

ELECTRONICALLY RECORDED DO NOT  
REMOVE THE COUNTY STAMPED FIRST  
PAGE AS IT IS NOW INCORPORATED AS  
PART OF THE ORIGINAL DOCUMENT.

ADA COUNTY RECORDER Phil McGrane  
BOISE IDAHO Pgs=41 CHE FOWLER  
BRIGHTON CORPORATION

**2022-065767**  
07/22/2022 09:53 AM  
\$130.00

**AMENDED AND RESTATED SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
APEX SUBDIVISION**

**AMENDED AND RESTATED SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
APEX SUBDIVISION**

**AMENDED AND RESTATED SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
APEX SUBDIVISION**

**Table of Contents**

<b>ARTICLE I RECITALS.....</b>	<b>2</b>
<b>ARTICLE II DECLARATION.....</b>	<b>2</b>
<b>ARTICLE III DEFINITIONS .....</b>	<b>3</b>
<b>ARTICLE IV PURPOSE.....</b>	<b>6</b>
<b>ARTICLE V PERMITTED USES AND PERFORMANCE STANDARDS.....</b>	<b>7</b>
<b>SECTION 5.01 Use.....</b>	<b>7</b>
(a) Generally. ....	7
(b) Failure to Comply.....	7
(c) Buildings. ....	7
<b>SECTION 5.02 Approval of Use and Plans. ....</b>	<b>7</b>
<b>SECTION 5.03 Prohibited Buildings/Uses. ....</b>	<b>8</b>
<b>SECTION 5.04 Adoption of ACC Rules/ACC Standards. ....</b>	<b>8</b>
<b>SECTION 5.05 Leasing.....</b>	<b>8</b>
<b>SECTION 5.06 Set-Backs. ....</b>	<b>8</b>
<b>SECTION 5.07 Antennae. ....</b>	<b>8</b>
<b>SECTION 5.08 Easements. ....</b>	<b>8</b>
(a) Public Utilities.....	8
(b) Water Drainage.....	8
(c) Lot Maintenance. ....	8
(d) Access to Common Areas.....	9
(e) Encroachment.....	9
(f) Plat. ....	9
<b>SECTION 5.09 Side Yard Easements. ....</b>	<b>9</b>
(a) Purpose of Side Yard Easements. ....	9
(b) Easements Appurtenant.....	10
(c) Covenants Running with Land - No Termination. ....	10
(d) Right of Access by Servient Lot. ....	10
(e) Right to Mortgage. ....	10
(f) Acceptance and Succession. ....	10
(g) Indemnification.....	10
(h) Settlement of Disputes Concerning Side Yard Easements.....	10
<b>SECTION 5.10 Common Driveways. ....</b>	<b>11</b>
<b>SECTION 5.11 Roofs. ....</b>	<b>11</b>
<b>SECTION 5.12 Animals. ....</b>	<b>11</b>

<b>SECTION 5.13 Maintenance.....</b>	<b>12</b>
<b>SECTION 5.14 Screening of Automobiles, Vehicles and Equipment.....</b>	<b>12</b>
<b>SECTION 5.15 Driveways.....</b>	<b>12</b>
<b>SECTION 5.16 Garage Doors.....</b>	<b>13</b>
<b>SECTION 5.17 Exterior Materials and Colors. ....</b>	<b>13</b>
<b>SECTION 5.18 Signs. ....</b>	<b>13</b>
<b>SECTION 5.19 Fences.....</b>	<b>13</b>
<b>SECTION 5.20 Landscaping. ....</b>	<b>14</b>
<b>SECTION 5.21 Storm Drainage.....</b>	<b>14</b>
<b>SECTION 5.22 Exemption of Declarant.....</b>	<b>15</b>
<b>ARTICLE VI PINNACLE HOMEOWNERS ASSOCIATION INC. ....</b>	<b>15</b>
<b>SECTION 6.01 Organization of Sub-Association. ....</b>	<b>15</b>
<b>SECTION 6.02 Members.....</b>	<b>15</b>
<b>SECTION 6.03 Classes of Membership.....</b>	<b>16</b>
<b>SECTION 6.04 Board of Directors and Officers.....</b>	<b>16</b>
<b>SECTION 6.05 Powers of Sub-Association. ....</b>	<b>16</b>
<b>SECTION 6.06 Duties of Sub-Association. ....</b>	<b>17</b>
(a) Operation and Maintenance of Common Area. ....	17
(b) Taxes and Assessments. ....	17
(c) Insurance. ....	18
(d) Administration Fees, Costs. ....	18
(e) Rule Making.....	18
(f) Architectural Control Committee.....	18
(g) Enforcement of Restrictions and Rules. ....	18
(h) Master Declaration/Master Association. ....	18
(i) Annual Meeting. ....	19
<b>SECTION 6.07 Cost of Maintenance, Repairs and Replacement. ....</b>	<b>19</b>
<b>SECTION 6.08 Budgets and Financial Statements. ....</b>	<b>19</b>
<b>SECTION 6.09 Effective Date.....</b>	<b>19</b>
<b>ARTICLE VII COMMON AREA.....</b>	<b>19</b>
<b>SECTION 7.01 Use.....</b>	<b>19</b>
(a) Governing Documents. ....	19
(b) Suspension of Rights. ....	20
(c) Dedications. ....	20
<b>SECTION 7.02 Liability for Damage. ....</b>	<b>20</b>
<b>SECTION 7.03 Damage and Destruction.....</b>	<b>20</b>
<b>SECTION 7.04 Condemnation. ....</b>	<b>20</b>
<b>ARTICLE VIII ASSESSMENTS ....</b>	<b>20</b>
<b>SECTION 8.01 Covenant to Pay Assessments.....</b>	<b>20</b>

<b>SECTION 8.02 Regular Assessments</b> .....	<b>20</b>
<b>SECTION 8.03 Special Assessments</b> .....	<b>21</b>
<b>SECTION 8.04 Limited Assessments</b> .....	<b>21</b>
(a) Maintenance and Repair .....	21
(b) Correction of Violations .....	21
(c) Limited Purpose .....	21
<b>SECTION 8.05 Commencement of Regular Assessments</b> .....	<b>22</b>
<b>SECTION 8.06 Uniform Rate of Assessment</b> .....	<b>22</b>
<b>SECTION 8.07 Assessment Due Date</b> .....	<b>22</b>
<b>SECTION 8.08 Interest and Penalties</b> .....	<b>22</b>
<b>SECTION 8.09 Estoppel Certificate</b> .....	<b>22</b>
<b>SECTION 8.10 Notice and Quorum Requirements</b> .....	<b>22</b>
<b>ARTICLE IX ENFORCEMENT OF ASSESSMENTS</b> .....	<b>23</b>
<b>SECTION 9.01 Right to Enforce</b> .....	<b>23</b>
<b>SECTION 9.02 Creation of Assessment Liens</b> .....	<b>23</b>
<b>SECTION 9.03 Notice of Assessment Lien</b> .....	<b>23</b>
<b>SECTION 9.04 Enforcement</b> .....	<b>23</b>
<b>SECTION 9.05 Notice Required</b> .....	<b>24</b>
<b>SECTION 9.06 Reporting</b> .....	<b>24</b>
<b>SECTION 9.07 Non-Exclusive Remedy</b> .....	<b>24</b>
<b>ARTICLE X ARCHITECTURAL CONTROL COMMITTEE</b> .....	<b>24</b>
<b>SECTION 10.01 Members of the Committee</b> .....	<b>24</b>
<b>SECTION 10.02 Appointment</b> .....	<b>24</b>
<b>SECTION 10.03 Compensation</b> .....	<b>25</b>
<b>SECTION 10.04 Non-Liability</b> .....	<b>25</b>
<b>SECTION 10.05 Approval Required</b> .....	<b>25</b>
<b>SECTION 10.06 Variances</b> .....	<b>25</b>
<b>SECTION 10.07 Application</b> .....	<b>25</b>
(a) Site Plan .....	26
(b) Building Plan.....	26
(c) Landscape Plan .....	26
(d) Evidence of Cost .....	26
<b>SECTION 10.08 Completion Security Deposit</b> .....	<b>26</b>
<b>SECTION 10.09 Decision</b> .....	<b>26</b>
<b>SECTION 10.10 Inspection and Complaints</b> .....	<b>27</b>
<b>SECTION 10.11 Inspection Fee(s)</b> .....	<b>27</b>
<b>ARTICLE XI ENFORCEMENT</b> .....	<b>27</b>
<b>SECTION 11.01 Complaints</b> .....	<b>27</b>

(a) Master Declaration.....	27
(b) Supplemental Declaration.....	27
<b>SECTION 11.02 Hearing.....</b>	<b>28</b>
<b>SECTION 11.03 Appeal of Decisions.....</b>	<b>28</b>
<b>SECTION 11.04 Enforcement.....</b>	<b>29</b>
<b>SECTION 11.05 Additional Damages.....</b>	<b>29</b>
<b>SECTION 11.06 Non-Exclusive Remedy.....</b>	<b>30</b>
<b>SECTION 11.07 Private Rights.....</b>	<b>30</b>
<b>ARTICLE XII ANNEXATION.....</b>	<b>30</b>
<b>SECTION 12.01 Annexation.....</b>	<b>30</b>
<b>SECTION 12.02 De-Annexation.....</b>	<b>30</b>
<b>ARTICLE XIII MISCELLANEOUS.....</b>	<b>31</b>
<b>SECTION 13.01 Term.....</b>	<b>31</b>
<b>SECTION 13.02 Amendment.....</b>	<b>31</b>
(a) Approval of Master Association; By Declarant.....	31
(b) By Owners.....	31
(c) By Necessity.....	31
<b>SECTION 13.03 Books and Records.....</b>	<b>31</b>
<b>SECTION 13.04 Non-Waiver.....</b>	<b>32</b>
<b>SECTION 13.05 Acceptance.....</b>	<b>32</b>
<b>SECTION 13.06 Indemnification of Board Members.....</b>	<b>32</b>
<b>SECTION 13.07 Notices.....</b>	<b>32</b>
<b>SECTION 13.08 Interpretation.....</b>	<b>32</b>
<b>SECTION 13.09 Severability.....</b>	<b>32</b>
<b>SECTION 13.10 Not a Partnership.....</b>	<b>32</b>
<b>SECTION 13.11 No Third Party Beneficiary Rights.....</b>	<b>33</b>
<b>SECTION 13.12 Injunctive Relief.....</b>	<b>33</b>
<b>SECTION 13.13 Breach Shall Not Permit Termination.....</b>	<b>33</b>
<b>SECTION 13.14 Attorney's Fees.....</b>	<b>33</b>
<b>SECTION 13.15 Force Majeure.....</b>	<b>33</b>

**NOTICE TO POTENTIAL  
BUYERS AND OWNERS**

**THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH POTENTIAL RESIDENT AND OWNER OF SUBDIVISION PROPERTY WITHIN THE SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENTS DETAILS THE OBLIGATIONS AND RESPONSIBILITIES OF ALL THE SUBDIVISION OWNERS AND RESIDENTS.**

**THE DECLARANT (AS DEFINED HEREIN) EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY DECLARANT. THE SUB-ASSOCIATION (AS DEFINED HEREIN) HAS NUMEROUS DUTIES AND RESPONSIBILITIES THAT REQUIRES EXPENDITURES BY THE SUB-ASSOCIATION, SOME OF WHICH MAY NOT BE KNOWN AT THE TIME AN OWNER ACQUIRES A LOT WITHIN THE SUBDIVISION. THE FUNDS NEEDED TO MEET THESE EXPENDITURES SHALL BE PROVIDED BY ASSESSMENTS ON THE OWNERS. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING ANY MATTER, INCLUDING, BUT NOT LIMITED TO THE TOTAL OR THE TYPES OF ASSESSMENTS TO BE LEVIED AGAINST AN OWNER TO PAY FOR ANY ASPECT OF THE SUBDIVISION, SHOULD BE DISREGARDED IN THEIR ENTIRETY AND IN ALL EVENTS THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED SUPPLEMENTAL DECLARATION AND ANY APPLICABLE DOCUMENTS EXECUTED BY THE DECLARANT SHALL CONTROL.**

## **ARTICLE I RECITALS**

**WHEREAS**, Declarant has recorded that certain Master Declaration governing certain Property in Ada County, Idaho ("Master Declaration");

**WHEREAS**, real property described on Exhibit A attached hereto and incorporated herein by reference, is a portion of the Property, as defined in the Master Declaration, and is the subject of this Amended and Restated Supplemental Declaration (the "Subdivision Property");

**WHEREAS**, the Declarant recorded a Supplemental Declaration on March 30, 2022 as Instrument No. 2022-031623. Declarant desires to amend and restate the Supplemental Declaration and has the authority to record this Amended and Restated Supplemental Declaration pursuant to the Master Declaration;

**WHEREAS**, the Declarant has created this Amended and Restated Supplemental Declaration and the Sub-Association to govern the Subdivision Property, pursuant to the terms of the Master Declaration;

**WHEREAS**, the Declarant desires to subject the Subdivision Property to certain covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes, supplementing the Master Declaration, herein set forth to accomplish the following: (i) comply with the Master Declaration; (ii) insure the enhancement and preservation of Subdivision Property values, (iii) provide for the proper design, development, improvement and use of the Subdivision Property by the Declarant and all other persons or entities who may subsequently acquire an interest in the Subdivision Property, and (iv) create a residential development of high quality;

**WHEREAS**, as additional land owned by the Declarant adjacent to the Subdivision Property is platted and developed for uses similar to that of the Subdivision Property, upon approval pursuant to the Master Declaration and this Amended and Restated Supplemental Declaration, such may become subject to the terms of this Amended and Restated Supplemental Declaration by the annexation of the same as provided herein;

**WHEREAS**, the Declarant may, from time to time, promulgate further conditions, covenants, restrictions and easements relating to particular tracts or parcels of real Subdivision Property within the Property, which may supplement and/or amend this Amended and Restated Supplemental Declaration; and

**WHEREAS**, in order to achieve the objectives and desires of the Declarant, the Declarant will control the management and government of the Subdivision Property and the Sub-Association until such time as the Owners take over the management functions of the Sub-Association as provided in this Amended and Restated Supplemental Declaration.

All capitalized terms used in this Amended and Restated Supplemental Declaration shall have the same meanings as in Article III, Definitions, unless otherwise specified herein.

## **ARTICLE II DECLARATION**

The Declarant hereby declares that the Subdivision Property and each Lot (as defined herein) is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared



and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Subdivision Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each Lot therein and shall be binding upon all persons having or acquiring any right, title or interest in the Subdivision Property or any Lot therein; shall inure to the benefit of every Lot in the Subdivision Property and any interest therein; and shall inure to the benefit of and be binding upon the Declarant and each Owner, and each successor in interest of each, and may be enforced by the Declarant by and any Owner, or by the Sub-Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Amended and Restated Supplemental Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Subdivision Property in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision Property. No development or construction activities shall be deemed to constitute a nuisance or violation of this Amended and Restated Supplemental Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Amended and Restated Supplemental Declaration may be granted by the ACC (as defined herein) provided that such waiver shall be for a reasonable period of time and shall not violate the ordinances of the City of Meridian, Idaho, applicable to the Subdivision Property. Any such waiver need not be recorded and shall not constitute an amendment of this Amended and Restated Supplemental Declaration.

In the event of a conflict between the provisions of this Amended and Restated Supplemental Declaration and the Master Declaration, or any Master Association documents, the Master Declaration and the Master Association documents shall control.

### **ARTICLE III** **DEFINITIONS**

As used in this Amended and Restated Supplemental Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

**ACC**: The committee created by the Sub-Association which works on behalf of the Sub-Association to manage the architectural, building, landscape and other plans for Lots located in the Subdivision.

**ACC Rules/ACC Standards**: Such rules or standards created by the Sub-Association through its ACC.

**Amended and Restated Supplemental Declaration**: This instrument as it may be amended and/or supplemented from time to time.

**Annexation**: The process by which additional tracts or parcels of land not initially a part of the Subdivision Property are made subject to this Amended and Restated Supplemental Declaration.

**Assessment**: A payment required of an Owner of a Lot, including Regular, Special, Limited Assessments, as provided in this Amended and Restated Supplemental Declaration, including, but not limited to, a payment of any kind or nature required by the Master Association.

**Automobiles:** Cars, sports utility vehicles, motorcycles, motorized scooters, and/or standard size pick-up trucks and/or vans, all whether operable or inoperable.

**Board or Board of Directors:** The duly elected and qualified Board of Directors of the Sub-Association.

**Building:** A structure, whether complete, substantially complete, or partially complete, including, but not limited to, a foundation for such structure, constructed on a Lot on a temporary or permanent basis and, unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith, whether complete, substantially complete or partially complete.

**Bylaws:** The Bylaws of the Sub-Association, including any amendments thereto duly adopted.

**Common Area:** All real and personal property, including fee simple, easements (including, but not limited to, landscape easements), licenses, leases, or any other real property which constitute the following: (i) is defined as "Common Area" pursuant to the Master Declaration, and (ii) which is located within the Subdivision Property.

**Common Driveway:** A driveway used for vehicular access to more than one (1) Lot, as shown on the Plat or indicated in a recorded easement between affected Lots. The Common Driveways located within the Subdivision are owned by the Sub-Association, but are maintained, repaired and replaced solely by the Owners benefitting from access over and across such Common Driveway.

**Development:** The project to be undertaken by the Declarant resulting in the improvement of the Subdivision Property, or any additional Subdivision Property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other improvements.

**Declarant:** Smith Brighton, Inc. ("Brighton"), for as long as Brighton, or any entity with at least one principal in common with Brighton, owns any portion of the Property. Brighton hereby designates Brighton Corporation, an Idaho corporation, to be the "Designated Agent" for the Declarant to sign any and all documents and take any and all actions on behalf of Declarant which are permitted to be made or done by Declarant in this Amended and Restated Supplemental Declaration, including, but not limited to, the execution and recording of amendments to this Master Declaration. Any documents and/or acts taken by Brighton Corporation as Designated Agent may be relied upon as the act of the Declarant, unless Brighton Corporation's authority as Designated Agent is revoked as provided herein. Grantor may at any time revoke the status of Brighton Corporation as Designated Agent, and appoint a new "Designated Agent" for Grantor by recording such revocation and/or appointment in the records of Ada County, Idaho. Additionally, Brighton may at any time convey, assign and transfer its rights as "Declarant" in this Amended and Restated Supplemental Declaration to another entity which owns any portion of the Subdivision Property, so long as Brighton records a document evidencing such conveyance, assignment and transfer of its rights as Declarant to such entity(ies) in the records of Ada County, Idaho. A transferee of the Brighton's rights as described herein may also transfer its rights as described herein.

**Improvements:** All structures and appurtenances to real property, of all kinds and types, including, whether complete, substantially complete or partially complete, including, but not limited to, Buildings, pedestrian pathways, roads, driveways, parking lots, sidewalks,

walkways, walls, fences, screens, landscaping, poles, signs, pools, restroom facilities, changing rooms, community center, clubhouse, tennis courts, attached play structures, attached benches, irrigation facilities, storm drainage facilities, sprinklers, and/or lighting, if any. Improvements shall not include those items which are located entirely within the interior of a Building and cannot be readily observed when outside thereof, except for in the case of Common Area owned and/or maintained by the Master Association, or a Sub-Association.

**Initial Construction:** The physical movement of any soil on a Lot with the intent of constructing Improvements on such Lot.

**Limited Assessment:** An Assessment levied by the Sub-Association upon one or more Lots, but not upon all Lots within the Subdivision Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Sub-Association to correct a condition prohibited or to cure an Owner's breach hereunder, or as may be otherwise be assessed by the Master Association pursuant to the Master Declaration.

**Lot:** A portion of the Subdivision Property which is a legally described tract or parcel of land within the Property, or which is designated as a Lot in a Plat, including any improvements located on such tract or parcel of land.

**Master Association:** Apex Master Association, Inc., the Idaho non-profit corporation organized by the Declarant, comprised of Members consisting of Sub-Associations created through Supplemental Declarations, and which exists for the purpose of providing self-government for the Property, and its committees or other sub-associations, if any.

**Master Declaration:** That certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Pinnacle Master Association a.k.a. Apex Master Association, dated March 2022, recorded as Instrument No. 2022-028701 on March 22, 2022 in the records of Ada County, Idaho, as it may be further amended and/or supplemented from time to time, and including any Master Association governing documents, sub-associations, committees, rules, and/or regulations as they may be created, amended and/or supplemented from time to time.

**Supplemental Declaration:** (i) that certain Supplemental Declaration dated March 30, 2022 as Instrument No. 2022-031623 which is being amended by this Amended and Restated Supplemental Declaration; (ii) this instrument as it may be further amended and/or supplemented from time to time.

**Supplemental Declaration – Section Property:** The term “Supplemental Declaration – Section Property means a Supplemental Declaration executed and recorded by Declarant prior to the conveyance of any property within such Section to do any of the following: (i) designate certain property as a “Section”, (ii) impose additional or modified restrictions, covenants or obligations applicable to such Section, and (iii) attach a site plan of the property in such Section, as permitted pursuant to this Amended and Restated Supplemental Declaration.

**Member:** Any person(s) who is an Owner of a Lot within the Subdivision Property is a Member of the Sub-Association, unless otherwise provided by applicable law.

**Owner:** A person or persons or other legal entity or entities, including the Declarant, holding fee simple title to a Lot within the Subdivision Property. The obligations of Owner in this Amended and Restated Supplemental Declaration run with the Subdivision Property and are also personal to the Owner as the Owner of a Lot.

**Subdivision(s)**: A platted area within the Subdivision Property, as it is governed by this Supplemental Declaration, as such area may be amended, annexed, modified or supplemented from time to time.

**Plat**: A final subdivision plat covering a portion of the Subdivision Property, and any future real property annexed into the Subdivision Property pursuant to this Amended and Restated Supplemental Declaration from time to time, all as recorded in the office of the County Recorder, Ada County, Idaho, and all as the same may be adjusted and/or amended from time by duly recorded amendments thereto.

**Property**: The real property and any and all other appurtenances described in the Master Declaration or Supplemental Declaration, as may be adjusted from time to time.

**Regular Assessment**: An assessment levied by the Sub-Association against Owners and/or Lots to provide funds to pay the ordinary estimated expenses of the Sub-Association, including, but not limited to, expenses relating to the Common Area, or as otherwise may be assessed by the Master Association pursuant to the Master Declaration.

**Special Assessment**: An assessment levied by the Sub-Association other than a Regular or Limited Assessment, or as may otherwise be assessed by the Master Association pursuant to the Master Declaration.

**Section**: The term "Section" shall mean one or more Lots within the Subdivision which are from time to time designated as a "Section" by the recordation of a Supplemental Declaration.

**Sub-Association**: Pinnacle Homeowners Association, Inc., an Idaho non-profit corporation, organized by Brighton for the purpose of implementing the requirements of the Master Declaration, and this Amended and Restated Supplemental Declaration, and the Sub-Association's respective committees.

**Subdivision Property**: The whole of the Subdivision Property described in the recitals above (and Exhibit A), and any additional land annexed thereto pursuant to Article XII, below.

**Vehicles and Equipment**: Excluding Automobiles, all vehicles, recreation equipment, and/or gardening and maintenance equipment, and/or bicycles, and/or riding or moving devices, or any equipment related to the foregoing, including, but not limited to, trailers, mobile homes, larger than standard-size pickup trucks and/or vans, boats, tractors, campers, garden or maintenance equipment, and toys, all whether operable or inoperable.

Any capitalized terms not defined herein shall have the same meaning as in the Master Declaration.

#### **ARTICLE IV** **PURPOSE**

In addition to the Master Declaration, the Subdivision Property is hereby made subject to the covenants and restrictions contained in this Amended and Restated Supplemental Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Subdivision Property to fulfill the Project Objectives, as defined in the Master Declaration.

**ARTICLE V**  
**PERMITTED USES AND PERFORMANCE STANDARDS**

**SECTION 5.01 Use**

(a) **Generally.** Unless as otherwise designated in the Master Declaration, or unless otherwise specified in a Supplemental Declaration covering a particular Lot(s), Lots (excluding Common Area Lots) shall be used only for residential purposes and such uses as are customarily incidental thereto. As used herein and elsewhere in this Amended and Restated Supplemental Declaration, "residential" shall mean the following: use of the Improvements on a Lot for living accommodations by one (1) or more related or unrelated persons, including guests of the principal occupant(s), which guests reside therein on a temporary basis; except that, notwithstanding the provisions of §67-6530 et. seq., Idaho Code, as used in this Amended and Restated Supplemental Declaration, neither "residential" or "customarily incidental" uses include, nor shall the same be construed to include, the use of Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant, which is hereby expressly prohibited. As used herein, "customarily incidental" shall include, but is not limited to, the following uses, so long as such use is in compliance with all applicable statutes, laws and ordinances: (i) any and all uses by the Sub-Association of any Lots (including, but not limited to, Common Area uses, and/or development and sales activities relating to the Property, including model homes); and/or (ii) a home office provided that such home office does not result in a consistent increase in traffic and demand within the Property as determined by the Board in its discretion; and/or (iii) a daycare provided that such daycare does not result in a consistent increase in traffic and demand within the Property as determined by the Board in its discretion. Unless otherwise specified in this Amended and Restated Supplemental Declaration, or shown on the Plat for the Property and specifically permitted in a Supplemental Declaration, no Lot shall be used at any time for a use other than a residential use as defined herein, including, but not limited to, any commercial or business activity. In the event the Master Declaration provides for Sub-Association decisions, determinations, approvals regarding various issues, the Board or the ACC created herein shall provide the same, including, but not limited to, ACC Rules/Standards.

(b) **Failure to Comply.** Willful or negligent act or omission of an Owner and/or Occupant to comply with this Amended and Restated Supplemental Declaration shall subject such Owner and/or Occupant to enforcement actions pursuant to this Amended and Restated Supplemental Declaration and as determined by the Sub-Association from time to time, including, but not limited to, revocation of Subdivision privileges, and/or fines. In the case of fines, and/or costs incurred by the Sub-Association to correct such Owner and/or Occupant's acts or omissions, the Sub-Association may levy Limited Assessments against the Lot associated with such Owner and/or Occupant, based on the procedure provided herein for such Limited Assessments.

(c) **Buildings.** Except as (i) otherwise designated on the Master Declaration, (ii) otherwise specified for a particular Lot, tract or parcel in a Supplemental Declaration, or (iii) allowed by the zoning ordinance applicable to the Lot, no Lot shall be improved except with one (1) dwelling unit. Each dwelling unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) standard size cars, with a maximum number as determined by the ACC from time to time. The minimum square footage of living area within a dwelling unit located on a Lot shall as provided in the ACC Rules/ACC Standards. The square footage of living area shall be based on the finished interior living space at or above the grade of the Lot, exclusive of basement, porches, patios and garage.

**SECTION 5.02 Approval of Use and Plans.** No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan for the Improvements have been reviewed in advance and approved by the ACC in accordance with the provisions of Article X, below. Once an Owner commences Initial Construction on a Lot, an Owner shall have one hundred eighty (180) days from commencement of construction to complete or remove any

Improvements which are not completed within such period, with all costs and expenses incurred to do so at such Owner's cost and expense, and subject to a Limited Assessment for payment therefor.

**SECTION 5.03 Prohibited Buildings/Uses.** No trailer or other vehicle, tent, shack or garage shall be used as a temporary or permanent residence within the Property. No noxious or offensive nuisance shall be conducted on any Lot which may be or become an unreasonable annoyance or nuisance to the Occupants of the Lots within the Property (as determined by applicable law and/or the Board in its discretion) by reason of: (i) activities by any person; (ii) by reason of unsightliness; and/or (iii) the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

**SECTION 5.04 Adoption of ACC Rules/ACC Standards.** The Declarant, or in the event of the Declarant's failure to do so, the Sub-Association Board and ACC, shall have the power to create ACC Rules/ACC Standards relating to the design, planning, construction, alteration, modification, removal or destruction of Improvements within the Subdivision Property deemed necessary or desirable by the Declarant, or the governing ACC, as the case may be, to carry out the purposes of the Master Declaration and this Amended and Restated Supplemental Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of the Master Declaration and this Amended and Restated Supplemental Declaration.

**SECTION 5.05 Leasing** Building and Lots, if occupied, must be Owner-occupied and no portion of a Building or Lot thereof may be leased to an Occupant; however, if an Owner provides sufficient evidence to the Board of an undue hardship caused by the foregoing restriction on leasing, the Board may permit a lease in its discretion. Owner shall provide Board with a copy of any lease permitted by the Board. For the purpose of this Amended and Restated Supplemental Declaration, "leasing" is the regular, exclusive occupancy of a Building by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee.

**SECTION 5.06 Set-Backs.** The ACC shall have the right to stagger the front setbacks of the Lots in order to create a more pleasing appearance and to minimize the negative visual appearance of a uniform building line.

**SECTION 5.07 Antennae.** No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

**SECTION 5.08 Easements.** There is hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and/or for the use and benefit of the Sub-Association, and their successors and assigns, as specifically provided for herein, unless otherwise specified herein, the following easements, under, over, on, through and across the applicable areas of the Property:

(a) **Public Utilities.** To benefit all of the above, for the purpose of installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for any portion of the Property;

(b) **Water Drainage.** To benefit the Declarant and Sub-Association, for the purpose of water drainage, including "established" drainage described in Section 5.21, retention, recreation or amenity purposes; and to benefit each Owner, not to exceed one foot (1') as between each Lot;

(c) **Lot Maintenance.** To benefit the Sub-Association, including its contractors and agents, a non-exclusive easement across such Owner's Lot for the purpose of performing maintenance, repair and replacement of the landscaping elements within each Lot within the Property as described in Section 5.13, below.

(d) **Access to Common Areas.** To benefit the Declarant and the Sub-Association, for the purpose of access through those portions of Lots contiguous to any Common Area to maintain, repair, replace and restore landscaping and any other Improvements within the Common Area, including, but not limited to, a sprinkler system which may be installed to irrigate any landscaping located on a Common Area as shown on the recorded Plat for the Property;

(e) **Encroachment.** To benefit the Declarant, Sub-Association and each Owner, for the purpose of encroachment, reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner;

(f) **Plat.** To benefit all of the above, for the purposes for which they are designated, any additional easements, if any, as shown and designated on the recorded Plat for the Property; and

Unless otherwise specified herein or in another recorded document, the easement areas (excluding any equipment or appurtenances owned by the Declarant, the Sub-Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

**SECTION 5.09 Side Yard Easements.** The Declarant shall have the right at any time prior to the conveyance of fee title to a Lot to an Owner to declare and create an easement, not to exceed ten feet (10') in width (hereafter "Side Yard Easement") on, over, along and across any Lot (hereafter "Servient Lot") within the Property, which Side Yard Easement shall be adjacent to and along the whole of the side yard lot line that abuts an adjacent Lot (hereafter "Dominant Lot"), which Side Yard Easement shall, if so declared and created by the Declarant, except as expressly provided to the contrary hereafter, be for the sole and exclusive use of the Dominant Lot, provided that there shall be only one (1) such Side Yard Easement on each Servient Lot. The location of the Side Yard Easement on each Servient Lot, if not shown on the recorded subdivision Plat, if declared and created by the Declarant, shall be determined by the location of the Building on the Servient Lot and shall be located along the side lot line which is nearest to the Building constructed by an Owner on such Owner's Lot and shall terminate at the structure of the residential dwelling located on the Servient Lot. If the Declarant declares and creates a Side Yard Easement on a Lot in accordance with this Section, the Declarant shall execute, acknowledge and record in the official records of Ada County, Idaho, a Master Declaration of Side Yard easement, which shall evidence the declaration and creation by the Declarant of the Side Yard Easement and shall describe the location thereof upon the Servient Lot.

(a) **Purpose of Side Yard Easements.** The purpose of the Side Yard Easement, if declared and created by the Declarant pursuant to this Section, shall be to allow the Owner of the Dominant Lot the right to perpetually use and maintain, on an exclusive basis (except as expressly provided to the contrary hereafter), the area within the Side Yard Easement for any use or purpose for which the Dominant Lot may be used, subject to applicable setbacks as provided in the Master Declaration or required by the applicable ordinances of the City of Meridian, Idaho, as modified by any special or conditional use permit granted by the City of Meridian, Idaho, and relating to the Property.

(b) **Easements Appurtenant.** If the Declarant declares and creates a Side Yard Easement on a Lot, such Side Yard Easement shall be an easement appurtenant to the Dominant Lot and cannot be separated from the Dominant Lot or transferred or assigned by the owner of the Dominant Lot separate from the conveyance of the fee title to the Dominant Lot. A conveyance of fee title to the Dominant Lot shall constitute a conveyance, transfer and assignment of all right, title and interest in and to the Side Yard Easement to the recipient of fee title to the Dominant Lot notwithstanding the provision in the document(s) of conveyance to the contrary or if such document(s) of conveyance is silent with respect to such Side Yard Easement.

(c) **Covenants Running with Land - No Termination.** Each Side Yard Easement declared and created by the Declarant hereunder shall be a perpetual easement running with the land and shall inure to the benefit of and be binding upon the Owner of the Servient Lot and the Dominant Lot and their respective successor and assigns including, without limitation, all subsequent owners of either the Servient Lot and the Dominant Lot and all persons claiming under or through them. Each Side Yard Easement declared and created by the Declarant shall not terminate by lapse of time, non-use or the lack of maintenance.

(d) **Right of Access by Servient Lot.** Notwithstanding the exclusive nature of the Side Yard Easement as may be declared and created by the Declarant hereunder, the Owner, Occupant or Resident of the Servient Lot, and their employees, agents and contractors, shall have the right to enter upon the Side Yard Easement located on the Servient Lot, if such entry is necessary for the maintenance, repair or restoration of Improvements located on the Servient Lot. Any such entry by the Owner, Occupant or Resident of the Servient Lot, or their employees, agents or contractors, shall be at such time(s) and intervals as shall minimize the inconvenience of the Owner, Occupant or Resident of the Dominant Lot, and, when possible, shall be made after notice, written or oral, given to the Owner, Occupant or Resident of the Dominant Lot. The Owner, Occupant or Resident of the Servient Lot shall be responsible for the repair of any damage to any property, including landscaping, located in the Side Yard Easement resulting from such entry, which repair shall be made promptly after such entry, but in no event more than ten (10) days thereafter.

(e) **Right to Mortgage.** The Owner of the Dominant Lot shall have the right to mortgage such Owner's rights with respect to a Side Yard Easement which is appurtenant to such Owner's Lot, if required by the mortgagee, and, in such event, the mortgagee of an Owner's interest in the Side Yard Easement shall have no obligation hereunder unless and until the mortgagee acquires the fee title to the mortgaged property. The mortgage by the Owner of a Servient Lot shall be subordinate to and junior to the right of the Owner of the Dominant Lot in and to a Side Yard Easement, if any, located on a Servient Lot.

(f) **Acceptance and Succession.** If a Side Yard Easement is declared and created by Declarant, each Owner of the Servient Lot, and each successor Owner of the Servient Lot, by the acceptance of a deed to the Servient Lot, shall be deemed to agree to, and to be bound by, the terms, conditions and covenants of this Section. The rights and obligations contained in this Section shall bind each Owner of a Lot within the Property, and such Owner's Occupants, heirs, personal representatives, successors and assigns.

(g) **Indemnification.** From and after the date that the Declarant declares and creates a Side Yard Easement on a Lot, the Owner of each Dominant Lot shall indemnify, save and hold harmless the Owner of the Servient Lot, and such Owner's heirs, personal representatives, successors and assigns, from and against any claim, liability, damage, judgment, cost or expense, of whatever kind or nature, including attorneys' fees, arising from or relating to the use by the Owner of the Dominant Lot of the Side Yard Easement located on the Servient Lot.

(h) **Settlement of Disputes Concerning Side Yard Easements.** In the event of any dispute arising between the Owner of a Dominant Lot and the Owner of a Servient Lot concerning a Side Yard



Easement located on the Servient Lot, or a dispute between said Owners involving the interpretation of this Article, the matter shall be submitted to the Board, which shall act as a board of arbitration and shall proceed in accordance with the rules and procedures of the American Arbitration Association then in effect, and the decision of the majority of the members of the Board shall be binding on the respective Owners of the Servient Lot and the Dominant Lot.

**SECTION 5.10 Common Driveways.** To solely benefit the Owners and Lots using a Common Driveway for access to such Lot, for the purpose of permitting shared vehicular and pedestrian access, and ingress/egress, over such Common Driveway, and the right and obligation of such benefited Lots to repair, maintain and replace such Common Driveway as described in this Declaration.

**SECTION 5.11 Roofs.** The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Rules/ACC Standards.

**SECTION 5.12 Animals.** No animals, livestock, birds, insects or poultry of any kind, except Assistance Animals (defined below) shall be raised, bred, or kept on any Lot, except that Household Pets (defined below) may be kept for an Owner's personal use provided that: (a) such Household Pets are not bred or maintained for any commercial purpose; (b) no more than two (2) domesticated dogs and/or cats, or other small household pets may be kept on a Lot; and (c) any such Household Pet shall be properly restrained, be on a leash when not confined to an Owner's Lot and be controlled at any time they are within the Property so they do not unreasonably bother or constitute a nuisance to others.

"Household Pets" as permitted hereby, shall mean generally recognized household pets, such as, but not limited to domesticated dogs, domesticated cats, fish rodents and non-poisonous reptiles. Household Pets shall not include livestock, poultry, other birds or waterfowl not housed within the Dwelling, swine or other animals. Notwithstanding the foregoing, Household Pets shall not be kept which unreasonably bother or constitute a nuisance to other Owners. "Nuisance" shall mean any noise animal (as defined below), any vicious animal, any non-domestic household pet, or any animal which damages or destroys property. Excess, continued or untimely barking, molesting passerby, chasing vehicles, pursuing or attacking other animals, including wildlife, and trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. "Noisy Animal" means any animal which habitually, constantly or frequently disturbs the sleep, peace or quiet of any other Owner, Owners shall contact the local animal control agency regarding Noisy Animals prior to submitting a complaint to the Sub-Association about such animals. Any costs associated with responding to complaints of a Noisy Animal or Nuisance pet may be levied against an Owner as a Special Assessment. The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner) shall be jointly and severally liable for any and all damage and destruction caused by the Household Pet. Assistance Animals are welcome in the Subdivision in conformity with the Fair House Act, in accordance with the following:

(a) Under the Fair Housing Act, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. An "Assistance Animal" is any animal that works, assists and/or performs tasks and services for the benefit of a person with a disability or provide emotional support that improves the symptoms of a disability. Examples of Assistance Animals are guide animals, animals that alert people who are deaf, animals that pull a wheelchair, animals that alert and protect a person who is having a seizure, animals that remind an individual with mental illness to take prescribed medications, animals that calm an individual with Post Traumatic Stress Disorder during an anxiety attack and an animal that alleviates a person's depression or anxiety. Assistance Animals in training are to be treated as Assistance Animals, even if the handler is not disabled.

(b) The Sub-Association shall have the right, to the extent permitted under the Fair Housing Act, to prohibit or restrict any Assistance Animal that (1) is out of control and the handler does not take effective action to control it; or (2) the animal's behavior poses a threat to the health or safety of others. Any individual who brings an Assistance Animal in the Subdivision is financially and legally responsible for

any injury or damage caused by such Assistance Animal, and for any clean-up of the Common Area, road or other property necessitated by such Assistance Animal.

**SECTION 5.13 Maintenance.** The following provisions shall govern the maintenance of Lots and all Improvements thereon:

(a) Each Owner of a Lot shall maintain the landscaping planted and installed by the Owner in the landscape strip located between the street curb and the sidewalk adjacent to the Owner's Lot (hereafter "Street Landscape Buffer"), as required by Section 5.20, below, said landscaping to be maintained in a condition comparable to the condition of the landscaping on the Owner's Lot as required herein;

(b) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right of way or otherwise kept in the open or exposed to public view;

(c) For Lots burdened by that Master Perpetual Storm Water Drainage Easement as shown on a recorded plat, Owner shall maintain the easement area free of all encroachments and obstructions (including fences, shrubs, trees, and posts of any kind) which may adversely affect the operation and maintenance of the storm drain facilities. Any damage to the storm drain facilities caused by an Owner shall be repaired or replaced at the sole expense of the Owner, and is subject to a Limited Assessment for payment therefor.

**SECTION 5.14 Screening of Automobiles, Vehicles and Equipment.**

(a) The primary purpose of the garage required on each Lot is for the parking and storage of Automobiles. Each Improvement constructed on a Lot shall have a minimum of two (2) garage spaces for Automobiles. No other use of a garage which prohibits or limits the use of a garage for the parking or storage of the number of Automobiles for which it is designed shall be permitted. The Owner shall provide sufficient garage space or other enclosed parking approved by the ACC for all Automobiles used by the Occupants of a Lot, which Automobiles, whether operative or non-operative, shall be kept within the garage on a Lot, except for the following: (i) actual use; and/or (ii) temporary periods of no more than seventy-two (72) consecutive hours in connection with actual use.

(b) Vehicles and Equipment shall be kept at all times in an enclosed structure, and at no time shall any such Vehicles or Equipment be parked or stored on a Lot in public view or on a public or private right of way within the Property except: (i) when in actual use; and/or (ii) for a temporary period of no more than twenty-four (24) consecutive hours in connection with actual use.

(c) No Automobile or Vehicle and Equipment shall be parked in a manner that interferes with any other Owner's right of ingress and egress to their Lot.

(d) the Board may require removal of any inoperative Automobile or Vehicle and Equipment, or any unsightly vehicle as determined by the Board in its discretion, and any other Vehicle and Equipment, or item improperly parked or stored. If the same is not removed after two (2) days' written notice, the Board may cause removal at the risk and expense of the Lot Owner thereof. Any other item or equipment determined by the Board to be objectionable may be similarly removed.

**SECTION 5.15 Driveways.** If a Driveway location is indicated on a Lot in a Plat, such Lot's Driveway shall be constructed in the indicated location. Lots upon which Common Driveways are located, and Lots benefitted by such Common Driveways shall be indicated on the Plat. The Owners of Lots which benefit from a Common Driveway shall share equally in the costs of maintenance, repair, and replacement of such Common Driveway. The determination of whether to incur a cost for maintenance, repair and replacement shall be made by a majority of the Owners benefitting a Common Driveway (or unanimously if only two Lots

are benefitted by such Common Driveway); provided that by purchasing a Lot benefitted by a Common Driveway, such Owner agrees the Common Driveway must be maintained at least to the standards set forth in Section 5.13. If an Owner makes a determination that the aforementioned standard is not being met, the Owner may submit such determination and supporting evidence to the Board for review, and the Board shall hold a hearing upon notice to all affected Owners, and the Board shall determine whether such maintenance, repair and/or replacement is or was necessary to meet the applicable standards, as determined by the Board in its reasonable discretion. If the Board determines such maintenance, repair and/or replacement is or was necessary, and an Owner who undertakes and pays for the maintenance, repair and/or replacement at reasonable cost and does not receive reimbursement from a benefitted Owner, the Board may, in its sole discretion, levy a Limited Assessment for the benefit of the paying Owner(s) for such amount not paid, and/or revoke Subdivision privileges and/or assess fines until such payment is made. If the Board receives payment to release the Limited Assessment, the Board shall transmit such payment to the paying Owner. Additionally, the paying Owners shall have all remedies under this Amended and Restated Supplemental Declaration, including injunctive relief in Section 9.07, and any and all remedies at law or in equity. This Section is in addition to, not in lieu of, the Sub-Association's right to enforce this Master Declaration with respect to the Common Driveways.

**SECTION 5.16 Garage Doors.** Garage doors shall be closed except when open for a temporary purpose.

**SECTION 5.17 Exterior Materials and Colors.** All exterior materials and colors shall be selected and used which are approved by the ACC. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Rules/ACC Standards.

**SECTION 5.18 Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Rules/ACC Standards with respect to signs allowed within the Subdivision, which ACC Rules/ACC Standards, if adopted, shall regulate signs within the Subdivision and shall control over the specific provisions of this Section. The restrictions set forth in this Section do not apply to signage owned or controlled by the Sub-Association.

**SECTION 5.19 Fences.** No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the ACC Rules/ACC Standards, it being the intent of the Declarant that all such privacy fencing shall present, to the extent reasonably practicable, a uniform appearance throughout the Property. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of the City of Meridian, Idaho, applicable to the Property.

In addition to the requirements of the ACC Rules/ACC Standards applicable to fences, fencing, all fences and walls shall be subject to the following restrictions:

(a) No fence or wall shall be permitted to be constructed or installed on the Common Area or any portion of a berm constructed by the Declarant within the Property; provided, that if the Declarant constructs or installs a fence in a Common Area or on a berm, the ACC may allow fences on the adjacent Lot(s) to be attached thereto so long as such attachment does not (i) impede the maintenance, repair or replacement of the Common Area or berm, (ii) alter the visual theme established by the fence constructed or installed by the Declarant, and (iii) does not project above the top of the fence constructed or installed by the Declarant;

(b) Fences and walls shall not extend closer to any street than twenty feet (20') nor project beyond the setback of the principal Building on the Lot, except for corner Lots, which may be less, and except as otherwise approved by the ACC. The ACC may approve a maximum height of up to six feet (6') for fences, depending on the materials and location proposed by the Owner for such fence;

(c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs;

(d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Master Declaration or shown on the recorded Plat(s) of the Property; and

(e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the ACC. It is not the intent of this subsection (e) to create a view easement on or across any Lot ("Affected Lot") in favor of any Lot which is adjacent to or in the vicinity of the Affected Lot.

**SECTION 5.20 Landscaping.** The following provisions shall govern the landscaping of Lots within the Property:

(a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XI, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. The use of berms and sculptures in planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan and shall comply with Section 5.13 above and Section 5.21 below if any Storm Water Areas are located on said Lot;

(b) Each Owner shall be required to landscape the Street Landscape Buffer (as defined in Section 5.13, above), unless prohibited by a governmental authority, which landscaping shall be included in the landscape plan to be submitted to and approved by the ACC. Notwithstanding the foregoing, the ACC shall have the right, if deemed necessary by the ACC to assure uniformity in and/or compatibility of the landscaping within the Street Landscape Buffer, to adopt ACC Rules/ACC Standards which shall specify the nature, type, extent and design of the landscaping therein, and, if so adopted, the ACC Rules/ACC Standards shall be binding upon the Owners;

(c) All required landscaping on a Lot shall be installed within thirty (30) days after "substantial completion" of the Building on the Lot, with a reasonable extension allowed for weather. As used herein, "substantial completion" of the Building shall mean the Building meets the requirements to obtain a certificate temporary occupancy, regardless of whether such certificate is actually obtained; and

(d) The ACC Rules/ACC Standards shall set forth the initial minimum landscaping required on each Lot

**SECTION 5.21 Storm Drainage.** Storm drain facilities within the Property may be located within the Ada County Highway District ("ACHD") rights-of-way, in ACHD public rights-of-way, which may or may not be within Lot(s) owned by the Sub-Association (may be referred to herein as "ACHD ROW Areas"). Maintenance of all the storm drain facilities within the ACHD public rights-of-way shall be the responsibility of ACHD. The Sub-Association shall maintain the surface (grass, trees, shrubs, etc.) of the storm water management facilities outside the ACHD public rights-of-way (i.e., Sub-Association properties, swales, seepage trenches, storm ponds, park/detention areas, etc., hereinafter "Storm Water Areas") which shall be performed in accordance with the Maintenance and Operation Manual on file with ACHD and the Sub-

Association. All Storm Water Areas are subject to ACHD easements, if any, shown on the recorded Plat(s) for the Subdivision. The primary purpose of the Storm Water Areas is for the management of storm water. All recreational, aesthetic and other uses of these areas are secondary. Any additions to the Storm Water Areas or ACHD ROW Areas (such as benches or additional landscaping) require a license agreement with ACHD and, if approved, should be considered temporary and will not be replaced if removed by ACHD when heavy maintenance of the Storm Water Area is required. ACHD has the right to inspect such facilities in the Storm Water Areas and/or ACHD ROW Areas which affect ACHD, and if necessary, perform any required maintenance or repairs. ACHD has the right to assess the Sub-Association for the costs of any required maintenance or repairs where the Sub-Association or Owner (pursuant to Section 5.13 above) has failed to adequately maintain the ACHD ROW Areas or Storm Water Areas which affect ACHD that are part of the storm water treatment/detention area(s) within the Subdivision. Any changes or modifications to the Storm Water Areas above and beyond the improvements shown on the ACHD approved storm drain plans for the Subdivision which affect ACHD require the prior approval of ACHD. Notwithstanding the above, the Property may contain additional drainage facilities owned or managed by a governmental or quasi-governmental entity other than ACHD, as may be necessary for the development of the Property as determined by Grantor

**SECTION 5.22 Exemption of Declarant.** Subject to the Master Declaration, nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Subdivision Property, and/or effectuate lot line adjustments and/or surveys, or to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Subdivision Property owned or controlled by the Declarant, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of Development of the Subdivision Property. This Amended and Restated Supplemental Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain ACC approval of any Improvements constructed or placed within the Subdivision Property by the Declarant in connection with the Development of the Property. The Declarant shall be entitled to the non-exclusive use, without charge, of any Common Area within the Subdivision Property in connection with the marketing of the Lots therein. In addition, the Declarant shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas on and the Lot(s) owned by the Declarant for such a period of time as is reasonably deemed by the Declarant to be necessary.

## **ARTICLE VI**

### **PINNACLE HOMEOWNERS ASSOCIATION INC.**

**SECTION 6.01 Organization of Sub-Association.** Pinnacle Homeowners Association Inc. shall be organized by the Declarant as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its Bylaws and this Amended and Restated Supplemental Declaration. Neither said Articles nor said Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Amended and Restated Supplemental Declaration or the Master Declaration.

**SECTION 6.02 Members.** Each Owner (including the Declarant) of a Lot by virtue of being such an Owner, and for so long as such ownership of a Lot is maintained, shall be a Member of its governing Sub-Association. No Owner shall have more than one membership in the Sub-Association, but shall have such voting rights as hereafter set forth. A membership in the Sub-Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Sub-Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Sub-Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to

the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Sub-Association.

**SECTION 6.03 Classes of Membership.** The Sub-Association shall have two (2) classes of membership:

**CLASS A.** "Class A Members" shall be the Members of the Sub-Association which are all Owners of Lots within the Subdivision, with the exception of the Declarant. The Class A Members shall be non-voting Members of the Sub-Association until such time as voting rights of the Class B Member expires, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member(s).

**CLASS B.** "Class B Members" shall be the Declarant, and any person or entity to whom Declarant has specifically granted such Class B Member voting rights in a writing recorded in the records of Ada County, Idaho. If Declarant has not granted such Class B voting rights in such a recorded writing, the Owner of a Lot shall be a Class A Member. The Class B membership and the Class B Member voting rights shall cease and be converted to Class A membership and Class A voting rights when the Declarant (including any transferee who becomes Declarant) is no longer Declarant under this Amended and Restated Supplemental Declaration.

**SECTION 6.04 Board of Directors and Officers.** The affairs of the Sub-Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

**SECTION 6.05 Powers of Sub-Association.** The Sub-Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in this Amended and Restated Supplemental Declaration, the Master Declaration, Articles, and/or the Bylaws. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Amended and Restated Supplemental Declaration, the Master Declaration, Articles, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Sub-Association and other responsibilities set forth in this Amended and Restated Supplemental Declaration and the Master Declaration, including, but not limited to, the following:

(a) Assessments. The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Amended and Restated Supplemental Declaration;

(b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Master Declaration, Master Association documents, Supplemental Declaration, Sub-Association documents, or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof;

(c) Creation of Committees and Delegation of Powers. The authority to create, and delegate its power and duties to, committees that it creates, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable, and to create sub-associations;

(d) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Sub-Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Sub-Association, the Board, its officer, a manager or any other representative or employee of the Sub-Association, or the ACC;

(e) **Sub-Association Rules.** The powers to adopt, amend, and repeal such rules and regulations as the Sub-Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other Subdivision Property owned or controlled by the Sub-Association; provided, however, Sub-Association rules shall not discriminate among Owners and shall not be inconsistent with this Amended and Restated Supplemental Declaration, the Master Declaration, Articles, and/or Bylaws this Amended and Restated Supplemental Declaration. A copy of Sub-Association rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Sub-Association rules shall have the same force and effect as if they were set forth in and were part of this Amended and Restated Supplemental Declaration. In the event of any conflict between a Sub-Association rule or any provision of the Articles, Bylaws or this Amended and Restated Supplemental Declaration, the conflicting provisions of the Sub-Association rules shall be deemed superseded to the extent of any such inconsistency;

(f) **Emergency Powers.** The Sub-Association, or any person authorized by the Sub-Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or Subdivision Property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Sub-Association unless said entry was necessitated by a condition caused by the Owner or Occupant;

(g) **Licenses.** The power to grant and convey to any revocable third party licenses on, through, under or of the Common Area and/or the Subdivision Property, and/or service contracts, as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners; and

(h) **Fiscal Year.** The Board shall have the right to elect a fiscal year for the Sub-Association instead of a calendar year for budget, Assessment and accounting purposes.

**SECTION 6.06 Duties of Sub-Association.** In addition to the powers delegated to it by this Amended and Restated Supplemental Declaration, the Master Declaration, Master Association, Articles, and Bylaws, without limiting the generality thereof, the Sub-Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties, as required and/or delegated by the Master Association, and/or additionally desired by the Sub-Association:

(a) **Operation and Maintenance of Common Area.** Unless otherwise elected to be performed by the Master Association, perform, or provide for the performance of, the operation, maintenance and management of the Common Area, including the repair and replacement of Subdivision Property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant, and the maintenance, management, repair or replacement all other Common Area, at or above the standards required in the Master Declaration, all in compliance with all laws, plans, regulations, statutes and ordinances and agreements affecting the Subdivision Property, whether recorded or unrecorded;

(b) **Taxes and Assessments.** Pay all real and personal Subdivision Property taxes and assessments applicable solely to the Sub-Association, if any. The Sub-Association shall pay all other taxes,

federal, state or local, including income or corporate taxes, levied against the Sub-Association in the event that the Sub-Association is denied the status of a tax exempt corporation;

(c) **Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:

- (i) Comprehensive public liability insurance insuring the Sub-Association, the Board, officers, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area under the control and/or maintained by the Sub-Association. The limits of liability of such coverage shall be as determined by the Board of Directors;
- (ii) If elected by the Board, full coverage directors and officer's liability insurance in an amount determined by the Board;
- (iii) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Sub-Association's functions or to insure the Sub-Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Sub-Association funds or other property;
- (iv) The Sub-Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith; and
- (v) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Sub-Association.

(d) **Administration Fees, Costs.** Pay to the Declarant, so long as the Declarant manages the Sub-Association, all actual out-of-pocket costs paid or incurred by the Declarant in the management and administration of the affairs of the Sub-Association plus an administrative fee equal to current market fees as are typically charged for such management and administration for similar properties in Meridian, Idaho, and which administrative fee shall be compensation to the Declarant for the services provided to the Sub-Association;

(e) **Rule Making.** Make, establish, create, amend and repeal Sub-Association rules;

(f) **Architectural Control Committee.** Appoint and remove members of the ACC, all subject to the provisions of this Amended and Restated Supplemental Declaration;

(g) **Enforcement of Restrictions and Rules.** Perform such other reasonable acts, whether or not expressly authorized by this Amended and Restated Supplemental Declaration, to enforce any of the provisions of this Amended and Restated Supplemental Declaration and the Sub-Association rules for which enforcement is desirable as determined by the Sub-Association; and

(h) **Master Declaration/Master Association.** Uphold the provisions of the Master Declaration with respect to the Subdivision Property, including all Owners and all Lots, the Master Association and related documents, pay all Assessments related to the Master Association and Master Declaration, and participate and vote in all meetings of the Master Association. The Sub-Association shall hold appropriate



meetings and votes as determined in the Bylaws and other Sub-Association governing documents to determine its vote in any Master Association related matters.

- (i) **Annual Meeting.** Hold an annual meeting for the Members.

**SECTION 6.07 Cost of Maintenance, Repairs and Replacement.** Unless otherwise elected to be maintained by the Master Association (with the cost paid through Master Association Assessments to the Sub-Association and/or Owners as determined by the Master Association), the cost of the maintenance, repairs and replacements of the Improvements located on a Common Area, and any required Improvements, if any, located thereon within the public right(s)-of-way within the Subdivision Property, or any other Improvement, Subdivision Property or facility required by this Amended and Restated Supplemental Declaration and the Master Declaration and this Amended and Restated Supplemental Declaration to be maintained, repaired or replaced by the Sub-Association and the continuing operational expenses in connection therewith, including taxes, shall be paid by the Sub-Association from the funds of the Sub-Association obtained by Regular or Special Assessments against the Lots within the Subdivision Property which are served thereby. Such costs and expenses (hereafter "cost and expenses") shall be apportioned among the Lots within the Subdivision Property served thereby on an equal basis. The Sub-Association shall have the right to establish a reserve account to implement the purposes of this Amended and Restated Supplemental Declaration, and the Board shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment shall be determined by the Board. The Board shall have the right to place all funds collected in an interest-bearing account in an appropriate financial institution. In the event the Sub-Association does not have adequate funds to pay the cost and expenses deemed by the Sub-Association to be required, the deficiency shall be assessed to each Lot, on an equal basis, as a Special Assessment.

**SECTION 6.08 Budgets and Financial Statements.** Financial statements for the Sub-Association shall be regularly prepared and copies distributed to each Member as follows:

- (a) pro forma operating statement (budget) for each fiscal year shall be distributed at the Sub-Association's annual meeting; and

- (b) The Sub-Association, or its agent, shall cause to be prepared and delivered at the Sub-Association's annual meeting, a balance sheet as of the last day of the Sub-Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Sub-Association for that fiscal year.

**SECTION 6.09 Effective Date.** Until the creation and organization of the Sub-Association, the Declarant shall have the right to exercise all of the powers of the Sub-Association set forth in this Amended and Restated Supplemental Declaration.

## **ARTICLE VII** **COMMON AREA**

**SECTION 7.01 Use.** Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Common Area, subject to the following:

- (a) **Governing Documents.** The provisions of this Amended and Restated Supplemental Declaration, the Master Declaration, the Master Association and its constituent documents, the Sub-Association, Bylaws of the Sub-Association, and other Sub-Association constituent documents, and the rules, regulations and standards promulgated thereunder. Each Owner, using the Common Area, shall comply with the same;

(b) **Suspension of Rights.** The right of the Sub-Association to suspend the rights to use Common Area (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Sub-Association, and any such rights contained in the Master Declaration by the Master Association; and

(c) **Dedications.** The right of the Declarant to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes.

**SECTION 7.02 Liability for Damage.** In the event that any maintenance, repair or replacement of all or any portion of the any Improvements located on a Common Area, and the Subdivision Property, and/or located thereon within the public right(s)-of-way within the Subdivision Property, or any other Improvement, Subdivision Property or facility required by this Amended and Restated Supplemental Declaration to be maintained, repaired or replaced by the Sub-Association, is performed by the Sub-Association as a result of the willful or negligent act or omission of an Owner or Occupant, or a family member, guest or invitee of an Owner or Occupant, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Sub-Association and/or the Sub-Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in this Amended and Restated Supplemental Declaration.

**SECTION 7.03 Damage and Destruction.** In the case of damage by fire or other casualty to the Common Area, insurance proceeds to compensate for damage and destruction shall be paid to the Sub-Association, as the case may be, and the Sub-Association shall thereafter determine what repair or reconstruction shall be undertaken.

**SECTION 7.04 Condemnation.** If at any time any part of the Common Area can be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Sub-Association. The Sub-Association shall then use all or a portion of the funds as determined by the Sub-Association.

## **ARTICLE VIII ASSESSMENTS**

**SECTION 8.01 Covenant to Pay Assessments.** Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Sub-Association and/or Master Association. All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of his or her Lot.

**SECTION 8.02 Regular Assessments.** Regular Assessments shall be made by the Sub-Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and for the performance by the Sub-Association of its other duties and responsibilities, including, but not limited to, those under the Master Declaration. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Sub-Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous

periods and the creation of a reserve, surplus and/or sinking fund(s). The monthly Regular Assessment shall be set by the Board from time to time.

**SECTION 8.03 Special Assessments.** In addition to Regular Assessments, the Sub-Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

(a) If not paid by the Master Association, to defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Amended and Restated Supplemental Declaration; and/or

(b) To cure a deficit in the common and ordinary expenses of the Sub-Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

At the closing of the sale of each Lot by the Declarant, a special assessment in an amount determined by the Board from time to time shall be collected from the purchaser of the Lot as payment to the Sub-Association for the set-up costs and the maintenance of the Common Area and landscape easements to be maintained by the Sub-Association. Upon the transfer of ownership of a Lot by an Owner to a third party, a transfer fee in an amount determined by the Board from time to time shall be payable by the Owner to the Sub-Association, provided, that no transfer fee shall be payable if the Lot was purchased by a builder from the Declaration and within one (1) year thereafter sold and transferred to a third party.

**SECTION 8.04 Limited Assessments.** In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

(a) **Maintenance and Repair.** The Sub-Association shall have the power, but not the obligation, to incur expenses for maintenance and repair of any Lot or the maintenance, repair, completion or removal of, any Improvement on a Lot, including the Street Landscape Buffer (as defined in the Master Declaration ) and a Common Driveway (as defined in the Master Declaration) if such maintenance and repair, completion or removal, is necessary, is necessary to protect the Common Area or any other portion of the Property, and/or the existence of the condition of the Lot and/or Improvement reflects anything other than a first-class residential subdivision, as determined by the ACC in its discretion, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable timeframe after written notice of the necessity thereof has been delivered by the ACC to said Owner. The Sub-Association shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, completion and/or removal, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair, completion, and/or removal and the Assessment therefore;

(b) **Correction of Violations.** In addition to maintenance and repair, the Sub-Association, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Amended and Restated Supplemental Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in this Amended and Restated Supplemental Declaration; and

(c) **Limited Purpose.** The Sub-Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Sub-Association believes necessary with respect to certain Lots but not an appropriate expense for payment by the Sub-Association. Such

Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

**SECTION 8.05 Commencement of Regular Assessments.** Regular Assessments of the Sub-Association against each Lot shall commence the date of the closing of the first sale of a Lot to an Owner; provided, however, that Lots owned by the Declarant shall not be assessed a Regular Assessment. If the Declarant pays all or any portion of the expenses of the Sub-Association, such excess amounts so paid shall constitute either (i) a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Declarant within the Property, or (ii) a loan by the Declarant to the Sub-Association, which loan, without interest, shall be repaid by the Sub-Association to the Declarant from the funds of the Sub-Association which are available to make such repayment.

**SECTION 8.06 Uniform Rate of Assessment.** Except as expressly provided to the contrary in this Amended and Restated Supplemental Declaration, Regular and Special Assessments of the Sub-Association shall be fixed at a uniform rate for all Lots.

**SECTION 8.07 Assessment Due Date.** The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

**SECTION 8.08 Interest and Penalties.** Any Regular, Special or Limited Assessment levied by the Sub-Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

**SECTION 8.09 Estoppel Certificate.** The Sub-Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Sub-Association, a particular Owner is in default under the provisions of this Amended and Restated Supplemental Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Sub-Association shall have the right to charge a reasonable fee for the certification herein provided.

**SECTION 8.10 Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in either the Articles or the Bylaws of the Sub-Association, written notice of any meeting called for the purpose of levying a Special Assessment or a Limited Assessment shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of sixty percent (60%) of the Owners, who have voting rights in the Sub-Association, either in person or by proxy, shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of ten percent (10%) of the Owners who have voting rights in the Sub-Association, either in person or by proxy, shall constitute a quorum. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 8.04, above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial

meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

## **ARTICLE IX ENFORCEMENT OF ASSESSMENTS**

**SECTION 9.01 Right to Enforce.** The right to collect and enforce payment of the Assessments made by the Sub-Association and Master Association is vested in the Sub-Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Amended and Restated Supplemental Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

**SECTION 9.02 Creation of Assessment Liens.** There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Subdivision Property pursuant to this Amended and Restated Supplemental Declaration, and/or the Master Association, together with interest thereon and all costs of collection which may be paid or incurred by the Sub-Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens (including Mortgages) or claims created subsequent to the recordation of this Amended and Restated Supplemental Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant thereto, in which the first Mortgagee has been given and made in good faith and for value, which first Mortgage is of record as an encumbrance against such Lot prior to the recordation of an Assessment claim of lien; and (iii) labor or materialmen's liens, if the same are prior and superior by reason of applicable law. Except as expressly provided in this Section 9.02, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Amended and Restated Supplemental Declaration. All other lien holders acquiring liens on any Lot after recordation of this Amended and Restated Supplemental Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Sub-Association, whether or not such consent is specifically set forth in the instruments creating such other liens.

**SECTION 9.03 Notice of Assessment Lien.** If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Sub-Association shall prepare a written Notice of Assessment Lien setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Sub-Association, acknowledged by a Notary Public and recorded in the office of the Ada County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Sub-Association shall prepare and record a Notice of Satisfaction with respect thereto.

**SECTION 9.04 Enforcement.** Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Sub-Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Sub-Association any Assessments against the Lot which shall become due during the period of foreclosure. The Sub-Association shall have the right and power to bid at the foreclosure sale

or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

**SECTION 9.05 Notice Required.** Notwithstanding anything to the contrary contained in this Amended and Restated Supplemental Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Sub-Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

**SECTION 9.06 Reporting.** The Sub-Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 8.05, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Sub-Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Ada County, Idaho, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Sub-Association shall be required to notify a Mortgagee as herein provided, the Sub-Association shall assess the Owner who is delinquent an amount for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 8.02, above, as such amount is determined by the Board from time to time.

**SECTION 9.07 Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Amended and Restated Supplemental Declaration shall not be deemed to be an exclusive remedy and the Sub-Association may pursue all other remedies available at law or in equity.

## **ARTICLE X** **ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 10.01 Members of the Committee.** The ACC shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

**SECTION 10.02 Appointment.** For so long as Declarant exercises its rights as Declarant, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by a resolution in writing

unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

**SECTION 10.03 Compensation.** The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the plans and specifications described in Section 9.07.

**SECTION 10.04 Non-Liability.** Neither the Board, ACC, Declarant, (and in the case of the Owner, the Sub-Association), or any member, partner, officer, employee, agent, successor or assign thereof, shall be liable to the Sub-Association, any Owner or any other person, for any claim, cost, loss, damage or injury arising out of or connected with the performance of the powers, duties and/or responsibilities in this Amended and Restated Supplemental Declaration, Master Declaration, Articles, By-Laws, ACC Rules/ACC Standards, or actions and documents reasonably related thereto, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application, and/or determinations related to violations and enforcement of such the above described documents and actions, including, but not limited to the ACC Rules/ACC Standards. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Sub-Association, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign regarding the above.

**SECTION 10.05 Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision Property without the prior express written approval of the ACC.

**SECTION 10.06 Variances.** The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Amended and Restated Supplemental Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC. The ACC may not authorize variances from compliance with the Master Declaration without the additional approval of the Master Association.

If a variance is granted as provided herein, no violation of this Amended and Restated Supplemental Declaration, ACC Rules/ACC Standards, or Master Declaration, or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Amended and Restated Supplemental Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the ordinances of the City of Meridian, Idaho, applicable to the Property.

**SECTION 10.07 Application.** To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Subdivision Property, the Owner shall submit a

written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

(a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all setbacks, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements;

(b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used;

(c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped, including the Street Landscape Buffer, which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways, and which will promote water efficient landscape practices in compliance with applicable ACC Rules/ACC Standards; and

(d) **Evidence of Cost.** Such evidence of the cost of the Improvements as shall be satisfactory to the ACC to assure compliance with the requirements, if any, of the ACC Rules/ACC Standards.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

**SECTION 10.08 Completion Security Deposit.** At the time of the submission of the application under Section 10.07, above, the Owner shall deposit with the ACC, as a completion security deposit (hereafter "Completion Deposit"), as such amount is determined by the ACC from time to time. The Completion Deposit shall be held by the ACC as security for the completion by the Owner of the Improvements on the Lot as approved by the ACC, as required by for the completion of Improvements, including landscaping. If an Owner meets the completion deadlines and requests return of the Completion Deposit in writing within sixty (60) days after such deadlines have passed, the Completion Deposit shall be returned to the Owner without interest. If the Owner fails to complete such Improvements, and/or fails to request return of such Completion Deposits within such designated periods stated above, the ACC shall have the right to: (a) deduct from such Completion Deposit the amount of any penalties, off-sets and costs as set forth in this Amended and Restated Supplemental Declaration or the ACC Rules/ACC Standards, including any costs which may be paid or incurred by the Sub-Association or a third party to complete or remove such Improvements, as the case may be; and (b) deduct the Inspection Fee(s) payable by an Owner to the ACC from the Completion Deposit. Any remaining Completion Deposit shall be forfeited by Owner, and shall be retained for the Sub-Association's and/or the ACC's use for any purpose, free and clear of any interest of the Owner.

**SECTION 10.09 Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision Property as a quality residential development.



Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty-five (45) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

**SECTION 10.10 Inspection and Complaints.** The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating the Master Declaration, this Amended and Restated Supplemental Declaration or the ACC Rules/ACC Standards or the approved plans and specifications. The ACC may bring a complaint as provided in Article XI.

**SECTION 10.11 Inspection Fee(s).** The ACC shall have the right to charge an Owner an inspection fee (hereafter "Inspection Fee") as determined by the ACC from time to time for each inspection of the Improvements constructed on a Lot if the initial inspection, which shall be performed by the ACC without cost to the Owner, reveals that the Improvements do not comply with the approved application or is deviating therefrom or is violating this Amended and Restated Supplemental Declaration or the ACC Rules/ACC Standards or the approved plans and specifications, and an additional inspection(s) is required to assure such compliance. Any collection of Inspection Fee(s) so charged by the ACC to an Owner shall be enforceable as a Limited Assessment.

## **ARTICLE XI ENFORCEMENT**

### **SECTION 11.01 Complaints.**

(a) **Master Declaration.** Complaints involving potential violations of the Master Declaration shall be submitted in writing, by an Owner, or the Sub-Association, to the Master Association with a copy to the Board. The Master Association shall have the exclusive jurisdiction to evaluate and resolve such complaints.

(b) **Supplemental Declaration.**

(i) Complaints involving potential violations of this Amended and Restated Supplemental Declaration with regard to the ACC Rules/ACC Standards, or with regard to the duties and powers of the ACC and conditions imposed by the ACC, shall be submitted to the ACC; and

(ii) All other complaints shall be in writing and submitted to the Board.

(iii) In the event the ACC or Board, as applicable, receives a written complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise. Should the ACC or Board determine that there has been a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the violation and shall demand that the Owner conform to either or both of the following directives: the Owner shall immediately cease the activity which constitutes a violation; and the Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC or Board determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

**SECTION 11.02 Hearing.** An Owner served with a written notice of a violation by the Board, ACC or a Complainant shall have the right to request and be heard at a hearing in front of the ACC or Board, as determined appropriate by the Board, for the purpose of presenting facts and information. Such hearing must be requested by such party within ten (10) days from the date the written notice of any decision by the Board or ACC, or the date of written notice of violation by the Board or ACC, is mailed to the Owner (and Complainant) as evidenced by the records of the Board or ACC. The hearing shall be held within ten (10) days following receipt by the Board of the request for a hearing, unless the Board shall extend said period of time because of the unavailability of the Board, as applicable. A hearing may be continued by the ACC or Board for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC or Board shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC or Board with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC or Board incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC or Board and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 10.07.

**SECTION 11.03 Appeal of Decisions.** All Board decisions are final, unless upon written request by an Owner, Complainant, or ACC, the Board agrees to reconsider the matter in its sole discretion. An ACC decision may be appealed to the Board on a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.02 above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to violations unless said Owner or Complainant has participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the Board.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the Board shall be considered final and not subject to further appeal.

At the hearing the Owner, and Complainant, if any, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner and the Complainant, if any, shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner and the Complainant, if any, will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner and the Complainant, if any, shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the prior decision of the Board, in which event such costs shall be paid by the Sub-Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as a Limited Assessment.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

Notwithstanding anything to the contrary herein, any informal decisions, actions, or investigations by the ACC and/or the Board on a verbal complaint shall be within the sole discretion of the ACC and/or Board, and such decisions, action or investigations shall not waive any and all processes provided herein, or supersede any requirements for a written complaint herein.

**SECTION 11.04 Enforcement.** The Board shall be authorized on behalf and in the name of the Sub-Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Amended and Restated Supplemental Declaration.

The Board shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the Board shall have the sole discretion to commence such proceedings.

The authority of the Board as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Sub-Association.

In the event the Sub-Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Sub-Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Sub-Association within five (5) days after written demand therefor is mailed to the Owner, the Sub-Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article IX, above.

**SECTION 11.05 Additional Damages.** In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Sub-Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited

Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The Board may enforce the same as a Limited Assessment.

**SECTION 11.06 Non-Exclusive Remedy.** The right of the Sub-Association to levy a Limited Assessment shall not be deemed to be an exclusive remedy of the Sub-Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

**SECTION 11.07 Private Rights.** The Sub-Association shall not mediate or litigate a “private dispute” between Owners. As used herein, a “private dispute” shall mean a dispute to which either of the following apply: (i) the Sub-Association has determined that there is no violation of this Amended and Restated Supplemental Declaration, or other Project Documents, either formally or informally, verbally or in writing; and/or (ii) in the sole discretion of the Board, the Board determines that the neither the interests of the Sub-Association or a substantial number of the Owners would be benefitted by the Board and/or the Sub-Association’s mediation and/or litigation of such dispute.

## **ARTICLE XII ANNEXATION**

**SECTION 12.01 Annexation.** Upon a recorded annexation in compliance with the Master Declaration, additional real Property may be annexed into the Subdivision Property and brought within the provisions of this Amended and Restated Supplemental Declaration by the Declarant, at any time, without the approval of any Owner or the Sub-Association. To annex additional real property to the Subdivision as provided herein, the Declarant shall record an amendment to this Amended and Restated Supplemental Declaration, which amendment must be approved in writing as described in the Master Declaration. Upon such annexation, the Owners of the Lots within the annexed real property shall become Members of the Sub-Association with all rights, privileges and obligations as all other Members as provided in this Amended and Restated Supplemental Declaration. The amendment of this Amended and Restated Supplemental Declaration as authorized by this Section 12.01, to annex additional real property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.02 of this Amended and Restated Supplemental Declaration.

(a) **Section Property.** Declarant may annex certain Subdivision Property by recording a Supplemental Declaration – Section Property to the Amended and Restated Supplemental Declaration, which amendment must be approved in writing as described in the Master Declaration. The Supplemental Declaration – Section Property may supplement this Amended and Restated Supplemental Declaration with additional, amended or different covenants and restrictions, or may delete or modify covenants and restrictions for that specific real property described therein, so long as the additional, different, deleted or modified covenants or restrictions comply with the Master Declaration and obtain approval as required therein. Upon such annexation, the Owners of the Lots within the Section Property shall become Members of the Sub-Association

**SECTION 12.02 De-Annexation.** Upon a recorded de-annexation in compliance with the Master Declaration, the Declarant shall be required to delete all or a portion of the real property from the coverage of this Amended and Restated Supplemental Declaration and the jurisdiction of the Sub-Association, so long as the Declarant is the Owner of all of the Subdivision Property to be de-annexed and, provided further, that an appropriate amendment to this Amended and Restated Supplemental Declaration is recorded in the office of the Ada County Recorder.

**ARTICLE XIII**  
**MISCELLANEOUS**

**SECTION 13.01 Term.** This Amended and Restated Supplemental Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2040, unless amended as hereafter provided. After December 31, 2040, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Amended and Restated Supplemental Declaration and such written instrument is recorded with the Ada County Recorder.

**SECTION 13.02 Amendment.** Notwithstanding anything to the contrary herein, all amendments and/or supplements to this Amended and Restated Supplemental Declaration must comply at all times with the Master Declaration. This Amended and Restated Supplemental Declaration may be amended as follows:

(a) **Approval of Master Association; By Declarant.** Unless otherwise required by the Master Declaration, this Amended and Restated Supplemental Declaration may be amended pursuant to this Section 13.02 without the approval of the Master Association, so long as such document is consistent with the Master Declaration, the Master Association, and all documents related thereto. Until Declarant sells all Lots within the Subdivision Property, Declarant may amend this Amended and Restated Supplemental Declaration by executing a written amendment and recording it in the records of Ada County, Idaho.

(b) **By Owners.** Except as otherwise expressly provided this Amended and Restated Supplemental Declaration, the provisions of this Amended and Restated Supplemental Declaration, other than this Section, may be amended by an instrument in writing, signed by the Class B Member. After the Class A Members become entitled to voting rights, the provisions of this Amended and Restated Supplemental Declaration, other than this Section, may be amended by an instrument in writing, approved by at least 50% of the of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose, as certified by the President and Secretary of the Sub-Association. Any amendment to this Section shall require: (i) the signatures of at least 66.67% of all of the Class B votes held by the Class B Members, as certified by the President and Secretary of the Sub-Association, and any the vote of the Class B Members, or (ii) after the Class A Members become entitled to voting rights, approval by 66.67% of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose, as certified by the President and Secretary of the Sub-Association. Amendments complying with this Section 13.02 shall be effective upon recordation with the Ada County Recorder.

(c) **By Necessity.** Declarant shall have the exclusive right, power and authority to amend this Amended and Restated Supplemental Declaration, or any of the Subdivision Property documents, at any time and at its sole discretion, if such amendment is: (i) necessary to bring any provision into compliance with any applicable laws, statutes, rules, plans, ordinances, or other agreements governing the Property; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage for the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental authority or reputable private insurance company or lender to make insure or purchase mortgage loans on the Lots; and/or (v) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental authority or applicable federal, state or local statute, ordinance, and/or law.

**SECTION 13.03 Books and Records.** All accounting and financial books and records, and meeting minutes of the Board and Sub-Association, and any other records determined by the Board in its sole discretion, shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in

the Sub-Association, or at such other place and time as the Board shall prescribe. Neither the Board nor the ACC shall be required to release any records regarding enforcement activities, but may do so in its sole discretion.

**SECTION 13.04 Non-Waiver.** The failure of the Declarant, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Amended and Restated Supplemental Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

**SECTION 13.05 Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Amended and Restated Supplemental Declaration and agrees to be bound by the same.

**SECTION 13.06 Indemnification of Board Members.** Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Sub-Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Sub-Association or prior thereto during the period the Declarant is exercising the powers of the Sub-Association.

**SECTION 13.07 Notices.** Any notice permitted or required to be delivered as provided in this Amended and Restated Supplemental Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

**SECTION 13.08 Interpretation.** The provisions of this Amended and Restated Supplemental Declaration and any Supplemental Declaration shall be liberally construed to effectuate the Project Objectives and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Amended and Restated Supplemental Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**SECTION 13.09 Severability.** Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**SECTION 13.10 Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Declarant.

**SECTION 13.11 No Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

**SECTION 13.12 Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the covenants, easements and restrictions contained in this Amended and Restated Supplemental Declaration, the Declarant, the Master Association, and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Amended and Restated Supplemental Declaration or provided by law.

**SECTION 13.13 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Amended and Restated Supplemental Declaration shall entitle any Owner to terminate this Amended and Restated Supplemental Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Amended and Restated Supplemental Declaration. Any breach of this Amended and Restated Supplemental Declaration shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Amended and Restated Supplemental Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**SECTION 13.14 Attorney's Fees.** In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Amended and Restated Supplemental Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding the prevailing party's reasonable costs and attorney's fees, including the same with respect to an appeal.

**SECTION 13.15 Force Majeure.** The period of time provided in this Amended and Restated Supplemental Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

[END OF TEXT]

IN WITNESS WHEREOF the Declarant has executed this Amended and Restated Supplemental Declaration effective as of March 29, 2022.

DECLARANT:

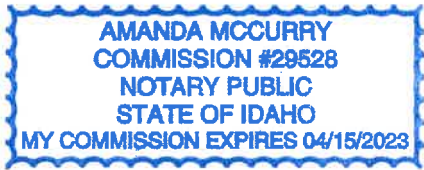
SMITH BRIGHTON INC., an Idaho corporation


By:   
Robert L. Phillips, Vice President

STATE OF IDAHO    )  
                              ) ss:  
County of Ada        )

On this 22nd day of July, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT L. PHILLIPS, known or identified to me to be the Vice President of Smith Brighton Inc., an Idaho corporation, and the person who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same in said limited liability company's name.

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



  
Notary Public for Idaho  
My Commission Expires: 4/15/2023



**EXHIBIT A**

**DESCRIPTION OF SUBDIVISION PROPERTY**

**LOTS DESCRIPTION - BUILDABLE**

Parcels of land being a portion of Apex Southeast Subdivision No. 1, as same is shown on the Plat thereof recorded in Book 122 of Plats at Pages 19381 through 19387, Instrument No. 2022-024156, of Ada County Records, more particularly described as follows:

Block 3: Lots 2 through 12; Lots 15 through 18

Block 4: Lots 2 through 7; Lots 9 through 14

Block 5: Lots 1 through 9; Lots 11 through 19

Block 6: Lots 2 through 7; Lots 9 through 14

Block 7: Lots 2 through 11; Lots 14 through 17

Block 8: Lots 2 through 4

Block 9: Lots 2 through 4

END

### **LOTS DESCRIPTION - COMMON AREA**

Parcels of land being a portion of Apex Southeast Subdivision No. 1, as same is shown on the Plat thereof recorded in Book 122 of Plats at Pages 19381 through 19387, Instrument No. 2022-024156, of Ada County Records, more particularly described as follows:

Block 3: Lots 1, 13, 14 and 19

Block 4: Lots 1 and 8

Block 5: Lot 10

Block 6: Lots 1 and 8

Block 7: Lots 1, 12, 13 and 18

Block 8: Lot 1

Block 9: Lot 1

END