

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

HAILEY CREEK
PROFESSIONAL PARK
An Addition to the City of Rigby
Jefferson County, Idaho

IMPORTANT NOTICE

THE FOLLOWING IS A IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL BUYER AND OWNER OF A LOT WITHIN HAILEY CREEK PROFESSIONAL PARK SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS, RESPONSIBILITIES AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND LOTS LOCATED WITHIN HAILEY CREEK PROFESSIONAL PARK. HAILEY CREEK PROFESSIONAL PARK IS A UNIQUE COMMERCIAL ENVIRONMENT. EACH POTENTIAL OWNER IS ADVISED TO MAKE FULL AND COMPLETE INQUIRY ABOUT HAILEY CREEK PROFESSIONAL PARK BEFORE ACQUIRING A LOT. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE LOTS WILL BE SUBJECT TO ASSESSMENTS LEVIED BY HAILEY CREEK PROFESSIONAL PARK OWNERS ASSOCIATION, INC. THE DECLARANT, AS DEFINED IN THIS DECLARATION, EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY THE DECLARANT. POTENTIAL OWNERS ARE ADVISED TO REVIEW THIS DECLARATION PRIOR TO ACQUIRING A LOT.

**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
HAILEY CREEK PROFESSIONAL PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAILEY CREEK PROFESSIONAL PARK (this “Declaration”) is made effective as of the 16th day of October, 2009 by HAILEY CREEK PROFESSIONAL PARK, LLC, an Idaho limited liability company (“Declarant”).

ARTICLE 1 RECITALS

Section 1.1 Property Covered. Declarant is the owner of certain real property located in the City of Rigby, Jefferson County, Idaho, and legally described on Exhibit A attached hereto, which is made subject to this Declaration.

Section 1.2 Commercial Development. Hailey Creek Professional Park is a commercial property which Declarant intends to develop in accordance with zoning ordinances and development approvals obtained or to be obtained by Declarant from the City of Rigby.

Section 1.3 Purpose of Declaration. The purposes of this Declaration are to set forth covenants, conditions, restrictions, easements and equitable servitudes for the Property, to designate the Common Area, and to create the Association for the maintenance of the Common Area and management of the Property. This Declaration is designed to preserve the Property’s value, desirability and attractiveness, to ensure a well-integrated, high-quality development, and to guarantee adequate maintenance of the Common Area and the Improvements located thereon in a cost effective and administratively efficient manner.

ARTICLE 2 DECLARATION

Declarant hereby declares that the Property and every Lot or interest therein shall be held, sold, conveyed, encumbered, hypothecated, used, occupied and improved subject to the provisions of this Declaration. All provisions hereof shall be deemed covenants running with the land or as equitable servitudes, and shall constitute benefit and burdens to the Owners and all Persons hereafter acquiring or owning any interest in the Property, however such interests may be obtained. Each Owner of a Lot, including Declarant, is subject to all of the rights and duties contained within this Declaration. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant’s right to complete the development of the Property and to construct Improvements thereon, nor Declarant’s right to maintain model, construction, sales or leasing offices or similar facilities (temporary or

otherwise) on any portion of the Property, including the Common Area or any public right-of-way, nor Declarant's right to post signs incidental to construction, sales or leasing, nor Declarant's right to modify plans for the Property.

ARTICLE 3 DEFINITIONS

"Annual Budget" means the annual budget for the Association determined as provided in Section 8.6 of this Declaration.

"Articles" means the Articles of Incorporation of the Association or other organizational or charter documents of the Association, as the same may be amended or revised from time to time.

"Assessments" means those payments required of Owners, including Regular, Special and Limited Assessments. The Association shall have the right to require Assessments from its Members.

"Association" means Hailey Creek Professional Park Owners Association, Inc., an Idaho nonprofit corporation, its successors and assigns.

"Board" or "Board of Directors" means the Board of Directors or other governing board or individual, if applicable, of the Association.

"Building" means the building to be constructed on a Lot, in compliance with this Declaration and all applicable zoning and building codes, for the exclusive use and possession of the Owner of the Lot.

"Bylaws" means the Bylaws of the Association, as the same may be amended or revised from time to time.

"Common Area" means the land designated on the Plat as Lot 15, including but not limited to all areas designated on the Plat for access and parking, and all utility lines and facilities located within the Common Area.

"Common Expenses" means all costs and expenses incurred by the Association for management, utilities, insurance, improvements, maintenance, repair and replacements, and any necessary reserve funds with respect to the Common Areas, including but not limited to all landscaping maintenance and snow removal, and any and all other costs and expenses, including legal, accounting and other professional fees, incurred to conduct the business and affairs of the Association. Common Expenses shall also include legal fees and costs incurred by the Association to defend any claim, suit or other action against the Association, including but not limited to any claim, suit or other action brought by any Owner, which shall be paid

by the Owners (including the Owner bringing such claim, suit or other action) in accordance with this Declaration.

“Declarant” means Hailey Creek Professional Park, LLC, an Idaho limited liability company, or its successors in interest, or any Person to whom the Declarant expressly transfers its rights under this Declaration, in whole or in part, other than transfers of Lots to individual Owners.

“Declaration” means this Declaration of Covenants, Conditions and Restrictions for Hailey Creek Professional Park, as it may be amended or supplemented from time to time.

“Improvement” means any Building and any other structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, fences, streets, drives, parking areas, sidewalks, curbs, landscaping, walls, hedges, plantings, trees, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, grading, road construction or utility improvements. Improvements include both original improvements existing on the Property on the date hereof and all later changes and Improvements.

“Limited Assessments” means charges against a particular Owner and its Lot for certain costs incurred by the Association that are directly attributable to the Owner.

“Lot” means all Lots within the Property as specified or shown on the Plat upon which Improvements may be constructed, except for purposes of this Declaration the term Lot shall not include Lot 15 designated in the Plat as Common Area. For voting, membership and assessment purposes herein, “Lot” shall not include Lot 15 designated as Common Area.

“Member” means each Owner holding a membership in the Association, including Declarant.

“Mortgage” means any first-lien mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

“Mortgagee” means any Person, bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, or any successor to the interest of such, named as mortgagee, beneficiary, or creditor under any Mortgage, as Mortgage is defined above.

“Owner” means the record owner, whether one or more Persons, including Declarant, holding fee simple interest of record to a Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired

fee simple title pursuant to foreclosure or other proceedings. If ownership of a Lot is held by one or more Persons, the multiple Owners of that Lot shall be deemed a single Owner for purposes of voting in meetings of the Association.

“Percentage Share” means each Owner’s percentage share of the Common Expenses are set forth on Exhibit B attached hereto.

“Person” means any individual, partnership, corporation, trust, estate or other legal entity, including Declarant.

“Plat” means the Plat for Hailey Creek Professional Park recorded on August 6, 2009 as Instrument Number 378660, records of Jefferson County, Idaho.

“Property” means the real property described on Exhibit A.

“Property Manager” shall mean that Property Manager, if any, retained by the Association pursuant to Section 7.10.

“Regular Assessments” means charges for Common Expenses levied against the Lots by the Association pursuant to the terms of this Declaration.

“Special Assessments” means charges for capital improvements and replacements and a reasonable reserve therefor, equipment purchases and replacements and a reasonable reserve therefor, and shortages in Regular Assessments which are levied against the Lots by the Association pursuant to the terms of this Declaration.

ARTICLE 4 NATURE OF LOTS

Section 4.1 Legal Descriptions of Lots. For purposes of conveying, mortgaging, or otherwise affecting title, any Lot may be legally described by its identifying number as shown on the Plat. Such legal description shall be construed to describe the Lot and the appurtenant membership in the Association and to incorporate all the rights and limitations incident to the ownership of a Lot in the Property. Such legal description shall be substantially as follows:

Lot _____, Hailey Creek Professional Park, an addition to the City of Rigby, County of Jefferson, State of Idaho, according to the duly recorded plat thereof.

Section 4.2 Conveyances and Form of Holding Lots. The Lots in the Property may be conveyed and recorded as individual properties capable of independent usage. Each Lot may be held in any traditional form of holding real property interests including, but not

limited to, community property, tenancy in common and joint tenancy with right of survivorship. The Owners of the respective Lots shall have the absolute right to lease the areas within each Lot provided the lease is made subject to the rules and regulations made by the Board.

ARTICLE 5 NATURE OF OWNERSHIP

Section 5.1 Ownership of Common Areas. The Association shall own the Common Areas. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Areas for all purposes incident to the use and occupancy of its Lot and all other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with the Lot.

Section 5.2 Covenants Appurtenant to Lots. All rights or interests and all obligations or restrictions of an Owner created hereunder shall be deemed appurtenant to its Lot and shall not be separable therefrom. Any conveyance or encumbrance of a Lot shall also be deemed a conveyance or encumbrance of those appurtenant rights or interests even though such rights or interests are not expressly referred to in such conveyance or encumbrance.

Section 5.3 Covenants to Run with the Land. This Declaration and all covenants, restrictions, limitations, easements, conditions, and uses as herein provided for shall constitute covenants to run with the land hereby included within the Property and shall be a burden and/or a benefit to the Declarant, its successors and assigns, and to any Person acquiring any interest in the Property, and to their heirs, executors, administrators, personal representatives, successors or assigns.

ARTICLE 6 RIGHTS AND EASEMENTS

Section 6.1 Rights of Use and Enjoyment. Every Owner shall have a nonexclusive right for the use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions set forth in this Declaration, as supplemented from time to time.

Section 6.2 Delegation of Use and Enjoyment. Any Owner may delegate, in accordance with the Declaration, its right of use and enjoyment in the Common Area, to its tenants, employees, customers, guests or invitees.

Section 6.3 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on the Plat, or any portion thereof, and to any other easements of record or of use.

Section 6.4 Easements for Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unwilful placement or settling or shifting of the Improvements, including, without limitation, structures, walkways, and sidewalks constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as the encroachments exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Section.

Section 6.5 Easements for Access and Parking. Declarant expressly reserves for the benefit of Declarant and all Owners of the Property reciprocal easements for (i) ingress and egress over, across and upon designated portions of the Common Areas to and from their respective Lots in connection with the normal use of the Lots, (ii) parking upon designated portions of the Common Areas in connection with the normal use of the Lots; and (iii) for necessary maintenance and repair of any Improvements including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Declarant and all Owners, their customers, tenants and invitees, while occupying a Lot or temporarily visiting the Property, for pedestrian or vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot, subject to any rules and regulations as may be adopted by the Association.

Section 6.6 Easements for Utilities. All Owners shall have an easement over the Common Area for the installation and repair of utility services and for the drainage of water over, across and upon the Common Area resulting from the normal use of the Lots. Notwithstanding anything expressly or implied contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Lot to a purchaser.

ARTICLE 7 ASSOCIATION GOVERNANCE AND ADMINISTRATION

Section 7.1 Organization. The Association shall be a nonprofit corporation under the applicable provisions of Idaho law and shall be charged with the duties and invested with

the powers prescribed by law and set forth herein. Neither the Articles nor the Bylaws shall be adopted, amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Each Owner shall abide by and benefit from the provisions, covenants, conditions and restrictions contained herein. The Association shall not engage in politics or pursue any political purpose.

Section 7.2 Purpose. The purpose of the Association shall be to:

7.2.1 Maintain, repair and replace all Improvements in the Common Area; including, without limitation, all streets, sidewalks, parking, landscaping and other Improvements;

7.2.2 Aid and cooperate with the Owners in the enforcement of all conditions, covenants and restrictions on or appurtenant to their property; and

7.2.3 Exercise any and all power that may be delegated to it from time to time by the Owners.

Section 7.3 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from ownership of the Lot. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title to a Lot and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

Section 7.4 Membership Voting. The Association will have two (2) classes of memberships:

7.4.1 Class A Members. Owners other than Declarant shall be known as Class A Members. Each Class A Member shall have equal voting power and shall be entitled to one (1) vote for each Lot. 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 as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional votes shall not be allowed.

7.4.2 Class B Member. Declarant shall be known as the Class B Member, and shall be entitled to five (5) votes for each Lot owned. The Class B Member shall cease to be a voting Member in the Association when all of Declarant's Lots have been sold or leased.

Section 7.5 Association Meetings. Meetings of the Association shall be called and held in accordance with the Bylaws.

Section 7.6 Board of Directors and Officers. The Association's affairs shall be governed by a Board composed of not less than three (3) persons elected in accordance with the Bylaws. The foregoing to the contrary notwithstanding, the Declarant shall have the right to designate that the Association shall only have one or two members and to appoint all Board members until the Declarant has sold or leased all the Lots or has waived its right of appointment in writing. Each Board member must be an Owner of a Lot or a representative of an entity owning a Lot. Members of the Board, as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Board from serving in any other capacity and receiving compensation therefor. The officers of the Association shall be elected in accordance with the Bylaws. No compensation shall be paid to the officers for their services as officers unless otherwise authorized by a resolution of the Board. The Board may require that all officers and employees of the Board handling or responsible for funds provide adequate fidelity bonds. The premium on such fidelity bonds shall be a Common Expense payable by the Association.

Section 7.7 Powers of Board. The Property and the Association shall be managed, operated and maintained by the Board, subject to approval of Declarant on any and all matters as long as Declarant has the right to appoint the Board pursuant to Section 7.6. The Board may exercise all such powers of the Association and do all such lawful acts and things as are provided for by this Declaration, or by operational rules of regulations as may be adopted from time to time. These powers shall specifically include, but not be limited to the following:

7.7.1 To determine and levy Assessments to cover the cost of Common Expenses.

7.7.2 To collect, use and expend the Assessments collected to maintain, care for and preserve the Common Areas.

7.7.3 To enter into and upon the Lots in connection with the maintenance, care and preservation of the Common Areas and the Property.

7.7.4 To open bank accounts on behalf of the Association and to designate the signatories to such bank accounts.

7.7.5 To insure and keep insured the Common Area in accordance herewith.

7.7.6 To collect delinquent Assessments by suit or otherwise, to abate nuisances and to join or seek damages from the Owners for violations of any rules and regulations so adopted by the Board.

7.7.7 To make reasonable rules and regulations and to amend the same from time to time, and such rules and regulations and amendments shall be binding upon the Owners when the Board has approved them in writing. A copy of such rules and all amendments shall be delivered to each Owner upon request.

7.7.8 To employ property managers, workmen, janitors and gardeners and to purchase supplies and equipment, to enter into contracts, and generally to have the power of management in connection with the matters hereinabove set forth.

7.7.9 To bring and defend actions by or against more than one Owner and pertinent to the operation of the Association.

7.7.10 To acquire Lots in foreclosure or as a result of abandonment and to take any and all steps necessary to repair or renovate any Lot so acquired and to vote as an Owner, offer such Lot for sale or lease or take any other steps regarding such Lot as shall be deemed proper by the Board.

7.7.11 To maintain, repair, manage, construct, reconstruct and perform all other acts necessary and/or pertaining to the Common Areas.

7.7.12 To be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, including without limitation, attorneys' fees reasonably incurred in connection with any proceeding because of membership therein. Said expenses shall be Common Expenses and be limited to the extent such liability, damage, or injury is covered by any type of insurance.

7.7.13 To maintain, repair, care for and preserve the exterior of buildings, improvements and landscaping on the Common Area.

7.7.14 To grant easements where necessary for utilities over the Common Area to serve the Property.

7.7.15 To collect, use and expend the Assessments collected to maintain, care for and preserve the Common Area.

Section 7.8 Rights and Obligations. Without limiting the foregoing powers, the Board shall have the following specific rights and obligations:

7.8.1 Repair and Maintenance. The Board shall have the authority to employ and compensate personnel or contractors necessary for the operation, repair and maintenance of the Common Area (including, but not limited to landscape maintenance, snow removal, parking Lot and street maintenance); to employ and compensate necessary legal and

accounting services; and to purchase materials and supplies for the operation, maintenance, repair and/or replacement of any part of the Common Area.

7.8.2 Real Property Taxes and Assessments. The Association shall be responsible for the payment of all real property taxes and assessments on the Common Area. Real property taxes and assessments levied on the Lots shall be paid by the respective Owners.

7.8.3 Payment of Expenses. The Board may make all expenditures authorized in the Annual Budget. All payment vouchers shall be approved by the Board, and after such approval, shall be paid by the Association. Further, it shall be the duty of the Board to bill, collect, and receipt the collection of all monthly Assessments and to enforce the collection thereof. Upon ten (10) days notice to the Board and upon payment of a reasonable fee therefore, the Board shall furnish to any Owner a statement of its account setting forth of any unpaid Assessment or other charges due and owing from such Owner. The Board shall have the affirmative obligation to enforce all provisions of this Declaration and shall retain the services of an attorney when necessary to do so. Anything in this Declaration to the contrary notwithstanding, prior to submitting the first Annual Budget to the Association, the Declarant is authorized to make reasonable and necessary expenditures on behalf of the Association.

7.8.4 Mortgagor Default. The Board may give to any Mortgagee which has furnished to the Board its name and current address, written notification of any default by the mortgagor of performance of such mortgagor's obligations under this Declaration or any duly adopted rules or regulations pertaining to the Property which default has been demanded to be corrected by the Board and which default has not been cured within thirty (30) days.

7.8.5 Liability of the Board and Owners. Any contract, agreement or commitment made by the Board is made as agent for the Association and no member of the Board nor individual Owner shall be liable under such contract, agreement or commitment. The Board shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith.

7.8.6 Retention of Declarant for Administrative Assistance. The Board may reimburse the Declarant for reasonable expenses incurred by the Declarant for administrative assistance provided to the Board (i.e., secretarial services, postage, photocopies, etc.).

7.8.7 Accounting. The books and accounts of the Association shall be kept under the direction of the Board and in accordance with reasonable standards of accounting procedures. At the close of each accounting year, the books and records of the Property shall be examined by a person or firm approved by the Association. A report of such examination shall be prepared and submitted to the Owners at or before the annual meeting of the

Association. Financial reports, such as are required to be furnished, shall be available at the principal office of the Board for inspection at reasonable times by any Owner. Any Mortgagee on a Lot in the Property will, upon request, be entitled to inspect the books and records of the Property during normal business hours and receive the most-recent annual financial statement of the Association.

Section 7.9 Committees. The Board may designate one or more committees, each of such committees to consist of at least one director, which may exercise the powers of the Board in the management of the business and affairs of the Association. The Board may expressly delegate the authority to execute all documents to complete and confirm any business or affairs so delegated to the committee. Committees established by resolution of the Board shall keep regular minutes of their proceedings and shall report the same to the Board as required.

Section 7.10 Property Manager. The Board may retain a Property Manager to manage the operations, business and affairs of the Association, including all of the Board's rights, obligations and duties under this Declaration. The terms of the employment, rights, responsibilities and compensation of the Property Manager shall be as determined by the Board. The compensation of the Property Manager shall be a Common Expense.

ARTICLE 8 ASSESSMENTS

Section 8.1 Assessments; Creation of Lien and Personal Obligation. Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association the Regular, Limited and Special Assessments to be fixed, established and collected from time to time as hereinafter provided. The Regular, Limited and Special Assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due.

Section 8.2 Regular Assessments. The Association shall levy Regular Assessments against the Owners and their Lots for all Common Expenses.

Section 8.3 Limited Assessments. The Association may levy a Limited Assessment against a particular Owner and its Lot in an amount equal to the costs incurred by the Association in connection with any maintenance, repair or replacement required with respect to (i) the Common Area as a result of any act or omission of such Owner, and (ii) such Lot as a result of the failure of such Owner to keep its Lot in proper condition and repair as required by this Declaration.

Section 8.4 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, Special Assessments 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 a capital improvement for the Common Area, including fixtures and personal property related thereto, provided that any such Assessments shall have the assent of any Class B Member and two-thirds ($\frac{2}{3}$) of the votes of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose. Any such Special Assessments shall be payable over such a period as the Board shall determine. "Improvements" as used in this Section shall be limited to include only capital expenditures exceeding the sum of Five Thousand and No/100 Dollars (\$5,000.00). Expenses less than said amount are deemed to be normal repairs and not within the provisions of this Section.

Section 8.5 Exempt Property. The following property shall be exempt from the Assessments created herein:

8.5.1 All property expressly dedicated to and accepted by a local public authority;

8.5.2 All Lots owned by the Association;

8.5.3 All property designated as Common Area.

Section 8.6 Annual Budget. Subject to Section 8.8 below, the Board shall, from time to time, but at least each fiscal year, fix and determine a proposed budget representing the sum(s) necessary and adequate for the continued operation, management, maintenance, repair, insurance, liabilities, renovations, legal and accounting fees, any necessary reserve funds, and other Common Expenses of the Association for the next fiscal year and shall send a copy of the proposed budget and any supplement thereto to every Owner. The proposed budget shall then be presented at a meeting of the Association at least one (1) month before the commencement of the budgeted-for year. Unless disapproved by a two-thirds ($\frac{2}{3}$) vote of all the Owners at such meeting, the proposed budget shall become the Annual Budget for the upcoming fiscal year.

Section 8.7 Assessments to Owners. Subject to Section 8.8 below, all portions of the Annual Budget shall be assessed to the Owners (except the Declarant) in accordance with their Percentage Shares. Such Assessment shall be payable, at the Board's discretion, in either (i) one (1) annual payment due in advance on January 2nd of each year or (ii) twelve (12) equal monthly installments due in advance beginning on January 2nd and thereafter on the first day of each calendar month of each year. Owners shall pay the Assessments when due without any deduction on account of any set-off or claim of any nature whatsoever which an Owner may claim to have against the Association.

Section 8.8 Initial Assessments. As long as Declarant has the right to appoint the Board pursuant to Section 7.6, the Annual Budget shall not be required and the Owners' responsibility for Regular Assessments shall be reasonably determined by Declarant, which may not be consistent with the Percentage Shares.

Section 8.9 Adjustments. The Board may at any time and from time to time until the close of the budget year, increase or decrease the amount previously fixed as the Annual Budget and adjust the annual payment or the monthly installments assessed against each Owner accordingly.

Section 8.10 Costs of Collection. Each Owner shall pay all Assessments when due. Any part or all of an Assessment not paid within ten (10) days of its due date shall bear interest thereon at eighteen percent (18%) per annum until paid. All costs of collection, including reasonable attorneys' fees, costs of suit, and costs of establishing a lien, or of foreclosure of aid lien, shall be payable by the said Owner.

Section 8.11 Collection by Lien and Foreclosure. The lien for any unpaid Assessments and costs of collection may be recorded and foreclosed in accordance with Idaho Code §45-810, as amended or superceded.

Section 8.12 Statement of Common Charges. Upon the written request of any Owner or Mortgagee of any Lot herein, the Board shall promptly furnish a written statement of the unpaid Assessments due from such Owner. Any Mortgagee may pay any amount shown and thereby shall have a lien on such Lot for the amounts paid.

Section 8.13 No Exclusions. No Owner shall be exempt from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of its Lot. The Owners shall not by act or omission seek to abandon the status of the Property except as provided hereinafter or as allowed by the law.

Section 8.14 Reserve Fund Upon Transfer. If an Owner transfers its Lot to another, its interest in any reserve fund or funds shall be deemed to also have been transferred to the new Owner as an appurtenance to the transferred Lot.

Section 8.15 Buyer Liable. The buyer of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments owed by the Seller at the time of the conveyance, but such liability shall be without prejudice to the buyer's rights to recover from the seller the amounts paid by the Buyer therefor.

Section 8.16 Assignment of Rents. If any Owner who is renting its Lot shall default for a period of one (1) month in the payment of any Assessments, the Board may, at its option, and for so long as such default shall continue, demand and receive from any tenants

thereof any portion of the rent due or becoming due, and to the extent such rent is paid to the Association such tenant shall be discharged of liability to the Owner.

ARTICLE 9 RULES AND REGULATIONS

Section 9.1 Administrative Rules and Regulations. The Board shall have the power to adopt and establish by resolution, such building, management, use, and operational rules and regulations, as it may deem necessary for the maintenance, operation, management, occupation, and control of the Property, subject to the approval of Declarant as long as Declarant has the right to appoint the Board pursuant to Section 7.6. The Board may adopt the initial regulations governing the use of the Property by the Owners without giving notice to the Owners; however, subsequent regulations shall be adopted only after due notice of the proposed regulation or regulations are given to the Owners, and the Owners are given an opportunity to present arguments for or against such regulations. Such regulations shall not be inconsistent with the provisions of this Agreement, but may otherwise deal with any matters are a general concern to all Owners. When an amendment, alteration, or replica of a regulation is furnished in writing to the Owners, it shall become effective.

Section 9.2 Obligation of Owners to Comply. All Owners shall comply with all provisions of this Declaration and the administrative rules and regulations pertaining to the Property and shall require such compliance from their tenants, guests, employees and any other person whom they invite upon the Property. All agreements, decisions and determinations lawfully made by the Board shall be deemed to be binding on all Owners and shall inure to their benefit. Unless otherwise provided in this Declaration, each Owner, any group of Owners, or the Board shall have standing authority to enforce by any legal means, including suit for specific performance, injunctive relief or damages, the provisions of this Declaration and any duly adopted decisions or resolutions of the Association or Board.

Section 9.3 Owner's Obligation to Maintain and Repair. Each Owner, at its expense, shall keep its Lot in good order, condition and repair and in a clean and sanitary condition, and shall do all maintenance and redecorating which may at any time be necessary to maintain the good appearance of its Lot. Owner shall repair all injury or damages to the Property caused by the deliberate, negligent or careless action or inaction of such Owner, its agents, employees, guests, and/or invitees and all such repairs, maintenance and redecorating shall be of a quality and kind equal to the original work.

Section 9.4 Neglect. No Lot or Common Area or portions thereof shall be neglected or permitted to fall into an unsightly, displeasing or unattractive state, or permitted to be overgrown with weeds or strewn with rubbish. The Association shall have the power and shall be authorized at its discretion and at the request of any other Owners in such properties, to remove or to take any other action upon premises to remove rubbish, garbage, overgrown

weeds or such other unsightliness without responsibility or liability to the complaining Owners, and at the expense of the failing or neglecting Owners.

Section 9.5 Garbage and Refuse Disposal. No Lot, Common Area, or portion thereof, included within these properties shall be used or maintained as a dumping ground for rubbish. No machinery, appliances or unsightly materials will be used or stored in or around any Lot. Trash, garbage and other waste materials shall be deposited only in dumpsters meeting the requirements of the sanitation ordinances of the City of Rigby, and the regulations of the State of Idaho health authorities. Such dumpsters shall not be stored or kept within view from any public road or street or from the access and parking areas of the Common Area. The Declarant shall determine the locations of all dumpsters to be located on the Property.

Section 9.6 Temporary Structures. No structure of a temporary character, trailer, basement, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence whether temporarily or permanently.

Section 9.7 Common Areas. Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the Common Areas. The Common Areas shall be used only for the purposes for which they are intended, i.e., the furnishing of services and facilities for the enjoyment of the contiguous Lots.

Section 9.8 No Nuisance. No use or practice shall be permitted on the Property that is a source of annoyance to the occupants or that interferes with the peaceful possession and proper use of the Property by its Owners. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard to exist. No Owner shall permit any use of its Lot or of the Common Areas that will increase the rate of insurance upon the Property. No immoral, improper, offensive, or unlawful use shall be made of any part of the Property. Without limiting the generality of any of the foregoing provisions, no external speakers, horns, whistles, bells, or other sound devices, except used exclusively for security purposes, shall be located, used or placed upon any Lot or Common Area.

Section 9.9 Signs. Until the Declarant no longer owns any Lot in the Property, Declarant shall determine the use of all monument signs on the Property, and no signs or advertisements shall be displayed on or from any Lot without the prior written approval of the Declarant. Once Declarant no longer owns any Lot in the Property, the Board shall determine the use of all monument signs on the Property, no signs or advertisements shall be displayed on or from any Lot or the Common Area without the written approval of the Board.

Section 9.10 Parking. The access and parking areas of the Common Area shall only be used for operating and parking vehicles by the Owners and their tenants, employees,

guests and invitees. All parking in the Common Area shall be on a first come, first serve basis. No vehicles may be parked in the Common Area for more than twenty-four (24) consecutive hours.

Section 9.11 No Partition. A Lot shall not be partitioned as between Persons having an interest therein, but if grounds for such partition exist at law or in equity, the Lot shall be sold as a Lot and the proceeds divided in accordance with law.

Section 9.12 Communication. All Owners shall designate a single person to communicate with the Board or Property Manager on matters relating to the operations, business and affairs of the Association, including, but not limited to, matters related to the operation, maintenance and repair of the Common Area. All communications by the Owner and its employees, agents and tenants to the Board or Property Manager shall be through such designated person. In the event that a Property Manager has been retained, the Owners agree to communicate all issues relating to the operations, obligations, business and affairs of the Association to the Property Manager directly, and the Owners shall not communicate on any matter related to the operations, business and affairs of the Association, including, but not limited to, the maintenance or operation of the Common Area, to the individual Board members, the Declarant or any contractors or workers on the Property unless specifically directed otherwise by the Board, the Declarant or Property Manager. The Owners agree that the provisions of this Section are a material consideration in their decision to acquire a Lot in the Property, and repeat violations of the provisions of this Section shall be deemed to be a nuisance subject to recovery of damages or for negative or affirmative injunctive relief.

Section 9.13 Common Architectural Design and Common Landscaping Scheme. All buildings shall be of first quality construction and design in accordance with a common architectural design (the "Design"). The Design is known as "French Country" and consists of a dominant gable roof structure, with roof pitches of no less than eight vertical inches to twelve horizontal inches and no more than fourteen vertical inches to twelve horizontal inches. The Design will be applicable to not only the original construction of all buildings, but to any subsequent modifications of original construction for the purpose of retaining the cohesiveness of Hailey Creek Professional Park. All landscaping will be completed according to a common landscaping scheme (hereinafter the "Scheme"). The Scheme will be established by the Declarant and will result in a pleasing and cohesive design. All landscaping within Lot lines and surrounding each building will be installed upon completion of each building according to the Scheme. After installation, all landscaping improvements, common area and the area surrounding each building within the Lot lines of each Lot will be maintained by the Association and such maintenance shall be a common expense.

Section 9.14 Exterior Finishing Materials. The exterior materials for all buildings shall be exclusively a combination of cultured rock, brick and siding. The exterior material

and color scheme shall be subject to approval by the Board in order to incorporate exterior materials into a design that will be pleasing and cohesive for all of Hailey Creek Professional Park.

Section 9.15 Roofing Materials. All roofing shingles will be asphalt architectural shingles of the same color approved by the Board.

ARTICLE 10 ARCHITECTURAL CONTROL

Section 10.1 Architectural Control. Until the last Lot has an occupied structure constructed thereon, the Declarant shall have the sole right to exercise the rights, obligations and powers of the Board set forth in this Section 10.1. Subject to the provisions of Section 10.2.1, no Improvement or landscaping shall be commenced, built, constructed, placed, or maintained upon any Lot, nor shall any exterior addition, change or alteration of any existing Improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Board may require, shall have been submitted to and approved in writing by the Board as to the harmony of the external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Board fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Board in such form as they may require, it shall be deemed approved.

10.1.1 Design Requirements. The size and location of the building envelope on each Lot shall be determined by Declarant. The exterior surfaces of each occupied structure shall be constructed of such materials and colors as may be approved by the Board.

10.1.2 Discretion of the Board. The Board shall have the right to refuse to approve any design, plan or color for Improvements, construction or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing on such design, the Board shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Board may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from the adjacent or neighboring property, and any and all other factors which, in the Board's opinion, shall affect the desirability of such proposed Improvement, structure or alteration. Actual construction shall comply with the plans and specifications approved.

10.1.3 Rules. The Board is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Board deems appropriate and in keeping with the spirit of due process of law.

The Board is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Board. The failure of the Board to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Board's discretion, it being the intent of this Declaration to provide the Board with as broad discretion as is permissible under the law.

10.1.4 Fees. The Board may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Board for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

10.1.5 Waivers. The approval of any plans, drawings or specifications for any Improvement, or alteration, or for any matter requiring the approval of the Board, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

10.1.6 Non-Liability of Board Members. Neither the Board nor any member thereof, nor its duly authorized Property Manager or Board representative, nor the Declarant, shall be liable to any 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 of the Board. The Board shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Board shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 10.2 Improvements by the Declarant.

10.2.1 Exemption from Architectural Control. Any Improvement, sign or landscaping commenced, built, constructed, placed, or maintained on the Property or any Lot by the Declarant shall be exempt for the requirements of Section 10.1.

10.2.2 Deviation from Plat and Plans. Declarant shall have the right to add to, delete from, modify or otherwise deviate from the project development plans as contemplated

by any Plat and/or any site improvement plans, upon obtaining the approval of the City of Rigby.

10.2.3 Declarant's Limited Warranty for Common Area Improvements. The Declarant shall warrant that each Improvement commenced, built, constructed or placed in the Common Area by or on behalf of the Declarant shall be free from defects in the original materials and workmanship, as hereinafter defined, for one (1) full year from the date said Improvement was substantially complete (the "Limited Warranty"). Defective materials and/or workmanship shall be materials or workmanship not substantially in accordance with the construction standards commonly used in the industry. The Declarant shall have the right to determine that materials and methods to be used in making repairs under the Limited Warranty and to determine whether an Improvement should be repaired or replaced. THE LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY DECLARANT. NO OTHER WARRANTY, GUARANTEE OR UNDERTAKING, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE IMPROVEMENTS AND CONSTRUCTION THEREOF SHALL BIND OR OBLIGATE THE DECLARANT. ALL OTHER WARRANTIES, GUARANTEES AND UNDERTAKINGS ARE HEREBY EXPRESSLY DISCLAIMED. SPECIFICALLY, BUT WITHOUT LIMITING THE FOREGOING, DECLARANT HEREBY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Limited Warranty does not include remedies for damage to the Improvements caused by normal wear and tear during normal usage, casualty, acts of God, use for a purpose for which the Improvements were not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Limited Warranty does not include damage or injury of any kind or nature whatsoever resulting from mycotoxins, mold, fungal spores or volatile organic compounds. The Declarant shall assign all manufacturer's warranties related to the Common Area Improvements to the Association.

10.2.4 Construction Activities by Declarant. The Declarant shall have the right and easement to use the Common Area (including, but not limited to, the parking areas) for construction staging and construction activities. The Declarant shall have the right to restrict the Owner's access to or use of any Common Area so used when necessary, in their opinion, for safety, security or convenience. The Owners understand and agree that the Declarant will conduct construction activities on the Property during normal business hours and the Owners waive any claim of nuisance or disruption from such activities. Declarant shall have the right to use all Common Area power and water for its construction, repair and maintenance activities without reimbursement to the Association. The Association and Declarant shall also have the right to use any exterior water spigot or power outlet on any Lot for construction, repair and maintenance activities without reimbursement to the Owner, provided that such use is not, in the Board's sole discretion, excessive or wasteful.

ARTICLE 11 INSURANCE

Section 11.1 Types of Insurance. The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time. The Association may secure and maintain at all times the following insurance and bond coverage:

11.1.1 The Association may obtain a property insurance policy covering any Association owned property, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

11.1.2 The Association may obtain a commercial general liability insurance policy covering all of the Association owned facilities in an amount not less than One Million Dollars (\$1,000,000). Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of a Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

11.1.3 The Association may obtain liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of any committees as may be appointed from time to time by the Board in such amount as may be reasonable in the premises.

11.1.4 The Association may purchase workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

11.1.5 The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the Property, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

Section 11.2 Insurance Provisions. The following additional provisions shall apply with respect to all insurance policies obtained by the Association:

11.2.1 Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgages.

11.2.2 Each policy of insurance obtained by the Association shall, if possible, provide a waiver of the insurer's subrogation rights with respect to the Declarant, the Association, the Owners and their respective owners, officers, servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any other insurance clause therein shall not apply with respect to insurance held individually by the Owners.

11.2.3 All policies shall be written by a company licensed to write insurance in the State of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.

11.2.4 All policies shall name the Declarant as an additional insured.

ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 Damages to or Destruction of the Common Area. As soon as practical after an event causing damage to or destruction to any part of the Common Area, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Section shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

Section 12.2 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. The Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during any period of insurance adjustments and repair and reconstruction.

Section 12.3 Funds for Repair and Reconstruction. The proceeds received by the Association from any property insurance shall be used for the purpose of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may assess and collect in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further Assessments may be made in like manner if the amounts collected prove insufficient to complete such repair and reconstruction.

Section 12.4 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Section or, if no Special Assessments were made, then such balance shall be retained by the Association.

Section 12.5 Decision Not to Rebuild. If Owners representing at least sixty seven percent (67%) of the total allocated votes in the Association and sixty seven percent (67%) of the Mortgagees (based upon one (1) vote for each Mortgage owned) of the Lots agree in writing not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall retained by the Association.

Section 12.6 Damage or Destruction Affecting Lots. In the event of damage or destruction to any Improvements owned by any Owner, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine of not less than fifty dollars (\$50) per day on the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, the Association shall act in the proceedings incident to the condemnation proceeding.

Section 13.2 Condemnation; Distribution of Award; Reconstruction. The award made for such partial or complete taking shall be payable to the Association to be disbursed as set forth below. If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty seven percent (67%) of the Members shall

otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in the Section above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association.

ARTICLE 14 RIGHTS TO REPURCHASE LOTS

Section 14.1 Right of First Refusal.

14.1.1 If an Owner makes or receives a bonafide offer for the purchase and sale, conveyance or other transfer of any Lot that does not have a Building constructed or under construction thereon in accordance with this Declaration, the Owner shall first offer the Lot, in writing, to Declarant on terms and conditions set forth in the offer. Declarant shall have thirty (30) days after the transmission of such offer to notify the Owner, in writing, that it either (i) agrees to purchase the Lot on the terms of the offer, or (ii) declines to purchase the Lot. If Declarant declines to purchase the Lot or fails to notify the Owner, in writing, that it agrees to purchase the Lot within such thirty (30) day period, then the Owner shall be free to sell the Lot to the buyer and on the terms and conditions set forth in the offer for a period of three (3) months after expiration of such thirty (30) day period. Upon the Owner's request, Declarant agrees to confirm, in a mutually acceptable writing with acknowledgment, of its decision not to purchase the Lot or its failure to notify the Owner of its decision within the thirty (30) day period set forth above. If the Lot is not sold pursuant to the offer within such three (3) month period, the Owner shall again offer the Lot to Declarant pursuant to this Section 14.1 in connection with the same offer and any future offers with respect to the Lot.

14.1.2 The parties intend that the first right of refusal set forth in this Section 14.1 shall not fail as a result of an Owner extending an offer which, by its terms, cannot be matched by Declarant, such as an exchange. Therefore, if Declarant is unable to perform under any of the terms (except for the payment of money) of any offer extended by the Owner, then Declarant shall have the right to purchase the Lot for cash at a price that is the cash equivalent of said offer. The "cash equivalent" is the cash price that fairly represents the fair market value of the Lot as evidenced by the offer in question and as determined by the parties, or if no agreement, then as determined by an independent appraisal by an appraiser mutually acceptable to the parties, or if no mutually acceptable appraiser is found, then one appointed by a court of competent jurisdiction.

14.1.3 This Section 14.1 shall not apply to any transfer of a Lot to any third party related to the Owner through blood or marriage or to any entity owned (in whole or in part) and controlled by the Owner.

14.1.4 Declarant shall have the right to assign its rights under this Section 14.1 for any particular offer to the Association or any Member at any time.

Section 14.2 Option to Repurchase.

14.2.1 If, upon the third anniversary of Declarant's first conveyance or transfer of a Lot to an Owner, the Lot does not have a Building constructed or under construction thereon in accordance with this Declaration, the Declarant shall have the right, at any time thereafter until construction of a Building has been commenced on the Lot, to notify the Owner of such Lot that Declarant may be interested in repurchasing said Lot on the same price, terms and conditions as the Owner acquired the Lot. Upon such notification from Declarant, the Owner shall notify Declarant, in writing, of the exact price, terms and conditions of the Owner's acquisition of the Lot. If Declarant is unable to perform under any of the terms (except for the payment of money) of any offer extended by the Owner, then Declarant shall have the right to purchase the Lot for cash at a price that is the cash equivalent of said offer. The "cash equivalent" is the cash price that fairly represents the fair market value of the Lot as evidenced by the offer in question and as determined by the parties, or if no agreement, then as determined by an independent appraisal by an appraiser mutually acceptable to the parties, or if no mutually acceptable appraiser is found, then one appointed by a court of competent jurisdiction. Declarant shall have thirty (30) days after the transmission of the Owner's notification (and resolution of any issues related to the amount of any cash equivalence) to notify the Owner, in writing, that it either (i) agrees to purchase the Lot on the terms provided, or (ii) declines to purchase the Lot.

14.2.2 Declarant shall have the right to assign its rights under this Section 14.2 for any particular Lot to the Association or any Member at any time.

Section 14.3 Closing; Further Actions. In the event of the exercise of any of the rights set forth in this Article, Declarant and Owners agree to proceed to the closing of such transaction in good faith, and agree to take such steps and extend such courtesies as may be commercially reasonable to facilitate such closing. The parties shall take such further actions reasonably necessary to complete or confirm the transactions contemplated, including but not limited to, the execution any and all documents necessary to consummate the closing of the transaction with acknowledgment or affidavit, if necessary.

ARTICLE 15 AMENDMENT

Section 15.1 By the Association. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, “amendment”) by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing a majority of the voting power of the Association, and such amendment shall be effective upon its recordation with the Jefferson County Recorder. The provisions of this Declaration, other than this Article, may also be amended as long as Declarant, or an assignee of Declarant, owns at least three Lots by an instrument in writing signed and acknowledged by the Declarant or the assignee of Declarant, and such amendment shall be effective upon its recordation with the Jefferson County Recorder. Notwithstanding the foregoing, any amendment to this Article shall require the vote or written consent of Members holding sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of the Association. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of any Lot which existed prior to the said amendment. No amendment shall modify or diminish the rights of the Declarant hereunder without the Declarant’s written consent.

Section 15.2 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective Lots notwithstanding that such Owners may not have voted for or consented to such amendment and as to all Mortgagees and other holders of a lien or security interest in any portion of the Property.

Section 15.3 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee under a Mortgage made in good faith and for value and recorded prior to the recordation of such amendment; provided, however, that the foreclosure of any such Mortgage shall not affect the validity or enforceability of this Declaration, as amended.

ARTICLE 16 MISCELLANEOUS

Section 16.1 Notices. Any notices 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 seventy-two (72) hours after 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 address for any Lot owned by 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, as provided in this Section.

Section 16.2 Enforcement and Non-Waiver.

16.2.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

16.2.2 Violations and Nuisances. The failure of any Owner of a Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action in the Declarant, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

16.2.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

Section 16.3 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 16.4 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

Section 16.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

Section 16.6 Restrictions Construed Together. All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

Section 16.7 Restrictions Severable. Notwithstanding the provisions of the foregoing Section, each of the provisions of this Declaration shall be deemed independent and

severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

Section 16.8 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

Section 16.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

Section 16.10 Successors and Assigns. All references herein to Declarant, Owners, the Association or Person shall be construed to include all successors, assigns, partners and authorized agents of such Declarant, Owners, Association or Person.

Section 16.11 Declarant's Discretion. Any time this document calls for the exercise of discretion by the Declarant, Declarant shall not be required to act reasonably in the exercise of such discretion.

Section 16.12 Written Approval Required. In each instance where the approval of Declarant, the Association, the Board or any governmental or other authority is required herein, "approval" shall mean the prior written approval of such Person.

IN WITNESS WHEREOF, the Declarant has caused its name to be hereunto subscribed as of the date first set forth above.

DECLARANT:

HAILEY CREEK PROFESSIONAL PARK,
LLC

By: _____
Jaramie Magera, Manager

STATE OF IDAHO)
)ss.
County of Jefferson)

On the _____ day of October, 2009, before me the undersigned, a notary public in and for said State, personally appeared JARAMIE MAGERA, known or identified to me to be the manager in the limited liability company of Hailey Creek Professional Park, LLC and the manager who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such manager executed the same in said limited liability company name.

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

(seal)

Notary Public for Idaho
Residing at Rigby, Idaho
My Commission Expires: _____

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EXHIBIT A

HAILEY CREEK PROFESSIONAL PARK

All property located within the boundary of the Plat for Hailey Creek Professional Park, an Addition to the City of Rigby, Jefferson County, Idaho recorded as Instrument Number 378660 on August 6, 2009, records of Jefferson County, Idaho

EXHIBIT B

HAILEY CREEK PROFESSIONAL PARK

Percentage Shares

<u>Lot</u>	<u>Percentage Share</u>
1	4%
2	4%
3	4%
4	4%
5	4%
6	4%
7	4%
8	4%
9	4%
10	4%
11	4%
12	4%
13	4%
14	4%
16	4%
17	4%
18	4%
19	4%
20	4%
21	4%
22	4%
23	4%

<u>Lot</u>	<u>Percentage Share</u>
24	4%
25	4%
26	4%