Assessments to VMC on or before the due date established by the Board for such Assessments. If an Association fails to timely collect any portion of the Assessments, as determined in the sole and absolute discretion of the Board, VMC may collect any such unpaid Assessments on its own behalf and enforce its lien against any such Condominium Unit or Lot without joinder of such Association. An Association's right to collect Assessments on behalf of VMC is a license from VMC which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

(d) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the payment of a subsidy to VMC. Any subsidy paid to VMC by



Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to VMC in future years.

**6.02 Operating Fund.** The Board will establish an operating fund into which will be deposited all monies paid to VMC and from which disbursements will be made in performing the functions of VMC under this Covenant. The funds of VMC may be used for any purpose authorized by the Documents and Applicable Law.

**6.03 Regular Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of VMC ("**Regular Assessments**") which sets forth: (i) an estimate of expenses to be incurred by VMC during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (ii) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and giving due consideration to any expected income and any surplus from the prior year's fund; and which (iii) excludes the operation, maintenance, repair and management costs and expenses associated with any Service Area and Benefited Common Area. Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final, binding and conclusive so long as such determination is made in good faith. If the sums collected prove inadequate for any reason, including the non-payment of any Individual Assessment by any Owner as further set forth below, VMC may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to VMC at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.04 Special Assessments.** In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of VMC under the Documents. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, VMC may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Benefited Common Area. Any Special Assessment levied by VMC for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by VMC

for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Benefited Common Area will be levied against all Owners who have been assigned the obligation to pay Benefited Common Area Assessments based on Assessment Units.

**6.05 Benefited Common Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by VMC to operate, maintain, repair, or manage any Benefited Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Benefited Common Area including a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and surplus from the prior year's fund. The level of assessments levied to pay for expenses associated with a Benefited Common Area (the "**Benefited Common Area Assessments**") will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non-payment of any individual Benefited Common Area Assessment, VMC may at any time, and from time to time, levy further Benefited Common Area Assessments in the same manner as aforesaid. All such Benefited Common Area Assessments will be due and payable to VMC at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.06 Service Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by VMC in the coming year. The total amount of assessments levied to pay for Service Area Expenses for each Service Area ("**Service Area Assessments**") will be allocated either: (i) equally; (ii) based on Assessment Units; or (iii) based on the benefit received among all Lots and Condominium Units in the benefited Service Area. All amounts that VMC collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from VMC's general funds.

**6.07 Working Capital Contribution.** Upon the transfer of a Lot or Condominium Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital contribution ("**Working Capital Contribution**") in an amount determined by the Declarant during the Development Period, and a Majority of the Board thereafter, will be paid by the transferee of the Lot or Condominium Unit to VMC. Such Working Capital Contribution shall be used by VMC to fund operating expenses and reserves and to maintain, repair and replace the Common Area as necessary. The levy of any Working Capital Contribution will be effective only upon the Recordation of a written notice, signed by the Declarant during the Development Period, or a duly authorized officer of the Association thereafter, setting forth the amount of the Working Capital

Contribution. The Working Capital Contribution may be modified, from time to time, by the Declarant during the Development Period, or a Majority of the Board; provided, however, that during the Development Period, any modification to the Working Capital Contribution payable on the transfer of a Lot or Condominium Unit must be approved in advance and in writing by the Declarant. The Working Capital Contribution need not be uniform among all Lots and Condominium Units. The Declarant, during the Development Period, and the Board thereafter, may, from time to time, notify the Manager of the Working Capital Contribution applicable to a Lot or Condominium Unit.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Contribution: (i) foreclosure of a deed of trust lien, tax lien, or VMC's assessment lien; (ii) transfer to, from, or by VMC; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who is a Homebuilder or Residential Developer will not be subject to the Working Capital Contribution; however, the Working Capital Contribution will be payable by any Owner who acquires a Lot or Condominium Unit from a Homebuilder or Residential Developer for residential living purposes or by any Owner who: (i) acquires a Lot or Condominium Unit and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot or Condominium Unit for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Contribution to a particular Owner, the decision of the Declarant during the Development Period, and the Board thereafter, regarding the application of the exception will be binding and conclusive without regard to any contrary interpretation of this *Section 6.07*. The Working Capital Contribution will be in addition to, not in lieu of, any other assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such assessments. The Working Capital Contribution hereunder will be due and payable by the transferee to VMC immediately upon each transfer of title to the Lot or Condominium Unit, including upon transfer of title from one Owner of such Lot or Condominium Unit to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power, in its sole and absolute discretion, to waive the payment of any Working Capital Contribution attributable to a Lot or Condominium Unit (or all Lots and/or Condominium Units) by written waiver notice, which waiver may be temporary or permanent.

**6.08 Individual Assessments.** In addition to any other Assessments, the Board may levy an individual assessment ("**Individual Assessment**") against an Owner and the Owner's Lot or Condominium Unit, which may include, but is not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) fees for estoppel letters and project documents; (v) insurance deductibles; (vi) reimbursement for damage or waste caused by

willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot or Condominium Unit; (vii) Common Expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received; (viii) fees or charges levied against VMC on a per-Lot or per-Condominium Unit basis; (ix) "pass through" expenses for services to Lots or Condominium Units provided through VMC and which are paid by each Lot or Condominium Unit according to benefit received; (x) any Golf Club Assessments paid by VMC to the Golf Club Owner; and ; (xi) any Social Club Assessments paid by VMC to the Social Club Owner.

**6.09 Amount of Assessment.**

(a) Assessments to be Levied. The Board will levy Assessments against each "Assessment Unit" (as defined in *Section 6.09(b)* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 6.03* and *Section 6.04* will be levied uniformly against each Assessment Unit.

(b) Assessment Unit. Each Residential Lot will constitute one "Assessment Unit" unless otherwise provided in *Section 6.09(c)*. Each Commercial Lot and Condominium Unit will be allocated the number of "Assessment Units" set forth in the Notice of Applicability attributable to such Commercial Lot or Condominium Unit. Declarant will determine such Assessment Units in its sole and absolute discretion. Declarant's determination regarding the number of Assessment Units applicable to each Commercial Lot or Condominium Unit will be final, binding and conclusive. The Notice of Applicability may include a provision with an alternative Assessment Unit allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person not affiliated with Declarant) the number of Assessment Units previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or Improvements actually constructed on the Commercial Lot or Condominium Unit differ from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time the notice allocating Assessment Units thereto was originally Recorded. In the event of a modification to the Assessment Units allocated to a Commercial Lot or Condominium Unit, Declarant will Record an amended Notice of Applicability setting forth the revised allocation of Assessment Units attributable to the Commercial Lot or Condominium Unit.

(c) Residential Assessment Allocation. Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Residential Lot. An allocation of more than one Assessment Unit to a Residential Lot must be made in a Notice of Applicability or in a Tract Declaration for the Subject Property in which

the Residential Lot is located. Declarant's determination regarding the number of Assessment Units applicable to a Residential Lot pursuant to this *Section 6.09(c)* will be final, binding and conclusive.

(d) **Declarant Exemptions.** Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Subject Property, Lot or Condominium Unit from Assessments; or (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Subject Property, Lot or Condominium Unit or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Subject Property, Lot or Condominium Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend, or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument. Declarant or the Board may also exempt any portion of the Annexable Land which is dedicated and accepted by public authority from Assessments.

**6.10 Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**6.11 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney's fees.

**6.12 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* and all costs of collection, including attorney's fees, are secured by the continuing Assessment lien granted to VMC pursuant to *Section 6.01(b)* above,

and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (i) liens for real estate taxes or other governmental assessments or charges; (ii) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due; (iii) the seller's interest in a first contract for sale; (iv) Golf Club Assessments; and (v) Social Club Assessments. VMC will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized Board member or an officer of VMC. VMC may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by an officer of VMC and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to VMC to secure and enforce the Assessment lien granted hereunder. The Assessment lien and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies VMC may have pursuant to Applicable Law and under this Covenant, including the rights of VMC to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. VMC will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, VMC will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.12*, VMC will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which VMC has already foreclosed such lien. Such release may be signed by an officer of VMC and Recorded. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien

associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to VMC, the Owner will pay such amounts to VMC out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Assessment liens and charges in favor of the State of Idaho or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts.

**6.13 Exempt Property.** The following area within the Subject Property will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by a public authority;
- (b) The Common Area and the Benefited Common Area; and
- (c) Any portion of the Annexable Land or Subject Property owned by Declarant.

No portion of the Annexable Land will be subject to the terms and provisions of this Covenant, and no portion of the Annexable Land (or any owner thereof) will be obligated to pay Assessments hereunder unless and until such Annexable Land has been made subject to the terms of this Covenant by the Recording of a Notice of Applicability in accordance with *Section 12.05* below.

**6.14 Fines and Damage Charges.** Before levying any fine or damage charge, VMC shall provide an Owner with a written violation notice and an opportunity to be heard at a Board meeting. At least thirty (30) days prior to such Board meeting, VMC shall provide written notice to such Owner by personal service or certified mail providing the time, date, place and subject matter of such Board meeting. In the event the Owner begins resolving the violation prior to such Board meeting, no fine shall be imposed as long as such Owner continues to address the violation in good faith until fully resolved. If the Owner does not begin to resolve the violation prior to such Board meeting, the Board upon a Majority vote may assess fines against an Owner for violations of the Documents which have been committed by an Owner, an Occupant, or the Owner or Occupants guests, agents or invitees pursuant to the procedure set forth below. Any fine and/or charge for damage levied in accordance with this *Section 6.14* will be considered an Individual Assessment. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to VMC from property damage or destruction of Common Area or Benefited Common Area or any facilities caused by

the Owner, Occupant, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

**ARTICLE 7**  
**SOCIAL CLUB ASSESSMENTS**

**7.01 Social Club Assessments.**

(a) Established by Social Club Owner. Social Club Assessments will be levied against Lots and Condominium Units in amounts established by the Social Club Owner pursuant to this *Article 7* and the Social Club Documents.

(b) Personal Obligation; Lien. Each Social Club Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Social Club Assessment is levied and upon recordation of this Covenant will be secured by a lien hereby granted and conveyed by Declarant to the Social Club Owner against Lots and Condominium Units as set forth herein (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Social Club Owner may enforce payment of such Social Club Assessments in accordance with the provisions of this Article and Applicable Law. In the event an Owner fails to pay Social Club Assessments to the Social Club Owner, VMC shall be obligated to pay the unpaid Social Club Assessments to the Social Club Owner upon the written request of the Social Club Owner, and to the extent permitted by Applicable Law, VMC shall discharge its obligation to pay Social Club Assessments by utilizing its operational and capital reserve funds. In addition to any other rights reserved in the Documents or Applicable Law, VMC shall have the right to reimbursement from an Association having jurisdiction over Lots or Condominium Units to which any unpaid Social Club Assessments are attributable and the Board may require an Association to maintain a certain amount of operational and/or capital reserve funds, as determined by the Board, to ensure the Association has sufficient funds to discharge the Association's obligation to reimburse VMC in accordance herewith.

(c) Collection of Social Club Assessments. Unless the Social Club Owner elects otherwise by providing written notice to VMC, VMC will collect from each Owner and/or Association the Social Club Assessments, which shall be remitted by VMC to the Social Club Owner upon receipt. VMC's obligation to collect Social Club Assessments may be rescinded or reestablished if previously rescinded, at any time, by written notice provided by the Social Club Owner to VMC.



**7.02 Social Club Membership Assessments.** Social Club Membership Assessments shall be levied by the Social Club Owner against each Mandatory Social Club Sub-Member in an amount determined by the Social Club Owner pursuant to the Social Club Documents to discharge fees, dues, and other charges attributable to each Mandatory Social Club Sub-Member's sub-membership rights in the Social Club through VMC.

**7.03 Entry Fee.** Upon transfer of a Lot or Condominium Unit, the Owner of which is designated as a Mandatory Social Club Sub-Member, including without limitation, through the transfer of a Lot or Condominium Unit to a Mandatory Social Club Sub-Member (including both transfers from Declarant to the initial Mandatory Social Club Sub-Member, and transfers from one Mandatory Social Club Sub-Member to a subsequent Mandatory Social Club Sub-Member), an entry fee ("**Entry Fee**") in such amount, if any, as may be determined by the Social Club Owner will be paid by the transferee of the Lot or Condominium Unit to the Social Club Owner. The Entry Fee may be modified, from time to time, by the Social Club Owner; provided, however, during the Development Period, any modification to the Entry Fee must be approved in advance and in writing by the Declarant. The Entry Fee need not be uniform among all Lots and Condominium Units. The Social Club Owner, with the advance written consent of the Declarant during the Development Period, may, from time to time, notify VMC of the Entry Fee applicable to a Lot or Condominium Unit.

In the event of any dispute regarding the application of the Entry Fee to a particular Mandatory Social Club Sub-Member, the decision of the Social Club Owner, with the advance written consent of the Declarant during the Development Period, regarding the application of the Entry Fee will be binding and conclusive without regard to any contrary interpretation of this *Section 7.03*. The Entry Fee will be in addition to, not in lieu of, any other assessments levied in accordance with this *Article 7* and will not be considered an advance payment of such assessments. The Entry Fee hereunder will be due and payable by the new Mandatory Social Club Sub-Member or transferee to the Social Club Owner immediately upon becoming a Mandatory Social Club Sub-Member. The Social Club Owner, with the advance written consent of the Declarant during the Development Period, will have the power to waive the payment of any Entry Fee attributable to a Lot or Condominium Unit (or all Lots and/or Condominium Units) by written waiver notice, which waiver may be temporary or permanent.

**7.04 Late Charges.** If any Social Club Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Social Club Owner, at the Social Club Owner's election at any time and from time to time, to pay a late charge in such amount as the Social Club Owner may designate, and the late charge (and any reasonable handling costs) will be levied as an individual assessment (the "**Individual Social Club Assessment**") against the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Social Club Assessments, including foreclosure of the

lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**7.05 Owner's Personal Obligation; Interest.** Social Club Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Social Club Assessments. No Owner may exempt himself from liability for such Social Club Assessments. In the event of default in the payment of any such Social Club Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Social Club Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Social Club Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney's fees.

**7.06 Social Club Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 7* is, together with late charges as provided in *Section 7.04* and interest as provided in *Section 7.05* and all costs of collection, including attorney's fees, are secured by the continuing Social Club Assessment lien granted to the Social Club Owner pursuant to *Section 7.01(b)* above, and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (i) liens for real estate taxes or other governmental assessments or charges; and (ii) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Social Club Assessment became due. The Social Club Owner will have the power to subordinate the aforesaid Social Club Assessment lien to any other lien. Such power will be entirely discretionary with the Social Club Owner. The Social Club Owner may, at its option and without prejudice to the priority or enforceability of the Social Club Assessment lien granted hereunder, prepare a written notice of Social Club Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice will be signed by the Social Club Owner and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to the Social Club Owner to secure and enforce the Social Club Assessment lien granted hereunder. The Social Club Assessment lien and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Social Club Owner may have pursuant to Applicable Law and under this Covenant, including the rights of the Social Club Owner to institute suit against such Owner personally obligated to pay the Social Club Assessment, institute foreclosure proceedings of the aforesaid lien, and/or enforce VMC's obligation to pay the Social Club Assessments attributable to an Owner upon written notice from the Social Club Owner. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses

and reasonable attorney's fees incurred. The Social Club Owner will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Social Club Owner will report to said Mortgagee any unpaid Social Club Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Social Club Assessment lien, the lien for any Social Club Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Social Club Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Social Club Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 7.06*, the Social Club Owner will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Social Club Owner has already foreclosed such lien. Such release may be signed by the Social Club Owner and Recorded. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Social Club Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Social Club Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Social Club Owner, the Owner will pay such amounts to the Social Club Owner out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Social Club Assessment liens and charges in favor of the State of Idaho or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts.

**ARTICLE 8**  
**GOLF CLUB ASSESSMENTS**

**8.01 Golf Club Assessments.**

(a) Established by Golf Club Owner. Golf Club Assessments will be levied against Lots and Condominium Units in amounts established by the Golf Club Owner pursuant to this *Article 8* and the Golf Club Documents.

(b) Personal Obligation; Lien. Each Golf Club Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Golf Club Assessment is levied and upon recordation of this Covenant will be secured by a lien hereby granted and conveyed by Declarant to the Golf Club Owner against Lots and Condominium Units as set forth herein (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Golf Club Owner may enforce payment of such Golf Club Assessments in accordance with the provisions of this Article and Applicable Law. In the event an Owner fails to pay Golf Club Assessments to the Golf Club Owner, VMC shall be obligated to pay the unpaid Golf Club Assessments to the Golf Club Owner upon the written request of the Golf Club Owner, and to the extent permitted by Applicable Law, VMC shall discharge its obligation to pay Golf Club Assessments by utilizing its operational and capital reserve funds. In addition to any other rights reserved in the Documents or Applicable Law, VMC shall have the right to reimbursement from an Association having jurisdiction over Lots or Condominium Units to which any unpaid Golf Club Assessments are attributable and the Board may require an Association to maintain a certain amount of operational and/or capital reserve funds, as determined by the Board, to ensure the Association has sufficient funds to discharge the Association's obligation to reimburse VMC in accordance herewith.

(c) Collection of Golf Club Assessments. Unless the Golf Club Owner elects otherwise by providing written notice to VMC, VMC will collect from each Owner and/or Association the Golf Club Assessments, which shall be remitted by VMC to the Golf Club Owner upon receipt. VMC's obligation to collect Golf Club Assessments may be rescinded or reestablished if previously rescinded, at any time, by written notice provided by the Golf Club Owner to VMC. .

**8.02 Golf Club Landscape Assessments.** Golf Club Landscape Assessments are used for expenses related to the recurring, periodic, and anticipated responsibilities of the Golf Club Owner with respect to providing Golf Club Landscape Services. The estimated and/or actual costs incurred by the Golf Club Owner to provide the Golf Club Landscape Services, if any, will

be allocated either: (i) equally among all Assessment Units; or (ii) based on the benefit received among all Lots and Condominium Units. The Golf Club Owner will prepare an annual budget with the estimated expenses to be incurred by the Golf Club Owner for each fiscal year to provide the Golf Club Landscape Services. The Golf Club Owner will make the budget or a summary of the budget available to VMC, although failure to receive a budget or budget summary will not affect an Owner's and/or VMC's liability for Golf Club Landscape Assessments. If, during the course of a budget year, the Golf Club Owner determines that Golf Club Landscape Assessments are insufficient to cover the estimated costs and expenses for the remainder of the year, the Golf Club Owner may increase Golf Club Landscape Assessments for the remainder of the budget year in an amount that covers the estimated deficiency. Notwithstanding any term or provision herein to the contrary, with the advance written consent of the Declarant during the Development Period, Golf Club Landscape Assessments may also include expenses related to the recurring, periodic, and anticipated responsibilities of the Golf Club Owner to provide landscape maintenance and repair services on portions of the Golf Course adjacent to the Lots, Common Area, and/or Benefitted Common Area.

**8.03 Late Charges.** If any Golf Club Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Golf Club Owner, at the Golf Club Owner's election at any time and from time to time, to pay a late charge in such amount as the Golf Club Owner may designate, and the late charge (and any reasonable handling costs) will be levied as an individual assessment (the "**Individual Golf Club Assessment**") against the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Golf Club Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**8.04 Owner's Personal Obligation; Interest.** Golf Club Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Golf Club Assessments. No Owner may exempt himself from liability for such Golf Club Assessments. In the event of default in the payment of any such Golf Club Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Golf Club Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Golf Club Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney's fees.

**8.05 Golf Club Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 8* is, together with late charges as provided in *Section 8.03* and interest as provided in *Section 8.04* and all costs of collection, including attorney's fees, are secured by the continuing Golf Club Assessment lien granted to the Golf Club Owner pursuant

to *Section 8.01(b)* above, and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (i) liens for real estate taxes or other governmental assessments or charges; and (ii) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Golf Club Assessment became due. The Golf Club Owner will have the power to subordinate the aforesaid Golf Club Assessment lien to any other lien. Such power will be entirely discretionary with the Golf Club Owner. The Golf Club Owner may, at its option and without prejudice to the priority or enforceability of the Golf Club Assessment lien granted hereunder, prepare a written notice of Golf Club Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice will be signed by the Golf Club Owner and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant will be deemed conclusively to have granted a power of sale to the Golf Club Owner to secure and enforce the Golf Club Assessment lien granted hereunder. The Golf Club Assessment lien and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Golf Club Owner may have pursuant to Applicable Law and under this Covenant, including the rights of the Golf Club Owner to institute suit against such Owner personally obligated to pay the Golf Club Assessment, institute foreclosure proceedings of the aforesaid lien, and/or enforce VMC's obligation to pay the Golf Club Assessments attributable to an Owner upon written notice from the Golf Club Owner. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Golf Club Owner will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Golf Club Owner will report to said Mortgagee any unpaid Golf Club Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Golf Club Assessment lien, the lien for any Golf Club Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Golf Club Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Golf Club Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 8.05*, the Golf Club Owner will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Golf Club Owner has already foreclosed such lien. Such release may be signed by the Golf Club Owner and Recorded. Except as

otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Golf Club Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Golf Club Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Golf Club Owner, the Owner will pay such amounts to the Golf Club Owner out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Golf Club Assessment liens and charges in favor of the State of Idaho or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts.

## ARTICLE 9 ARCHITECTURAL CONTROL

### 9.01 Architectural Control By Declarant.

(a) Declarant as Valor Reviewer. During the Development Period, neither VMC, the Board, nor a committee created by or appointed by VMC or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements, without the written approval of Declarant. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of the Valor Reviewer. **Until expiration or termination of the Development Period, the Valor Reviewer means Declarant or Declarant's appointee(s) and in no event is the Valor Reviewer a committee created by or appointed by the Board or VMC.** Declarant may designate one or more persons from time to time to act as or on behalf of the Valor Reviewer in reviewing and responding to applications.

(b) Limits on Liability. In reviewing and acting on an application for approval, the Valor Reviewer may act solely in the Declarant's self-interest and owes no duty to any other person or any organization, and approval may be granted or withheld at Declarant's sole discretion. Declarant is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law. No Improvements constructed or caused to be constructed by Declarant will be subject to

the terms and provisions of this *Article 9* and need not be approved in accordance herewith.

(c) Transfer of Declarant's Rights. Upon expiration or termination of the Development Period, the rights of Declarant as the Valor Reviewer will automatically be transferred to a design review committee created by and appointed by the Board (the "DRC"), as set forth in *Section 9.02* below.

**9.02 Architectural Control by VMC.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, as further set forth below, or the Development Period is terminated or expires, VMC has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, VMC, acting through the DRC as created by the Board and the members thereof appointed as set forth below, will assume jurisdiction over and exercise the rights of architectural control for the Subject Property.

(a) Delegation by Declarant during the Development Period. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this *Article 9* to the DRC created by the Board. The DRC may include members of the Board, Owners, or consultants or professionals, such as architects, engineers, or other persons who may or may not be Owners. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

(b) Composition of the DRC. The DRC will consist of at least three (3) but not more than seven (7) persons appointed by the Board. Members of the DRC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the DRC, in which case all references in the Documents to the DRC will be construed to mean the Board. The DRC may include members of the Board, Owners or may include consultants or professionals, such as architects, engineers, or other persons, who may or may not be Owners, whose compensation, if any, may be established from time to time by the Board.

(c) Limits on Liability. The DRC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the DRC shall have no liability for the DRC's decisions which are made in good faith, and which are not arbitrary or capricious. The DRC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the DRC; (ii) supervising construction for the



Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

**NO IMPROVEMENT MAY BE CONSTRUCTED, ALTERED, OR MODIFIED WITHOUT THE  
ADVANCE WRITTEN APPROVAL OF THE VALOR REVIEWER OR THE DRC.**

**9.03 Prohibition of Construction, Alteration and Improvement.** No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Valor Reviewer. The Valor Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Subject Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement without obtaining Valor Reviewer approval, provided that such action is not visible from any other portion of the Subject Property or Annexable Land.

**9.04 Architectural Approval.**

(a) **Submission and Approval of Plans and Specifications.** Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Condominium Units, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Valor Reviewer together with any review fee which is imposed by the Valor Reviewer in accordance with *Section 9.04(b)*. The Valor Reviewer may elect to reject plans and specifications submitted by the Owner if the Owner is in violation of the terms and provisions of the Documents, or is delinquent in the payment of any Assessments. No plat, re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications have been approved in writing by the Valor Reviewer. The Valor Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Valor Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Valor Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Valor Reviewer, in its sole discretion, may require. Site plans must be approved by the Valor Reviewer prior to the clearing of any Lot or Condominium Unit, or the construction of any Improvements. The Valor Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the Valor Reviewer, are deemed

sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the Valor Reviewer may issue an approval to Homebuilders or a Residential Developer for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

(b) Design Guidelines. The Valor Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines which apply to all or any portion of the Subject Property. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant will control. In addition, the Valor Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted. Such fees will be submitted to the Valor Reviewer unless otherwise stated in the Design Guidelines and are not considered a security deposit by Owner to secure Owner's compliance with the terms and provisions of this Covenant. The Valor Reviewer will not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the Valor Reviewer. The Valor Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit and certificates of compliance or completion relating to any Improvement), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Valor Reviewer as provided herein, and the Valor Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variations. The Valor Reviewer may grant variances from compliance with any of the provisions of the Documents, when, in the opinion of the Valor Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the DRC, must be approved by the Declarant until expiration or termination of the Development Period, a Majority of the Board, and a Majority of the members of the DRC. Each variance may be Recorded at the discretion of the Declarant during the Development Period and the Board thereafter. Failure to Record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Valor Reviewer, Declarant, the Board or the DRC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not

operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

(e) Duration of Approval. The approval of the Valor Reviewer of any final plans and specifications, and any variances granted by the Valor Reviewer will be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Valor Reviewer, and the Valor Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 9.04* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Valor Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Valor Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Valor Reviewer.

(g) Non-Liability of the Valor Reviewer. **NEITHER THE DECLARANT NOR THE VALOR REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE VALOR REVIEWER'S DUTIES UNDER THIS COVENANT.**

## **ARTICLE 10**

### **MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Subject Property. The provisions of this *Article 10* apply to the Covenant and the Bylaws of VMC.

**10.01 Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to VMC (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to

which its Mortgage relates (thereby becoming an “**Eligible Mortgage Holder**”), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Subject Property or which affects any Lot or Condominium Unit on which there is a Mortgage held, insured, or guaranteed by an Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or Condominium Unit or the Owner or Occupant which is not cured within sixty (60) days after notice by VMC to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by VMC.

**10.02 Examination of Books.** VMC will permit a Mortgagee, as designated representative of an Owner, to examine the books and records of VMC during normal business hours.

## **ARTICLE 11 EASEMENTS**

**11.01 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Annexable Land becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Annexable Land and the Subject Property.

**11.02 Common Area or Benefited Common Area Right of Ingress and Egress.** Declarant, its agents, employees, assigns, successors and designees will have a right of ingress and egress over and the right of access to the Common Area or Benefited Common Area to the extent necessary to use the Common Area or Benefited Common Area and the right to such other temporary uses of the Common Area or Benefited Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Annexable Land or the Subject Property.

**11.03 Bulk Rate Services; Community Services and Systems Easement.** The Subject Property shall be subject to a perpetual non-exclusive easement for the installation, maintenance and repair of Community Services and Systems and the facilities pertinent and necessary to the same, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly install, provide, maintain and furnish the same, and provide and maintain services available through any Bulk Rate Contract, which easement shall run in favor of Declarant and VMC.

**11.04 Roadway and Utility Easements.** Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Subject Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Subject Property, the Annexable Land, and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Subject Property, the Annexable Land, and any other property owned by Declarant; (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Subject Property, the Annexable Land, and any other property owned by Declarant; and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Subject Property, the Annexable Land, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iv) of this Section. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Benefited Common Area, or a Service Area.

**11.05 Entry and Fencing Easement.** Declarant reserves for itself and VMC, an easement over and across the Subject Property for the installation, maintenance, repair or replacement of fencing and entry facilities which serves the Subject Property, the Annexable Land, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or entry facilities as Common Area, Benefited Common Area, or a Service Area.

**11.06 Landscape, Monumentation and Signage Easement.** Declarant hereby reserves for itself and VMC, an easement over and across the Subject Property for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Subject Property, the Annexable Land, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Benefited Common Area, or a Service Area.

**11.07 Easement for Special Events.** The Declarant reserves for itself and VMC, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or VMC, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Condominium Unit subject to this Covenant acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and any Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

**11.08 Drainage and Detention Facilities Easement.** Portions of the Subject Property may include one or more sedimentation, drainage and detention facilities, ponds or related improvements which serve all or a portion of the Subject Property, the Annexable Land, or additional land (collectively, the "Drainage Facilities"). Declarant hereby reserves for itself and VMC, and their successors, assigns, and designees, a perpetual non-exclusive easement over and across the Subject Property for the installation, maintenance, repair or replacement of the Drainage Facilities. The Drainage Facilities may be designated by the Declarant in a written notice Recorded to identify the particular Drainage Facilities to which the easement reserved hereunder applies, or otherwise dedicated to the public or applicable governmental authority (which may include retention of maintenance responsibility by VMC), conveyed and transferred to VMC as Common Area, Benefited Common Area or a Service Area. If the Facilities are designated or conveyed or maintenance responsibility reserved or assigned to VMC as Common Area, Benefited Common Area or a Service Area, VMC will be required to maintain and operate the Drainage Facilities in accordance with Applicable Law.

**11.09 Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of the Documents, each Owner, by accepting a deed to a Lot or Condominium Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Lot or Condominium Unit, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot or Condominium Unit, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of the Documents. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

**11.10 Cellular Tower and Telecommunications Easement.** Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area or Benefited Common Area, or any portion of the Subject Property or the Annexable Land which Declarant intends to designate as Common Area or Benefited Common Area (the "CTT Easement Area") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area or Benefited Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither VMC, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Subject Property and the Annexable Land for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this *Section 11.10*. The rights reserved to Declarant under this *Section 11.10* shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Subject Property or the Annexable Land shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 11.10*, except as expressly approved in writing by Declarant. EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT AND ITS ASSIGNS UNDER THIS SECTION 11.10 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The

provisions of this *Section 11.10* shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

**11.11 Easement to Inspect and Right to Correct.** For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, Improvement, or condition that may exist on any portion of the Annexable Land or Subject Property, and a perpetual nonexclusive easement of access throughout the Annexable Land and Subject Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 11.11* may not be construed to create a duty for Declarant, VMC, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot or Condominium Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Subject Property, including without limitation, all Common Areas and Benefited Common Areas and the Owner's Lot or Condominium Unit and all Improvements thereon for the purposes contained in this *Section 11.11*.

**11.12 Shared Facilities Agreement.** Certain adjacent property (the "**Adjacent Property**"), which may be owned by the Golf Club Owner, the Social Club Owner, or another third-party (the "**Adjacent Owner**"), and VMC may share certain facilities, including roadways, drainage improvements, irrigation, signage, monumentation, open space, and landscaping located in the Annexable Land, the Subject Property, and/or the Adjacent Property (the "**Shared Facilities**"). Declarant reserves the right to: (a) grant and convey easements to the Adjacent Owner over and across Common Area and Benefited Common Area which may be necessary or required to utilize and/or maintain the Shared Facilities; (b) require VMC and the Adjacent Owner to share in the expenses associated with the use and/or maintenance of the Shared Facilities; and (c) enter into a shared facilities and cost sharing agreement (the "**Shared Facilities Agreement**"), by and on behalf of VMC, to govern the rights and responsibilities of both VMC and the Adjacent Owner with regard to use and maintenance of the Shared Facilities, to allocate costs for the operation, maintenance and reserves for the Shared Facilities between VMC and the Adjacent Owner, and to grant reciprocal easements for access and use of the Shared Facilities. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay any fee allocated under the Shared Facilities Agreement to VMC as an Assessment to be levied and secured by a continuing lien on the Lot or Condominium Unit in the same manner as any other Assessment and Assessment lien arising under *Article 6*.



**11.13 Governmental Easements.** Notwithstanding the foregoing provisions of this *Article 11* or any other provision of this Covenant to the contrary, neither Declarant nor the Association may in any way grant or affect any easements in a manner that violates or is contrary to easements granted by or to the City or any other local government or municipal authority.

## **ARTICLE 12** **DEVELOPMENT RIGHTS**

**12.01 Development.** It is contemplated that the Annexable Land and Subject Property will be developed pursuant to a plan, which may, from time to time, be amended or modified by the Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Tracts, and to create and/or designate Lots, Condominium Units, Common Area, Benefited Common Area, and Service Areas and to subdivide all or any portion of the Subject Property and Annexable Land. As each area is conveyed, developed or dedicated, Declarant may Record one or more Tract Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Tract Declaration may provide its own procedure for the amendment thereof.

**12.02 Special Declarant Rights.** Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots and Condominium Units in the Subject Property; (b) to maintain Improvements upon Lots, Condominium Units, Common Area and Benefited Common Area as sales, model, management, business and construction offices or visitor centers at no charge; and (c) to maintain and locate construction trailers and construction tools and equipment within the Subject Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

**12.03 Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Annexable Land and, upon the Recording of a notice of addition of land, such land will be considered part of the Annexable Land for purposes of this Covenant, and upon the further Recording of a Notice of Applicability meeting the requirements of *Section 12.05* below, such added lands will be considered part of the Subject Property subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. Such added land need not be contiguous to the Annexable Land. To add lands to the Annexable Land, Declarant will be required only to Record, a notice of addition of land (which notice may be contained within any Tract Declaration affecting such land) containing the following provisions:

(a) A reference to this Covenant, which reference will state the document number or book and page wherein this Covenant is Recorded;

(b) A statement that such land will be considered Annexable Land for purposes of this Covenant, and that upon the further Recording of a Notice of Applicability meeting the requirements of *Section 12.05* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

(c) A legal description of the added land.

**12.04 Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Annexable Land, including the Subject Property, and remove and exclude from the burden of this Covenant and the jurisdiction of VMC any portion of the Subject Property. Upon any such withdrawal and removal, this Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Subject Property withdrawn. To withdraw lands from the Annexable Land or Subject Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(a) A reference to this Covenant, which reference will state the document number or book and page number wherein this Covenant is Recorded;

(b) A statement that the provisions of this Covenant will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

**12.05 Notice of Applicability.** Upon Recording, this Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Annexable Land to the terms, covenants, conditions, restrictions and obligations of this Covenant and any applicable Tract Declaration. This Covenant and any applicable Tract Declaration shall apply to and burden a portion or portions of the Annexable Land upon the Recording of a Notice of Applicability describing such applicable portion of the Annexable Land by a legally sufficient description and expressly providing that such Annexable Land shall be considered a part of the Subject Property and shall be subject to the terms, covenants conditions, restrictions and obligations of this Covenant and any applicable Tract Declaration. To be effective, a Notice of Applicability must be executed by Declarant, and the property included in the Notice of Applicability need not be owned by the Declarant if included within the Annexable Land. Declarant may also cause a Notice of Applicability to be Recorded covering a portion of the Annexable Land for the purpose of encumbering such Annexable Land with this Covenant and any Tract Declaration previously Recorded by

Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Tract Declaration, which shall apply to such Annexable Land). To make the terms and provisions of this Covenant applicable to a portion of the Annexable Land, Declarant shall be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A reference, if applicable, to the Recorded Tract Declaration which will apply to such portion of the Annexable Land (with any amendment, modification, or supplementation of the restrictions set forth in the Tract Declaration which shall apply to such portion of the Annexable Land);

(iii) A statement that all of the provisions of this Covenant (except as otherwise set forth at the end of this section) shall apply to such portion of the Annexable Land;

(iv) A legal description of such portion of the Annexable Land; and

(v) If applicable, a description of any Benefited Common Area or Service Area which benefits the Annexable Land and the beneficiaries of such Benefited Common Area or Service Area.

**NOTICE TO TITLE COMPANY**

**NO PORTION OF THE ANNEXABLE LAND IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE ANNEXABLE LAND UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH ANNEXABLE LAND AND REFERENCING THIS COVENANT HAS BEEN RECORDED.**

Notwithstanding the foregoing or anything to the contrary set forth in this Covenant, as part of any Notice of Applicability, Declarant specifically reserves the right to exempt some or all of any portion of the Annexable Land from certain provisions of this Covenant, including but not limited Articles 7 and 8 hereof.

**12.06 Assignment of Declarant's Rights.** Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by

any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

**12.07 Right to Designate Sites for Governmental and Public Interests.** During the Development Period, Declarant may designate sites within the Subject Property and/or the Annexable Land for government activities and interests, including fire, police and utility facilities. Declarant also may designate such sites within Common Area or Benefited Common Area, in which case VMC shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

**12.08 Infrastructure Contributions.** Declarant will construct and cause to maintained (either directly or by the Association following a transfer of the same to the Association) as required under that certain Development Agreement, recorded as Document No 2019-111089, Official Records of Ada County, Idaho, a pressure irrigation system serving the Property for the benefit of the Association and the Property (the "**Pressure Irrigation System**"). Declarant intends and shall be entitled to collect, from each Homebuilder and/or Residential Developer an amount equal to one-thousand five-hundred twenty and NO/100 Dollars (\$1,520.00) per Lot or Condominium Unit in exchange for Declarant's construction of the Pressure Irrigation System (the "**Pressure Irrigation System Contribution**"). Notwithstanding the foregoing, in the event the Declarant does not collect the Pressure Irrigation System Contribution from a Homebuilder or Residential Developer that acquires a Lot or Condominium Unit from Declarant, then upon the initial transfer of the Lot or Condominium Unit from the Homebuilder or Residential Developer to a third-party Owner who acquires the Lot or Condominium Unit for residential purposes, the Pressure Irrigation System Contribution will be paid by the transferee of the Lot or Condominium Unit to Declarant. The levy of any Pressure Irrigation System Contribution will be effective only upon the Recordation of a written notice, signed by the Declarant during the Development Period.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Pressure Irrigation System Contribution: (i) foreclosure of a deed of trust lien, tax lien, or VMC's assessment lien; (ii) transfer to, from, or by VMC; or (iii) transfers for which Declarant received payment of the Pressure Irrigation System Contribution attributable to the Lot or Condominium Unit on or before the date of such transfer. The Pressure Irrigation System Contribution will be in addition to, not in lieu of, any charges or assessments levied in accordance with *Article 6* of this Covenant and will not be considered an advance payment of assessments. The Pressure Irrigation System Contribution will be due and payable by the transferee to Declarant immediately upon each transfer of title to the Lot or Condominium Unit. The Declarant during the Development Period will have the power, in its sole and absolute discretion, to waive the payment of any Pressure Irrigation System Contribution attributable to a Lot or Condominium Unit (or all Lots and/or Condominium Units) by written waiver notice, which waiver may be temporary or permanent. In the event the Pressure Irrigation System

Contribution is not paid to Declarant upon the non-exempt transfer of a Lot or Condominium Unit, Declarant may provide written notice thereof to VMC and VMC shall pay the Pressure Irrigation System Contribution to Declarant, and may levy an Individual Assessment against the Lot or Condominium Unit for which the Pressure Irrigation System Contribution pertains to discharge VMC's obligations hereunder.

### ARTICLE 13 DISPUTE RESOLUTION

*This Article 13 is intended to encourage the resolution of disputes involving the Annexable Land or Subject Property. A dispute regarding the Common Area, Benefited Common Area, and/or Improvements thereon can create significant financial exposure for VMC and its Members, interfere with the resale and refinancing of Lots and Condominium Units, and increase strife and tension among the Owners, the Board and VMC's management. Since disputes may have a direct effect on each Owner's use and enjoyment of the Common Area and Benefited Common Area, this Article 13 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between VMC and a law firm or attorney who will represent VMC in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.*

**13.01 Introduction and Definitions.** VMC, the Owners, Declarant, Homebuilders, Residential Developers, and all persons subject to this Covenant, and each person not otherwise subject to this Covenant who agrees to submit to this *Article 13* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a Residential Developer, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Common Area, Benefited Common Area, or any Improvement thereon (individually, a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Annexable Land and/or Subject Property and the Common Area or Benefited Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. Notwithstanding anything contained in this *Article 13*, any Claim brought by an Owner related to a residence that is subject to a warranty agreement provided by the Declarant, Homebuilder, or Residential Developer will not be subject to this *Article 13* and will be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this *Article 13*. This *Article 13* may only be amended with the prior written approval of the Declarant, VMC (acting through a Majority of the Board), and Owners holding 100% of the votes in VMC. As used in this Article only, the following words, when capitalized, have the following specified meanings:

(a) **"Claim"** means:

(ii) Claims relating to the rights and/or duties of Declarant, VMC, the Golf Club, the Social Club, the Golf Club Owner, the Social Club Owner, or the Valor Reviewer, under the Documents.

(iii) Claims relating to the acts or omissions of the Declarant, VMC or a Board member or officer of VMC during Declarant's control and administration of VMC, and any claim asserted against the Valor Reviewer, the Golf Club, the Social Club, the Golf Club Owner, and/or the Social Club Owner.

(iv) Claims relating to the design or construction of Improvements located on the Common Area or Benefited Common Area.

(b) **"Claimant"** means any Party having a Claim against any other Party.

(c) **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

**13.02 Mandatory Procedures.** Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 13.08* below, a Claim must be resolved by binding arbitration. Unless otherwise approved by Members holding eighty percent (80%) of the votes in VMC, VMC, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim against the Golf Club, Social Club, Golf Club Owner, or the Social Club Owner.

**13.03 Claim Affecting Common Areas.** In accordance with *Section 3.16* of this Covenant, VMC does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design or construction of Improvements on a Lot or Condominium Unit (whether one or more). Additionally, no Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area. Each Owner, by accepting an interest in or to title to a Lot or Condominium Unit, hereby grants to VMC the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area and/or Benefited Common Area. In the event VMC asserts a Claim related to the Common Area and/or Benefited Common Area, as a precondition to providing the Notice defined in *Section 13.05*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim related to the Common Area and/or Benefited Common Area, VMC must:

(a) Obtain Owner Approval of Engagement.

*The requirements related to Owner approval set forth in this Section 13.03(a) are intended to ensure that VMC and the Owners approve and are fully informed of the financial arrangements between VMC and a law firm or attorney engaged by VMC to prosecute a Claim relating to the design or construction of the Common Area or Benefited Common Area. The engagement agreement between VMC and the law firm or attorney may include requirements that VMC pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between VMC and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between VMC and the law firm or attorney is terminated or if VMC agrees to settle the Claim. In addition, the financial arrangement between VMC and the law firm or attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Benefited Common Area or execute a written agreement between VMC and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area or Benefited Common Area unless the law firm or attorney and the financial arrangements between VMC and the law firm or attorney are approved by the Owners in accordance with this Section 13.03(a).*

Unless otherwise approved by Members holding eighty percent (80%) of the votes in VMC, VMC, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Benefited Common Area if the agreement between VMC and law firm or attorney includes any provision or requirement that would obligate VMC to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by VMC: (i) if VMC terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if VMC agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if VMC agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in VMC must approve the law firm and attorney who will prosecute the Claim and the written agreement between VMC and the law firm and/or attorney.

The approval of the Members required under this *Section 13.03(a)* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between VMC and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by VMC; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by VMC; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by VMC if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area, Benefited Common Area, or Improvements on the Annexable Land or Subject Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether use of the Common Area or Benefited Common Area will be affected by such testing, and if the destructive testing occurs the means or method VMC will use to repair the Common Area or Benefited Common Area affected by such testing and the estimated costs thereof. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in VMC approve the law firm and/or attorney who will prosecute the Claim and the written agreement between VMC and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

(b) Provide Notice of the Inspection. As provided in *Section 13.03(c)* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, VMC must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas and/or Benefited Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(c) Obtain a Common Area Report.

*The requirements related to the Common Area Report set forth in this Section 13.03(c) are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations*



*are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.*

Obtain a written independent third-party report for the Common Area and/or Benefited Common Area (the "**Common Area Report**") from a professional engineer licensed by the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors with an office located in Ada County, Idaho (the "**Inspection Company**"). The Common Area Report must include: (i) a description with photographs of the Common Area and/or Benefited Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area and/or Benefited Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area and/or Benefited Common Area performed by VMC or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area and/or Benefited Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Ada County, Idaho, and each such contractor providing the estimate must hold all necessary or required licenses from the Idaho Contractors Board or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by VMC. The Common Area Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents VMC or proposes to represent VMC; (b) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by VMC to the Inspection Company at the time the Common Area Report is finalized and delivered to VMC; or (c) the law firm or attorney that presently represents VMC or proposes to represent VMC has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in VMC's agreement with the law firm or attorney) VMC for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an "independent" report means that VMC has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that VMC will

directly pay for the report at the time the Common Area Report is finalized and delivered to VMC.

(d) Provide a Copy of Common Area Report to all Respondents and Owners. Upon completion of the Common Area Report, and in any event no later than three (3) days after VMC has been provided a copy of the Common Area Report, VMC will provide a full and complete copy of the Common Area Report to each Respondent and to each Owner. VMC shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which will include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

(e) Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 11.11* above, the Declarant has an easement throughout the Annexable Land and Subject Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, Residential Developer, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

(f) Hold Member Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, VMC must obtain approval from Members holding eighty percent (80%) of the votes in VMC to provide the Notice described in *Section 13.05*, initiate the mandatory dispute resolution procedures set forth in this *Article 13*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between VMC and the law firm and/or attorney selected by VMC to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by VMC directly or for which VMC may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by VMC to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the

market value, marketability, or refinancing of a Lot or Condominium Unit while the Claim is prosecuted; and (vii) a description of the manner in which VMC proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not: (a) the attorney who represents or will represent VMC in the Claim; (b) a member of the law firm of the attorney who represents or will represent VMC in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent VMC in the Claim. In the event Members approve providing the Notice described in *Section 13.05*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in VMC, at a meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

(g) Provide Officer Certification. Within ten (10) days after a vote of Members called pursuant to this *Article 13*, the secretary or another officer of VMC will provide to Declarant and any Respondent (if different than Declarant): (i) a true and correct copy of the meeting notice provided to Members, for the meeting at which such vote was taken; (ii) copies of the ballots cast at such meeting (whether in person, electronic, or by proxy); (iii) a certification, executed by the issuing officer of VMC that: (a) the information set forth in (i) and (ii) hereinabove is true and correct; (b) the meeting notice provided to Members was provided in accordance with this *Article 13*; and (c) the vote was held in accordance with the Bylaws and this *Article 13*.

**13.04 Claim by Owners.** Pursuant to *Section 13.03* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area, such Owner shall be required, since a Claim affecting the Common Area and/or Benefited Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 13.05*, initiating the mandatory dispute resolution procedures set forth in this *Article 13*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by VMC in accordance with *Section 13.03(b)* (Provide Notice of Inspection), *Section 13.03(c)* (Obtain a Common Area Report), *Section 13.03(d)* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 13.03(e)* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 13.03(f)* (Owner Meeting and Approval), *Section 13.03(g)* (Officer Certification), and *Section 13.05* (Notice). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Covenant.

**13.05 Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. If a Claim is subject to Idaho Code §§ 6-2501--2504, the Claimant and Respondent are advised, in addition to compliance with *Section 13.06*, to comply with the terms and provisions of Idaho Code §§ 6-2501--2504. Failure to comply with the time periods or actions specified in Idaho Code §§ 6-2501--2504 could affect a Claim if the Claim is subject thereto. The one hundred and twenty (120) day period for mediation set forth in *Section 13.07* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 13.07* is required without regard to the monetary amount of the Claim.

If the Claimant is VMC, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area and/or Benefited Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by VMC related to the Common Area and/or Benefited Common Area; (b) a copy of any engagement letter between VMC and the law firm and/or attorney selected by VMC to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area and/or Benefited Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in VMC approved the law firm and attorney and the written agreement between VMC and the law firm and/or attorney in accordance with *Section 13.03(a)*; (d) a true and correct copy of the meeting notice provided to Members in accordance with *Section 13.03(f)* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in VMC approved providing the Notice. If the Claimant is not VMC and pertains to the Common Areas and/or Benefited Common Areas, the Notice will also include a true and correct copy of the Common Area Report.

**13.06 Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Annexable Land or Subject Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Annexable Land or Subject Property that is subject to the Claim for the purposes of inspecting the Annexable Land or Subject Property.

**13.07 Mediation.** If the Parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the Parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 13.07*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 13.08*.

**13.08 Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g. a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 13.08*.

(a) **Governing Rules.** If a Claim has not been resolved after mediation in accordance with *Section 13.07*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 13.08* and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this *Section 13.08*, this *Section 13.08* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(b) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(c) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(d) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(e) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 13.08* will limit the right of Claimant or Respondent, and Claimant and Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(f) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 13.08*.

(g) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 13.08* and subject to *Section 13.09* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Idaho law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble, consequential, or punitive damages for any Claim.

(h) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Ada County, Idaho. Unless otherwise provided by this *Section 13.08*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Idaho Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of

business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**13.09 Allocation Of Costs.** Notwithstanding any provision in this Covenant to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

**13.10 General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim.

**13.11 Period of Limitation.** The exclusive period of limitation for any of the Parties to bring any Claim is the applicable statute of limitations for such Claim under Applicable Law.

**13.12 Funding the Resolution of Claims.** VMC must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 13*. VMC may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless VMC has previously established and funded a dispute resolution fund.

**13.13 Severability.** The provisions of this Article shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion herein shall not affect the validity or enforceability of any other provision or portion herein.

#### **ARTICLE 14** **GENERAL PROVISIONS**

**14.01 Term.** Upon the Recording of a notice pursuant to *Section 12.05*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Annexable Land described in such notice, and will inure to the benefit of and be enforceable by VMC, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is Recorded, and continuing through and including January 1, 2095, after which time this Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning an early termination, or change of term or renewal term) is approved by (a) Declarant or the Board (after expiration or termination of the Development Period) and (b) the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the Subject Property. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a

quorum as established pursuant to the Bylaws. An Association Representative may not exercise a vote on behalf of the Members or the Owners for a change as contemplated in this *Section 14.01*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. The Representative System of Voting is not applicable to a change as contemplated in this *Section 14.01*, it being understood and agreed that any change must be approved by a vote of the Members casting their vote individually.

**14.02 Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Benefited Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by VMC for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit. In the event any proceeds attributable to acquisition of Benefited Common Area are paid to Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit. An Association Representative may not exercise a vote on behalf of the Members or the Owners for a change as contemplated in this *Section 14.02*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. The Representative System of Voting is not applicable to a change as contemplated in this *Section 14.02*, it being understood and agreed that any change must be approved by a vote of the Members casting their vote individually.

**14.03 Amendment.** This Covenant may be amended at any time by the Recording of an instrument executed and acknowledged by (a) Declarant acting alone and at any time; or (b) by the president and secretary of VMC setting forth the amendment and certifying that such amendment has been approved by (i) Declarant or the Board (after expiration or termination of the Development Period) and (ii) the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the Subject Property. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. An Association Representative may not exercise a vote on behalf of the Members or the Owners for a change as contemplated in this *Section 14.03*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. The Representative System of Voting is not applicable to a change as contemplated in this *Section 14.03*, it being understood



and agreed that any change must be approved by a vote of the Members casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period. Each Owner is advised that, in accordance with this *Section 14.03*, Declarant has the unilateral right to amend this Covenant for any purpose. The Subject Property will be developed over many years. Changes in the Declarant's plans for the Subject Property and Annexable Land will occur. The Declarant may also elect to modify, remove or add to the terms and provisions of this Covenant to respond to such changes and actual or perceived changes in market or other conditions. Accordingly, each Owner and VMC should anticipate and expect that modifications, amendments and/or changes will be made to the terms and provisions of this Covenant unilaterally by the Declarant as determined in Declarant's sole and absolute discretion and judgment.

**14.04 Enforcement.** VMC and the Declarant will have the right but not the obligation to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or VMC to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against the Declarant, VMC, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE SUBJECT PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, VMC, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR VMC TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS.**

**14.05 Higher Authority.** The terms and provisions of this Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

**14.06 Severability.** If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**14.07 Conflicts.** If there is any conflict between the provisions of this Covenant, the Articles, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Tract Declaration, the provisions of this Covenant will govern.

**14.08 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**14.09 Acceptance by Grantees.** Each grantee of a Lot, Condominium Unit, or other real property interest in the Subject Property, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Subject Property, and will bind any person having at any time any interest or estate in the Subject Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

**14.10 Damage and Destruction.**

(a) **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Benefited Common Area covered by insurance, the Board, or its duly authorized agent, may, in its sole discretion, proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 14.10(a)*, means repairing or restoring the Common Area or Benefited Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) **Repair Obligations.** Any damage to or destruction of the Common Area or Benefited Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to VMC within said period, then the period will be extended until such information will be made available.

(c) **Restoration.** In the event that it should be determined by the Board that the damage or destruction of the Common Area or Benefited Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Benefited Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by VMC in a neat and attractive condition.

(d) **Special Assessment for Common Area.** If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special

Assessment, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Special Assessment for Benefited Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Benefited Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special Assessment, as provided in *Article 6*, against all Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

(g) Proceeds Payable to Owners Responsible for Benefited Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Benefited Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

**14.11 View Impairment.** Although certain Lots or Condominium Units in the Subject Property at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Condominium Unit. Notwithstanding any oral or written statement made by any person or contained in any sales materials or brochures, no representation or warranty whatsoever, express or implied, is made by Declarant, VMC or the Club Parties concerning the view that any Lot or Condominium Unit will have whether as of the date this Covenant is Recorded or thereafter. Any view that exists at any point in time for a Lot or Condominium Unit may be impaired or obstructed by further construction within or outside the Subject Property, including by construction of Improvements (including landscaping) by Declarant, the Golf Club Owner, or the Social Club Owner, construction by third parties (including Owners and Occupants) and by the natural growth of landscaping. No third party, including any broker, salesperson or Owner, has any right to bind Declarant, VMC the Golf Club Owner, or the Social Club Owner with respect to the preservation of any view from any Lot or Condominium Unit or any view of a Lot or Condominium Unit from any other property.

**14.12 Safety and Security.** Each Owner and Occupant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Subject Property. Declarant may construct gated entrances leading into the Subject Property in order to limit vehicular access and to provide some privacy for the Owners and Occupants. Each of the Owners and Occupants acknowledges and agrees as follows:

(a) Declarant makes no representations or warranties that gated entrances will provide security and/or safety to Owners, Occupants, and their families, invitees and licensees.

(b) The gated entrances may restrict or delay entry into the Subject Property by the police, fire department, ambulances and other emergency vehicles or personnel.

(c) For as long as Declarant is selling Lots or Condominium Units and/or constructing Improvements within the Subject Property, Declarant may allow the gated entrance to remain open during business and construction hours for the period of time necessary to sell all of the Lots and Condominium Units and/or construct all Improvements within the Subject Property.

Each Owner and Occupant assumes the risk that any such gated entrances may not provide security and safety and may restrict or delay entry into the Subject Property by the police department, ambulances and other emergency vehicles and personnel. Neither the Declarant, VMC, the Golf Club Owner, the Social Club Owner, nor any director, officer, agent or employee of any of the foregoing shall be liable to the Owners or Occupants for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrances.

**14.13 Notices.** Any notice permitted or required to be given to any person by this Covenant will be in writing and may be delivered either personally or by mail, or as otherwise provided in this Covenant or required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to VMC for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to VMC.

**14.14 No Warranty of Enforceability.** Neither Declarant, the Golf Club Owner, nor the Social Club Owner makes any warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in this Covenant or the Club Documents. Any Owner acquiring a Lot or Condominium Unit in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and

enforceability thereof and, by acquiring the Lot or Condominium Unit, agrees to hold Declarant and Club Owner harmless therefrom.

**14.15 Property Condition; As-Is, Where-Is.** WITHOUT LIMITATION, UPON AND AS OF THE DATE ANY PORTION OF THE ANNEXABLE LAND OR SUBJECT PROPERTY IS TRANSFERRED FROM DECLARANT TO AN OWNER, THE OWNER ACKNOWLEDGES THAT, EXCEPT FOR DECLARANT'S EXPRESS REPRESENTATIONS, WARRANTIES, AND COVENANTS MADE IN THE DOCUMENTS, AN AGREEMENT BETWEEN THE DECLARANT AND THE OWNER, AND ANY TRANSFER DOCUMENTS EXECUTED BY DECLARANT, (I) OWNER IS ACQUIRING THE ANNEXABLE LAND OR SUBJECT PROPERTY IN "AS IS" AND "WHERE IS" CONDITION, "WITH ALL FAULTS," AND THAT DECLARANT IS TRANSFERRING THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY IN "AS IS" AND "WHERE IS" CONDITION "WITH ALL FAULTS," (II) NEITHER DECLARANT NOR ITS AGENTS HAVE MADE ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, REGARDING ANY MATTER PERTAINING TO THE ANNEXABLE LAND OR SUBJECT PROPERTY OR ITS USE, INCLUDING, WITHOUT LIMITATION: (A) THE PHYSICAL CONDITION, ZONING, USE, VALUE, INTENDED USE, OR OTHER CONDITION OF THE ANNEXABLE LAND OR SUBJECT PROPERTY; (B) ITS MERCHANTABILITY; (C) ITS FITNESS FOR A PARTICULAR PURPOSE; (D) THE PHYSICAL CONDITION, ZONING, USE, VALUE, INTENDED USE, OR OTHER CONDITION OF ANY NEIGHBORING PROPERTY; OR (E) THE CLASSIFICATION OF THE ANNEXABLE LAND OR SUBJECT PROPERTY FOR AD VALOREM PURPOSES. UPON THE TRANSFER OF THE ANNEXABLE LAND OR SUBJECT PROPERTY, OWNER WILL HAVE HAD AMPLE OPPORTUNITY TO INSPECT THE ANNEXABLE LAND OR SUBJECT PROPERTY, TO EXAMINE, INSPECT AND INVESTIGATE ALL IMPROVEMENTS LOCATED ON THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY, TO INSPECT AND EXAMINE THE SUBSURFACE OF THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY AND ALL SOIL, ENGINEERING, ENVIRONMENTAL AND OTHER CONDITIONS OF THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY, TO INSPECT AND EXAMINE THE ZONING, BUILDING AND GOVERNMENTAL REGULATORY MATTERS PERTAINING TO THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY AND THE DEVELOPMENT THEREOF, TO DETERMINE THE AVAILABILITY OF WATER AND UTILITIES, TO EXAMINE AND DETERMINE SOILS OR ENVIRONMENTAL CONDITIONS, TO INVESTIGATE ANY ENCROACHMENTS WHICH WOULD BE DISCLOSED BY EITHER AN INSPECTION OF THE PROPERTY OR A SURVEY, OR OTHER CONDITION OF ANY NEIGHBORING PROPERTY, AND TO INVESTIGATE ANY POTENTIAL FOR FLOODING AND SUCH OTHER MATTERS AS MIGHT BE DISCLOSED OR DETERMINED BY AN EXAMINATION OF THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY AND INDEPENDENT INQUIRY WITH RESPECT THERETO; AND, SUBJECT TO DECLARANT'S EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS MADE IN THE DOCUMENTS, AN AGREEMENT BETWEEN THE

DECLARANT AND THE OWNER, AND ANY TRANSFER DOCUMENTS EXECUTED BY DECLARANT, OWNER WILL ACCEPT TITLE TO THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY IN ITS CONDITION AS OF THE DATE THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY IS TRANSFERRED TO OWNER. OWNER WILL NOT RELY ON ANY MATTERS CONTAINED IN ANY SALES OR PROMOTIONAL MATERIALS FURNISHED BY DECLARANT OR ITS AGENTS. OWNER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO OWNER OR TO BE PROVIDED TO OWNER ON BEHALF OF DECLARANT WITH RESPECT TO THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY ENGINEERING DATA, SOILS REPORTS, SURVEYS OR OTHER INFORMATION THAT DECLARANT OR ANY OTHER PARTY MAY HAVE DELIVERED OR SHALL DELIVER TO OWNER PERTAINING TO THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY IS FURNISHED WITHOUT ANY REPRESENTATION OR WARRANTY OF DECLARANT WHATSOEVER; WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT DECLARANT HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. OWNER AGREES TO FULLY AND IRREVOCABLY RELEASE DECLARANT FROM ANY AND ALL CLAIMS THAT OWNER MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST DECLARANT FROM ANY COSTS, LOSS, CLAIMS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO SUCH INFORMATION OR DOCUMENTATION, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE RELEASES, ACKNOWLEDGMENTS, REPRESENTATIONS, WARRANTIES AND COVENANTS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE TRANSFER OF THE APPLICABLE ANNEXABLE LAND OR SUBJECT PROPERTY AND SHALL NOT LAPSE.

*[SIGNATURE PAGE FOLLOWS]*



**EXHIBIT "A"**

**DESCRIPTION OF ANNEXABLE LAND**

Lots 3 through 5, inclusive, Lots 7 through 16, inclusive, Lots 18 through 23, inclusive, Lots 25 through 30, inclusive, Lots 32 through 36, inclusive, Lots 38 through 45, inclusive, and Lots 47 through 57, inclusive, Block 1, of Falcon Crest Subdivision No. 1, a subdivision located in Ada County, Idaho, according to the plat recorded in Plat Book 122, Pages 19308 through 19316 in the Official Records of Ada County, Idaho.