

*Covenants, Conditions and
Restrictions*

for

*Virginia Park Subdivision
No. 1 at the Colonies*

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BY *John. Brown*

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**DECLARATION
ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VIRGINIA PARK SUBDIVISION NO. 1
AT THE COLONIES**

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DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VIRGINIA PARK SUBDIVISION NO. 1
AT THE COLONIES

THIS DECLARATION is made this 10-11 day of July, 2002, by Dyver DEVELOPMENT, a limited liability company, hereinafter called "Grantor."

ARTICLE I: RECITALS

1.1 Real Property Description. Grantor is the owner of all that real property located in Canyon County, Idaho as described on Exhibit "A" attached hereto and incorporated herein by this reference, and sometimes referred to herein as the "Property".

1.2 Development. The Property is part of a larger parcel of real property generally described on Exhibit "B" and incorporated herein by reference (the "Master Parcel") which proposes to develop said real property in phases in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the City of Caldwell, the County of Canyon, and the State of Idaho. In order to facilitate the phased development of the Master Parcel, Grantor may record, in Grantor's sole discretion, Supplemental Declarations which subject another portion of the Master Parcel to this Declaration. Each such addition of the Master Parcel shall constitute a "Tract," as defined below. As development of a Tract is approved under said zoning and subdivision ordinances, the filing of said Supplemental Declaration shall make such Tract subject to this Declaration.

1.3 Conditions. Any Development plans for said real property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, in Grantor's sole discretion, and impose no obligations on Grantor as to how said real property is to be developed or improved. Any purchaser of a Building Lot within a Tract acknowledges that said Building Lot is subject to the above referenced zoning and subdivision ordinances and regulations and such other governmental ordinances and regulations and approvals hereunder as may be in effect or as may from time to time be imposed. Said Purchaser acknowledges familiarity with the same, constructively or otherwise.

1.4 Purpose. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitude's (collectively "Restrictions") that apply to said real property. The Restrictions are designed to preserve the value, desirability and attractiveness of said real property, to ensure a quality development, and to guarantee the maintenance of the subdivision and improvements located thereon in a cost effective and administratively efficient manner.

ARTICLE II: DECLARATION

Grantor hereby declares that the Property and those Tracts of real property subjected to this Declaration by the recordation of Supplemental Declarations of Annexation as provided herein, and each Building Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale thereof, and to enhance the value, desirability and attractiveness thereof. The terms, covenants, conditions,

easements and restrictions set forth herein shall run with the land, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in said real property or any Building Lot, parcel of portion thereof; shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest and each Grantee or Owner and such grantee's or owner's respective successors in interest, and may be enforced by Grantor, by any Owner or such Owner's successors in interest, as hereinafter defined, against any other owner, tenant or occupant of said real property.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of said real property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities (temporary or otherwise) on any portion thereof, including any common area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing, nor Grantor's right to modify plans for said property.

ARTICLE III: DEFINITIONS

- 3.1 **"Architectural Committee"** shall mean the committee created by the Grantor pursuant to Article V hereof, which may be referred to herein as the "Committee".
- 3.2 **"Association"** shall mean Virginia Park Subdivision No. 1 at the Colonies Homeowner's Association, Inc to be organized by the Declarant as described in Article VIII of This Declaration.
- 3.3 **"Building Lot"** shall mean a subdivision lot within the Property as specified or shown on any Plat and/or by any Supplemental Declaration, upon which Improvements may be constructed. Building Lot shall mean a lot so specified on any final plat or on any preliminary plat of the Property.
- 3.4 **"Declaration"** shall mean this Declaration as it may be amended from time to time.
- 3.5 **"Design Guidelines"** shall mean the construction guidelines approved by the Architectural Committee.
- 3.6 **"Grantor"** shall mean Dyver Development, LLC, an Idaho limited liability company, or its successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor.
- 3.7 **"Improvement"** shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever.
- 3.8 **"Member"** shall mean the Owner or Owners of a Building Lot in his or their capacity as a Member of the Association.
- 3.9 **"Owner"** shall mean the person or other legal entity, including Grantor, holding fee simple title of record to a Building Lot, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.
- 3.10 **"Person"** shall mean any individual, partnership, corporation or other legal entity.
- 3.11 **"Plat"** shall mean any subdivision plat now or hereafter covering any portion of the Master Parcel as recorded at the office of the County Recorder, Canyon County, Idaho, as the same may be amended by duly recorded amendments thereof, and shall mean collectively all subdivision plats now or hereafter covering any or all of the Master Parcel.
- 3.12 **"Property"** shall mean that certain real property located in Canyon County, Idaho described on Exhibit "A" attached hereto and incorporated herein by this reference, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property. The Property also may include, in Grantor's sole discretion, such additional property in addition to that

described on Exhibit "A," in the Master Parcel as may be annexed by means of a Supplemental Declaration of Annexation as provided herein. Grantor, in its sole discretion, may or may not eventually include all portions of the property described on Exhibit "B" as part of the Property subject to this Declaration. Additionally, Grantor, at its sole election, may withdraw any Tract of which Grantor is the sole Owner previously included within the Property upon recordation of a Supplemental Declaration of Deletion.

- 3.13 **"Limited Assessment"** shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Grantor for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.
- 3.14 **"Supplemental Declaration"** shall mean any Supplemental Declaration recorded by Grantor including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Property, and/or adding or deleting a Tract or Tracts to the Property. A Supplemental Declaration which adds an additional Tract or Tracts to the Property may be referred to herein as a "Supplemental Declaration of Annexation". A Supplemental Declaration which deletes a Tract or Tracts from the Property may be referred to herein as a "Supplemental Declaration of Deletion."
- 3.15 **"Tract"** shall mean a defined portion of the Property (including that described on Exhibit "A", or a portion of Exhibit "A", or portion of the Master Parcel annexed to the Property pursuant to a Supplemental Declaration of Annexation) which has been designated as a Tract by this Declaration or a recorded Supplemental Declaration of Annexation. Designation of a Tract is at the sole and exclusive right of the Declarant.

ARTICLE IV : GENERAL AND SPECIFIC RESTRICTIONS

- 4.1 **Structures – Generally.** All structures (except for sales offices or similar facilities of Grantor) are to be designed, constructed and used in such a manner as shall be compatible with this Declaration, and shall meet the following minimum standards:

4.1.1 **Use, Size, Height and Construction of Dwelling Structure.** All Building Lots shall be improved and used solely for residential use. No Building Lot shall be improved except with a single family dwelling unit designed to accommodate no more than a single family and occasional guests, and such other Improvements as are necessary or customarily incidental to a single family residence. No business or home occupation shall be conducted from said dwelling unit or Improvement with the exception of a sales office intended for the sale of Building Lots, or new homes thereon. No dwelling unit shall be more than two stories in height, including split-level designs. A basement or daylight basement shall not be counted as a story in determining compliance with this section. The dwelling structures and accessory structures shall be constructed on site, unless otherwise specifically permitted in writing by the Architectural Committee. Modular or manufactured homes or houses shall not be permitted. Already constructed homes or houses shall not be permitted to be moved onto a Building Lot.

4.1.2 **Architectural Committee Review.** No improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed or materially altered on or removed from the property unless and until the building plans, specifications, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: size, height, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, physical or aesthetic impacts on other property, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors which the Architectural Committee, in its reasonable discretion, may deem relevant.

The Architectural Committee shall be generally guided by the following:

- (a) Roofing material may consist of wood/cedar shakes, tile, or 25 year architectural composition shingles, or other material approved by the Architectural Committee. Colors are preferred to be of **darker tones**. Samples must be submitted and approved in writing by the Architectural Committee **before installation**.
- (b) The Committee shall not approve flat roofs, zero roof overhangs, or exterior roof construction of tarpaper, gravel or metal.
- (c) Exterior colors shall be of a flat or semi-gloss type and shall be limited to subdued tones. Colors shall be compatible with surrounding homes. **Exterior colors must be approved in writing by the Architectural Committee prior to application.**
- (d) The Committee shall not approve any plans which contemplate visible construction with blocks of cement, cinder, pumice or similar materials, unless the same is faced on the outside with wood, stone, stucco or similar materials and approved in writing by the Committee.
- (e) The Committee shall not approve any extreme, bizarre, or eccentric design or construction.
- (f) All roofs must have a pitch of at least 5/12. (Porches and covered patio roof pitch shall be addressed on a case by case basis in context with the overall appeal of the structure.)
- (g) Exterior surfaces of chimneys are to be of hardboard, stucco, wood, stone or brick.
- (h) Utility meters are to be placed in an unobtrusive location and concealed behind fences where possible. Location shall be shown on the site plan.

Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

4.1.3 Setbacks and Height. No residential or other structure (exclusive of fences and similar structures) shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat for the Tract in which the Building Lot is located, by any applicable zoning restriction, by any conditional use permit, or as may be specified in this Declaration or any Supplemental Declaration, whichever is more restrictive. This section is intended to comply with the building standards for the City of Caldwell, Idaho. Any and all buildings shall comply with the City of Caldwell Building Codes at a minimum.

4.1.4 Accessory Structures. Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the Architectural Committee. No pools, pool slides, diving boards, hot tubs, spas, outbuildings, or similar items shall extend higher than ten (10) feet above the finished graded surface of the Building Lot upon which such item(s) are located, and no playhouses or playground equipment shall extend higher than ten (10) feet, except for basketball backboards, which may extend beyond this limit as reasonably required to accommodate a ten (10) foot rim.

4.1.5 Driveways. All access driveways shall have a wearing surface approved by the Architectural Committee consisting of concrete and shall be properly graded to assure proper drainage. Additional driveway accesses other than the garage area must be approved by the Architectural Control Committee.

4.1.6 Mailboxes. All mailboxes and stands will be of consistent design, material and coloration as specified by the Architectural Committee and to assure uniformity, shall be located at places designated by the Architectural Committee and/or the Postal Service.

4.1.7 Fencing. No fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than six (6) feet, or other lesser height as the Architectural Committee may require, above the finished graded surface. Fencing using natural landscaping as a visual and/or privacy barrier is strongly encouraged. "Invisible" fencing to control and contain dogs is strongly encouraged and shall be allowed. No fence shall be constructed of any material other than wood or vinyl, nor finished in other than a natural finish, except as may be specifically approved in

writing by the Architectural Committee prior to construction. Any and all fencing shall comply with the City of Caldwell building codes.

Every owner of any lot on the perimeter of the subdivision as a whole is required, within 90 days from date of move-in, to install fencing on his lot along the boundary of the subdivision, abutting any neighbor that is not part of this subdivision. This fence shall be dog-eared cedar fence that is 6 feet in height. Following are the lots in Phase I that must install fence according to these guidelines: Lots 2, 14, 15 and 16 of Block 1; Lots 3, 4 and 5 of Block 4.

- 4.1.8 Lighting.** Exterior lighting, including flood lighting, shall be part of the architectural concept of the Improvements on a Building Lot. Fixtures, stands and all exposed accessories shall be harmonious with building design and shall be as approved by the Architectural Committee prior to installation. Lighting shall be restrained in design, and excessive brightness shall be avoided. Exterior yard lights and posts as set forth in landscaping paragraph are required for all front yards.
- 4.2 Antennae.** No exterior radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Property unless it is approved by the Architectural Committee and located or screened in a manner acceptable to said Architectural Committee. Satellite dishes shall be allowed on the Property if size and location are submitted and approved by the Architectural Committee prior to installation. All such applications will be reviewed on a case-by-case basis.
- 4.3 Insurance Rates.** Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance or which would be in violation of applicable laws, regulations, and ordinances.
- 4.4 No Further Subdivision.** Subject to paragraph 4.19 below, no Final Platted Building Lot may be further subdivided, nor may any easement or other interest therein be granted, unless applied for by grantor.
- 4.5 Signs.** No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee except: (1) such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots; (2) temporary signs naming the contractors, the architect, and the lending institution for a particular construction operation; (3) such informational signs of customary and reasonable dimensions as prescribed by the Architectural Committee may be displayed; and (4) one (1) sign of customary and reasonable dimensions not to exceed three (3) feet by two (2) feet as may be displayed by an Owner other than Grantor on or from a Building Lot advertising the residence for sale or lease.
- 4.6 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, 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 the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), flashing lights or search lights shall be located, used or placed on the Property without the prior written approval of the Architectural Committee.
- 4.7 Exterior Maintenance: Owner's Obligations.** No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or so as to damage adjoining property or facilities, the Architectural Committee, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition and to enter upon such Owner's Building Lot for the purpose of doing so, and

such Owner shall promptly reimburse the Committee for the cost thereof. Such cost shall be an Assessment and shall create an enforceable lien. The Owner of the offending Building Lot shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Architectural Committee in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

- 4.8 Drainage.** There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Architectural Committee.
- 4.9 Grading.** The Owner of any Building Lot within the Property in which grading or other work has been performed pursuant to an approved grading plan shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Architectural Committee or a public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Assessment as may be applicable. An approved grading plan means such plan as may have been approved by the applicable government agency and/or Architectural Committee.
- 4.10 No Hazardous Activities.** No activities shall be conducted on the Property, and no Improvements constructed on any property which are or might be unsafe or hazardous to any person or property.
- 4.11 Unightly Articles.** No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in area approved by the Architectural Committee. Playground equipment, such as slides, swings, etc., shall not be permitted in the front yard of any lot. No clothing or fabrics shall be hung, dried or aired in such a way as to be visible to other property, and no equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Building Lot except within an enclosed structure or as appropriately screened from view. Any holiday decorations may be placed no earlier than 30 days prior to the holiday and must be removed within 30 days after the holiday for which they were placed. No vacant residential structures shall be used for the storage of building materials.
- 4.12 No Temporary Structures.** No house trailer, mobile home, or tent (other than for short term individual use which shall not exceed one month unless approved by the Architectural Committee), no temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property. Also excepted from this requirement is any sales office established by Grantor for the Property.
- 4.13 No Unscreened Items.** No garbage cans, trash containers, firewood, boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepared and unsightly vehicles or similar items, vehicles or equipment shall be placed or parked upon any portion of the Property (including without limitation, streets, parking areas and driveways) unless the same are enclosed by a structure concealing them from view in a manner approved by the Architectural Committee. To the extent possible, garage doors shall remain closed at all times.
- 4.14 No Mining or Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This paragraph shall not prohibit exploratory drilling or coring which is necessary to construct a residential structure or Improvement.
- 4.15 Energy Devices, Outside.** No energy production devices, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without

the written approval of the Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This paragraph shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

- 4.16 Vehicles.** Vehicles parked on a driveway shall not extend into any sidewalk or bike path or pedestrian path. Motor homes and other recreational vehicles may be stored behind the front yard fence. No recreational vehicles shall remain parked on the driveway or street for more than is required for loading and unloading for typical use. (approximately 48 hours in any one week period)
- 4.17 Animals/Pets.** No animals, birds, insects, pigeons, poultry, etc. shall be kept on the Property unless the presence of such creatures does not constitute a nuisance nor conflict with any City of Caldwell ordinance. This paragraph does not apply to the keeping of up to two (2)-domesticated dogs, up to two (2)-domesticated cats, and other household pets which do not unreasonably bother or constitute a nuisance to others. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of the Owner. The animal owner shall clean up any animal defecation immediately from public rights-of-ways. The construction of dog runs or other pet enclosures shall be subject to Architectural Committee approval, shall be appropriately screened, and shall be maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of five (5) feet from the side and fifteen (15) feet from the rear Building Lot line, shall not be placed in any front yard of a Building Lot, and shall be screened from view so as not to be visible from an adjacent Building Lot. The use of "invisible" fencing to control or restrain dogs to the respective animal Owners' lot is strongly encouraged and is recommended.
- 4.18 Landscaping.** Upon substantial completion of the Residential Structure located thereon, each Building Lot shall have in the front yard thereof underground sprinkler system, rolled (sod) lawns, at least two (2) conifer or deciduous trees and at least five (5) shrubs or bushes as approved by the Architectural Committee, and as part of the front landscaping "Wing" fences on both sides of the home must be installed. Each Owner of a Building Lot that is a corner lot in the subdivision shall be required to install underground sprinklers and rolled (sod) lawn on the sides of his lot, to be completed within the same time frame as specified above for front yard landscaping. An allowance of additional time shall be granted at the sole discretion of the Architectural Committee during the months of November through March given weather conditions and irrigation water availability. A landscape plan shall be submitted to and approved by the Architectural Committee prior to commencement of any landscaping work. During construction of the Residential Structure, there shall be installed in the front yard within ten (10) feet of the front boundary line, a photosensitive pole light designed to switch on automatically at sunset and off at sunrise with a minimum bulb power of 100 watts. Said stand shall be at least five (5) feet in height. In the event that any Owner shall fail or refuse to install proper trees and sod, the Architectural Committee, upon ten days prior written notice to the owner of such Property, shall have the right to enter upon Owners such Building Lot for the purpose of installing such trees, shrubs, and sod, and to enter upon such Owner's Building Lot for the purpose of doing so and such Owner shall promptly reimburse the Architectural Committee for the cost thereof. Such costs shall be an assessment and shall create an enforceable lien. The Owner of the offending Building Lot shall be personally liable, and such Owner's property may be subject to a mechanics' lien for all cost and expenses incurred by the Architectural Committee in taking such actions, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within (10) ten days after receipt of written demand thereof. The Association will assume the role of the Architectural Committee with respect to enforcement only upon the establishment of the Association.
- 4.19 Exemption of Grantor.** Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct

of Grantor's business of completing the work and disposing of the same by sales, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor for the development and disposal of the Property. Grantor may use any structures owned or leased by Grantor on the Property as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Grantor or an affiliate of Grantor on any portion of the Property owned by Grantor or an affiliate of Grantor. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property by an express written assignment recorded in the office of the Canyon County Recorder.

ARTICLE V: ARCHITECTURAL COMMITTEE

- 5.1 Creation.** Within thirty (30) days of the date on which Grantor first conveys a Building Lot to an Owner, Grantor shall appoint one (1) individuals to serve on the Architectural Committee ("Architectural Committee"). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity appointing them at any time without cause. Members of the Architectural Committee currently are:

Corey Barton, P.O. Box 369, Meridian, ID 83680

- 5.2 Grantor's Right of Appointment.** Grantor shall have the exclusive right to appoint and remove all members of the Architectural Committee until Grantor has conveyed 100% of the aggregate Building Lots in the Master Parcel, as the same may be now or hereafter platted, or until ten (10) years after the recording date of this Declaration whichever occurs later. If a vacancy on the Architectural Committee occurs until a permanent replacement has been appointed, Grantor, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.

Association's Right of Appointment. After Grantor has conveyed 100% of the aggregate Building Lots in the Master Parcel, or ten (10) years after the recording date of this Declaration, whichever occurs later, the Association shall have the exclusive right to appoint and remove all members of the Architectural Committee.

- 5.3 Review of Proposed Construction.** The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, including the inspection of construction in conformance with plans approved by the Architectural Committee. The Architectural Committee shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, licensed with the State of Idaho, to assist the Architectural Committee in its review of proposals or plans and specifications submitted to the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction alterations, or additions contemplated thereby in the locations indicated are in conformity with this Declaration, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Grantor.

- 5.3.1 Building Restrictions.** With the exception of Common Area Lots, no buildings shall be erected, altered, placed or permitted to remain on any Building Lot other than one (1) detached single-family dwelling which may not exceed thirty feet (30) in height, and a private garage for two (2) or more motor vehicles. The minimum square footage of living space (excluding the garage and porches) of each dwelling unit shall be 1,250 square feet finished or unfinished.

- 5.3.2 Conditions on Approval.** The Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, and/or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements for the maintenance thereof, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

- 5.3.3 Architectural Committee Rules.** The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules and guidelines may establish, without limitation, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures, as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.
- 5.3.4 Detailed Plans.** The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval.
- 5.3.5 Architectural Committee Decisions.** Responses by the Architectural Committee to the applicant will be sent to the address set forth in the application for approval within twenty (20) days after filing all materials required by the Architectural Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed or otherwise delivered to the applicant within twenty (20) days after the date of filing said materials with the Architectural Committee.
- 5.4 No Waiver of Future Approvals.** The approval of the Architectural Committee of 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 Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent.
- 5.5 Compensation of Members.** The members of the architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Grantor.
- 5.6 Non-Liability of Architectural Committee Members.** Neither the Architectural Committee nor any member or representative thereof shall be liable to Grantor or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee or such member or representative. The Architectural Committee 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 Architectural Committee 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.
- 5.7 Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, market conditions, or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least one (1) members of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions or restrictions contained in the Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplemental Declaration for any purpose except as to the particular Building Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Building Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

ARTICLE VI: ANNEXATION AND DELETION OF TRACTS

- 6.1 Annexation.** Grantor intends to develop the property described on Exhibit "A" and eventually, the remainder of the Master Parcel, and may, in Grantor's sole discretion, deem it desirable to annex some or all of such Master

Parcel to the Property covered by this Declaration. Tracts may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Grantor, its successors or assigns, at any time, and from time to time, without the approval of any Owner by means of the Grantor's recordation of a Supplemental Declaration of Annexation covering such Tract(s) in the Office of the Canyon County Recorder. The use and development of such Tracts shall conform to all applicable land use regulations, as such regulations are modified by variances.

- 6.2 Deletion.** Grantor may delete all or a portion of the Property, including the property described on Exhibit "A", and subsequently annexed Tracts, from the Property and from coverage of this Declaration so long as Grantor is the Owner of all such property being deleted and provided that Grantor records a Supplemental Declaration of Deletion in the office of the Canyon County Recorder in the same manner as a Supplemental Declaration of Annexation. Owners other than Grantor shall not be entitled to delete all or any portion of the Property or Master Parcel on written approval of Grantor so long as Grantor owns any portion of the Property or the Master Parcel.

ARTICLE VII: EASEMENTS

- 7.1 Drainage and Utility Easements.** Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots resulting from the normal use of adjoining Building Lots, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Grantor reserves the right to grant additional easements and rights-of-way over the Property 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 Building Lot in the Property to a purchaser.
- 7.2 Maintenance and Use Easement Between Walls and Lot Lines.** Whenever the wall of a structure or a fence or retaining wall is legitimately constructed on a Building Lot under plans and specifications approved by the Architectural Committee, and is located within three (3) feet of the lot line of such Building Lot, the Owner of such Building Lot is hereby granted an easement over and on the adjoining Building Lot (not to exceed three (3) feet from the Building Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Building Lot is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure or fence.

ARTICLE VIII: VIRGINIA PARK SUBDIVISION NO. 1 AT THE COLONIES HOMEOWNER'S ASSOCIATION, INC.

- 8.1 Organization of Association.** The Virginia Park Subdivision No. 1 at the Colonies Homeowner's Association, Inc. (Association) shall be organized by Declarant as an Idaho corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration.
- 8.2 Membership: Register: Voting**
- 8.2.1 Membership.** The Owners of the Building Lots in the Property, including the property described on Exhibit "A" and subsequently annexed Tracts, shall constitute the Association. Each Owner of a Building Lot shall automatically become a member of the Association upon taking title to such Building Lot. Membership shall be appurtenant to and may not be separated from Ownership of any Building Lot.
- 8.2.2 Voting.** The membership shall have two (2) classes of voting membership:

Class A: The Class A members shall be all Owners, with the exception of the Declarant (during the period when the Declarant is a Class B member). Each Class A member shall be entitled to one vote for each Building lot owned on any matter to come before the Members for a vote pursuant to this Declaration, the Article, the Bylaws or pursuant to law. Owners of a Building Lot as joint tenants, tenants in common, community property, or other ownership involving more than one Owner, shall be joint Members of the Association, but the vote of the Building Lot shall be cast as a single vote.

Class B: The sole Class B member shall be the Declarant, who shall be entitled to ten (10) votes for each Building Lot owned. The Class B membership shall cease and be automatically converted to Class A membership (one Class A membership for each Building Lot owned) when all the Master Parcel has been added to the Property by recordation of the Supplemental Declaration of Annexation and when following such addition, the total votes outstanding in Class A memberships equal the total votes outstanding in the Class B membership. For purposes of calculating the number of votes outstanding in each class of membership, all Building Lots, which have been officially platted as of the date the vote is taken shall be included, whether such Building Lots are a part of the Property as described on Exhibit "A" attached hereto, or were subsequently added to the Property pursuant to a Supplemental Declaration of Annexation.

8.2.3 Persons Under Disability. Minors and persons declared legally incompetent shall be eligible for membership in the Association, if otherwise qualified, but shall not be permitted to vote except through a legally appointed, qualified and acting guardian of their estate voting on their behalf, or, in the case of a minor with no legal guardian of his estate, through a parent having custody of the minor.

8.3 Meeting of Members.

8.3.1 Place. Meetings of the members of the Association shall be held at such suitable place as may be convenient to the membership and designated from time to time by the Board.

8.3.2 Annual Meetings. The annual meeting of the Association shall be held in the first quarter of each year, on a date fixed by the board. At such annual meeting there shall be a financial report, if applicable, the Owners shall elect members to the Board or fill vacancies therein, and such other business as shall come before the meeting may be transacted.

8.3.3 Special Meetings. It shall be the duty of the president to call a special meeting of the Association as directed by resolution of the board or upon the written request of a majority of the Board or upon the written request of Owners having one-third (1/3) of the total voting power of the Association. A meeting called at the request of the members shall be held at such time as the president may fix, which time shall not be less than fifteen (15) nor more than thirty (30) days after the receipt of the written request therefore.

8.3.4 Notice of Meeting. It shall be the duty of the secretary to give notice of each annual and special meeting, stating the purpose thereof and the time and place where it is to be held, to each member of the Association and to each mortgagee that has requested notice. Notice shall be given at least ten (10) days before annual meetings and at least ten (10) days before special meetings. Before any meeting of the Association, any member may, in writing, waive notice of such meeting. Attendance by a member at a meeting of the Association shall be a waiver by him of timely and adequate notice unless he expressly challenges the notice when the meeting begins.

8.3.5 Quorum. The presence in person or by proxy of members of the Association or voting representatives holding twenty-five percent (25%) of the total Residential Lots shall constitute a quorum for the transaction of business at any meeting of members of the Association.

8.3.6 Proxies. Any Building Lot Owner or voting representative may vote by proxy. Proxies shall be in writing, signed by the owner, or voting representative and filed with the Board. Proxies may be revoked at any time by written notice to the Board. Any designation of proxy may be signed by all Owners of a Building Lot; but when husband and wife are Owners, the proxy needs to be signed by only one spouse unless the other spouse notified the Board not to accept the proxy.

8.3.7 Majority Vote. Except as otherwise provided by statute, by the Declaration, or by these Bylaws, passage of any matter submitted to vote at a meeting where a quorum is in attendance shall require the affirmative vote of at least fifty-one percent (51%) of the Owners of the Building Lots.

8.3.8 Order of Business. The order of business at meetings of the Association shall be as follows unless dispensed with no motion:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of directors (annual meeting or special meeting called for such purpose);
- (g) Unfinished business;
- (h) New business;
- (i) Adjournment.

8.3.9 Parliamentary Authority. In the event of dispute, the parliamentary authority for the meetings shall be the most current available edition of *Robert's Rules of Order*.

8.4 Board of Directors

8.4.1 Number and Qualifications. The affairs of the Association shall be governed by a Board of three (3) directors, who shall be elected by ballot from the members of the Association. The members of the Association at any annual meeting may change the number of directors retroactively by amending this by-law provision, but shall not reduce the number below three (3) or in such a manner to deny an incumbent director (unless removed for cause) a full term of office.

8.4.2 Powers and Duties. The Board shall have the powers and duties provided for in the Idaho Non-Profit Corporation Act and in the Declaration, and all other powers necessary for the administration of the affairs of the Association, and may do all such acts and things as are not prohibited by statute or by the Declaration required to be done in another manner.

8.4.3 Election and Term of Office. The initial directors named in the Article shall serve until the first day of the calendar month following the date of adjournment of the first annual meeting. Thereafter, the term of office for directors shall begin on the first day of the calendar month following the date of adjournment of the annual meeting at which they are elected. The normal term of office for directors will be for three (3) years and until their successors are elected and take office. However, to provide for staggered terms, at the first annual meeting, one-third (1/3) of the number of directors (or the whole number nearest to one-third) shall be elected for one (1) year, the same number shall be elected for two (2) years, and the remainder shall be elected for three (3) years.

8.4.4 Vacancies. Vacancies on the Board caused by reasons other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum. Each person so selected shall be a director until a successor is elected at the next annual meeting of the Association to serve the balance of the unexpired term.

8.4.5 Removal of Directors. At any regular or special meeting, any one or more of the directors may be removed with or without cause by the Owners of a majority of the Residential Lots and a successor may then and there be elected to fill the vacancy thus created and to serve the balance of the unexpired term. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

8.4.6 Compensation. No compensation shall be paid to directors for their services as directors.

8.4.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings of the Board shall be

given to each director personally or by mail, telephone or telegraph, at least three (3) days before the day fixed for the meeting.

- 8.4.8 Special Meetings.** Special meetings of the Board may be called by the president on three (3) days notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by either the president or the secretary in like manner and on like notice on the written request of any two (2) directors.
- 8.4.9 Waiver of Notice.** Before any meeting of the Board, any director may, in writing, waive notice of such meeting. Attendance by a director at any meeting of the Board shall be a waiver by him or timely and adequate notice unless he expressly challenges the notice when the meeting begins.
- 8.4.10 Quorum.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board.
- 8.4.11 Open Meeting.** Any Building Lot owner or voting representative may attend any meeting of the Board, but shall not be entitled to participate.

8.5 Officers

- 8.5.1 Designation.** The principal officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be elected by the Board. The directors may appoint such other officers as in their judgment may be necessary or desirable. Two or more offices may be held by the same person, except that a person may not hold offices of president and secretary simultaneously.
- 8.5.2 Election of Officers.** At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the members of the Board, any officer may be elected at any such meeting.
- 8.5.3 Removal of Officers.** At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause. A successor to the removed officer may be elected at any such meeting.
- 8.5.4 President.** The president shall be the chief executive officer of the Association. He shall, when present, preside at all meetings of the Association and of the Board and shall have all the powers and duties usually vested in the office of the president.
- 8.5.5 Vice President.** The vice president shall perform the duties of the president when the president is absent or unable to act, and shall perform such other duties as may be prescribed by the Board.
- 8.5.6 Secretary.** The secretary shall keep the minutes of all meetings of the board and of the Association, and shall have custody of the business records of the Board and the Association, other than financial records kept by the treasurer. He shall also perform such other duties as may be prescribed by the Board.
- 8.5.7 Treasurer.** The treasurer shall have responsibility of the Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.
- 8.5.8 Other Officers and Employees.** Other officers of the Association and any persons employed to assist the officers shall have such authority and shall perform such duties as the Board may prescribe within the provisions of the applicable statutes, the Declaration and these Bylaws.
- 8.5.9 Compensation.** No compensation shall be paid to officers for their services as officers.
- 8.5.10 Declarant's Powers.** In accordance with the Declaration, the Declarant or Declarant's agent may exercise the powers of the officers until officers are elected.

8.6 Powers and Duties of the Association

3.6.1 Powers. The Association shall have all the powers of a nonprofit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration, and may do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the common areas and the performance of the other responsibilities herein assigned, including without limitation;

8.6.1.1 Assessments. The power to levy assessments (annual, special and limited) on the Owners of Building Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.

8.6.1.2 Right of Enforcement. The Association or any Owner or the Owner of any recorded mortgage upon and part of said Properties shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In addition to the foregoing, the Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$25.00 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown in the records of the Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of Directors of the Association or by a committee composed of not less than three (3) persons appointed by the Board of Directors. Such hearing shall be conducted in good faith and in a fair and reasonable manner.

Any Owner challenging the monetary penalty imposed as provided herein, including and claim alleging defective notice, must commence legal action within one (1) year after the date of the imposition of the said penalty. Any monetary penalty imposed as provided herein shall become a part of the assessment to which such Owner's Lot is subject, shall be in addition to any assessments levied by the Association pursuant to the provisions of Article IX, Section 9.1 of this Declaration, and shall not be subject to any of the requirements, limitations or restrictions on the amount or uniformity of assessments contained herein. In the event the Association or an Owner is required to initiate any action to enforce the provisions of the Declaration or in the event the Association retains legal counsel in connection with any of its methods of enforcement as set forth herein, the Association or the enforcing Owner shall be entitled to recover from the Owner against whom an enforcement is sought, all attorney fees and costs incurred as a consequence hereof, whether or not any lawsuit is actually filed, and any such attorney fees and costs so incurred by the Association shall be added to and become a part of the assessment to which such Owner's Lot is subject. Failure by an Association, or by any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.6.1.3 Delegation of Powers. The authority to delegate its powers and duties to committees, officers, employees or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

8.6.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable (" Association Rules"). The Association Rules shall govern the use of the common areas by the Owners, families of an Owner, or by an invitee, licensee, lessee, or contract purchaser of an Owner, provided, however, the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration provided, however, that so long as the Association Rules shall be effective for and against all Owners, whether or not any individual Owner actually received a copy of such Association Rules. In the event of any conflict between (i.) any Association

Rule and (ii) any provision of this Declaration, the Articles or the Bylaws, the Association Rules shall be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

3.6.1.5 Emergency. The Association or any person authorized by the Association may enter upon any Building Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.

8.6.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the common area as may be necessary or appropriate for the orderly maintenance of the common area or the preservation of the health, safety convenience and welfare of the Owners, or for the purpose of constructing, erecting, operating or maintaining:

- a. Underground lines, cables, wires, conduits and other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes;
- b. Public sewer, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and
- c. Any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association.

8.6.1.7 Duties of the Association. In addition to the power delegated to it by the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

- a. **Operation and Maintenance of Common Area.** Operate, maintain and otherwise manager or provide for the operation, maintenance and management of the common area including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association.
- b. **Taxes and Assessments.** Pay all real and personal property taxes and assessments separately levied against the common area owned and managed by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- c. **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the common area and other property owned or managed by the Association.
- d. **Insurance.** Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:
 - 1. Comprehensive public liability insurance insuring the Board, the Association the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the common area or other property owned or managed by the Association. Limits of liability of such coverage shall be as follows: Not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence with respect to personal injury or death, and property damage.

2. Such other insurance including Worker's Compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.
 3. The Association shall be deemed trustee of the interest of all Members of the Association in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
 4. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.
 5. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements of the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and the Veterans Administration to the extent applicable to the Property and/or the Association.
- e. **Rule Making.** Make, establish, promulgate, amend and repeal the Association Rules.
- f. **Architectural Committee.** Appoint and remove members of the Architectural Committee, all subject to the provisions of the Declaration.
- g. **Drainage Systems.** Operate, maintain, repair and replace all drainage and sprinkler systems installed on or used in connection with common area, provided said improvements are not maintained by the appropriate municipality.
- h. **Rights-of-Way Maintenance.** Maintain, repair and replace all irrigation lines or channels located in or serving the common area, and to pay all maintenance and construction fees of the irrigation district with respect to the property, which amounts shall be assessed against each Building Lot as provided herein.

8.7 Handling of Funds

- 8.7.1 **Accounts.** The Association shall establish the necessary funds or accounts to provide properly for the operation and maintenance of the Association. Overall superintendence of these funds shall be the responsibility of the treasurer of the Association. All accounts with banks or other depositories shall require the signature of two (2) officers on checks or other withdrawals.

8.8 Amendments

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors or by the members at any regular or special meeting. The amendment of these Bylaws is subject to the limitations set forth in the Declaration.

8.9 Indemnification

To the full extent permitted by applicable law, each member of the Board, each member of an Association committee, each officer and the Declarant who filed the Declaration shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceedings to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when Board approves such settlement and reimbursement as being in the best interest of the

Association; and further provided that this right of indemnification shall be inapplicable to the extent necessary, if at all, for the Association to obtain any insurance required by the Declaration.

ARTICLE IX: COVENANT FOR MAINTENANCE ASSESSMENTS

9.1 Creation of the Lien and Personal Obligation of Assessments. For each Building Lot owned within the Properties, each Owner (subject to the provision in paragraph 9.4) 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:

- A. Set-up fee to be collected at close of Building Lot in the amount of – Seventy-five and no/100 dollars (\$75.00) payable to Dyver Development, LLC. Upon each transfer of any lot in the subdivision and recording of the deed each buyer at closing shall pay to the Association a special transfer assessment of Twenty-five and no/100 dollars (\$25.00).
- B. Annual regular assessments.
- C. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- D. Limited Assessments as hereinafter provided.

The set-up fee, annual, special and Limited Assessments, together with interest as allowed by the Bylaws or Idaho law, whichever is greater, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees incurred in a collection effort whether or not suit has been filed, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

- A. **Purpose of Assessments.** The regular assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common area, and to pay the annual assessments of the irrigation district and other financial obligations.
- B. **Special Assessments for Capital Improvements.** In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special 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 a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the qualified voters, either in person or by proxy at a meeting duly called for this purpose.
- C. **Limited Assessments.** The limited assessments may be levied against any Owner in an amount equal to the costs and expenses incurred by the Association, including legal fees for corrective action necessitated by such Owner, including, without limitation, costs and expenses incurred for the repair and replacement of the common area or other property owned or maintained by the Association, damaged by negligent or willful acts of an Owner or occupant of a Building Lot who is occupying the Building Lot with the consent of such Owner or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein.

9.2 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual regular assessment shall be Eighty and no/100 Dollars (\$80.00) per Building Lot, to be billed and paid monthly, quarterly, semi-annually, or annually. Said billing schedule shall be determined at the discretion of the Association Board.

- A. From and after January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership of the Association as provided below.
- B. From and after January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of three-fourths (3/4) of the Owners who are voting in person or by proxy, at a meeting duly called for this purpose.
- C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

9.3 Notice and Quorum for any Action Authorized Under Sections 9.1 and 9.2. Written notice of any meeting called for the purpose of taking any action authorized under Sections 9.1 and 9.2 shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.4 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Building Lots and may be collected on a semi-annual basis; provided, however, that during the time there is a Class B member, such Class B member's obligation shall be limited to the difference between the amount of regular and special assessments levied against all Building Lots not owned by Declarant and the amount of the Association's actual expenses rather than those sums otherwise due by Class A members established in 9.1 and/or 9.2 above.

9.5 Date of Commencement of Annual Assessments-Due Dates. The annual regular assessments provided for herein shall commence as to all Building Lots on January 1, 2002. The Board of Directors shall fix the amount of the annual assessment against each Building Lot at least thirty (30) days in advance of each annual assessment period. Written Notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Building Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Building Lot is binding upon the Association as of the date of its issuance.

9.6 Effect of Nonpayment of Assessments – Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Building Lot.

9.7 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Building Lot shall not affect the assessment lien. However, the sale or transfer of any Building Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Building Lot from liability for any assessments thereafter becoming due or from the lien thereof.

9.8 Effect of Nonpayment as Against Mortgagees. No mortgagee shall be required to collect an assessment, and the failure of a Building Lot Owner to pay assessments shall not by itself cause a default under an insured (HUD/VA) mortgage.

ARTICLE X: IDENTIFICATION AND USE OF COMMON AREA

- 10.1 Common Area.** The common area granted to the Virginia Park Subdivision No. 1 at the Colonies Homeowner's Association, Inc., an Idaho Corporation is:

Lot 1, Block 1 – Landscaping
Lot 1, Block 6 - Landscaping
Lot 1, Block 7 – Landscaping

At the end of Mather Avenue, there is a temporary storm drain area to be maintained by the Virginia Park Subdivision No. 1 at the Colonies Homeowner's Association, including but not limited to pumping out the sand and grease traps. This storm drain area will be abandoned upon the development of Phase III.

This common area, the three Landscaping lots as stated above, shall be conveyed to the Association free and clear of all liens and title encumbrances (other than easements, taxes, and common restrictions) and shall be owned and maintained by the Homeowner's Association.

Detention Pond Maintenance: Detention ponds expenses, including but not limited to, upkeep and maintenance; shall be paid for by the Homeowner's Association upon acceptance of detention pond improvements by the City of Caldwell. The developer shall be responsible for any and all maintenance and expenses prior to city acceptance of said improvements.

Maintenance consists of inspecting the detention pond facilities yearly during the summer and after any major storm to ensure they are functioning properly. Maintenance shall include the following:

1. **Trash Cleanup.** Any trash found within the boundary of the pond lots shall be collected and disposed of offsite.
2. **Bank Stability.** During the periodic inspections, the banks of the pond shall be checked for any water spots, water entering the pond from adjacent lots, rodent holes and bank erosions. If any serious problems are discovered, the Association shall contact a licensed earthwork contractor to make the necessary repairs to the pond.
3. **Sand and Grease Trap Inspection.** During these same periodic inspections, the sand and grease traps on each detention pond lot shall be inspected and cleaned as necessary. In the event of heavy storm activity, the frequency of these inspections should be increased.

The Association shall not be dissolved or relieved of its responsibility to maintain the defined common area and facilities therein without the prior written approval from the City of Caldwell.

The Association and all Building Lot Owners by accepting title to a Building Lot agree that all Building Lot Owners within this Subdivision are benefited property Owners of such maintenance.

- 10.2 Use.** Every Building Lot Owner shall be entitled to a right and easement of enjoyment to the common area, and the title to the common area shall be considered appurtenant to the Building Lot Owner's title.
- 10.3 Liability to Building Lot Owners.** No individual Building Lot Owner shall have liability for damage to the common area or liability for injury to another arising out of someone's use of the common area, merely by virtue of being a Building Lot Owner.

ARTICLE XI: MISCELLANEOUS

- 11.1 Term.** The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run for a term of twenty (20) years from the date this Declaration is recorded, unless amended as herein provided. Thereafter, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless amended or extinguished by a written instrument executed by

Owners holding at least three-fourths (3/4) of the Ownership of the Subdivision, and such written instrument is recorded with the Canyon County Recorder.

11.2 Amendment

11.2.1 By Grantor. Until the recordation of the first deed to a Building Lot in the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated by Grantor by recordation of written instrument setting forth such amendment or termination. Any amendment affecting only a particular Tract may be made by Grantor by an Amendment to this Declaration at any time up to the recordation of the first deed to a Building Lot in such Tract.

11.2.2 After Sale of First Building Lot. After the recordation of the first deed to a Building Lot in the Property, the provisions of this Declaration may be amended by a written instrument approved by Owners holding at least three-fourths (3/4) of the eligible votes of the Owners in the Property.

11.3 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 Grantor, Association or other person or entity for the purpose of service of notices by such person or entity, or to the address of an Owner's Building Lot, if no other address for notices has been given to such person or entity by such Owner. Such address may be changed from time to time by notice in writing to the Grantor, as provided in this paragraph.

11.4 Enforcement and Non-Waiver

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

11.4.2 Violations and Nuisances. The failure of any owner of a Building Lot to comply with any provision hereof, is hereby declared a nuisance and will give rise to a cause of action in the Grantor, or any owner of a Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, may enforce by self-help any of the provisions hereof only in such self-help is preceded by reasonable notice to the Owner.

11.4.3 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 any or all enforcement procedures in law and equity.

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

11.4.5 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.

11.5 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.

11.5.1 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.

11.5.2 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph, 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.

11.5.3 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 include the masculine, feminine and neuter.

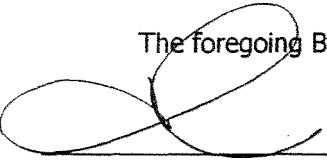
11.5.4 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

11.6 Successors and Assigns. All references herein to Grantor, Owners, or person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, or person.

ARTICLE XII: INDEMNIFICATION

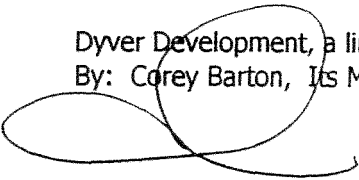
To the full extent permitted by applicable law, each member of the Board, each member of an Association committee, each officer and the Declarant who filed the Declaration shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceedings to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association; and further provided that this right of indemnification shall be inapplicable to the extent necessary, if at all, for the Association to obtain any insurance required by the Declaration.

The foregoing Bylaws shall be effective the 10th day of July, 2002.


Dyver Development, LLC
By: Corey Barton, Manager

IN WITNESS WHEREOF, the party hereto has hereunto caused its name to be subscribed this 10th day of July, 2002.

Dyver Development, a limited liability company
By: Corey Barton, Its Manager

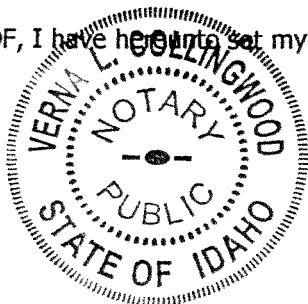

By: Corey Barton, Its Manager

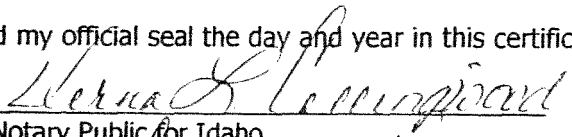
STATE OF IDAHO)
)ss

County of Canyon)

On this 10th day of July, 2002 before me, the undersigned, a Notary Public in and for said State, personally appeared Corey Barton, known to me to be the Manager of Dyver Development, a limited liability company, the limited liability company whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for and on behalf of such limited liability company.

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




Notary Public for Idaho
Residing at Caldwell, Idaho
Commission Expires: 11-17-04

AMENDMENT TO THE DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VIRGINIA PARK SUBDIVISION #1 AT THE COLONIES

The following paragraph is being recorded to Amend Article 5.1 of Declaration Establishing Covenants, Conditions and Restrictions for Virginia Park Subdivision #1 at the Colonies, recorded at the Canyon County Recorder's office, Canyon County, State of Idaho, on July 10, 2002, as instrument No. 200231079.

Article 5.1 should read as follows:

Creation. On or before thirty (30) days of the date on which Grantor first conveys a Building Lot to an Owner (other than Grantor), Grantor shall appoint at least one (1) individual to serve on the Architectural Committee ("Architectural Committee"). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity appointing them at any time without cause. Members of the Architectural Committee currently are:

The Board of Directors of the Homeowner's Association or the property management company that is being used at the current time.

Dyver Development, L.L.C.,
An Idaho Limited Liability Company

By:

Corey Barton
Managing Member

CANYON CITY RECORDER
by **Osmond**

CONFIDENTIAL

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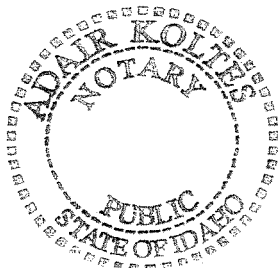
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200463380

STATE OF IDAHO)
)ss
County of Ada)

On this 4th day of November, 2004, before me, Adair Koltos, a Notary Public in and for said State, personally appeared **Corey Barton**, known or identified to me to be the Managing Member of the Limited Liability Company of Dyver Development, L.L.C., who subscribed said company name to the foregoing instrument, and acknowledged to me that he executed the same in said 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.



Notary Public for Idaho
Residing at Nampa, ID
My Commission Expires 6-05-2010

REQUEST
TYPE: MISC
FEB 3 1988
FBI - MEMPHIS

PIONEER-CALDWELL