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**DECLARATION
OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
RENOVARE SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE RENOVARE SUBDIVISION**

THIS DECLARATION is made as of the 9th day of April, 2015, by MDG LLC, an Idaho limited liability company, hereinafter referred to as "Declarant."

RECITALS:

A. Declarant was the owner of certain real property in the City of Eagle, Ada County, State of Idaho, which the Declarant is developing into a single family residential subdivision. A portion of the real property has been platted on the Plat of Renovare Subdivision Phase 1 ("**Phase One**"), Instrument No. 2015-022445 in the office of the Recorder of Ada County, Idaho. The described parcel of real property in said Plat is hereinafter referred to as the "Real Property."

B. Renovare Subdivision is a residential development that will be built out in two (2) phases. Phase One consists of approximately 29 residential lots, 4 common area lots that include an entry landscaped lot, two pond lots, and a lot for internal private streets. Phase One also plats a non-buildable lot not owned by the Declarant. The Common Lots in Phase One include: ponds, wetlands, an open space lot, and other amenities and facilities. The development lies partially in the Boise River floodplain and will be developed subject to special development criteria relating to wetlands areas, non-buildable open space, and flooding. Upon the platting of a second phase, the Declarant, by recordation of a supplemental declaration, shall annex the second phase making it subject to this Declaration, all in accordance with Section 12.6 herein.

C. The purpose of this Declaration is to set forth the restrictions, covenants, limitations, easements and conditions that, together with the City of Eagle ordinances and approvals of this property, are designed to preserve the unique value of the Real Property, and its desirability and attractiveness as a quality residential development, in which both the improved Common Lots and the undeveloped natural resources are maintained, preserved and protected.

D. The protective covenants, conditions, restrictions, reservations, easements, liens and charges are for the benefit of Real Property and all owners thereof. All conveyances of the Real Property or any part thereof shall be subject to this Declaration.

DECLARATION:

NOW, THEREFORE, Declarant hereby imposes upon the Real Property the following easements, conditions, covenants, restrictions and reservations which shall run with the Real Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof. Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit the Declarant's right to complete the development of the Real Property and to construct improvements thereon.

ARTICLE 1: DEFINITIONS

The following capitalized and italicized terms shall, as used in this Declaration, have the following meanings. Italicized words or terms within a definition refer to other defined words or terms:

- 1.1 “*ACHD*” shall mean Ada County Highway District.
- 1.2 “*ADC*” shall mean the Architectural Design Committee.
- 1.3 “*Aesthetic Ponds*” shall mean those ponds throughout the *Development*, including the ponds that are located on the *Pond Lots*, and the ponds located on Lot 34.
- 1.4 “*Architectural Design Guidelines*” shall mean such standards promulgated by the *Declarant* and/or the *ADC* as authorized by **Section 11.3** below.
- 1.5 “*Area of Special Flood Hazard (“ASFH”)*” shall mean and refer to those areas that are identified on the Flood Insurance Rate Map (“**FIRM**”) Panel #16001C0162H, with an effective date of February 19, 2003, which areas are subject to the regulations of the Eagle City Code, Title 10, Flood Control. The FEMA Regulatory Floodway boundary line is depicted on the *Plat* and is further shown on that Record of Survey No. 7068, records Ada County, Idaho.
- 1.6 “*Assessment*” shall mean a payment required of *Association Members*, including Regular, Special or Limited, as permitted in this Declaration.
- 1.7 “*Association*” shall mean and refer to Renovare Home Owners’ Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.
- 1.8 “*Association Rules*” shall mean such rules promulgated by the *Declarant* and/or the *Association* pursuant to **Section 8.4(d)**.
- 1.9 “*Board*” shall mean the duly elected and qualified Board of Directors of the *Association*.
- 1.10 “*Builder*” shall mean the general contractor who constructs the *Dwelling* on a *Residential Lot* for an *Owner*, or for sale by the *Declarant* to an *Owner*.
- 1.11 “*Building*” includes any *Dwelling*, house, garage, or any other partially or fully enclosed building, or other structure, consisting of one or more walls or roof.
- 1.12 “*Common Lots*” shall mean and include the *Entry Lot*, the *Open Space Lot*, the *Pond Lots*, and the *Private Streets*; and any lot or parcel designated as a *Common Lot* in the final *Plat* of the subdivision. Lot 34 is NOT a *Common Lot*. It is a non-buildable lot owned by others,

and is encumbered with a greenbelt easement. No *Common Lot* may be transferred, sold or further subdivided without the prior written approval of the City of Eagle.

1.13 "*Common Facilities*" shall mean and refer to those physical improvements constructed by Declarant upon *Common Lots*, or in the case of the *Pressurized Irrigation System*, *Storm Water Drainage Facilities* and *Flood Water Storage System* that are located in utility easements crossing the *Residential Lots*, *Common Lots* or non-platted contiguous parcels. Other *Common Facilities* include, without limitation, fencing on *Common Lots*, street lights and accent lighting; *Private Gates*, the Development signage, and all related equipment and improvements and the *Entry Lot*, signage, and other improvements; and all landscaping on the *Common Lots*.

1.14 "*Declarant*" shall mean the undersigned owner of the *Real Property*, including any successor to the Declarant, who succeeds to the ownership of substantially all of Grantor's interest in the whole of the *Real Property*, or any person to whom the Declarant has assigned its rights hereunder.

1.15 "*Declaration*" shall mean this Declaration, as it may be amended from time to time.

1.16 "*Development*" shall mean Phase One and future phases of the *Renovare Subdivision*.

1.17 "*Development Agreement*" shall mean that certain Development Agreement by and between the City of Eagle and Rock Contractors, Inc. as the Applicant, recorded as Ada County Instrument No. 108055908, as modified from time to time; specifically including the development agreement modification identified as RZ-24-06 MOD4.

1.18 "*Drainage Easement*" shall mean those easements for drainage noted on the *Plat* encumbering the front lot lines common to the *Private Streets*, all rear lot lines and specifically encumbering Lots 8 and 33 of the *Development*.

1.19 "*Dwelling*" shall mean any structure intended to be occupied as a single-family residence, together with the vehicular parking garage attached to such *Dwelling* and all projections therefrom.

1.20 "*Entry Lot*" shall mean Lot 1 of the *Development*.

1.21 "*First Mortgagee*" shall mean any Mortgagee possessing or holding a lien on a *Residential Lot* or any part thereof prior to any other Mortgage.

1.22 "*Flood Water Storage System*" shall mean the *Aesthetic Ponds*, and the *Common Facilities* relating to the control of flooding in the floodplain, storm drainage overflow, and gravity irrigation overflow, if any.

1.23 “*Limited Assessment*” shall mean an Assessment levied by the Association upon one or more *Residential Lots*, but not upon all *Lots* within the *Real Property*, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the *Association* to correct a condition prohibited or to cure an Owner’s breach hereunder.

1.24 “*Lot(s)*” when the word “*Lot(s)*” is utilized it shall mean and refer to any tract of land within the *Real Property* designated on the *Plat* as a subdivided lot in Block 1 of Renovare Subdivision Phase One, be it a *Residential Lot* or *Common Lot*.

1.25 “*Member*” shall mean any person who is an *Owner* of a *Residential Lot* within the *Development*.

1.26 “*Mortgage*” shall mean any mortgage, deed of trust, land sale contract or other security instrument by which a *Residential Lot* is encumbered.

1.27 “*Mortgagee*” shall mean any *Person* or the successor to any *Person* named as the mortgagee, beneficiary, seller or creditor under a *Mortgage*.

1.28 “*Occupant*” shall mean any person, association, corporation or other entity who is an *Owner*, the guest of an *Owner*, or has leased, rented, or is otherwise legally entitled to occupy and use any *Dwelling* on a *Residential Lot* or *Building*.

1.29 “*Multi-Facility Maintenance Manual*” shall mean that certain maintenance manual prepared for the Declarant on behalf of the Association, setting forth maintenance requirements for the *Pressurized Irrigation System*, the *Storm Water Drainage Facilities*, including the *Aesthetic Ponds*, and the *Private Streets*, including the *Private Gate*, which *Multi-Facility Maintenance Manual* may be amended from time to time by the *Association*.

1.30 “*Open Space Lot*” shall mean Lot 33.

1.31 “*Owner*” shall mean and refer to the Person(s) who is the record owner of fee simple title to any *Residential Lot*, excluding in all cases, any party holding an interest in a *Residential Lot* merely as security for the performance of an obligation.

1.32 “*Person*” shall mean a human being, a corporation, a partnership, a limited liability company, or any other legal entity.

1.33 “*Plat*” shall mean and refer to that certain plat of the Renovare Subdivision Phase 1, recorded in the Ada County Recorder's office, which Plat when recorded subdivided all of Phase One.

1.34 “*Pondbank(s)*” shall mean the portion of any *Lot* that slopes from the relatively flat grade of such *Lot* down to the waterline of the *Aesthetic Ponds*.

1.35 “*Pond Lot(s)*” shall mean *Common Lot 8* and *Open Space Lot 33*.

1.36 “*Pressurized Irrigation System*” shall mean the physical infrastructure that delivers irrigation water to each *Lot*, including the pump facility located on Lot 34; the underground irrigation main pipes and valves located in the irrigation easements noted on the *Plat*; the user service connections, including valve boxes and service boxes, delivering the irrigation water to the *Residential Lots*; and the underground sprinkler systems on the *Common Lots* and *Residential Lots*, and all related equipment, parts and materials, including without limitation the buried sprinkler lines, heads and valves installed on the individual Residential Lots by the Builder.

1.37 “*Private Gate*” shall mean the gate located at the westerly end of E. Loan Shore Ln.

1.38 “*Private Streets*” shall mean the internal *Development’s* streets identified on the *Plat* as E. Lone Shore Ln., S. Renovare Ln. and S. Don Vincent Dr. The *Private Streets* are for the use and benefit of the *Residential Lots*, and any utilities that utilize the easements contained in the *Private Streets*, and are to be owned and maintained by the Association, as set forth in Section 8.7(c) herein.

1.39 “*Real Property*” shall mean the property defined in the recitals above.

1.40 “*Regular Assessment*” shall mean an Assessment levied by the *Association* to provide funds to pay the ordinary expenses of the Association.

1.41 “*Residential Lot(s)*” shall mean and refer to any tract of land within the *Real Property* designated on the *Plat* as a subdivided lot that may be independently owned and intended for development, use, and occupancy as a single family residence.

1.42 “*Shared Driveway*” shall mean the driveway easement that provides approximately twenty feet (20’) wide driveway access to Lot 13, across the north twenty (20’) of Lot 14, as shown on the *Plat*. This Shared Driveway also provides fire department and other emergency access to the *Development* and the turn-around easement on a portion of Lots 14 and 15 designated on the *Plat*. It shall be jointly maintained by the Owners of Lot 14 and Lot 13.

1.43 “*Special Assessment*” shall mean an Assessment levied by the *Association* other than a *Regular Assessment* or *Limited Assessment*.

1.44 “*Storm Water Drainage Facilities*” shall mean the facilities for storm water treatment, conveyance and collection within the *Development*.

1.45 “*Transition Date*” shall mean the latter of the date the *Declarant* certifies in writing to the Association that no additional *Real Property* shall hereafter be made subject to this *Declaration*, or the date when there are no more than three (3) *Residential Lots* without homes or *Residential Lots* with new homes offered for sale to the general public.

1.46 “*Water Rights*” shall mean those certain shares in the Union Ditch Canal Company, together with any additional water rights that the *Declarant* files with the Idaho Department of Water Resources, as more particularly identified in **Section 7.2**, together with any additional Water Rights acquired by the Declarant for use on the Development.

1.47 “*Wetland Areas*” shall mean those certain areas containing wetland and floodplain value in the *Development*, including the wetland areas described and delineated on a United States Army Corp of Engineers Clean Water Act 404 Permit NWW (the “*USACE 404 Permit*”). Such Wetland Areas include both wetlands in existence prior to the construction of the Development and Wetland Areas specifically constructed within the *Development* (commonly known as mitigated wetlands).

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

ARTICLE 2: PURPOSE

2.1 The Real Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Residential Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure a well integrated quality residential development, and to guaranty maintenance of the Common Lots, excluding however Lot 34, and the Common Facilities located thereon, and to protect the natural resources of the open space, contiguous natural areas, the North Channel of the Boise River, and the Wetlands Areas. The covenants and restrictions contained in this Declaration have been specifically designed to meet such objectives, to comply with the City of Eagle ordinances and approvals, and for the specific purposes of:

(a) Insuring Owners and Occupants of quality design, development and construction of the Dwellings, and to protect and enhance their investment and use of the improved Residential Lots.

(b) Preventing the construction within the Development of inferior designed Dwellings, or Dwellings constructed with unsuitable materials.

(c) Encouraging and insuring the building of the Dwellings in appropriate locations on the Residential Lots, to assure visual quality, harmonious appearance, and to protect sensitive environmental areas within the Real Property.

(d) Providing for the protection of the Wetland Areas, Pond Lots and the Open Space Lot.

(e) Securing and maintaining proper set-backs from streets, adjoining lots, the ASFH, Wetland Areas and open areas.

(f) The integration of development of the Residential Lots by setting common general standards consistent with the Architectural Design Guidelines.

(g) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

ARTICLE 3: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to Real Property and shall be for the benefit of, and limitation upon, all present and future Owners, or any interest therein, and the Association, which is hereby empowered, in addition to each Owner, to enforce the same:

3.1 Use. Each Residential Lot shall be used only for residential purposes. As used herein “residential purposes” shall mean the use of the Dwellings on a Residential Lot for living accommodations for not more than two (2) unrelated persons, excluding guests of the principal Occupants, which guests may reside therein on a temporary basis. “Residential” is not intended, nor shall the same be construed to include the use of the Residential Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant. Any use of a Residential Lot, other than for residential purposes, shall not be permitted, including but not limited to use of the Dwellings for any trade, business, professional or illegal activity.

3.2 Leasing Restrictions. Any Lease (as defined below) permitting the occupancy of a Residential Lot by a tenant shall provide that the terms of the Lease shall be subject in all respects to the provisions contained in this Declaration, the Association Rules, and its Bylaws; and shall further provide that the failure by any such tenant to comply with the terms of such documents shall be a default under such lease, and that upon the failure of the Owner to enforce the terms of such documents, the Association shall be deemed the Owner’s attorney-in-fact for the purpose of enforcing the terms of this Declaration, including the right to evict the tenant. For the purposes of this Declaration, a “Lease” shall mean any agreement for the leasing and rental of a Dwelling, including a month-to-month rental agreement. All such leases shall be in writing; provided, however, the failure of the Owner to enter into a written Lease shall not prevent the Association from enforcing its rights under this provision. No more than 15% of the Residential Lots shall be leased at any point in time. The Association shall maintain a list of Residential Lots that are subject to a Lease and if necessary a waiting list for Owners who seek to lease their Residential Lots when the maximum percentage has been reached.

3.3 Subdivision. No Residential Lot may be further subdivided.

3.4 Animals. No animals, livestock, birds, insect or poultry of any kind shall be raised, bred, or kept on any Residential Lot, except that domesticated dogs and/or cats or other small household pets which do not unreasonably bother or constitute a nuisance to other Owners may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided further, if any pets are permitted outside a Dwelling, under no circumstances shall there be any more than two (2) domesticated dogs and/or cats. Fenced areas or other enclosures

for permitted household pets, if permitted, must be approved by the ADC. Dogs and other similar pets shall be on a leash when not confined to an Owner's Residential Lot. Owners of pets shall be responsible to immediately cleanup and dispose of any waste created by their pets anywhere on the Real Property. The rights and privileges relating to ownership of household pets may be further regulated and restricted by Association Rules.

3.5 Trash. All garbage, refuse and animal waste shall be properly and promptly cleaned and stored and appropriately removed from each Lot and Common Lot so as to prevent unsightliness, or unnecessary or unreasonable odors. No part of the Real Property shall be littered or used for the dumping or storage of any garbage, trash, discarded personal property or other waste. Garbage, trash, or other waste shall be kept, until its removal, in suitable trash cans or other containers as may be regulated by the Association. Trash receptacles must be stored in contained areas so that they are not visible from any spot external to the Residential Lot.

3.6 Hazardous Activities. No activities shall be conducted, and no improvements shall be constructed on any Residential Lot or Common Lot which are or might be unsafe or hazardous to any person or property. Without limiting the foregoing, no firearms shall be discharged upon the Real Property and no open fires shall be lighted or permitted except in a contained barbecue unit or while attended and in use for cooking purposes, or within a designated fire-pit located on a Residential Lot, provided such pit shall not become a nuisance to adjoining Owners.

3.7 Wildlife. Phase One, when combined with the future phase two of the Development, is being developed adjacent to the North Channel of the Boise River, in areas with ecological features that provide habitat conducive to bird and mammal wildlife, including, without limitation, Great Blue Heron, Green Heron, hawks, owls, deer, beaver and fox. Certain types of landscaping will be more attractive to such wildlife than others. The Declarant and The Renovare Home Owners' Association, Inc. will not be responsible for the impact of wildlife on the Residential Lot improvements and landscaping. Further, no hunting, trapping or other capturing of wildlife shall be permitted on the Real Property; excepting however, fishing that is permitted subject to any State of Idaho, City of Eagle or Association Rules and Regulations, and any beaver or other animal depredation authorized by Idaho Fish and Game.

3.8 Parking and Vehicle Storage.

(a) The Private Streets shall be subject to use, speed, parking regulations of the Association Rules and the restrictions of this Declaration. Whenever there is a conflict between such Association Rules and regulations of this Declaration, the stricter rule or regulation shall apply.

(b) Owner's or occupant's vehicles shall not be parked on the Private Streets. Guests may park only in designated parking areas on E. Lone Shore Lane and on the other interior Private Streets or in the Owner host's driveway; provided however no parking on any portion of the Private Streets shall be permitted for longer than twelve hours.

(c) The primary purpose of the garage required on each Residential Lot is for the parking and storage of automobiles and other vehicles. The Owner, subject to the approval of the ADC, shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Residential Lot. Permanent parking outside of the garage is not permitted.

(d) No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored within the Development. No motor homes, trailers, boats, jet skis, snowmobiles, buses, inoperable vehicles, campers, recreational vehicles, and/or other mobile equipment, trailers, implements, and vehicles of all kinds or nature shall be stored on any Residential Lot, unless (i) such items are fully enclosed within the Dwellings' garage, or (ii) the ADC has otherwise approved the location and/or screening of said items.

(e) No truck, truck camper, trailer, tent, garage, barn, shack or other outbuilding or vehicle shall at any time be used as living quarters on any part of Real Property.

(f) The use of all vehicles, including but not limited to automobiles, trucks, bicycles, motorcycles, sailboats, canoes, and other water craft, shall be subject to Association Rules, which may prohibit or limit the use thereof within the Real Property, and provide further regulations regarding the use and storage of the same.

3.9 Commercial Use Prohibited. No Residential Lot shall be used at any time for commercial or business activity; provided, however, that the Declarant or other persons authorized by the Declarant may use Residential Lot(s) for development and sales activities related to the Real Property.

3.10 No Offensive Use. No noxious, offensive or unsightly conditions shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. The Association, within its absolute discretion, shall be the arbiter of whether or not any conditions are in violation of this provision.

3.11 Sewer Restrictions. All bathroom, sink, toilet facilities, and showers shall be located inside the Dwellings, unless otherwise approved by the ADC.

3.12 Drainage Restrictions. Storm or irrigation water from the rear portion of the Residential Lots may drain onto the contiguous *Pond Lots*. Storm water runoff and irrigation water emanating from the front portion of the Residential Lots shall drain over the street curb and into the street gutter. No storm water or pressurized irrigation water shall cross side lot lines onto adjacent Residential Lots.

3.13 Storm Water Drainage Facilities. The Development is improved with Storm Water Drainage Facilities, which include sand and grease traps, underground seepage beds, the Aesthetic Ponds, and the discharge and interconnecting drain pipes. The Aesthetic Ponds are used to collect and store storm water not only from the platted lots but also from E. Riverside Dr. and the parcels of real property contiguous to the northern boundary of the platted lots and/or E. Riverside Dr. (known as the "**Tennis Club Plaza Parcels**"). Residential Lot Owners and/or

Occupants shall not interfere in any way with any of the drainage facilities, including, without limitation, depositing any material into the storm drain lines, or into the Aesthetic Ponds.

3.14 Wetland Areas and Pondbanks. Lot Owners are not permitted to alter the course of the Pondbanks either on the Lots or at any other location within the Development, without prior written consent from the ADC, and shall maintain the Pondbanks condition consistent with the final design of the Development. The slope of the Pondbanks as established by the Declarant may only be altered if the ADC gives its written approval, and any landscaping thereof shall be subject to the requirements set forth in the Architectural Design Guidelines. Filling and or building within any of the Wetland Areas is strictly prohibited and is subject to prosecution under federal law.

ARTICLE 4: EASEMENTS

The Residential Lots or some of them as the case may be, are hereby burdened with certain easements and related restrictions that are either designated on the Plat, set forth in the Plat Notes, and/or set forth in this Article. Any easements designated on the Plat shall be deemed to be expressly dedicated, reserved or granted easements.

4.1 Ingress and Egress Easements on Private Streets. There is hereby reserved for the benefit of the Owners, a perpetual ingress and egress easement over the road bed portion of the Private Streets consisting of Common Lot 19 for vehicle and pedestrian access; and further reserved for the benefit of the Owners of Residential Lots 14 and 13 an access easement over the Shared Driveway; and further reserved for the benefit of the Association for repair and maintenance an easement over all of the Private Streets. The easements reserved herein are also for the purposes of the installation, use and repair of sewer main, water mains, and all utilities. The responsibility for repairing and maintaining the Private Streets shall lie with the Association. The responsibility for repairing and maintaining the Shared Driveway shall lie with the Owners of Lots 14 and 13.

4.2 Public Utility Easements. There is hereby reserved for the use and benefit of the Declarant, the Association and public utilities a permanent easement for public and private utilities, including without limitation, electrical power, gas, phone, cable, sewer, and water distribution lines, over, under and across the Private Streets, the Shared Driveway, and other Lots as indicated on the Plat. Parking on the Private Streets shall be limited to areas posted by the Association in its sole discretion. All Common Lots, including the Private Streets have a blanket public utilities, pressure irrigation and drainage easement.

4.3 Pressurized Irrigation System Easement. The Development's irrigation water is delivered to the Development from New Union Ditch Company through an existing gravity irrigation feed line utilized by this Real Property, future phase two, and the contiguous property to the north of the Development. This gravity irrigation enters the Development from under E. Riverside Dr., continuing in a buried line for storage in the interconnected ponds within and south of the Development. The easement for the construction, operation and maintenance of the Pressurized Irrigation System pump station with pumping facilities is located on Lot 34, all as

more particularly set forth in an easement granted from the Owner of Lot 34 in favor of the Association. The easements for the pressure irrigation lines and system drains are reserved for the benefit of the Association and are located on the Plat. The pump facility has been oversized by the Declarant contemplating shared use of the pump station and pumping facilities by Lot 34 and by the parcel of real property contiguous to Phase One on its northern boundary, upon terms acceptable to the Declarant. Nothing herein shall be construed to grant a right of use of the pumping facility to any parcels other than the Development.

4.4 Flood Water Storage System Easement. There is hereby reserved for the Declarant, the Association, and its agents, the right to go across Residential Lots to access the Flood Water Storage System, and Storm Water Drainage Facilities for maintenance, repair and reconstruction purposes from time to time.

ARTICLE 5: BUILDING RESTRICTIONS

5.1 Plans. No Dwelling, building, fence, wall or other structure, Initial Landscaping (defined below) or subsequent or substantial landscaping, or screening planting shall be undertaken, erected or maintained upon any Residential Lot, nor shall any exterior addition to or change or alteration to the exterior of any Dwelling, be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the ADC, in accordance with the Architectural Design Guidelines, this Declaration, and any reasonable application process adopted by the ADC. The design of the Dwellings shall be consistent with the “contemporary” theme of the Development.

5.2 Remodeling/Renovations. Approval of the ADC shall not be required for any remodeling or renovation involving the interior of any Building or structure, nor the repainting, in the same color, of the exterior of any Building, structure or improvement, the replacement or repair of broken, deteriorated or damaged exterior windows, siding, trim, decking, walks, driveways, exposed structural members or foundations, provided such work does not alter the size of the structure, the configuration or architectural features of its exterior, (including the size and shape of windows), the pitch or configuration of roof lines, eaves and exposed gables, or the height or material of fences, and is consistent with Architectural Design Guidelines for Renovate and the provisions of this Declaration.

5.3 Drainage/Grading. Owners shall not alter any existing and proposed drainage paths and patterns, culverts, catch basins, or subsurface drainage systems. The Owners shall not interfere with the established drainage pattern over the Owner’s Lot or any other Lot. In connection with the Owners’ construction, grading and site improvement work, the Owner shall make adequate provisions to handle the runoff of surface water so as to comply with the Lot’s drainage plan.

5.4 Repair of Damage/Compliance Deposit. Any damage to streets, curbs, sidewalks, mailboxes, irrigation lines and utility facilities, caused during construction shall be the responsibility of the Builder. The Builder may conduct an inspection of the Lot and complete a lot inspection form at least ten (10) days prior to the first purchase of the Lot and submit to the

Declarant the completed lot inspection form identifying any damages to the Lot. Damages not identified on the lot inspection form shall be deemed to be the responsibility of the Builder. The Compliance Deposit, required pursuant to **Section 11.7** of this Declaration, shall be held as security for the Builder's obligations under this Declaration and the Architectural Design Guidelines. The Builder will forfeit its Compliance Deposit if (i) the Builder commences construction without first obtaining approval of its plans and specifications from the ADC, or (ii) constructs the improvements in material variance with the approved plans and specifications. The Declarant will be entitled to utilize the Compliance Deposit or part thereof to cure the Builder's (i) failure to repair any damage caused by the Builder's agents or subcontractors to streets, curbs, sidewalks, mailboxes, fences, irrigation lines, utility facilities, Common Lots, Wetland Areas, or Common Facilities, or (ii) failure to keep clean the work site and to dispose of all debris and waste material.

5.5 Pre-Built Homes. No mobile home, prefabricated home, modular home, or other pre-built home shall be allowed on any Residential Lot, at any time.

5.6 Building Envelopes. The area on any Residential Lot upon which a Building may be constructed and located is limited by several factors and easements. The location of any Building must comply with the City of Eagle zoning regulations in effect at the time of the issuance of a building permit, or as otherwise approved in the Development Agreement, including, without limitation, setback requirements. All Buildings must be set back a minimum of fifty feet (50') from the FEMA Regulatory Floodway, as determined by the applicable FEMA maps at the time a building permit is issued, and otherwise comply with Eagle City Code, Section 10-8-8-5(D). The final footprint of any Building may be further restricted by the ADC so as to reasonably preserve views of the Aesthetic Ponds, the Boise foothills and mountain front, and other geographic features that could otherwise be seen from other Residential Lots, provided however the authority of the ADC to so restrict a Building footprint shall not be construed to grant any rights to any Residential Lot Owner, including view easements. Specific Residential Lot building envelopes will be provided by the Declarant and shall be adhered to by the Builders. During the site construction of the Development, some or all of the Lots, were filled above the regulatory base flood elevation. A Letter of Map Revision based on Fill (LOMRF) is being submitted to the City of Eagle and FEMA based on a survey of the fill placed. It is the Owner's responsibility to verify that any proposed Building be located within the limits of the LOMRF area. Construction of Buildings located outside of this area that still adhere to all other buildable area requirements shall be at the discretion of the Owner. No Buildings shall be constructed within the Wetland Areas. No Buildings shall be constructed over any of the easements set forth in Article 4, including without limitation the Public Utilities Easements, Pressurized Irrigation Easement, or on the Shared Driveway.

5.7 Elevation Restrictions. All finished floor elevations for any Building must be a minimum of two feet (2') above the FEMA regulatory base flood elevation per City code and the bottom of any crawlspace shall be a minimum of 12" above the base flood elevations. Additionally, the bottom of all footings shall be separated from the groundwater elevation in an amount recommended by a geotechnical engineer who will have determined the seasonal high groundwater elevation for various areas in the Development. Upon the completion of the

foundation for any Building, no further construction shall be permitted until the Owner has provided the ADC a finished floor certificate certifying that the elevation restrictions contained herein have been complied with.

5.8 Height Restriction. All Dwellings are subject to any City of Eagle building, zoning and/or subdivision ordinances in effect at the time a building permit is issued.

5.9 Dwelling Size. No Dwelling shall be constructed or placed on any Residential Lot containing a total floor area suitable for use as living area, not including a garage, of less than 1,900 square feet for single story and no less than 2,100 square feet for two story with a minimum of 1,600 square feet on the ground floor. THE OWNER (OR HIS/HER BUILDER) SHOULD REVIEW THE ARCHITECTURAL DESIGN GUIDELINES. THE ADC SHALL CONSIDER THE ADVERSE AFFECT OF DWELLINGS SIZE MINIMUMS AND MAXIMUMS AND HEIGHT RESTRICTIONS ON OTHER RESIDENTIAL LOTS WITHIN THE DEVELOPMENT IN GRANTING OR WITHHOLDING ITS APPROVAL OF THE PLANS AND SPECIFICATIONS.

5.10 Garages. Garage doors will be contemporary in design. Unless otherwise agreed to by the ADC, RV garages will be discouraged and only approved by the ADC, if in the discretion of the ADC, the proposed RV Garage is unobtrusive and otherwise does not interfere with the clean contemporary lines of the Dwellings. Garage interiors are to be taped and painted at minimum.

5.11 Basements. Basements are not permitted.

5.12 Antennae. All exterior radio antennae, television antennae or other antennae, including a satellite dish, shall only be erected or maintained if approved by the ADC.

5.13 Service Facilities. No outside clotheslines shall be permitted, and all garbage cans, maintenance tools, and similar items shall be stored in a screened or enclosed fashion to conceal them from the view of neighboring Lots and streets.

5.14 Exterior Energy Devices. All energy production devices including, but not limited to, generators of any kind and solar energy devices, shall not be constructed or maintained on any Residential Lot without the prior written approval of the ADC, except for heat pumps or similar appliances shown on the plans approved by the ADC.

5.15 Lighting. Any exterior lighting shall comply with the Architectural Design Guidelines, and shall be limited to dark sky lighting. Exterior Christmas lighting will be permitted subject to Association Rules as the Association deems reasonable, which Rules may limit both the time period and the extent of any such Christmas lighting.

5.16 Roofs. The type, pitch and roof covering materials(s) which shall be required on all Buildings shall be as set forth in the Architectural Design Guidelines.

5.17 Maintenance. The following provisions shall govern the maintenance of each Residential Lot, its landscaping, and all improvements thereon:

(a) Each Owner of a Lot shall maintain all Buildings in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, windows glazed, rubbish and debris removed, and otherwise maintain the Buildings in a neat and aesthetically pleasing condition.

(b) There shall be no alteration of the vegetation or hydrology of the Wetland Areas, or any building, dumping, chemical application, or dredging, or any other use or activity that disturbs the Wetland Areas. Such restrictions on use and activity in the Wetland Areas may be enforced by the Association, the City of Eagle, the United State Corp of Engineers, or other agencies having jurisdiction over the preservation of Wetlands.

(c) All damage to any Building or improvements shall be repaired as promptly as is reasonably possible.

(d) A Dwelling which is vacant for any extended time period shall be kept locked in order to prevent entrance by vandals. Vacant Dwellings and unimproved Residential Lots shall not be exempt from the provisions of this Declaration.

(e) Any structure, facility, equipment, objects and conditions determined by the ADC, in its sole discretion, to be unsightly, if permitted by the ADC at all, shall be enclosed within an approved structure, appropriately screened from public view, or removed if required by the ADC. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.

(f) Any event or condition on a Lot which, in the sole discretion of the ADC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot.

(g) In the event that any Owner shall permit any Dwelling to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in **Article 10.3** of this Declaration.

5.18 Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ADC and which are compatible with other Buildings on neighboring Residential Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ADC prior to installation, and color and material samples shall be supplied to the ADC in accordance with the Architectural Design Guidelines.

5.19 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Residential Lot. Owners may advertise an improved Residential Lot for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon, subject to any reasonable restrictions imposed by the ADC. No rental or lease signs shall be used. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Residential Lot during construction of the Dwellings. All such signage must be removed upon completion of the construction. Lighted, moving or flashing signs for any purposes are prohibited, except holiday lighting subject to any applicable Association Rules. Any directional or identification sign within the Real Property shall be permitted, provided the same is approved by the ADC prior to installation. Notwithstanding the foregoing, the ADC shall have the right to adopt Architectural Design Guidelines with respect to signs allowed within the Development, which Architectural Design Guidelines, if adopted, shall further regulate signs within the Real Property.

5.20 Construction Time Frame. The Association has delegated to the ADC the authority to establish building timelines. Construction shall commence no later than six months from the date of the sale of a Lot to a Builder or to an Owner other than the Declarant.

5.21 Storage Facilities and Equipment. Outbuildings, separate garages, sheds and shelters are not permitted.

5.22 Swimming Pools. Above ground swimming pools shall not be permitted. The installation of in-ground swimming pools may be permitted on Residential Lots, provided their plans and specifications, location, and design have been approved in writing by the ADC prior to their construction or installation; and provided further that the Residential Lot Owner will be required to execute an indemnity holding the Declarant and Association harmless from any claims resulting from the Lot's suitability for installation of a swimming pool and claims resulting from use of the swimming pool. Lot Owners should obtain a certification from an Engineer that the Lot is suitable for installation of an in-ground swimming pool.

5.23 Fences and Walls. No fence or wall of any kind shall be constructed on a Residential Lot unless the plans and specifications, including the location, design, material and color, have been approved in writing by the ADC prior to the construction or installation. Although Residential Lot fencing is discouraged, no lot boundary fencing other than open wrought iron fencing, or in some cases for privacy, horizontal cedar fencing shall be permitted.

Any fences and walls shall be subject to the following restrictions:

(a) Privacy fences shall not extend beyond the back plain of the Dwelling. No fence higher than four feet (4') shall be allowed without the prior written approval of the ADC.

(b) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Residential 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.

(c) Unless otherwise permitted in this Declaration or in any easement, no fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Development Plat.

(d) No wall, hedge, high planting, obstruction or barrier shall be allowed which would, in the opinion of the ADC, unreasonably interfere with the use, enjoyment, and view of neighboring Residential Lots and streets, and shall not be allowed if, in the opinion of the ADC, the same constitutes an undesirable, noxious or nuisance effect upon neighboring Residential Lots.

(e) There shall be no fencing on a common Residential Lot Line, unless the Owners of the two contiguous Residential Lots agree to have a common lot line fence constructed. If only one of the Owners of the contiguous lots desires to fence, such fence, subject to ADC approval, will be permitted only if it is constructed entirely on the lot of the owner who desires the same.

(f) The restriction against any Building in the ASFH or on the Wetland Areas shall apply to fencing.

5.24 Landscaping. The following provisions shall govern the landscaping of Residential Lots within the Real Property:

(a) The Builder shall prepare a landscape plan and shall submit the same to the ADC. The installation and/or construction of the landscaping shall not commence without the prior approval of the ADC of the landscape plan (the "**Approved Landscape Plan**"). The use of mounds, sculptures, rock terraces and large stones in planting areas is encouraged. Landscaping of a Residential Lot shall be in accordance with the approved plan.

(b) All approved landscaping that meets the minimum requirements set forth in the Approved Landscape Plan shall be installed within thirty (30) days after substantial completion of the Dwelling on the Residential Lot, and prior to the issuance of an occupancy permit by the City of Eagle, with a reasonable extension allowed for delays caused by weather.

(c) An underground automatic sprinkler system shall be installed sufficient to irrigate the entire landscaped portion of the Residential Lot. The sprinkler system for each Residential Lot is governed by a sprinkler system controller(s) regulated by the Association, and not located on the individual Residential Lot. Owners are not permitted to intercept the

distribution of irrigation water to their particular Residential Lot or to install their own irrigation control panels.

(d) After all initial landscaping, including the sprinkler system and hardscaping (the “**Initial Landscaping**”), have been installed in accordance with the Approved Landscape Plan, plantings, landscape elements, berming, fencing, and the sprinkler system may only be augmented, modified or replaced, if the proposed changes are approved by the ADC and the provisions of this Declaration. All plantings, lawn and landscaping shall at all times be properly irrigated and maintained.

(e) Maintenance of the Residential Lots’ Initial Landscaping, excluding hardscaping, shall be provided by the Association, as more particularly set forth in Section 8.7(b) herein.

(f) Raised bed and minimal herb and vegetable planting may be permitted by the ADC, provided however the Association’s obligation to maintain the Residential Lot’s Initial Landscaping shall not include any responsibility for the Owner’s herbs, vegetables or any potted plants.

5.25 Mailboxes. A mailbox for each of the Dwellings shall be placed in a group mailbox structure at the entry to the Development. In the event a mailbox is damaged or destroyed, it shall be repaired and/or replaced in an identical manner to the original approved installation.

5.26 Utilities. All utility connections and service lines shall be underground, and shall conform to all applicable code requirements. Approval of the ADC prior to installation shall not be required.

5.27 Docks. No docks, fixed or floating, shall be built on the Residential Lot portion of the Aesthetic Ponds.

ARTICLE 6: COMMON LOTS AND FACILITIES

6.1 Purpose. The Common Lots and Common Facilities shall be maintained for the common benefit of the Development. All Common Lots, including the Private Streets and Common Facilities shall be owned by and maintained by the Association. Lot 34 is a non-buildable lot that will not be owned and will not be maintained by the Association. Lot 34 is however encumbered by a twenty five foot (25’) wide greenbelt easement dedicated to the public and maintained by the City of Eagle. Several of the Common Lots are multi-purposed and not all Common Lots are devoted for the use and occupation by the Owners. Use of the Common Lots and Common Facilities is not dedicated to the public and the public shall not be permitted to use them, including the approximately six foot (6’) wide paved pedestrian and bicycle path constructed on Common Lot 33 that provides a pedestrian pathway for use by the Owners and Occupants.

6.2 Owner's Enjoyment of Common Lots. Each Owner shall have a right of use and enjoyment of the following Common Lots, together with the Common Facilities thereon:

(a) Open Space Lots. The Open Space Lot shall be landscaped and improved with a bocci ball court and a meandering six-foot (6') wide pathway, which amenities and other open spaces may be utilized the Owners, subject to any Association Rules promulgated by the Declarant or the Association.

(b) Aesthetic Ponds. The Owner's use of the Aesthetic Ponds shall be limited to non-motorized boating and fishing, provided no Owners or Occupants shall be permitted to trespass on other Residential Lots either to access the Aesthetic Ponds or to stop on the shoreline of Aesthetic Ponds that is part of a Residential Lot. Use of the Aesthetic Ponds may be further restricted and/or permitted by the Association through its promulgation of Association Rules. Swimming in the Aesthetic Ponds is prohibited.

6.3 Use Limitations. The right of each Owner to the use and enjoyment of the Common Lots identified in the foregoing provisions are subject, however, to the following limitations:

(a) The right of the Association to suspend the voting rights and right to use the Common Lots by an Owner for any period during which any Assessment against his Residential Lot remains unpaid; and for significant or recurrent infractions of the Association Rules.

(b) The right of the Association to limit the number of Owners' guests permitted to use the Common Lots. Owners shall not permit guests to utilize recreational amenities in the Subdivision outside of the Owner's presence.

(c) The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Lots and Common Facilities; and, in aid thereof, to place a deed of trust thereon; provided that the Common Lots may not be mortgaged without the consent of at least sixty-six and two-thirds percent of the Owners, and that any deed of trust of Common Lots shall be subject to and subordinate to the rights of use of an Owner to the Common Lots. Under no circumstances shall any Common Lot, excepting however Lot 34, or portion thereof be sold, or transferred, without both the consent of at least sixty-six and two-thirds percent of the Owners and the written approval of the City of Eagle. Further, to the extent the Association elects to improve any of the Common Lots and Common Facilities, such improvements shall be in accordance with applicable City of Eagle ordinances and approvals.

(d) The right of the Directors of the Association to promulgate reasonable Association Rules governing the use of the such Common Lots for the purpose of securing safe use by the Owners and protecting the privacy and quiet enjoyment of the Owners or Occupants, including without being limited thereto, rules restricting persons under or over designated ages

from using certain Common Facilities during certain times and reasonable regulations and restrictions regarding vehicle parking.

(e) The right of the Association to expense reasonable maintenance of the Common Lots.

(f) The right of the Association to prohibit access to Common Lots and Common Facilities for any reasonable reason, including, without limitation, repairs, weather, and safety or health considerations.

6.4 Special Purpose Common Lots. The following Common Lots, Common Facilities constructed thereon, and Wetland Areas are limited to particular purposes. Use, if any, is restricted as follows:

(a) Emergency Access Areas. Although the Owners and the public are permitted to utilize the emergency access easement located on the contiguous Lonesome Dove Subdivision for pedestrian and bicycle access to the Eagle City Greenbelt, said emergency access shall not be utilized by Owners, Occupants or any members of the public for vehicle access.

(b) Irrigation Water Storage. In addition to the Owner permitted uses, Aesthetic Ponds are also used for irrigation water storage and flood water storage. The Owner's use of these Aesthetic Ponds shall not interfere with any pressurized irrigation or flood water structures and other Common Facilities. Tampering with the irrigation facilities or flood control mechanisms, structures and any other Ponds is strictly prohibited.

(c) Wetland Areas. All of the Wetland Areas in the Development, either on the Pond Lots or the Residential Lots, are subject to the restrictions and limitations of the USACE 404 Permit and the *Final Wetland Mitigation* that covers the Development. The location of Wetland Areas are designated on the Plat. Pursuant to the USACE 404 Permit, the Mitigation Plan and the Clean Water Act, the Declarant, the Association, and Lot Owners are charged with the obligation to perpetually protect the existing, mitigated and enhanced Wetland Areas located within the Development. Filling and/or building within the Wetland Areas, or altering such areas, shall be prohibited unless an Owner seeking a variance from the USACE 404 Permit and/or Mitigation Plan obtains written permission from the United States Department of Army Corp of Engineers and all other applicable regulatory agencies. The Association shall keep in its files a copy of the USACE 404 Permit and the Mitigation Plan, which copies shall be made available for inspection and further copying by Owners upon reasonable notice. Should the Declarant, Association or Owners have any questions concerning their rights and obligations with respect to the Wetland Areas, they should refer to the complete USACE 404 Permit and Mitigation Plan.

6.5 Damages. An Owner shall be liable for damages to the Common Lots, Common Facilities and public and private utilities sustained by reason of the negligence or intentional misconduct of said Owner, or of his family, licensees, invitees and lessees, both minor and adult. In the case of a joint ownership of a Residential Lot, the liability of such Owners shall be joint

and several. The cost of correcting such damage shall be a Limited Assessment against that Owners' Residential Lots and may be collected as provided in **Section 10.3**.

6.6 **INDEMNITY.** EACH OWNER BY ACQUIRING TITLE TO ANY RESIDENTIAL LOT IS DEEMED TO ACKNOWLEDGE THAT THE SUBDIVISION KNOWN AS RENOVARE IS A UNIQUE DEVELOPMENT ENCOMPASSING THE AESTHETIC PONDS THAT MAY PERMIT FISHING AND OTHER SMALL CRAFT WATER RELATED ACTIVITIES SUBJECT TO THE TERMS OF THESE CC&R'S AND THE ASSOCIATION RULES; AND THAT SUCH AMENITIES YIELD ADDITIONAL RISKS FOR THE OWNER AND THE OWNER'S GUESTS. EACH OWNER COVENANTS ON ITS OWN BEHALF, ON BEHALF OF ITS GUESTS AND ALL OCCUPANTS OF THE OWNER'S DWELLING, AND ON BEHALF OF ALL BUSINESS INVITEES TO THE OWNER'S RESIDENTIAL LOT (COLLECTIVELY THE "INDEMNITORS") TO INDEMNIFY, HOLD HARMLESS, AND TO DEFEND THE DECLARANT, AND ITS AGENTS, SUCCESSORS AND ASSIGNS, AND THE RENOVARE HOME OWNERS' ASSOCIATION FROM ANY AND ALL CLAIMS, ACTIONS, DAMAGES, COSTS AND ANY COMPENSATION WHATSOEVER RESULTING FROM THE INDEMNITORS' USE OF THE SUBJECT LOT, THE COMMON LOTS, AND THE AESTHETIC PONDS

ARTICLE 7: WATER SYSTEMS

7.1 **Domestic Water.** Each Residential Lot shall have access to the domestic water system to be owned and operated by Eagle Water Company. The domestic water system will provide water for culinary and other ordinary domestic household uses. Cross-connections between the domestic water system and the pressure irrigation system are prohibited. Any Owner's use of water from the domestic water system shall constitute an agreement to pay the charges imposed by Eagle Water Company.

7.2 **Water Rights.** The Declarant owns certain water rights as documented by shares in the New Union Ditch Company(Water Rights). These Water Rights shall be utilized by the Declarant, and subsequently the Association, to (i) store for aesthetic purposes water to naturally fill the Aesthetic Ponds within the Development; (ii) mitigate water evaporation from the ponds and (iii) provide irrigation water to the Pressurized Irrigation System that will irrigate all landscaped areas within the Development, including the Residential Lots. The Water Rights shall be transferred to the Association on or before the Transition Date, but cannot be diverted or transferred to any other real property. Nor shall the Association or Declarant change the use of the irrigation water from its irrigation purposes in accordance with the terms of this **Article 7**.

7.3 **Irrigation System.** The irrigation water is diverted from one of the Aesthetic Ponds and directed through the Pressurized Irrigation System via a central pump facility that shall deliver pressurized irrigation water through main irrigation lines and ultimately to service lines to the Lots. The Pressurized Irrigation System provides irrigated water to other parcels not part of the Development, including two parcels contiguous to the Development on its northern border and Lot 34. Water is supplied by a gravity irrigation feed line, which delivers the surface water rights from the New Union Ditch Company into the Pond Lots. Owners of Residential

Lots may be required to pay as part of their regular assessment, from time to time, the Development's share of any costs to maintain the gravity irrigation feed line; the cost of operating and maintaining the Pressurized Irrigation System, including the funding of a reserve fund, and monthly power bills regardless of actual use or nonuse of water from the Pressurized Irrigation System. Use of the Pressurized Irrigation System shall be subject to such rules and regulations of the Association, and the right to receive water therefrom is, in any event, subject to availability. The water rights associated with the Real Property shall belong to the Declarant until transferred to the Association, and notwithstanding the foregoing, individual Residential Lots shall not be deemed to have irrigation water rights, beyond the right to utilize the Pressurized Irrigation System subject to the Association Rules. THE AVAILABILITY OF PRESSURIZED IRRIGATION WATER FOR ANY RESIDENTIAL LOT SHALL BE SUBJECT TO A WATERING SCHEDULE PREPARED BY THE ASSOCIATION THAT IS SUBJECT TO CHANGE. A SCHEDULE WILL REGULATE THE TIME AVAILABLE TO INDIVIDUAL RESIDENTIAL LOTS OR GROUPS OF RESIDENTIAL LOTS FOR WATERING. THE SCHEDULE AND THE ASSOCIATION RULES REGARDING THE LOT'S USE OF THE SPRINKLER SYSTEM MAY BE SET FORTH IN *THE RENOVARE PRESSURE IRRIGATION SYSTEM PORTION OF THE MULTI-FACILITY MAINTENANCE MANUAL, (as may be revised from time to time)*. Each Owner is prohibited from interfering with, adjusting or altering any portion of the Pressurized Irrigation System and shall be bound by the watering schedule prepared by the Association. Although it is contemplated that the schedule will provide for irrigation every other day, such alternate date watering may not be the same as an even-odd day irrigation schedule. Each Owner is prohibited from making any cross connection or tie in between the Pressurized Irrigation System and the domestic water system. The repair and maintenance of the individual Lot Owner's sprinkler system will be the responsibility of the Association. The Association's system operator shall be entitled to access the Residential Lots for the purpose of inspecting, servicing and maintaining any Pressurized Irrigation System components located on the Residential Lots.

WATER FROM THE PRESSURIZED IRRIGATION SYSTEM IS NOT DRINKABLE; RESIDENTIAL LOT OWNERS SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF THEIR RESIDENTIAL LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES.

ARTICLE 8: HOMEOWNERS ASSOCIATION

8.1 Formation. There shall be only one homeowners association for the Development. The Association has been organized by the Declarant as an Idaho nonprofit corporation. The Association will be incorporated and will adopt By-Laws for its governance. To the extent the Articles of Incorporation or By-Laws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

8.2 Membership. Each Owner shall be a Member of the Association. The owner of Lot 34 is not a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The ownership of a Residential Lot shall be the sole qualification for membership and shall automatically commence when a person becomes an

Owner and shall automatically terminate when such ownership is conveyed or transferred. There shall be only one membership for each Lot. If there are multiple Owners of a Lot, or if a business entity owns any Lot, the Owners shall, by written instrument filed with the Association, designate the individual entitled to exercise the privileges of Membership.

8.3 Association Control Transfer. Until the Transition Date, the Declarant, or the Declarant's successor or assignee, shall have the exclusive control of the Association and the Owners, excluding the Declarant, shall not have the right to vote on any matters involving the operation of the Association or the Association's exercise of its authority. On and after the Transition Date, the membership shall be franchised and each Member shall be entitled to one vote for each Residential Lot owned.

8.4 Powers of Association. The 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 the Articles, the By-Laws or this Declaration. It shall have the power through its Board, officers, or committees, as duly delegated, to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Declaration, 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 Lots and the performance of the duties of the Association and other responsibilities set forth in this 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 Residential Lots and to enforce payment thereof in Accordance with the provisions of this Declaration.

(b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owners(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or Architectural Design Guidelines, and to enforce by mandatory injunction or otherwise, all provisions thereof.

(c) Delegation of Powers. The power and authority to delegate its power and duties to committees, 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.

(d) Association Rules. The power to adopt, amend and repeal such Association Rules as the Association deems reasonable. Such Association Rules shall govern the use by Owners and Occupants or any other person of the Residential Lots, Common Lots, Common Facilities and other property owned or controlled by the Association; provided, however, Association Rules shall not unreasonably discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. The Association Rules include an irrigation schedule. **Such rules and irrigation schedule are set forth in the Pressure Irrigation System Portion of the Multi-Facility Maintenance Manual. The controller(s) for the Residential Lots' sprinkler systems are governed and regulated by the Association and**

cannot be interfered with by the Owners or other Occupants of the Residential Lots. A copy of 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 Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association Rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.

(e) Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any other Building on a Lot in the event of any emergency involving illness or potential danger to life or 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 Association unless said entry was necessitated by a condition caused by the Owner or Occupant.

(f) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, and rights-of-way, on, through, under or over the Common Lots, or the access, utility, and sewer easements of the Development, 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, for the purpose of constructing, erecting, operating or maintaining:

(i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.

(ii) Public sewers, storm drains, water drains and pipes, water systems, irrigation systems, electrical and gas lines or pipes.

(iii) Any similar public or quasi-public improvements or facilities.

8.5 Liability of Board Members and Officers. Neither any member of the Board nor any officers of the 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 Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ADC, provided that said Board Member, officer, manager, or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

8.6 Dedication. The Association shall have the right to dedicate or transfer all or any part of the Common Lots or Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association, subject however to the prior written approval of the City of Eagle. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-thirds of the members of the Association.

8.7 Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct the business affairs of common interest to all Owners and to perform each of the following duties:

(a) Operation and Maintenance of Common Lots and Common Facilities. Perform, or provide for the performance of, the operation, maintenance and management of the Common Lots and Common Facilities owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss; the maintenance, repair and replacement of any facilities installed by the Declarant, and the maintenance, management, repair or replacement of all other personal and real property owned or controlled by the Association. Notwithstanding the foregoing, nothing herein shall be deemed to relieve any third party of its obligations concerning facilities located in the Development, which obligations are imposed upon such third parties by contract, easement, statutory authority, or other rules and regulations pursuant to their governing authority.

(b) Maintenance of Landscaped Areas. Periodically, and on a regular basis during the growing season, care and maintain any and all landscaped areas on the Common Lots and the Initial Landscaping of the front, rear and side yards of the Residential Lots. This general maintenance shall include mowing, trimming, turf fertilization, weeding of planter and shrub beds, Irrigation System spring startup, Irrigation System fall winterization, regulation and adjustment of irrigation pressure, replacement and repair of irrigation lines, replacement and repair of irrigation heads and nozzles, Irrigation System monitoring and adjustments to insure proper coverage, pruning of bushes and trees, tree health treatments and tree fertilization. The Association shall replace any item of the Initial Landscaping that fails to thrive in the first year after its planting. Thereafter, replacement of trees and shrubs shall be the responsibility of the Owner unless the landscape item has failed to thrive as a direct result of the Association's failure to provide adequate water. The Association shall have no responsibility for maintaining any portion of the Owner's landscaping that is not accessible due to an Owner's fencing or other obstruction or an Owner otherwise interferes with the Association's landscaping duties. The Association shall determine the acceptable level of landscape maintenance and may adopt a scope of landscape services, in writing, and shall have the right to update such scope of services from time to time. In connection with the Association's landscaping maintenance, all Owners and Occupants should be aware that the Association may, from time to time, spray for insect and weed control and such insecticide and weed control chemicals are to varying degrees toxic to certain individuals or animals that come in contact with them. Also, the City of Eagle or other local municipal agencies may subject the Development to its mosquito abatement procedures.

(c) Maintenance of Private Streets. The internal streets for the Development are Private Streets to be owned and maintained by the Association. The Private Streets have constructed in accordance with approved construction plans consistent with the Development Agreement. At all times the maintenance of the Private Streets shall be in accordance with Eagle City Code Section 9-3-2-5.C. The Association's obligations to maintain the Private Streets and their related drainage facilities shall be perpetual, which covenant shall be for the benefit of all

Residential Lots and which obligation shall burden all Residential Lots. This maintenance covenant is not subject to any amendment or other modification as otherwise provided for in this Declaration. The specific construction detail, regular maintenance requirements and a time table for replacing the Private Streets, based on their expected lifetime, shall be contained in the Private Streets section of the Multi-Facility Maintenance Manual prepared by a professional engineer licensed in the state of Idaho.

(d) Snow Removal. The Association, as it deems necessary, will provide snow removal services to the Residential Lot's driveways.

(e) Maintenance of Storm Water Drainage Facilities. Maintenance consists of periodically inspecting the Storm Water Drainage Facilities to insure they are functioning properly; cleaning out the piping and mucking out and rebuilding the drainage seepage beds, swales and similar drainage facilities, when the sediment levels are prohibiting drainage and the infiltration rate of the facilities becomes unacceptable resulting in periods of standing water greater than 48 hours. The Association shall have the authority and obligation to repair and maintain the Storm Water Drainage Facilities. No structures or other improvements shall be placed in a manner that would interfere with such maintenance. In the event that it is necessary to replace any improvements or landscaping such as trees or sod in connection with performing maintenance, such replacement shall be the responsibility of the Association.

(f) Maintenance and Operation of Other Facilities. The Association's maintenance obligation shall include preventative maintenance, inspection, repair and replacement of components of the Pressurized Irrigation System; the gravity irrigation feed line; the Flood Water Storage System; the ponds, sloughs and channels; any flood connection pipes; the pond and gravity irrigation overflow facilities; Storm Water Drainage and the Private Streets. The Multi-Facility Maintenance Manual sets forth the maintenance requirements for the Pressure Irrigation System, Storm Water Drainage and Private Streets. In addition to said maintenance requirements, the Association shall also retain a systems contractor to operate the Pressure Irrigation System, including the irrigation pump station, which operational requirements and guidelines are set forth in the Multi-Facility Maintenance Manual. As required in the Multi-Facility Maintenance Manual, a registered professional engineer with experience in river hydrology shall be retained by the Association to inspect the Flood Water Storage System (levee, pondbank, overflows, and spillways) once a year. The engineer shall provide a written report to the Association identifying any problems and, as needed, recommendations for repair.

(g) Maintenance of Water. Periodically, and on a regular basis during the warmer months, maintain the water quality and clarity of the Aesthetic Ponds. Such maintenance may include, but is not limited to, algae control, debris removal, pond bank weed abatement, and pond aeration; provided however that any such maintenance is undertaken in a manner that both complies with and maintains compliance with the USACE 404 Permit issued in connection with the Development.

(h) Taxes and Assessments. Pay all real and personal property taxes and Assessments levied against the Common Lots and Common Facilities owned or controlled by the

Association or against the Association and/or any property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt non-profit corporation.

(i) Utilities. Acquire, provide and/or pay for water, refuse collection, electrical, and other necessary services for the Common Lots owned or controlled by the Association.

(j) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Development, whether the same be located within or without the boundaries of the Real Property.

(k) Rule Making. Make, establish, promulgate, amend and repeal Association Rules.

(l) Architectural Design Committee. Appoint and remove Members of the Architectural Design Committee, all subject to the provisions of this Declaration.

(m) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

8.8 Improvements. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Lots and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners use of Common Lots under this Declaration; and provided further any modifications and/or improvements to the Common Lots shall be in accordance with applicable City of Eagle ordinances and approvals.

8.9 Enforcement of Common and Drainage Area Maintenance. Notwithstanding that the Association is obligated to maintain the Common Lots, Common Facilities, and provide maintenance of the Storm Water Drainage Facilities as more particularly set forth in **Section 8.7(e)**, it is hereby provided that the City of Eagle may elect, but have no responsibility, to maintain any part of the Common Lots, Common Facilities or Storm Water Drainage Facilities should the Association, Lot Owners, or the Declarant fail to maintain the same. In the event the City of Eagle, or any other agency having jurisdiction over the facility (an “**Agency**”) determines, in its sole discretion, that the Association is not adequately maintaining the Common Lots, Common Facilities or Storm Water Drainage Facilities in a reasonable time frame, the Agency shall, before undertaking maintenance of said areas, provide written notice of its and/or their intention to begin maintenance of the Common Lots, Common Facilities or Storm Water

Drainage Facilities within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by the Agency. In the event that the Association shall fail to commence within said time period, and conclude maintenance of the defined Common Lots, Common Facilities or Storm Water Drainage Facilities, the Agency is hereby granted an irrevocable license to enter upon any portion of the Common Lots, Common Facilities or Storm Water Drainage Facilities to perform inspection and maintenance. The thirty (30) day cure period herein shall be deemed to have been modified to a shorter cure period if the same is set forth in any writing between the Declarant and a specific agency. Should the Agency engage in maintenance of the defined Common Lots, Common Facilities or Storm Water Drainage Facilities after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Agency shall be entitled to and empowered to file a ratable lien against all Residential Lots within the Real Property to secure payment of any and all Assessments levied against any and all Residential Lots in the Real Property pursuant to this Declaration, together with interest at the rate which accrues on judgments and all costs of collection which may be paid or incurred by the Agency in connection therewith, including reasonable attorney fees. The Agency may exercise their rights under Idaho Code by assessing the Lot Owners and certifying those Assessments in the same manner as real property tax. This section shall not be amended without prior written approval from the applicable Agencies. The Association shall not be dissolved or relieved of its responsibility to maintain the Common Lots and Common Facilities without the prior written approval from the Agencies. The Association and all Owners, by accepting title to a Residential Lot, agree that all Owners within the Real Property are benefited property Owners for purposes of this section.

ARTICLE 9: RIGHTS RESERVED BY DECLARANT

9.1 Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

(a) Itself, its successors contractors and their subcontractors (including any district, company, City of Eagle, association or other entity providing a utility or other similar services), easements and rights-of-way on, over, under and across the utility easements over and under all Residential Lots and Common Lots as provided for herein or on the Plat for installation, maintenance and repair of all lines, wires, pipes, pumps, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(b) Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Real Property, or any portion thereof, until the same have been conveyed to the Association.

(c) Itself, its agents and successors, a nonexclusive easement on, over, under and across any irrigation pipeline easement or any other utility easements as provided for herein or created on the Plat for the construction and maintenance of the Pressurized Irrigation System.

ARTICLE 10: ASSESSMENTS

10.1 Agreement to Pay Assessments.

Each Owner, by acceptance of the deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay when due all Regular, Special and Limited Assessments made by the Association or the Declarant.

(a) Regular Assessments. An annual Regular Assessment shall be made by the Association in such amounts 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 Lots, including the Private Streets and Common Facilities and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, real and personal property taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, any and all utility bills, including Idaho Power and Eagle Water Company, the New Union Ditch Company other water suppliers, repair and maintenance, legal, accounting, and other professional fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s). The initial annual Regular Assessment shall be the amount of \$2,220.00 per Residential Lot, until changed by the Association.

(b) Private Street Expenses: The cost of maintaining, repairing, and resurfacing the Private Streets and their curbs and gutters is a component of the Board's calculation of the Regular Assessments. This cost shall be based upon a schedule for the future repair and maintenance of the Private Streets as set forth in the Appendix to the Multi-Facility Maintenance Manual, as amended from time to time. The maintenance and repair obligation with respect to the Private Streets shall include maintenance requirements for the street bed, which may include the separately striped street section for pedestrian and bicycle travel. An estimate of the cash requirement for such repair and maintenance shall include two components: an annual maintenance expense component and an amount for the creation of a reserve to cover the future scheduled repair. In computing such estimates, the Association shall consider, subject to the Association's modifications, the time schedule and probable cost estimates set forth in the Appendix to the Multi-Facility Maintenance Manual. Budgeting for the cost of maintaining any emergency vehicle access roads and turnarounds that are the responsibility of the Association and fire department turn around(s) shall be included.

(c) Limited Assessments: The Association shall have the power to levy a Limited Assessment against Owners and Residential Lots for maintenance and repair of any Residential Lot or any improvement on a Residential Lot, if such maintenance and repair is necessary to preserve the quality of the Development; and/or to correct a violation of the Declaration or any amendment thereto or the Architectural Design Guidelines. No such Limited Assessment shall be levied until (a) the Board or ADC has given written notice to the Owner of

the maintenance or violation cure required; (b) the Owner has refused to perform the required maintenance or correct the violation within a reasonable time; and (c) the Association has incurred expenses for maintenance or correcting the violation. Thereupon, the Board shall have the power to levy a Limited Assessment against the Owner to pay for the costs of such maintenance and repair or correction of violation and any other costs or expenses, including attorney fees, arising out of or incident to such maintenance and repair of the Association.

(d) Special Assessments: In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

(i) To defray, in whole or in part, the cost of any construction or reconstruction of Common Lots or Common Facilities, unexpected repair or replacement of a Common Lot or Common Facility located thereon or an easement area controlled by the Association, 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 Declaration.

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

(e) Irrigation Water: Surface irrigation water is provided to the real property by the New Union Ditch Company (the "*Irrigation Company*") who will invoice the Association for irrigation water and the Development's share of the operation, maintenance and repair fees incurred by the Irrigation Company. Any such fees charged to the Association shall be included as part of the Association's overall costs to be paid by the Regular Assessment to each Lot Owner.

10.2 Purpose of Assessments. The Assessments levied by the Association or the Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and to carry out the objectives and responsibilities of the Association, and for the improvements and maintenance of any Common Area, Common Facilities and all improvements constructed thereon, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Lot and Common Facilities, and including without being limited thereto, the payment of taxes and insurance on all or any part of the Real Property.

10.3 Collection and Enforcement. The Regular, Special and Limited Assessments, together with interest thereon and costs of collection and reasonable attorney fees, shall be a charge on the applicable Lots, pursuant to this **Article 10**, and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorney fees shall also be the personal obligation of the Owner at the time when the Assessment fell due. The right to collect and enforce payment of the Assessments is vested in the Association.

If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written notice of setting forth the type of Assessment, the amount of the Assessment, the amount remaining unpaid, 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 Association, whose signatures shall be acknowledged by a notary public, and such notice shall be recorded in the office of the Ada County Recorder. Thereupon, and upon the continuing failure of the Owner to pay an Assessment, the lien for Assessment herein created may be foreclosed upon as provided by law for foreclosure of a mortgage on real property and other real property liens. Notwithstanding anything to the contrary contained in the Declaration and any amendment thereof, no action may be brought to foreclose the lien of any Assessment until the expiration of thirty (30) days after written notice of default has been deposited in the United States mail, addressed to the Owner of the Lot at the street address of the Lot or the last known address of the Owner, or otherwise if shown on the books and records of the Association. Such notice shall specify the amount and due date of the unpaid Assessments and the legal description of the Lot, and may further include any reasonable attorneys' fees incurred to date in collection attempts in the minimum amount of **\$400.00** for preparation of the claim notice.

10.4 Set up and Initial Regular Assessment. Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Builder, or as to the remaining Lots owned by Declarant, when such Lots are no longer offered for sale to the general public. At each such closing, the Owner thereof shall pay the sum of **\$700.00** and also such portion of the existing Regular Assessment, pro rated for the remainder of the calendar year. These initial Assessments shall be paid to the Declarant to reimburse the Declarant the set up cost and the maintenance of the Common Lots and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment will be paid to the Declarant at each Closing that occurs prior to the Transition Date and only paid to the Association if the Association has conducted its first annual meeting, elected a board of directors and assumed the obligations and expenses of the Association. Until the Association has conducted its first meeting, the Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Association. The Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this Declaration. The Association shall, upon its first meeting, initiate Assessments in accordance with this **Article 10**, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant. After the first sale of each Lot, upon any subsequent sale a transfer fee in the amount of **\$300.00**, or such other sum as may be established from time to time by the Association, shall be paid at the closing of the sale of the Lot by the Owner selling the Lot.

10.5 Assessment Date. The date for computing and settling the Regular Assessment shall be no later than March 1, unless some other date is established by the Board.

10.6 Interest and Penalties. Any Regular, Special or Limited Assessments levied on Residential 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 15%. Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest

charged, the Board may, in accordance with Association Rules 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.

10.7 Billing for Annual Assessment. The Regular Assessment may be billed on a quarterly basis, 1/4th per quarter, and any such billing will be delinquent if not paid within fifteen (15) days after the date of the invoice.

10.8 Notice and Quorum for Special Assessment. Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Association members not less than twenty (20) days in advance of such meeting. Such notice shall specifically indicate that a Special Assessment is to be considered at such meeting. A quorum of not less than a one-third of the members entitled to vote shall be required at such meeting whether in person or by proxy.

10.9 Uniform Rate of Assessment. Regular and Special Assessments must be fixed in an equal amount for each Residential Lot. All Regular and Special Assessments shall equally apply to all Residential Lots, and no special rate or reduction in Assessment rate shall be allowed because any Lot is unimproved or does not have a Building thereon.

10.10 Subordination to the Lien of Mortgage. The lien of Assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Residential Lot shall not affect the Assessment lien, but the sale or transfer of any Residential Lot pursuant to a Mortgage foreclosure, if the Mortgage is held by any person other than a prior Owner of the Residential Lot, shall extinguish the lien of such Assessments as to payments which have become due prior to such sale or transfer.

ARTICLE 11: ARCHITECTURAL DESIGN COMMITTEE

11.1 Members of the Committee. An Architectural Design Committee of the Board shall be formed, comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ADC 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 ADC may be removed at any time, with or without cause.

11.2 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ADC. Thereafter, all members of the ADC shall be appointed or removed by the Board. The ADC 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 ADC. In the absence of such designation, the vote of any two (2) members of the ADC shall constitute an act of the ADC.

11.3 Adoption of Architectural Design Guidelines. Initially the Declarant and ultimately the ADC shall have the power to promulgate Architectural Design Guidelines relating to the planning, construction, alteration and modification of Buildings and other improvements and appurtenant landscaping within the Development deemed necessary or desirable by the Declarant or the ADC, as the case may be, to carry out the purposes of this Declaration. All Architectural Design Guidelines shall be consistent with the provisions of this Declaration. The Architectural Design Guidelines may contain provisions, not limited to design standards, exterior finishes and colors, fences, landscaping, exterior lighting, mailboxes and the like. They may also include policies, procedures and rules, which in the discretion of the ADC are reasonable to maintain a quality subdivision and to protect property values. The Residential Lot Owner shall review and be familiar with the current Architectural Design Guidelines, copies of which are available from the Declarant, the Declarant's marketing representative and at various title and escrow companies operating in the vicinity of the City of Eagle.

11.4 Certification by Secretary. The ADC shall, upon written request, certify that improvements upon any Residential Lot comply with this Declaration and have been duly approved by the ADC, or in the event such Building or other improvements do not so comply, specifying the extent of noncompliance.

11.5 Variations. The ADC may authorize variances from compliance with requirements of any conditions and restrictions contained in this Declaration, the Architectural Design Guidelines, or any prior approval when, in the sole discretion of the ADC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in writing signed by at least two (2) members of the ADC.

If a variance is granted as provided herein, no violation of this Declaration, Architectural Design Guidelines 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 Declaration or the Architectural Design Guidelines for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ADC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing thereon. The granting of a variance by the ADC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with applicable ordinances of the City of Eagle, Idaho.

11.6 Plan Review Application. No Dwelling, fence, wall or other structure, Initial Landscaping or subsequent substantial landscaping, or screening planting shall be undertaken, erected or maintained upon any Residential Lot, nor shall any exterior addition to or change or alteration to the exterior of any Dwelling or other Building, be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the ADC, in accordance with the Architectural Design Guidelines, this Declaration, and any reasonable application process adopted by the ADC. To request ADC approval for the construction, alteration, or modification of any improvements on a Residential Lot, the Owner shall submit, prior to any construction, a written

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

All applications must contain, or have submitted therewith, at a minimum, the following material (collectively called "*Plans and Specifications*") prepared in accordance with acceptable architectural standards and submitted with the application form:

(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, grading and lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements, as more particularly set forth and required in the Architectural Design Guidelines.

(b) Architectural Drawings. A 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 include, by sample if required by the ADC, all exterior colors, materials and finishes, including roof shingles, proposed to be used; and other details required by the Architectural Design Guidelines.

(c) Landscape Plan. A landscape plan for portions of the Lot to be landscaped 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 other details required by the Architectural Design Guidelines.

11.7 Compliance Deposit. At the time the Owner submits its plan review application for construction of the new Dwelling on a Residential Lot or for the substantial replacement of a Dwelling, the Owner shall deposit with the ADC, as a deposit (hereafter "**Compliance Deposit**"), in the amount of One Thousand Dollars (\$1,000.00), or such other amount as shall be determined by the ADC. The Compliance Deposit shall be held by the ADC as security for the Owners' performance of all construction obligations contained in its lot purchase agreement or otherwise required by the plans and specifications approved by the ADC, including, but not limited to the landscaping requirements. Upon the Owner or the Owner's builder's full compliance with the construction and landscaping of all improvements as evidenced by an ADC compliant site inspection, the Compliance Deposit shall be returned to the Owner (without interest). If the Owner or builder fails to (i) comply with any of its construction obligations, (ii) substantially construct the improvements in accordance with the approved plans and specifications (including landscape), or (iii) fails to timely complete such improvements, the ADC shall have the right to deduct from such Compliance Deposit the amount of any costs which may be paid or incurred by the Association or a third party to complete such improvements, and to bring the Lot improvements into compliance.

11.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ADC 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 Development as a quality

residential development. The ADC may, in its discretion, require the Owner to furnish additional materials beyond those required herein. Unless extended by mutual consent of the Owner and the ADC, the ADC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted application. The decision of the ADC can be in the form of an approval, a conditional approval or denial. The decision of the ADC shall be in writing, signed by a member of the ADC, dated, and a copy thereof mailed or delivered to the Owner at the address shown on the application or remitted by facsimile to the fax number, if any, shown on the application, or by email to the email address, if any, 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.

11.9 Inspection and Complaints. The ADC 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 plans and specifications or is deviating therefrom, or is violating this Declaration or the Architectural Design Guidelines.

Should the ADC determine that the Owner or the Owner's builder is deviating from the approved plans and specifications or is violating the provisions of this Declaration or the provisions of the Architectural Design Guidelines, the ADC shall promptly issue a notice in writing to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

(a) The Owner shall immediately cease the activity which constitutes a deviation or violation: and/or

(b) The Owner shall adhere to the correction measures set forth in the written Notice.

Should the ADC determine there has any reported deviation or violation has been cured, it shall promptly issue a notice of such determination to the Owner. A copy of the ADC's written decision shall be submitted to the City of Eagle as part of the Builder's application for a building permit. The City reserves the right to deny, at its discretion, any building permit application that does not meet the design requirements, if any, imposed by the Eagle Design Review Board and the Eagle City Council.

11.10 Interpretation and Enforcement. The ADC, subject to Board approval, shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lots improvements. This right of enforcement can include the ADC hiring any or all of such work to be done and levying a Limited Assessment against the Lot on which said work takes place for the full amount of the cost of said work plus any other costs ADC may incur in such enforcement. All 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

Association to correct the same shall be assessed as a Limited Assessment against the Lot owned by said Owner.

11.11 Judicial Enforcement. upon approval by the Board, shall be authorized on behalf and in the name of the 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 Development, the continuation of which violates the provisions of this Declaration, the Architectural Design Guidelines or the approved plans and specifications of any improvements to a Residential Lot. 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 Association.

ARTICLE 12: GENERAL PROVISION

12.1 Government Rules and Ordinances. In the event any of these covenants, conditions and restrictions are less restrictive than any government rules, including City of Eagle ordinances, then the more restrictive government rule, regulation or ordinances shall apply. These covenants, conditions and restrictions are subject to all rules, regulations, laws and ordinances of all applicable government bodies. In the event a governmental rule, regulation, law or ordinance would render a part of these covenants, conditions and restrictions unlawful, then in such event that portion shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.

12.2 Enforcement. The Association, the Declarant, any Owner, or any First Mortgagee shall have the right to enforce, by proceedings of law or in equity, the terms and provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

12.3 Severability. Invalidation of any one of these covenants or restrictions shall in no way affect other provisions which shall remain in full force or effect.

12.4 Term. This Declaration shall run with the land and shall inure to the benefit of the Association, the Owner of any Lot, and any First Mortgagee as provided herein, and their respective legal representatives, heirs, successors, grantees, and assigns, for an initial term of forty (40) years from the date of this Declaration. After the initial term, this Declaration shall automatically renew for successive ten (10) year periods unless two-thirds (2/3) of the votes of the membership vote, in a duly noticed membership meeting, to terminate the Declaration.

12.5 Amendments. Except as otherwise provided herein, and specifically excepting any amendments, modifications, or changes requiring the City of Eagle approval, any of the covenants and restrictions of this Declaration, except the easements herein granted for utilities

and water distribution facilities, may be amended by an instrument signed by members entitled to cast not less than two-thirds (66 and 2/3%) of the votes of the membership. Any amendment must be recorded.

12.6 Annexation. Upon the recordation of a final plat of additional land contiguous to the Real Property, such additional property shall, for the purposes of this Agreement, be deemed Annexed Property. Amendment of the Declaration to include such Annexed Property, and to subject such Annexed Property to the rights, privileges, restrictions, covenants and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the additional property being annexed, and any supplemental or different covenants, conditions and restrictions applicable thereto, and any deletions or modifications to these covenants, conditions and restrictions as the Declarant may deem appropriate, and shall describe the Common Lots and Common Facilities thereof. Upon the recordation of the Supplemental Declaration, the definitions of Real Property, Common Lots and Common Facilities shall automatically be amended to conform to such supplement, as shall all the other definitions herein, including the definitions of Lot and Owner. Upon such annexation, the Owners of the Residential Lots within the Annexed Property, shall be come Members of the Association with all rights, privileges, and obligations as all other Members.

12.7 Conveyance of Common Lots. The Common Lots, or easements thereon, Common Facilities and Water Rights may be conveyed to the Association by Declarant, free and clear of all encumbrances, prior to the First Mortgage in that phase being insured by HUD. Until conveyed, Declarant shall be solely responsible for the maintenance and operation of Common Lot and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided for herein.

12.8 FHA/VA Approval. Prior to the Transition Date, the following actions may require the prior approval of the Federal Housing Administration or the Veterans Administration; annexation of additional real property to the Project, mergers and consolidations, mortgaging or dedication of Common Lots, dissolution or amendment of the Articles of Incorporation or Bylaws of the Association, and amendment of this Declaration.

12.9 Contracts or Agreements. The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering building Residential Lots in the Project with Dwellings thereon.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has set his hand and seal as of the date and year first above written.

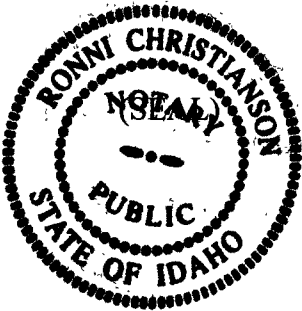
MDG LLC, ^{Development}
By Renovare, LLC, its authorized agent,

By _____
Dave Buich, its Member

STATE OF IDAHO.)
 : ss.
County of Ada.)

On this 9th day of April, 2015, before me, a notary public in and for the state of Idaho, personally appeared Dave Buich, known and identified to me to be the Member of Renovare, LLC, the Authorized Agent of MDG LLC, an Idaho limited liability company, and the Authorized Agent who subscribed said liability company name to the foregoing instrument, and acknowledged to me that it executed the within instrument on behalf of said limited liability company.

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



Ronni Christanson
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 6-30-16