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STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF
Neighborhood Inc

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DANIEL J. ENGLISH
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# DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR MILL RIVER SECOND ADDITION A SUBDIVISION LOCATED IN COEUR D'ALENE, IDAHO

THIS DECLARATION is made on this 9th day of November, 2005, by the undersigned owners of the subject property, (hereinafter referred to as "Grantor"), to establish certain covenants, conditions, restrictions and easements for Mill River Second Addition, a subdivision located in Coeur d'Alene, Kootenai County, Idaho, as follows:

A. Grantor is the owner of certain property (Property) in Coeur d'Alene, Kootenai County, Idaho, described in Exhibit "A" attached hereto and incorporated herein by reference.

B. Said Property was contemplated to be part of a master planned development known as Mill River along with certain adjacent and contiguous properties which comprise that certain property annexed by the City of Coeur d'Alene, Kootenai County, Idaho, under Ordinance #3-119. Grantor has been assigned certain rights by Neighborhood, Inc., the former owner of the Property which allow Grantor to have the Property included as part of the master planned community and as part of the Mill River Property Owners Association, Inc.

C. There has previously been created a non-profit corporation known as Mill River Property Owners Association, Inc. which is subject to the General Nonprofit Corporation Laws of the State of Idaho to which should be delegated and assigned the powers and duties of owning, maintaining and administering the Common Areas in the Property, as described in Exhibit "B" attached hereto and incorporated herein by reference, and for administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges, set forth herein.

D. Pursuant to the provisions of Section 2.03 of those certain Covenants, Conditions, Restrictions and Easements for "Edgewater" Mill River Subdivision, Phase I, recorded as instrument number 1893355 in the offices of the County Recorder, Kootenai County, State of Idaho, the Owners of Lots in the Property described in Exhibit "A" attached hereto, shall be members of Mill River Property Owners Association, Inc., and subject to all privileges and obligations thereof. In addition, the members of the corporation may include those Owners of Lots to be developed in the property lying contiguous and adjacent to the property described in Exhibit "A", which are included in the annexation by the City of Coeur d'Alene under Ordinance #3-119. Such additional membership in the Corporation shall be in accordance with the provisions set forth in Article II hereof.

E. Grantor intends to develop and convey all of the Lots pursuant to a general plan for development and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property and Lots.

F. Grantor declares that all of the Lots, Dwelling Units, Commercial Units and Apartment Units to be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Lots, Dwelling Units, Commercial Units and Apartment Units in furtherance of a general plan for protection, maintenance, improvement and sale of the Lots, Dwelling Units, Commercial Units, Apartment Units or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Property and Lots and shall be binding upon any parties having any right, title or interest in the Lots, Dwelling Units, Commercial Units, Apartment Units or any part thereof, their heirs, successors and assigns, shall inure to the benefit of each Owner thereof; and may be enforced by Grantor, by any Owner or by the Association.

G. Nothing contained in this Declaration is intended to prevent any subsequent Declarations of Covenants, Conditions, Restrictions and Easements or Condominium which may be recorded upon all or any portion of the subject property, and which may be specific to a particular portion of the property or its use, so long as any such Declarations are not inconsistent herewith.

H. Nothing in this document shall be deemed to grant any authority to any property owners association or other entity or person to control any aspect of the real property described below in paragraph 3.01(a)(i), or to assess the same, except as expressly provided herein.

## ARTICLE I

## DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the following meanings:

Section 1.01 "Apartment Unit" shall mean a Unit situated within building or buildings offered for rent to the general public and owned in common by an individual Owner or an entity comprised of owners. An Apartment Unit differs from a Condominium Unit or a Townhouse Unit based upon the fact that the living quarters themselves are not individually owned by separate Owners. Special provisions relating to voting rights for the owner of Apartment Units and the assessments related thereto are set forth herein.

Section 1.02 "Articles" shall mean the Articles of Incorporation of the Association to be filed in the Office of the Secretary of State of the State of Idaho, as such Articles may be amended from time to time.

Section 1.03 "Assessment" shall mean any of the assessments that may be charged against an Owner and his or her Lot, Dwelling Unit, Commercial Unit or Apartment Units under the terms of this Declaration.

Section 1.04 "Association" shall mean Mill River Property Owners Association, Inc., a non-profit corporation formed under the laws of Idaho, its successors and assigns.

Section 1.05 "Association Maintenance Fund" shall mean the account, created for receipts and disbursements of the Association, pursuant to Article V hereof.

Section 1.06 "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

Section 1.07 "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.08 "Bylaws" shall mean the Bylaws of the Association.

Section 1.09 "Capital Improvement Assessment" shall mean a charge against each Owner and his or her Dwelling Unit, Commercial Unit or Apartment Units, representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Areas, or Landscape Maintenance Areas which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.10 "Close of Sale" shall mean the date on which a deed or real estate contract is recorded conveying a Lot, Dwelling Unit, Commercial Unit or Apartment Units to a purchaser.

Section 1.11 "Commercial Unit" shall mean those Lots and the buildings and improvements constructed thereupon which are used for a commercial or business purpose within a zone designated for commercial use according to the Plats for Mill River First Addition or Mill River Second Addition as approved by the City of Coeur d'Alene. Voting privileges and the assessments applicable to a Commercial Unit shall be based upon the square footage of improvements as set forth hereafter.

Section 1.12 "Commercial, Common Area Expense" means those expenses related exclusively to the commercial uses of Lot 2, Block 7 and Lot 3, Block 6, Mill River First Addition for the maintenance of parking areas, snow removal, landscape maintenance, common utilities, and other expenses incurred exclusively for the commercial uses and commercial owners of Lot 2, Block 7 and Lot 3, Block 6 Mill River First Addition.

Section 1.13 "Common Areas" shall mean all the real property and improvements including, without limitations landscaped areas, recreational facilities, structures, buildings, out-buildings, ponds, roadways, rights of way and walkways, which are owned by the Association for the common use and enjoyment of all of the Owners. The Common Areas to be so owned by the Association shall collectively be those portions of the Property described in Exhibit "'B" attached hereto, or as may be designated upon the recorded plat and which may be further described individually as the Landscape Maintenance Areas, and Roadway Common Areas.

The Common Areas do not include any property or structure within Rivers Edge, or Lot 2, Block 7 and Lot 3, Block 6 of Mill River First Addition.

Section 1.14 "Common Assessment" shall mean the monthly or annual charge, as determined by the Board of Directors, against each Owner and his or her Dwelling Unit, Commercial Unit or Apartment Units, representing a portion of the total ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Areas and, if applicable, the Landscape Maintenance Areas, as more fully described herein.

Section 1.15 "Common Expenses" shall mean the actual and estimated costs of, maintenance, management, operation, repair and replacement of the Common Areas (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvements Assessments), including those costs not paid by the Owner responsible for payment; the costs of any commonly metered utilities and other commonly metered charges for the Property, costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefitting the Common Areas or Landscape Maintenance Areas; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance all covering the Property, the costs of bonding the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrances levied against the Property for the benefit of all of the Owners; other expenses described in Section 5.03 and as approved by the Board pursuant to this Declaration.

Section 1.16 "Condominium Units" or "Townhouse Units" shall mean those single family residences joined by a common wall and individually owned. Apartment units or units in a multi-family dwelling are not considered Condominium Units or Townhouse Units unless the same have been segregated in accordance with the Condominium Act or otherwise segregated by operation of law as independently owned single family residences. Special provisions relating to the voting rights and the allocation of assessments relating to Condominium Units or Townhouse Units are set forth hereinbelow.

Section 1.17 "Custom Lots" shall mean those Lots designed primarily for stand-alone single family homes.

Section 1.18 "Custom Lot Owners" shall mean the Owners of the Custom Lots.

Section 1.19 "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.20 "Dwelling Unit" shall mean a residential building located on a Lot designed and intended for use and occupancy as a residency by a single family, and shall include the underlying Lot.

Section 1.21 "Exterior Landscaping and Perimeter Fences" shall be considered part of the Common Areas.

Section 1.22 "Family" shall be defined according to federal, state and local laws, which may or may not change, or be interpreted differently, from time to time.

Section 1.23 "First Mortgage" shall mean the primary or priority Mortgage or Deed of Trust on a Lot, Dwelling Unit, Commercial Unit or Apartment Units recorded prior to the due date of any Assessment.

Section 1.24 "First Mortgagee" shall mean a Mortgagee which holds or owns a First Mortgage.

Section 1.25 "Grantor" shall mean the undersigned, their successors and person(s) to whom they shall have assigned any rights hereunder by express written instrument.

Section 1.26 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, garages, carports, ponds, cabanas, recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, plants, planted trees and shrubs, poles, signs, exterior air conditioning and water-softening fixtures or equipment.

Section 1.27 "Landscape Maintenance Areas" shall mean all plants, planted trees, shrubs, ground cover and other landscaping improvements originally constructed by Neighborhood, Inc. or Grantor in or upon the Common Areas or within landscape easements as designated upon the recorded plat or by Exhibit attached to this Declaration as may be herein described.

Section 1.28 "Lease" shall mean any agreement for the leasing or rental of a Dwelling Unit, Commercial Unit or Apartment Unit.

Section 1.29 "Lot" shall mean any plot of land shown upon the recorded Plat of the Property, except for the Common Areas, that is set aside and approved for construction.

Section 1.30 "Manager" shall mean the person or firm appointed by the Association as its agent and delegated certain duties and powers of the Association.

Section 1.31 "Member" shall mean any party holding a membership in the Association.

Section 1.32 "Mortgage," "Mortgagee," "Mortgagor" shall mean any mortgage or deed of trust or other conveyance of a Lot, Dwelling Unit, Commercial Unit, Apartment Units or other portion of the Property to secure the performance of any obligation which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term "Mortgagee" shall mean a

person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a person or entity who mortgages his or her Lot, Dwelling Unit Commercial Unit or Apartment Units to another (i.e., the maker of a Mortgage), and shall include the "Trustor" of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.33 "Notice and Hearing" shall mean written notice and a hearing at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner provided in the Bylaws.

Section 1.34 "Owner" shall mean the Person or Persons including Grantor, holding fee simple interest of record to, or the real estate contract purchaser of, any Lot, Dwelling Unit, Commercial Unit or Apartment Units which is/are a part of the Property. For purposes of Article X only, unless the context otherwise required, Owner shall also include the family, guests, invitees, licensees and lessees of any Owner.

Section 1.35 "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.36 "Property" shall mean all of the real property described in Exhibit "A".

Section 1.37 "Private Park" or "Private Beach" shall mean that portion of the property specifically identified as Lot 1, Block 6, Mill River First Addition, reserved exclusively for the use of the Owners of Lots or Units located within the Property.

Section 1.38 "Public Beach" shall mean Lot 2, Block 6, Mill River First Addition, which has or will be dedicated as public property by charitable donation from Neighborhood, Inc. to the City of Coeur d'Alene or its Parks Foundation as Neighborhood, Inc. may elect.

Section 1.39 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recording of such document in the appropriate office in Kootenai County, Idaho. All references herein to lots and blocks shall refer to that certain plat recorded as Mill River First Addition.

Section 1.40 "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, Dwelling Unit, Commercial Unit or Apartment Units representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Common Areas and Landscape Maintenance Areas.

Section 1.41 "Rivers Edge" is the project to improve and sell the real property described in paragraph 3.01(a)(i), below

Section 1.42 "Rivers Edge Property Owner's Association" is the legal entity created to enforce the Covenants, Conditions and Restrictions of Rivers Edge, and its successors and assigns.

Section 1.43 "Special Assessment" shall mean a charge against a particular Owner and his or her Lot, Dwelling Unit, Commercial Unit or Apartment Units, directly attributable to such Owner, equal to the cost incurred or levied by the Association for corrective action pursuant to the provisions of this Declaration.

Section 1.44 "Streets" shall mean all private roadways or common access ways throughout the Property which have not been dedicated or conveyed to the City of Coeur d'Alene or other public authority, which require private maintenance.

Section 1.45 "Subdivision" shall refer generally to the project known as Mill River, which consists of improvements to, development of and sale of the Real Property defined in Exhibit "A."

Section 1.46 "Water Company" shall mean any municipality or district providing water service to the Property, Dwelling Units and/or Commercial Units and is presently the City of Coeur d'Alene, Idaho.

Section 1.47 "Unit" shall mean, unless specifically set forth, any Lot, Dwelling Unit, Condominium or Townhouse Unit, Commercial Unit or Apartment Unit.

## ARTICLE II

## MEMBERSHIP IN ASSOCIATION

Section 2.01 Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 2.02 Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale of or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void. A Member who has transferred fee interest to his Lot or who has sold his Lot to a contract purchaser under a real estate contract shall ipso facto be deemed to have transferred to such grantee or contract purchaser his membership rights in the Association.

Section 2.03 Additional Memberships. Neighborhood, Inc. is the owner of certain additional real property, which has not yet been platted, subdivided or developed, included in that certain annexation by the City of Coeur d'Alene under Ordinance No. 3-119 and contemplated to be part of a master planned development commonly known as Mill River. Neighborhood, Inc. contemplates that said real property, which has not yet been subdivided or developed and is included in that certain annexation by the City of Coeur d'Alene under Ordinance No. 3-119 may be developed as additional phase(s) of Mill River and at Neighborhood, Inc.'s, or their successors' or assigns' sole option, the Owners of Lots located

within said additional phase(s) shall be included as members of the Association, subject to the following terms and conditions:

a. Additional memberships in the Association shall not exceed those Owners of Lots within the additional phase(s) of the geographic boundaries of that certain annexation by the City of Coeur d'Alene under Ordinance No. 3-119.

b. Inclusion of such Owners of Lots for membership in the Association shall be at the sole discretion of Neighborhood, Inc., or their successors or assigns; and Neighborhood, Inc., their successors or assigns shall not be obligated to include such Lots for membership.

c. If Neighborhood, Inc. or its successors or assigns choose to include the Owners of Lots within that certain property, which has not yet been subdivided nor developed, annexed by the City of Coeur d'Alene under Ordinance #3-119, and contemplated to be part of a master planned development known as Mill River for membership in the Association, such inclusion shall be for the entire phase being developed. In other words, Neighborhood, Inc. must include all lots within said phase if any of said lots are to be included for membership in the Association.

d. Neighborhood, Inc., its successors or assigns shall provide written notice to the Association of its intention to include such Owners of Lots of additional phases of the Mill River as Members of the Association within 90 (ninety) days of the recording of the plat for any additional phase of the Subdivision.

e. Neighborhood, Inc. shall provide to the Association a copy of the approved plat of the lots for which Owners are be included for Membership in the Association with the notice of its intention to include such lots.

f. Neighborhood, Inc. shall, subsequent to recording the final plat of any additional properties in which Owners of Lots are to be included as members of the Association, properly record with the Office of the Recorder of Kootenai County, a Declaration of Covenants, Conditions, Restrictions and Reservations of Easements which shall be generally compatible with those referred to hereinabove, excluding such deviations in architectural control and design standards which may vary from addition to addition, dependent upon the respective use and character of each development. The specific architectural controls and design standards shall be determined for each additional properties by Neighborhood, Inc. or its successors or assigns, in its sole determination, and may differ substantially from addition to addition. Such differences may include without limitation, specifications relating to structure size, setbacks, construction materials, permitted outbuildings, landscaping, fences, public access, docks, walkways and driveways. A separate Architectural Board as contemplated in Article VII hereof may be established by Neighborhood, Inc. for any additions of adjoining property, whether or not they are included for membership in this Association. It is the intention of Neighborhood, Inc. to provide for wide latitude and divergence in the types of architecture which may be utilized in various areas of a master planned community or upon adjoining properties. To accommodate this diversity, a separate Architectural Board may be created for additional developments on an individual basis as determined solely by Neighborhood, Inc.

g. Upon such notice to the Association, all Owners of Lots within the additional phase to be included shall become Members of the Association in accordance with the terms of this Declaration, and with all of the privileges, benefits, and obligations of membership, as though they had been originally included as Members, excepting, that any assessments or charges accruing to such membership shall not be retroactive.

h. All of the common areas of any phase subsequently included in accordance with the provisions hereof shall be owned and maintained by the Association in accordance with the terms of this Declaration.

i. Neighborhood, Inc.'s right to include the Owners of Lots within the additional phases of that certain subdivision known as and preliminarily approved as Mill River Subdivision by the City of Coeur d'Alene, Idaho shall expire twenty (20) years from the date of recording of this original Declaration.

j. Neighborhood, Inc. may impose upon any subsequent phase or additions greater financial obligations for maintenance of certain Common Areas made a part of the subsequent phases, which shall not accrue as expenses to the Owners of Lots or Units within the Property. For instance, the maintenance of certain private roadways, bike paths, private parks or commercial area maintenance may be assessed to subsequent phases involved in the Association without imposing any greater burden on the other Owners.

## ARTICLE III

## VOTING RIGHTS

Section 3.01 Classes of Voting Membership. The Association has two (2) classes of voting membership as follows:

a. Class A. Class A Member shall be all Owners in the Property, with the exception of Neighborhood, Inc., for so long as there exists a Class B membership for the Association. Neighborhood, Inc. shall become a Class A Member with regard to Lots owned by them upon conversion of its Class B Membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Article III, Section 3.02 of this Declaration.

Class A Members shall be segregated into the following separate subclasses. Class A Members shall be entitled to the number of votes, and shall cast the votes, in the manner hereinafter set forth:

i. Lots 4 through 25, Block 6, Mill River First Addition which are zoned R-8 and border Shoreview Lane. For purposes of this Declaration, this section shall be known as "Rivers Edge." This property shall be developed as single family residences. The Owners of Property in Rivers Edge shall be entitled to one (1) vote for each Lot owned.

Said votes shall be cast within the Rivers Edge Property Owners Association, and the President of said Association shall then cast the votes in the aggregate as one block of votes based upon the majority votes. When more than one person holds an interest in any Lot, all such persons shall be Members.

ii. Lots 1 through 6, Block 1; Lots 7 through 20, Block 1; Lots 22 through 30, Block 1; Lots 1 through 5, Block 3; Lots 1 through 7, Block 4; and Lots 1 through 8, Block 5 Mill River First Addition. For purposes of this Declaration, this section shall be known as "River Life". This property shall be developed as single family residences. The Owners of Property in River Life shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Article III, Section 3.02 of this Declaration, and in no event shall more than one (1) Class A vote be cast with respect to any Lot.

iii. Lots 1 through 7, Block 1; Lots 1 through 14, Block 2; Lots 1 through 13, Block 3; and Lots 1 through 9, Block 4; of the preliminarily approved Mill River Third Addition Subdivision. For purposes of this Declaration, this section shall be known as "Summer Walk". It is anticipated this property shall be developed as single family residences. If this property is developed as single family residences, the Owners of Property in Summer Walk shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Article III, Section 3.02 of this Declaration, and in no event shall more than one (1) Class A vote be cast with respect to any Lot.

iv. The Owners of Commercial Lots and Units within the C-17 commercially zoned Lot 3, Block 6 and Lot 2, Block 7, which lie both north and south of the railroad track, shall be entitled to cast one (1) vote for each 500 square feet or portion thereof (for apartment votes, see vi. below) of completed building on the Commercial Lot owned by the individual Commercial Unit Owner. The calculation of square footage for voting and assessment purposes shall be based upon the interior measurements of building or buildings situated upon the Commercial Lot. For instance, if a Commercial Unit Owner has a building or buildings situated upon the Commercial Lot in which the interior square feet totals 1100 square feet, that Owner would be entitled to cast three (3) votes as a Class A Member. Until such time as a building or buildings have been constructed upon the Commercial Lot, the Commercial Unit Owner shall have one (1) vote only.

v. It is anticipated that there will be constructed upon the real property owned by Neighborhood, Inc. and situated west of Mill River First Addition and North of the street known as Riverway Place, consisting of approximately 9.25 acres, approximately 117 Condominium Units. For the purpose of this Declaration, this section shall be known as "Condominiums at Mill River." Each Condominium Unit Owner shall be entitled to one (1) vote for each Unit owned. Said votes shall be cast within the Condominium Association, and the President of said Association shall then cast the votes in the

aggregate as one block of votes based upon the majority votes. For instance if the vote in the Condominium Association was 60 yea and 40 nay, the President would cast all 100 votes as yeas in the Mill River Property Owners Association.

vi. Apartment Units may be developed upon the Property included in the subdivision known as Mill River Second Addition. Should said property be developed as Apartment Units, then in that event the individual Owner of the Apartment Units shall be entitled to cast one (1) vote for each ten (10) Apartment Units owned. In the event there are an odd number of Apartment Units which are not divisible by ten (10), then the individual Owner of the Apartment Units shall be entitled to cast one (1) vote for each block of Units greater than five (5), but less than ten (10). For instance, should an Owner own 56 Apartment Units, he would be entitled to cast six (6) votes; should an Owner own 55 Apartment Units, he would be entitled to cast five (5) votes. Nothing contained herein shall prohibit the Grantor from utilizing the above described property for any lawful use permitted within the zoned classification or any subsequent zone classification that the City of Coeur d'Alene may approve in the future.

vii. Nothing contained herein shall obligate Neighborhood, Inc. or its successors or assigns to develop any portion of the Property as anticipated, nor shall it be required to include the Owners of Lots for membership in the Association. Nothing contained herein shall prohibit Neighborhood or its successors or assigns from utilizing any property to be included in the Association for any lawful use permitted within the zoned classification or any subsequent zone classification that the City of Coeur d'Alene may approve in the future. However, at Neighborhood, Inc.'s, its sucessors' or assigns' sole option, it may include the Owners of Lots as members in the Association as set forth in Section II, hereinabove.

viii. Should Neighborhood, Inc., its successors or assigns, at its sole option, add the owners of adjacent lots as members in the Association, their membership and voting rights shall be consistent with the allocation of voting rights and assessments for the specific uses identified in this Section.

b. Class B. The Class B Member shall be Grantor, and Grantor shall be entitled to ten (10) votes for each Lot owned by them. The Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

i. At such time as seventy-five percent (75%) of all Units available for sale or included within the Subdivision, including any lots of subsequent phases made a part of the Association, have been deeded to owners other than the developer; or

ii. Twenty (20) years from the Close of Sale of the first Lot sold in the Property; or

iii. Upon Neighborhood, Inc.'s, its successors' or assigns' written relinquishment of its Class B Membership.

Section 3.02 Vote Distribution. Class A Members owning Lots in Unit within the Property shall be entitled to cast their votes in the numbers to which they are entitled as set forth above. When more than one person has an interest in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as a majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, the Articles and Bylaws, provided, however, Neighborhood, Inc. or its assigns shall have the absolute right to appoint one (1) Member to the Board of Directors regardless of the voting results.

## ARTICLE IV

## JURISDICTION OF ASSOCIATION

Section 4.01 The Association, acting through its Board of Directors shall also have:

a. The authority and the duty to maintain, repair and otherwise manage the Common Areas and Landscape Maintenance Areas and all utilities, improvements and landscaping thereon, all in accordance with the provisions of this Declaration.

b. The authority and the duty to maintain the storm and drainage facilities within the Common Areas.

c. The authority and the duty to obtain, for the benefit of the Property, refuse collection and electric, water, and sewer services for the Common Areas. Refuse collection for the Dwelling Units, Commercial Units and Apartment Units and payment therefore shall be up to each individual Owner unless the regulations of the designated purveyor of said services provide to the contrary, and in that event, refuse collection shall be the responsibility of the Association.

d. The authority and the duty to grant easements, rights of way, or strips of land, where necessary, for utilities over the Common Areas to serve the Common Areas and the Lots.

e. The authority and the duty to maintain such policy or policies of liability and fire insurance with respect to the Common Areas and personal property, if any, owned by the Association as provided herein furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws.

f. The authority but not the duty to employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and the authority to delegate its authority to committees, officers and employees.

g. The authority but not the duty to, after Notice and Hearing, without being liable to any Owner or tenant, enter any Lot, Dwelling Unit, Commercial Unit or Apartment Unit for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner fails to maintain or repair any such area as required by this Declaration. Said cost shall be a Special Assessment on said Owner's property and shall create a lien enforceable in the same manner as other Assessments as set forth in this Declaration. Said Owner shall pay promptly all amounts due for such work.

## ARTICLE V

## COVENANT FOR ASSESSMENTS

Section 5.01 Creation of the Lien and Personal Obligation of Assessments. Grantor, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit by acceptance of a deed or real estate contract therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree, to pay to the Association (1) monthly or annually, as determined by the Board, Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, and (4) Reconstruction Assessments; with such Assessments to be established and collected as hereinafter provided. Such Assessments, together with interest as set out herein, costs and reasonable attorney's fees for the collection thereof, shall be a lien on the Unit and Lot thereunder, and shall be a continuing lien from the due date of the Assessment. Each such Assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Unit at the time when the Assessment fell due. The personal obligation of the Owner shall not pass to his successors in title unless expressly assumed by them, however it shall continue to be a lien upon the property regardless of transfer.

Section 5.02 Creation of Fund. The Board of Directors shall establish a separate account (the "Association Maintenance Fund") into which shall be deposited all Assessments paid to the Association and from which disbursements shall be made in performance of functions by the Association. The Association Maintenance Fund shall include (1) an operating fund for current Common Expenses, and (2) a reserve fund for Common Expenses which would not reasonably be expected to recur on an annual or less frequent basis. If an operating fund or

reserve fund proves at any time to be inadequate for any reason, the Board may at any time levy a supplemental Common Assessment, subject to the provisions of Section 5.05 of this Article.

Section 5.03 Purpose of Common Assessments. The Common Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the roadways and Common Areas. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the property, without the prior approval of the Board. Common Assessments shall include without limitation, and the Association shall acquire and pay for out of the applicable funds derived from said Common Assessments, the following:

a. Water, sewer, electrical, lighting and other necessary utility services for the Common Areas. Garbage and refuse collection service for the Units may also be included if the applicable purveyor's regulations prohibit individual contracting for said service. Each Lot Owner shall be responsible for paying its own water and electricity usage and any other individually measured utility or service, promptly when due.

b. Landscape planting and maintenance by the Association of all landscaping, planted areas and sprinkler systems within the Common Areas, including commonly metered irrigation and electrical services.

c. Fire and casualty insurance with extended coverage as provided herein, covering the full insurable replacement cost of the Common Areas Improvements.

d. Liability insurance, as provided herein, insuring the Owners and the Association, its Directors and Officers against any liability to the public or to any Owner, their invitees or tenants, incident to their occupation and use of the Common Areas, and Landscape Maintenance Areas, with limits of liability to be set by the Board of Directors of the Association.

e. Worker's Compensation Insurance to the extent necessary to comply with any applicable laws, medical payments, insurance, liquor liability insurance and any other insurance deemed necessary by the Board of Directors of the Association.

f. Standard fidelity bonds covering all members of the Board of Directors of the Association and other employees and volunteers of the Association as and in an amount as determined by the Board of Directors, but not less than two times the sum of the annual Common Assessments of the Association.

g. Painting, maintenance, repair and replacement of all buildings, equipment, recreation facilities, fences and landscaping in, on, and of the Common Areas, as the Board shall determine is necessary and proper.

h. All real estate taxes pertaining to the Common Areas, and applicable personal property taxes on property owned by the Association and used in the Common Areas.

i. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which in the opinion of the Associations' Board of Directors shall be necessary or proper for the operation of the Common Areas or for the enforcement of the provisions of this Declaration.

Section 5.04 Adjustment of Common Assessment. Prior to the Sale of the first Lot on the Property, the Grantor shall estimate the costs and establish the amount of the Common Assessment. From and after the Close of Sale of the first Lot on the Property, the amount of each of the components which make up the Common Assessment pursuant to Section 5.03 above may be increased or decreased by the Board effective as of January 1 of each year thereafter without a vote of the membership, by not more than ten percent (10%) of the Assessment amount for the most recent Assessment year. The Common Assessment charged to the Owners of all Lots pursuant to Section 5.03 above may be increased or decreased by the Association by more than ten percent (10%) with the consent of at least two-thirds (2/3) of the voting power of those Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting.

Section 5.05 Capital Improvement and Reconstruction Assessments. In addition to the Common Assessment authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any improvement or other such addition upon the Common Areas, including fixtures and personal property related thereto; provided that whenever the aggregate Capital Improvement and Reconstruction Assessments in any fiscal year exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, such excess shall require the consent of two-thirds (2/3) of the voting power of those Members, voting in person or by proxy, at a meeting duly called for such purposes, written notice of which shall be sent Members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting.

Section 5.06 Rate of Assessment and Due Date.

a. Except as stated to the contrary herein, Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article V shall be established at a uniform rate; provided, however, the Association may, subject to the provisions of this Article, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to any willful or negligent acts or extraordinary demand for services, repairs or maintenance required as a result of said Owners, their guests or agents. All Common Assessments shall be due and payable, either monthly or annually as established by the Board, on or before the date(s) established by the Board, and other Assessments shall be paid and collected at such frequency as the Board shall determine from time to time.

b. The private roadways and all common areas within those commercial areas used for commercial purposes shall be shall be maintained and paid for solely by the Owners of the Commercial Units situated within Lot 3, Block 6 and Lot 2, Block 7, which are zoned C-17. The Association shall not be obligated to contract for or provide any maintenance or repair of any of the common areas within those zoned commercial areas used for commercial purposes, and the Owners of Commercial Units therein shall make provision for the fair and equitable distribution of such costs on such terms as they may agree to be appropriate or as otherwise provided by specific declaration provided for that specific portion of the Property. Commercial Unit and Lot Owners shall pay their equivalent portion for the maintenance of the Common Areas set forth on Exhibit "B", however, which shall be assessed on a square footage basis. For each 500 feet of interior commercial space, or any portion thereof, the Owner of the Commercial Unit shall be assessed equally to one Residential Unit, Condominium or Townhouse Unit.

c. The private roadways and common areas used primarily for the benefit of the Owners and invitees of Owners of Lots situated within "Rivers Edge" shall be paid for, governed and maintained by the Rivers Edge Property Owner's Association.

d. The private roadways situated within "River Life" shall be paid for solely by the Owners and invitees of Owners of Lots situated in said area. The Association shall arrange for the maintenance any of said roadways, and an additional assessment as determined by the Board shall be made to the Owners of Lots situated within "River Life".

e. The private roadways situated within "Summer Walk" shall be paid for solely by the Owners of the Lots situated in said area. The Association shall arrange for the maintenance any of said roadways, and an additional assessment as determined by the Board shall be made to the Owners of Lots situated within "Summer Walk".

f. The private roadways and common areas used primarily for the benefit of the Owners and invitees of Owners of Condominium Units situated within "The Condominiums at Mill River" shall be arranged and paid for solely by the Owners of the Units situated in said area. The Association shall not be responsible for arranging for any maintenance within this area.

The maintenance of the common areas, including the trails and open space, situated adjacent to "The Condominiums at Mill River" on the north, west and east side, shall be borne exclusively by the Condominium Owners Association and shall not be an obligation of the other Unit Owners within the Property. In consideration of the maintenance of those common areas lying adjacent to "The Condominiums at Mill River", the Owners of Units within "The Condominiums at Mill River" shall not be assessed for maintenance of other trails and open space situated throughout the Property. The Owners of Units within "The Condominiums at Mill River" shall remain responsible for uniform assessments related to the maintenance of the entry way monument and lighting, private community park, rights of way, landscape maintenance areas and other amenities situated upon the Property.

g. The Owners of Lots within Edgewater at Mill River as recorded at Book J of Plats, Page 60, records of Kootenai County, hereinafter referred to as "Edgewater" shall be exclusively responsible for assessments relating to the maintenance and repair of the common areas lying within "Edgewater", which common areas and landscape maintenance areas are specifically depicted on Exhibit "B" of the Addendum and Correction to Declaration of Covenants, Conditions Restrictions and Reservations of Easements for "Edgewater" Mill River Subdivision, Phase 1, a Subdivision Located in Coeur d'Alene, Idaho. The Owners of Lots lying within "Edgewater" shall not be responsible for any additional assessments for common areas lying beyond the boundaries of "Edgewater" as depicted on Exhibit "A" of said Addendum, except for a pro-rata assessment specifically for the purpose of maintaining the private park depicted on Exhibit "B" of said Addendum, to which they shall be entitled to the use thereof on such terms and conditions as the Board of the Association may determine, as shall apply to any other Lot Owner.

h. Should Neighborhood, Inc. include additional Owners as Members in the Association, any private roadway included in said addition shall be maintained by said additional Owners. Should the Association maintain any of said roadways, an additional assessment as determined by the Board shall be made to the owners of said added lots.

Section 5.07 Date of Commencement of Common Assessments; Financial Statements; Budget. The Common Assessments shall commence on the first day of the month following the Close of Sale of the first Lot. Upon the closing of each initial sale of a Lot, the purchaser of such Lot shall pay a sum equal to one year of the then prevailing annual or monthly Common Assessment to the Association as a non-refundable Association start-up fee and shall pay the current Common Assessment prorated to the date of closing, so that a full year's Common Assessment shall be due on the first day of the following calendar month. Written notice of any change in the schedule of payment (either monthly or annually) or in the amount of the Common Assessment shall be sent to every Owner not less than twenty (20) days prior to the effective date of such change. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of Assessments against a Unit is binding upon the Association as of the date of its issuance.

Section 5.08 Commercial Common Area Expenses. The expenses for maintenance or improvements of the parking areas, common areas, snow removal, common utilities and maintenance relating to the commercial uses on Lot 3, Block 6 and Lot 2, Block 7 of Mill River First Addition shall be borne exclusively by the Owners of said Lots, and if more than one owner, the cost shall be fairly apportioned among the various owners.

The Commercial Common Area Expenses shall specifically exclude the landscape maintenance costs for areas adjacent to and along Lot 3, Block 6 and Lot 2, Block 7 and the right of way of Grandmill Lane, which are depicted on Exhibit "B" attached hereto.

Section 5.09 Upon request from any Property Owners' Association operating within the Property, the Association shall prepare and deliver a master bill for all assessments for the Units within the requesting Property Owners' Association to such requesting Association.

Section 5.10 The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from any reserve funds, and shall cause to be distributed a copy of each such statement to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the Bylaws.

At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized estimate (budget) of the income and expenses of the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into any reserve funds, less any expected income and accounting for any surplus from the prior year). If the estimated sums prove inadequate for any reasons, including non-payment of any Owner's Common Assessment, the Board may at any time levy supplemental Common Assessments, subject to the provisions of this Article.

Section 5.11 Exempt Property. The following portions of the Property subject to this Declaration shall be exempt from the Assessments herein:

a. All portions of the Property dedicated to and accepted by a local public authority;

b. The Common Areas;

c. All Lots and/or Units owned by the Grantor; provided, however, Grantor shall reimburse the Association as long as Grantor is an owner of a Lot and/or Unit, for its proportionate share of the remaining actual cost of Common Expenses after application of the Common Assessments, based on the number of remaining Lots owned by Grantor in relation to the total number of Lots in the Property.

## ARTICLE VI

## EFFECT OF NON-PAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION

Section 6.01 Effect of Non-Payment of Assessment; Remedies of the Association. Any Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law, and the Owner responsible therefor may also be required further by the Board of Directors to pay each month a late charge of Five Dollars ($5.00) or five percent (5%) of the amount of the delinquent assessment or installment, whichever is greater. The Association may bring an action at law against the Owner personally

obligated to pay the same, and/or foreclose the lien against the Lot and/or Unit. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Unit.

If any installment of any Assessment is not paid within thirty (30) days after its due date, the Board may mail an Acceleration Notice to the Owner and to each First Mortgagee of a Unit which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, which action shall include paying all installments coming due during the period allowed to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to Owner, by which such default must be cured, (4) that failure to cure the default on or before the date specified in the notice will result in acceleration of the balance of the installments of the Assessment for the then current fiscal year and sale of the Lot, Dwelling Unit, Commercial Unit and/or Apartment Units, and (5) the legal description of the Lot, Dwelling Unit, Commercial Unit and/or Apartment Units. If the delinquent installments of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board may, at its option without further demand, enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 6.02 Notice of Assessment. No action shall be brought to enforce any Assessment lien, unless at least ten (10) days have expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot/Dwelling Unit/Commercial Unit/Apartment Units, and a copy thereof has been recorded by the Association in the Office of the Kootenai County Recorder. The Notice of Assessment must recite a good and sufficient legal description of any such Lot/Dwelling Unit/Commercial Unit/Apartment Units, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid Assessment at the highest rate allowed by law, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association. For the purposes of this Section 6.02, an Acceleration Notice given under Section 6.01 shall be deemed to be a Notice of Assessment if recorded in the Office of the Kootenai County Recorder.

Section 6.03 Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board in accordance with the provisions of the laws of the State of Idaho for judicially foreclosing mortgages. The Association through duly authorized agents, shall have the power to bid on the Lot/Dwelling Unit/Commercial Unit/Apartment Units at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 6.04 Curing a Default. Upon the timely curing of any default for which a Notice of Assessment or Acceleration Notice was filed by the Association, the officers thereof shall record an appropriate Release of Lien upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed One Hundred Fifty Dollars ($150.00), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by

any two (2) members of the Board stating the indebtedness secured by the lien upon any Lot/Dwelling Unit/Commercial Unit/Apartment Units created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request and payment of a reasonable fee, to be determined by the Board.

Section 6.05 Cumulative Remedies. The Assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment or unpaid Assessments, as above provided.

Section 6.06 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under Articles V or VI, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any recorded First Mortgage upon a Lot, Dwelling Unit, Commercial Unit or Apartment Units made in good faith and for value; provided that after such Beneficiary or some other person obtains title to such Lot, Dwelling Unit, Commercial Unit or Apartment Units by judicial foreclosure or by means of the powers set forth in such Deed of Trust, such Unit shall remain subject to the Declaration and payment of all Assessments accruing subsequent to the date such Beneficiary or other person obtains title and claims for a share of unpaid Assessments reallocated to all units, including each unit foreclosed.

## ARTICLE VII

## ARCHITECTURAL CONTROL

Section 7.01 Establishment of Architectural Control Committees. The Association Board of Directors shall establish Architectural Boards consisting of three (3) individuals, who need not be members of the Association, who shall serve at the pleasure of the Board of Directors, pursuant to the Bylaws of the Association. A separate and distinct Architectural Control Committee shall be established for each of the areas set forth in Section 3.01 above except for Rivers Edge which shall be subject to the Exclusion below in Section 7.17. Further a separate and distinct Architectural Control Committee may be established by Grantor for any additional subdivisions or properties whose Owners of Lots are subsequently included as Members of the Association. No buildings, or other structure shall be commenced, erected or maintained upon the Property, nor shall an exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior lighting and location of the same shall have been submitted to and approved in writing as to the quality of materials, harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee for the area being developed.

Section 7.02 Approval by the Architectural Control Committee. No buildings, or other structure shall be commenced, erected or maintained upon the Property, nor shall an exterior

addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the quality of materials, harmony of external design and location in relation to surrounding structures and topography by its Architectural Control Committee or designated agent thereof.

Section 7.03 Approval Necessary. Each Owner of a Lot, Dwelling Unit, Commercial Unit or Apartment Units must procure the Approval of its Architectural Control Committee of plans for new construction, site improvements, landscaping and all modifications thereof, prior to beginning construction.

Section 7.04 Submittals and Construction Completion. The Owner must submit building plans to their Architectural Control Committee. Plan approvals are good for 12 months from date of written approval.

Section 7.05 Record Keeping. A majority vote of the Architectural Control Committee will be required for design approval. Signatures must be affected on all approved plans. Records of approval shall be kept on file with the Secretary of the Association.

Section 7.06 Modifications of Guidelines. As changes in building materials, methods of construction, design concepts and governmental regulations may occur, the Board of Directors may enact revisions to the form and content of these guidelines and adopt such modifications as it deems appropriate. No Owner obtains any vested rights based on guidelines in effect when the Lot was acquired, as opposed to those in effect when his first submittal is made.

Section 7.07 Preliminary Review. The Board of Directors recommends that submittals be made with preliminary plans for preliminary review and evaluation prior to preparation of final plans. This procedure will often save the Owner expense and delay in the final working plans.

Section 7.08 Variances. The Architectural Control Committees may grant an Owner a variance from any guidelines, only if a physical condition exists that makes strict compliance a physical impracticability or creates a material economic burden on an Owner. The Owner who applies for such a variance has the burden of proof of hardship and shall offer evidence in support of his application to support the Architectural Control Committee finding that: the variance is appropriate to the location for the building or improvement on the particular Lot and the immediate neighborhood; the variance is consistent with policy set forth throughout these guidelines; and, that the variance will not materially adversely affect the character of the neighborhood or any adjacent property Owner. A desire to utilize a greater area of a Lot than a guideline would indicate, or to use less costly materials than prevailing in the community are not grounds for variances.

Section 7.09 Reasons for Disapproval. The Architectural Control Committees or their designated agent shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

a. The failure of such plans and specifications to comply with any of the restrictions contained herein, or to include information as may have been reasonably requested;

b. The objection to the exterior design appearance, materials, color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed structure;

c. The incompatibility of any proposed structure, use or parking areas with existing structures or uses on such Lot or upon other Lots in the vicinity, or the insufficiency of the size of the parking areas in relation to the proposed use of the Lot;

d. The objection to the grading plan for any Lot, or the location of any proposed structure upon any Lot or with reference to other Lots in the vicinity; or

e. Any other matter which would render the proposed structures or uses inharmonious with the general plan of improvement of the Property or with structures or uses located upon other Lots in the vicinity.

In any case where the Architectural Control Committee or its designated agent shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based.

Section 7.10 Unapproved Construction; Remedies. If any structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, other than in accordance with plans and specifications approved by its Architectural Control Committee or its designated agent pursuant to the provisions of this Article VII, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein.

Section 7.11 Building Standards During Construction Phase. The following requirements apply to and during the construction phase:

a. Surplus soil and other excavated debris shall be promptly removed from the building site. Blowing dust from grading must be controlled by watering. Excessive noise (including workers' radios) is prohibited. Alcohol and drug use on the site is prohibited. Work hours shall be from 7:00 o'clock a.m. to 6:00 o'clock p.m.

b. The Lot must be kept weed free and clear of construction debris and other waste.

c. All construction activity shall be contained on the Lot for which a building permit has been issued. Access to the Lot shall be only from the approved road abutting the site. Any common ground, adjacent Lots, or roads damaged during construction shall be properly restored to their original condition to the satisfaction of the Board.

d. A small job office may be maintained on the site, but temporary living quarters for workers or the Owner will not be permitted. The job office shall be removed within thirty (30) days after completion of the Dwelling Unit, Commercial Unit, Apartment Units or other permanent building, or within one (1) year after the date on which the temporary structure is erected, whichever first occurs.

e. Permanent water connections and temporary enclosed chemical toilets must be available during all of construction. Chemical toilets should be located downwind from neighbors (if possible) and must be removed within thirty (30) days after completion of the Dwelling Unit, Commercial Unit Apartment Units or other permanent building or within one (1) year after the temporary toilet was erected, whichever first occurs. Trash containers must be removed within thirty (30) days after completion of the Dwelling Unit, Commercial Unit, Apartment Units or other permanent building.

Section 7.12 Building Standards and Restrictions. The following standards and restrictions shall apply to all Lots:

a. Prohibitions. In addition to the "use" restrictions contained herein, the following are strictly prohibited:

i. Accessory structures such as doghouses, storage sheds, etc., may not be constructed prior to the Dwelling Unit, Commercial Unit or Apartment Units and, if not an integral part of the main building, must be permanent structures screened from view off-lot (for example, from any street, or any other Lot).

ii. Exterior lights which illuminate adjacent properties or create a nuisance. Lighting should be designed to minimize ambient light.

b. New Construction Required. No Dwelling Unit, Commercial Unit, Apartment Units, building or other structure shall be moved onto any Lot; new construction being required. No tent, trailer, mobile home, boat or other vehicle or structure shall be used or allowed for human habitation on a temporary or permanent basis on any Lot at any time.

c. Fencing. Fencing as approved by the Board will be constructed of materials specifically approved by the Board. Brown painted or powder coated steel fencing at a maximum height of Six (6) feet; with picket bars of ½" to 1" spaced not less than 3" apart nor wider than 12", shall be allowed. The Board shall require certain fences to conform to specific consistent fencing detail and must be permitted by the City of Coeur d'Alene.

d. Grade. No Owner shall raise the grade of any Lot above the grade established or to be established by Grantor without the prior approval of the Board or its designated agent. Changes in natural grade by cutting or filling should be kept to a minimum. Berms will be acceptable in many locations.

e. Utility Lines. All public and private utility lines shall be located under ground.

f. Pools and Spas. A pool or spa and all pumps and related equipment must be screened from view of the road, and should be situated to minimize visibility from and sound transmission to adjacent Lots.

g. Mailboxes. Mailboxes shall be consistent with requirements of the United States Postal Service and any specifications adopted by the Board.

h. Driveways/Walks. No walk material is permitted other than concrete, stamped concrete, exposed aggregate, pavers or other similar products. Wood expansion joints are permissible.

i. Guidelines. The following are adopted as general policies which each owner is encouraged to meet.

i. Building Siting. Siting and orientation of the building should be as unobtrusive as possible to the neighbors as well as to the community. The Board shall be empowered to reject inappropriate building siting.

ii. Building Character. Garish and unusual architecture and colors or materials in strong contrast to neighboring buildings will not be acceptable. Materials and colors shall blend with, rather than contrast, with the environment. Roof overhangs are encouraged. All building construction and landscape development shall be conducted by professional contractors.

iii. Roofs. Either gables or hipped roofs are recommended.

iv. Storage. Interior and exterior storage closets for bulky items such as barbecues, patio furniture and recreational equipment are encouraged.

The Board or its designated agent may modify these standards with respect to the plans and specifications for any particular Lot, Dwelling Unit, Commercial Unit or Apartment Units if the strict application of these standards would create an unreasonable hardship on the Owner, or would create a result inconsistent with the appearance or uses of the Lots, Dwelling Units, Commercial Units and Apartment Units in the vicinity. The Board or its designated agent may also issue rules or guidelines setting forth procedures for the submission of plans for approval requiring a fee payable to the Association to accompany each application for approval or additional factors which it will take into consideration in reviewing submissions.

Each Architectural Control Committee may also promulgate additional rules and specifications that it deems necessary to preserve the character and quality of the property for which it is responsible.

Section 7.13 Submittal Procedures. The minimum submittal for Board approval of an improvement shall be two complete sets of the final building plans and specifications at 1/4" - 1" scale or larger, including:

a. Plot plan showing locations of structure(s) on Lot and north arrow. The plot plan may be 1/8" scale.

b. Exterior elevation drawings of all sides of any structure, including walls. Indicate height of chimney as compared with the ridge of the roof, natural and finished grade for elevation of all views, the curb level in relations to the applicable elevation(s) of the structure, a detail showing a section from eaves to foundation, including window and trim.

c. Detailed floor plan. Include all room sizes, doors, windows and sizes of same, and the location of the outside air-conditioning unit.

d. Exterior colors and samples of materials. Describe all exterior materials and finishes (wall, roof, trim, chimney, garage door, etc.) and grade of material where applicable, proposed exterior painting and/or staining, including colors and, specifications and color selection for all metal sash and door frames.

e. Detailed roof plan showing all roof treatments and overhang lines.

f. Proposed off street parking.

g. Construction plans shall have sufficient detail to fully explain the intent and character of the structural, architectural, as well as the materials and finishes involved.

The Board may require any additional information reasonably required to determine if the improvement is consistent with these guidelines. All plan changes must be approved by the Board.

The Board's approval must be based on plans and details that thoroughly and accurately reflect the true design, materials and quality of the proposed building, or other improvements. Building plans must be prepared by a licensed architect or building designer.

Section 7.14 No Waiver of Future Approvals. The approval of the Board to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whenever subsequently or additionally submitted for approval or consent.

Section 7.15 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

a. Upon the completion of any work for which approved plans are required under this Article VII, the Owner shall give written notice of completion to the Board.

b. Within thirty (30) days thereafter, the Board or its duly authorized representative may inspect such Improvement. If the Board finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

c. If for any reason the Board fails to notify the Owner of noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 7.16 Non-liability of Board Members. Neither Neighborhood, Inc., Grantor, nor any Member of the Board, nor their representative, shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Board's duties hereunder, unless due to the willful misconduct or bad faith of the Board.

Section 7.17 Exclusion. The architectural control of Rivers Edge shall be under the exclusive control of the Owners of the Property through the Rivers Edge Property Owner's Association, or otherwise. To the extent the Owners or the Rivers Edge Property Owner's Association alter the present common scheme or plan, and that alteration violates the intent of this document, the Association shall have the rights and remedies provided in this Declaration.

## ARTICLE VIII

## MAINTENANCE AND REPAIR OBLIGATIONS

Section 8.01 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding architectural approval, to maintain, repair, replace, and restore areas subject to his exclusive control in a neat, sanitary and attractive condition. Areas subject to the exclusive control of a Custom Lot Owner shall be deemed to include, without limitation, the Owner's Unit and areas within such Owner's Lot, and any landscaped areas between such Owner's Lot and the frontage street for such Lot. Each Owner shall maintain the driveway and sidewalks if any, located on such Owner's Lot.

## ARTICLE IX

## CHARGES FOR UTILITY SERVICES

Section 9.01 Direct Charges. Charges to an individual Unit for natural gas, power or electricity will be made directly by the applicable utility company to the Unit Owner. Charges for telephone, cable television and individual security services will be similarly charged directly to the Owner or renter for the service.

Section 9.02 Water, Sewer and Garbage Charges to be Paid Directly or Through the Association. Water, sewer and garbage service will, if possible, also be charged by the purveyor directly to, and paid by, the individual Owner. To the extent not possible, then the charges for such services will be collected from the individual Owner and paid to the entity furnishing the service by the Association. Utility charges will be imposed by the Association and create a lien upon the Unit using the service.

Section 9.03 Solid Waste Disposal - Garbage. If the applicable purveyor will allow individual garbage/waste disposal billings, the Association shall require the Owner of each Unit to provide solid waste and garbage disposal containers for the use of such Unit, and charges will be made directly by the purveyor providing the service.

If individual billing is or becomes unavailable, the Association may elect to require individual disposal containers or provide dumpsters at specified locations to service the Dwelling Units, Commercial Units and Apartment Units, as well as the Common Areas. Then the Association will charge each Dwelling Unit, Commercial Unit or Apartment Units beginning with first occupancy a utility charge for the solid waste and garbage service. After first occupancy, each Dwelling Unit, Commercial Unit or Apartment Units will be charged for the utility charge whether the dwelling be thereafter occupied or not. The utility charge is to be determined by dividing the cost of service to all dumpsters or pick-up points located on the property by the number of individual Dwelling Units, Commercial Units or Apartment Units. The Owner of each Dwelling Unit, Commercial Unit or Apartment Units after first occupancy of such Unit(s) shall pay his or her proportionate share.

## ARTICLE X

## USE RESTRICTIONS

All real property within the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Grantor in Article XVI hereof.

Section 10.01 Single Family Dwelling Units; Leases. Each Dwelling Unit shall be used as a residence for a single family and for no other purpose. No unit shall be leased or rented for less than six (6) months, without prior written approval by the Association Board of Directors. No portion of any Single Family Dwelling Unit shall be sublet as a rental unit.

Section 10.02 Business or Commercial Activity. No part of the Property which is zoned for residential use shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; except Grantor, its successor or assigns, may use any portion of the Property for model home sites, and display a sales office during the construction and/or sale period.

Section 10.03 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot, Dwelling Unit, Commercial

Unit, Apartment Unit or the Common Areas, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner, including continually barking dogs. Except for snow removal equipment, no lawn mower, chain saw, or other loud noise generating device shall be operated on any Lot between the hours of 8:00 PM to 7:00 AM. The Board of Directors shall have the right to determine in accordance with the Bylaws if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

Section 10.04. Parking. No Dwelling/Commercial/Apartment Unit(s) Owner, or tenant/guest thereof shall be allowed to store any boat, unused vehicle, golf cart, camper, R.V., trailer or the like anywhere on the Property, except within a garage or behind a sight obscuring fence, for more than 48 hours. Exposed, unlicensed and unused vehicles shall not be permitted as per the City of Coeur d'Alene ordinances.

Section 10.05 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Dwelling Units without the prior approval of the Architectural Control Committee, except signs, regardless of size, used by Grantor, its successors and assigns to advertise the Property during construction and sale or lease period. The Association shall have the authority to provide one central advertising board not larger than two (2) feet square for use by any Dwelling Unit Owner or Apartment Units Owner to post For Sale or For Rent notices thereon. The Association may determine the location and establish rules for use of the advertising board, and be responsible for maintenance thereof.

Section 10.06 Beaches.

a. The Public Beach shall be governed and maintained by the City of Coeur d'Alene. However, should the City of Coeur d'Alene fail to maintain the area in a manner customary within the Mill River Subdivision, the Board of Directors shall be allowed to determine what maintenance shall be performed by the Association.

b. The Private Park or Private Beach is a common area owned by the Association. The use, rules and regulations of said area shall be determined by the Board and Members of the Association.

Section 10.07 Unlawful Activity. No improper, offensive or unlawful use shall be made of the properties nor any part thereof and all valid laws, zoning ordinances and the regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 10.08 Animal Restrictions. Animals must not be kept, bred or maintained for commercial purposes, and must be kept in accordance with the animal control laws of the City of Coeur d'Alene.

Section 10.09 Trash, Firewood Storage. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot, Dwelling Unit, Commercial Unit, Apartment

Unit or Common Areas, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Dwelling Units, Commercial Units and Apartment Units only when set out for a reasonable period of time (not to exceed twelve (12) hours) before and after scheduled trash collection hours. Additionally, all firewood, coal, presto-logs, etc., of any kind shall be stored within the Dwelling Unit or garage or Commercial Unit or Apartment Unit, and not in view of the public.

Section 10.10 Insurance Rates. Nothing shall be done or kept in the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 10.11 Drainage. There shall be no interference with the established drainage pattern over any Lot within the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Board. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that the Dwelling Unit, Commercial Unit or Apartment Units on such Lot is/are conveyed to a consumer/purchaser from Grantor or other builder, or that which is shown on any plans approved by the Board, which may include drainage from the Common Areas over any Lot, Dwelling Unit Commercial Unit or Apartment Units in the Property.

Section 10.12 Violation of Governing Instruments. There shall be no violation of the restrictions of this Declaration or of the rules and regulations of the Association adopted in accordance with the provisions of the Bylaws. If any Owner, his or her family, guest, licensee, lessee or invitees violates any such restrictions, the Board may impose a reasonable suspension of voting privileges of such Owner as further provided in the Bylaws, as well as reasonably suspend the rights of said persons to use the Common Area facilities. Additionally, the Board may seek any other remedies provided herein or by law.

Section 10.13 No Warranty of Enforceability. While Grantor has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reasons or to any extent, Grantor makes no warranty or representation as to the present or future validity or enforceability of any such covenants, conditions and restrictions. Any Owner acquiring a Lot, Dwelling Unit, Commercial Unit or Apartment Units in the Property in reliance of one or more of such provisions shall assume all risks of the validity and enforceability thereof and, by acquiring a Lot or Dwelling Unit, Commercial Unit or Apartment Units, agrees to hold Grantor harmless therefrom.

# ARTICLE XI

## EASEMENTS

Section 11.01 Common Area. Each Lot, Dwelling Unit, Commercial Unit and Apartment Unit and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs of the buildings or other improvements as designed or constructed. A valid easement for said encroachments and for the maintenance of same for so long as they stand shall and does exist.

Section 11.02 Blanket Easement. There is hereby created a blanket easement upon, through and across and over and under all of said Property for ingress, egress, installation, replacing, repairing and maintaining all utilities and service lines and systems, including but not limited to, water, sewer, gas, telephone, electricity and heat pump lines and a master antenna system and/or cable television system. By virtue of this easement, it shall be expressly permissible for the companies providing electrical, water, sewer, gas, master television antenna, cable television, telephone service, alarm systems and/or heat pump lines to install, erect and maintain all necessary pipes and conduit underground and other necessary equipment at over or below grade on said Property and to affix and maintain electrical cable television and/or telephone wires, gas lines, heat pump lines, circuits and conduits on, above, across and under the roofs and exterior walls and through walls of townhouses or other buildings, and meters and shutoffs at or inside and/or outside said buildings. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter into or to cross over the Common Areas, Lots, Dwelling Units, Commercial Units and Apartment Units and to enter any building during reasonable hours and upon request when occupied (except in an emergency when such request may be dispensed with), to inspect and to perform the duties of maintenance and repair of the buildings or Common Areas as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, gas lines, heat pump lines or other utilities may be installed or relocated on said Property except as initially approved by the Grantor or thereafter approved by Grantor or the Association's Board of Directors. Should any utility or organization furnishing a service covered by the general easement above request that a specific easement be provided by a separate recordable document, Grantor shall have the right to grant such easement on said Property provided it not be broader than the terms hereof. The easement provided for in this Section shall in no way affect any other recorded easement on said premises.

Section 11.03 Blanket Easement to Correct Drainage. The Grantor reserves a blanket easement and right, but not an obligation, for itself, its successors and the Association, on, over and under the ground within the Property to maintain and correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary following which the Grantor, its successors or the Association shall restore the affected property to its original condition as near as practicable. Reasonable notice of intent to take such action shall be given to all affected Owners, unless an emergency appears to exist which precludes such notice.

Section 11.04 Landscape. Grantor reserves an easement for itself, its successors and the Association across all of the Common Areas and all of the Landscaping Maintenance Areas to install maintain, repair and replace fencing and landscaping at the discretion of the Grantor, without, however, any obligation to do so.

Section 11.05 Perimeter Fence Easement. Grantor reserves a five (5') foot easement for itself, its successors and the Association adjacent to and along the perimeter of the Property for the installation, maintenance, repair and replacement of any fence installed by Grantor and/or the Association. Within the easement, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the perimeter fence. If fences are placed in any easement area, other than the outside perimeter fence, it will be the Lot Owner's responsibility to remove it if necessary for the installation, maintenance, repair or replacement of the utilities, drainage facilities or perimeter fence. No such Perimeter Fence Easement is created in the Real Property located within Rivers Edge.

## ARTICLE XII

## OWNERS' PROPERTY RIGHTS

Section 12.01 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right of ingress and egress to and over the Common Areas and a non-exclusive right of enjoyment to the Common Areas which shall be appurtenant to and shall pass with title to every Lot, Dwelling Unit, Commercial Unit and Apartment Units, subject to the following provisions:

a. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas, to enforce all parking restrictions within the Common Areas as set forth in Section 12.02 of this Article XII, to charge reasonable admission and other fees for the use of any recreational facility situated in the Common Areas, to reasonably limit the number of guests of Owners using the Common Areas, facilities, and to reasonably restrict access to areas of the Common Areas.

b. Subject to the provisions of Article XV of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Areas to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. With the exception of conveyance of easements for utilities serving the Common Areas, the Common Areas shall not be sold, transferred or conveyed by the Association without this Declaration being validly amended to provide for the same.

c. The right of Grantor and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Areas, and the facilities thereof, without cost, for access, ingress, egress, use and enjoyment, in order to maintain sale facilities and otherwise dispose of the Property as provided herein, until the Close of Sale of all of the

Dwelling Units, Commercial Units and Apartment Units in the Property; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners.

d. The right of the Board to suspend the rights and easements of any Member and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located in the Common Areas, for any period during which the payment of any Common, Special Capital Improvement or Reconstruction Assessment against such Member and his or her Dwelling Unit, Commercial Unit or Apartment Units remains delinquent, and, after Notice and Hearing, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Declaration, Articles, Bylaws or rules and regulations of the Association it being understood that any suspension for either non-payment of any Assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided herein.

e. The rights and reservations of Grantor as set forth in Article XVI of this Declaration.

f. The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Areas, in accordance with the design, finish or standard of construction of such improvement, or of general improvements within the Property, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of a majority of each class of voting membership in the Association.

g. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Areas.

h. The rights of any First Mortgagee as set forth in Article XV of this Declaration.

i. Non-exclusive easements appurtenant for vehicular traffic over all private streets within the Property, subject to the parking provisions set forth in Section 12.02 of this Article XII.

j. Easements for public services, including but not limited to the right of the firefighters, postal carriers and garbage men to enter upon any part of the Common Areas.

Section 12.02 Easements for Parking. Subject to the provisions of this Declaration respecting vehicle parking, the Association, through its officers, committees and agents, is hereby empowered to establish "parking", "guest parking", and "no parking" areas within the Common Areas as well as to enforce these parking limitations by all reasonable means, including the removal of any violating vehicles. No storage of any items of personal property of any kind will be allowed by any Owner or tenant/guest of a Dwelling Unit, Commercial Unit or Apartment Unit on any driveway, streets or Common Areas.

Section 12.03 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right to enjoyment of the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. Any guests of any Owner, his tenants or contract purchaser must be accompanied by said Owner, tenant or contract purchaser when using any part of the Common Areas.

Section 12.04 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot, Dwelling Unit, Commercial Unit, Apartment Units, or other property owned by him from liens and charges hereof, by waiver of the use and enjoyment of the Common Areas and the facilities thereon or by abandonment of his Lot, Dwelling Unit, Commercial Unit, Apartment Units or any other Property.

Section 12.05 Title to the Common Area. Grantor covenants for itself, its successors and assigns that it will convey to the Association fee simple title to the Common Areas free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, and conditions then of record, including those set forth in this Declaration.

Section 12.06 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on the Common Areas, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for the taxes and assessments assessed by the County Assessor or other taxing authority against the Common Areas and attributable to his own Lot, Dwelling Unit, Commercial Unit or Apartment Units and interest in the Common Areas; provided, however, that it is the intent of the Grantor that this Declaration serve to allow the Kootenai County Assessor to assess the Common Area taxes to the Owners of the Lots/Dwelling Units/Commercial Units/Apartment Units equally in lieu of establishing a separate tax parcel for the Common Areas.

Section 12.07 Recognition of Rights of Neighboring Land Owners and Users. Grantor for and on behalf of its successors and assigns acknowledges that subject Property lies adjacent to or in near proximity to existing traditional natural resource industries, including an operating lumber mill and wood pellet manufacturing business. Grantor acknowledges the perpetual right of these and other neighboring existing industries to continue their operation as they presently exist within the bounds of the law. Grantor acknowledges that these traditional natural resource industries can and do create a certain reasonable amount of dust, noise, and general unsightliness as a natural consequence of their operation, and Grantor for and on behalf of its successors and assigns waives any objection to such noted conditions as they presently exist. All persons succeeding Grantor are hereby deemed to acknowledge the existence of these neighboring industries, their right to continue operation, and by this Declaration waive objection to the same extent as the Grantor has done herein.

## ARTICLE XIII

## INSURANCE

Section 13.01 Casualty Insurance on Common Areas. The Association shall keep all insurable improvements and fixtures of the Common Areas insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

Section 13.02 Liability and Other Insurance. The Association may obtain general comprehensive public liability insurance and worker's compensation insurance, insuring the Board, the Association, the Owners, Grantor and managing agent, if any, against any liability to the public or the Owners of Lots/Dwelling Units, Commercial Units or Apartment Units and their invitees or tenants incident to the ownership of the Common Areas. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board, the officers of the Association and the Manager and any volunteers against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the requirements for subdivisions established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee or an Owner of a Lot, Dwelling Unit, Commercial Unit or Apartment Units in the Property, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA and FHLMC, as applicable.

Section 13.03 Manner of Apportioning Assessment for Insurance. Premiums for fire and casualty coverage of Common Area property and general liability coverage insuring the Board, the Association, the Owners, Grantor and managing agent, if any, against liability incident to the ownership and management of the Common Areas, shall all be borne equally by all Owners and thus included in the regular Common Assessments of the Owners as levied by the Association.

Section 13.04 Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

## ARTICLE XIV

## DAMAGE, DESTRUCTION OR CONDEMNATION

Section 14.01 Damage or Destruction of Common Area. Damage to or destruction of all or any portion of the Common Areas shall be handled in the following manner:

a. In the event of damage or destruction to any of the Common Areas, and the insurance proceeds are sufficient to effect total restoration then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

b. If the insurance proceeds are within Five Thousand Dollars ($5,000.00) or less of being sufficient to effect total restoration to the Common Areas, then the Association shall cause such Common Areas to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Unit Owners, in accordance with the provisions of Article V, Section 5.06, of this Declaration.

c. If the insurance proceeds are insufficient by more than Five Thousand Dollars ($5,000.00) to effect total restoration to the Common Areas, then by written consent or vote of majority of the Members of the Association, the Members shall determine whether (1) to rebuild and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Units, (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Five Thousand Dollars ($5,000.00) and which is assessable equally to all Unit Owners but which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged, or (3) subject to the provisions of Article XV, to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of Units as their interest may appear.

d. Each Member shall be liable to the Association for any damage to the Common Areas not fully reimbursed to the Association by insurance proceeds arising out of or caused by the willful or negligent act of any Owner, his family, guests or invitees. Repair or replacement shall be done at the Owner's expense, or, after Notice and Hearing, a Special Assessment therefore shall be made by the Board against the Owner and his Unit.

Section 14.02 Condemnation of Common Area. Except as provided herein, if all or any part of the Common Areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Section shall apply. The Board shall provide each Owner and each First Mortgagee with a written notice of the commencement of any such condemnation proceeding and of any proposed sale or disposition in lieu of or in avoidance of such proceeding.

All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association. In the event that all of the Common Areas are taken or condemned, or sold or otherwise disposed of in lieu of or in

avoidance thereof, the Condemnation Award shall be divided equally among the Owners and Mortgagees of the Dwelling Units, Commercial Units, Apartment Units and Lots as their interests may appear.

In the event that less than the entire Common Areas are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the rights, title, interests, privileges, duties and obligations of an Owner and Mortgagee in, to or with respect to the Common Areas not so taken or condemned shall continue in full force and effect as provided in this Declaration.

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 14.01 above.

## ARTICLE XV

## MORTGAGEE PROTECTION CLAUSE

Section 15.01 Notwithstanding any and all provisions hereof to the contrary, the following provisions are added hereto (and to the extent these added provisions conflict with any provisions of the Declaration these added provisions shall control):

a. Each First Mortgagee of a Mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default.

b. Unless at least seventy-five percent (75%) of First Mortgagees have given their prior written approval neither the Association nor the Grantor shall:

1. subject to Idaho non-profit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Areas and the improvements thereon which are owned by the Association;

(The granting of easements for public utilities or for other public purposes or consistent with the intended use of such property by the Association as provided in this Declaration, shall not be deemed a transfer within the meaning of this clause).

2. change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

3. by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Units, the maintenance of the exterior walls or common fences and driveways, or the upkeep of lawns and planting in the Property;

4. fail to maintain fire insurance on insurable Common Area property on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the advance value (based on current replacement cost);

5. use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such improvements;

6. amend this Declaration or the Articles of Incorporation or Bylaws of the Association in such a manner that the rights of any First Mortgagee Will be adversely affected.

c. First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of annual financial reports and other financial data within ninety (90) days following the end of any fiscal year of the Association, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

d. All First Mortgagees shall be given: (1) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, prior to any abandonment or termination of the Property, and prior to the effective date of any termination of any agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and (2) immediate notice following any damages to, or destruction of, the Common Areas and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Areas.

e. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such property, and First Mortgagees making such payments shall be owed immediately reimbursement therefore from the Association.

f. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person handling funds of the Association, including, but not limited to, employees and volunteers of any professional manager.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the FHLMC, the FNMA, or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of First Mortgages encumbering Lots with Dwelling Units, Commercial Units or Apartment Units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their Dwelling Units, Commercial Units or Apartment Units, if such agencies approve the Property as a qualifying subdivision, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board

concerning the status of any Mortgage encumbering a Dwelling Unit, Commercial Unit or Apartment Units.

## ARTICLE XVI

## GRANTOR EXEMPTION

Section 16.01 Grantor or its successors or assigns will undertake the work of developing the Common Areas and the infrastructure for the Lots to be used as building sites for Dwelling Units, Commercial Units or Apartment Units. The completion of that work and age of the Lots are essential to the establishment and welfare of the Property as a first-class residential community. In order that said work may be completed and the Property established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

a. Prevent Grantor, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot, Dwelling Unit, Commercial Unit or Apartment Units owned by them whatever they determine to be necessary or advisable in connection with the completion of said work; or

b. Prevent Grantor, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Common Area or any Unit or portion thereof owned or controlled by Grantor, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Property as a residential community and disposing of the same in Lots, Dwelling Units, Commercial Units or Apartment Units by sale; or

c. Prevent Grantor, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot, Dwelling Unit, Commercial Unit or Apartment Units owned or controlled by Grantor, or its successors or assigns, its or their business of developing, grading and constructing Dwelling Units, Commercial Units, Apartment Units and other improvements in the Property as a residential community with surrounding commercial uses and of disposing of Lots, Dwelling Units or Commercial Units thereon by sale; or

d. Prevent Grantor, its successors or assigns or its or their contractors or subcontractors, from maintaining such sign or signs on the Common Areas or any Dwelling Unit or Commercial Unit or Apartment Units owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots, Dwelling Units, Commercial Units and Apartment Units in the Property; or

e. Prevent Grantor, at any time prior to acquisition of title to a Lot, Dwelling Unit, Commercial Unit or Apartment Units by a purchaser from Grantor, to establish on that Lot additional licenses, reservations and rights-of-way of itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property.

## ARTICLE XVII

## GENERAL PROVISIONS

Section 17.01 Enforcement. This Declaration, the Articles of Incorporation and the Bylaws may be enforced as follows:

a. Breach of any of the covenants, conditions and restrictions contained in this Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, including Grantor, or by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the Court may deem reasonable, interest thereon, costs of collection and Court costs.

b. The result of every act or omission whereby any of the covenants, conditions and restrictions contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

c. The remedies herein provided for breach of the covenants, conditions and restrictions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

d. The failure of the Association or any Owner to enforce any of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

e. A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge or any bona fide First Mortgage or Deed or Trust made in good faith and for value on any Lot, Dwelling Unit, Commercial Unit or Apartment Units thereon; provided however, that any subsequent Owner of such property shall be bound by said covenants, conditions and restrictions, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 17.02 Severability. Invalidation of any of these covenants, conditions or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 17.03 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association and the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, in perpetuity from the date this Declaration is recorded, unless a Declaration of Amendment or Termination meeting the requirements of an amendment to this Declaration as set forth in Section 17.05 of this Article

XVII has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

Section 17.04 Interpretations. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community with surrounding commercial uses, and for the maintenance of the Common Areas and other items as set forth herein.

The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction; the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall include the masculine, feminine and neuter.

Section 17.05 Amendments. This Declaration may be amended only by the affirmative vote or written consent of not less than seventy-five percent (75%) of the voting power of each class of Members; Provided, however, that the prior written approval of at least seventy-five percent (75%) of all First Mortgagees must be also obtained, before Article XV may be amended; and provided further, that the prior written approval of Grantor must be obtained before Article XVI may be amended. Notwithstanding the foregoing, until the Close of Sale of the first Dwelling Unit, Commercial Unit or Apartment Units in the Property, Grantor shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. Any supplement or amendment to this Declaration must be signed by at least two (2) officers of the Association, indicating that the requisite approvals have been obtained, and such amendment or supplement must be recorded in the Office of the Kootenai County Recorder.

Section 17.06 No Public Right of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

Section 17.07 Notice and Acceptance. Every Person who owns, occupies or acquires right, title, estate or interest in or to any Lot, Dwelling Unit, Commercial Unit or Apartment Units or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to those restrictions is contained in the instrument by which such Person acquires an interest in the Property, or any portion thereof.

Section 17.08 Reservation of Easements. Reciprocal, nonexclusive easements are hereby reserved for the benefit of Owners of adjoining Units for the control, maintenance and repair of the utilities serving adjoining Units. Grantor expressly reserves for the benefit of all of the real property in the Property, and the Owners and the Association, reciprocal nonexclusive easements for access, ingress and egress to all Units, and over the Common Areas, for the purposes and the enjoyment of the Units in accordance with this Declaration, including without limitations for installation and repair of utility services, for drainage over, across and to adjacent Units for water resulting from the normal use of adjoining Dwelling Units, Commercial Units and/or Apartment Units, and for maintenance and repair of the Landscape Maintenance Areas.

Section 17.09 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.10 No Representation or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Grantor or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, operation, maintenance, cost of maintenance, taxes or regulation thereof as a subdivision, except as specifically and expressly set forth in this Declaration.

Section 17.11 Arbitration. In the event of any dispute arising under this Declaration, each party shall choose one arbitrator, and such arbitrators shall choose one arbitrator, and the decision shall be by a majority of all arbitrators. This decision shall be final and binding and the rules of the Idaho Uniform Arbitration Act shall apply.

Section 17.12 Termination of Any Responsibility of Grantor. In the event that Grantor shall convey any of its rights, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then in such event, Grantor shall be relieved of the performance of any further duty or obligation hereunder; provided that, except in the event of foreclosure, in order for Grantor to be so relieved of liability, such transferee shall expressly assume all such duties and obligations and shall first be approved by any lender of Grantor holding a mortgage on all or any portion of the Property (which approval shall not be unreasonably withheld).

The undersigned have executed this Declaration on the date first above written.

GRANTOR:

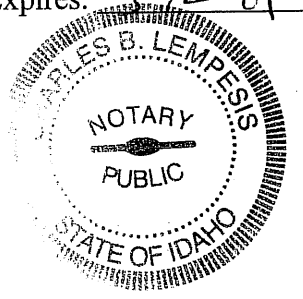
COPPER BASIN CONSTRUCTION, INC., an Idaho Corporation

By: _____
STEVE WHITE, President

STATE OF IDAHO )
)ss
COUNTY OF KOOTENAI )

On this 9th day of November, 2005, before me, a Notary Public in and for said State, personally appeared STEVE WHITE, known or identified to me to be the President of Copper Basin Construction, Inc., that he executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

NOTARY PUBLIC for the State of Idaho
Residing at: POST FALLS
My Commission Expires: 6/12/09




PREDECESSOR GRANTOR AND
ASSIGNOR OF GRANTOR'S INTEREST:

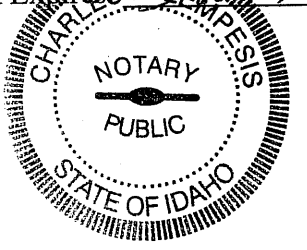
NEIGHBORHOOD, INC.

By: _____
CLIFFORD E. MORT, President

STATE OF IDAHO )
)ss
COUNTY OF KOOTENAI )

On this 9th day of November, 2005, before me, a Notary Public in and for said State, personally appeared CLIFFORD E. MORT, known or identified to me to be the President of Neighborhood, Inc., that he executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

NOTARY PUBLIC for the State of Idaho
Residing at: POST FALLS, IDAHO
My Commission Expires: 6/12/09

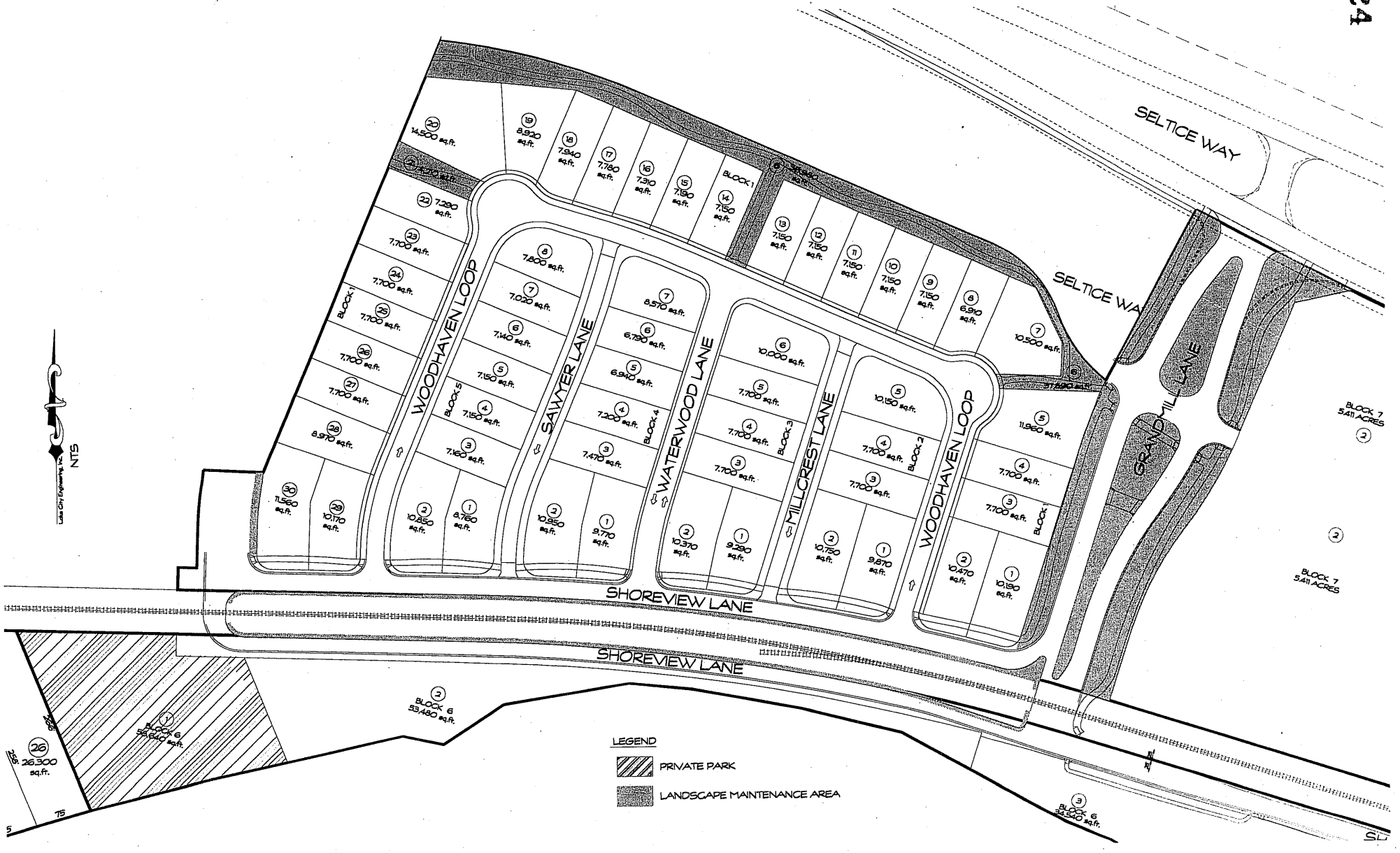


1995324

# Exhibit A

Legal Description

Lot 1, Block 1 of Mill River Second Addition as recorded at Book J of Plats, Page 249, Records of Kootenai County, Idaho.

1995324

# EXHIBIT "B"