

**COMMUNITY DOCUMENTS**

**FOR**

**HARVEST SPRINGS**



**HARVEST SPRINGS JV**

**VIEW POINTE DEVELOPMENTS, LLC**

**SATTERFIELD REALTY & DEVELOPMENT, INC.**

# TABLE OF CONTENTS

Page

<b>PREAMBLE .....</b>	<b>1</b>
<b>DECLARATION OF COVENANT .....</b>	<b>2</b>
<b>PART ONE: INTRODUCTION TO THE COMMUNITY.....</b>	<b>2</b>
<b>Chapter 1 Governing Documents.....</b>	<b>2</b>
1.1. Scope and Applicability.....	2
1.2. Additional Covenants.....	2
1.3. Conflicts.....	2
1.4. Definitions.....	3
<b>Chapter 2 Community Administration .....</b>	<b>3</b>
2.1. The Founder .....	3
2.2. The Association .....	4
2.3. The Board .....	4
2.4. The Owners .....	4
2.5. Builders .....	4
2.6. Neighborhood Associations .....	5
2.7. Mortgagees .....	5
<b>Chapter 3 Community Structure and Organization.....</b>	<b>5</b>
3.1. Designations of Properties Comprising the Community .....	5
3.2. Neighborhoods.....	6
3.3. Election Districts.....	6
<b>Chapter 4 Association Membership and Voting Rights .....</b>	<b>6</b>
4.1. Membership .....	6
4.2. Voting .....	7
<b>PART TWO: COMMUNITY STANDARDS .....</b>	<b>8</b>
<b>Chapter 5 Architecture, Landscaping, and Aesthetic Standards.....</b>	<b>8</b>
5.1. General .....	8
5.2. Architectural Control Authority.....	8
5.3. Guidelines and Procedures .....	9
5.4. No Waiver of Future Approvals .....	10
5.5. Variances .....	10
5.6. Limitation of Liability .....	11
5.7. Certificate of Compliance.....	11

<b>Chapter 6</b>	<b>Maintenance, Repair, and Replacement .....</b>	<b>11</b>
6.1.	Maintenance by Owners.....	11
6.2.	Maintenance of Neighborhood Association Property .....	12
6.3.	Maintenance by the Association .....	12
6.4.	Responsibility for Repair and Replacement.....	12
6.5.	Maintenance and Repair of Party Walls and Similar Structures .....	12
6.6.	Maintenance of Alleys .....	13
6.7.	Maintenance of Irrigation Lines .....	13
<b>Chapter 7</b>	<b>Use and Conduct .....</b>	<b>13</b>
7.1.	Use, Occupancy, and Transfer of Interests in Units.....	13
7.2.	Rulemaking Authority and Procedures .....	15
7.3.	Protection of Owners and Others .....	16
7.4.	Owners' Acknowledgment and Notice to Purchasers.....	16
<b>Chapter 8</b>	<b>Compliance and Enforcement .....</b>	<b>16</b>
8.1.	Compliance.....	16
8.2.	Remedies for Non-Compliance.....	17
8.3.	Board Decision to Pursue Enforcement Action.....	18
8.4.	Attorney's Fees and Costs .....	18
8.5.	Enforcement of Ordinances .....	18
<b>PART THREE: ASSOCIATION OPERATIONS .....</b>	<b>19</b>	
<b>Chapter 9</b>	<b>Property Management.....</b>	<b>19</b>
9.1.	Acceptance and Control of Association Property .....	19
9.2.	Maintenance of Area of Common Responsibility.....	19
9.3.	Discontinuation of Operation .....	20
9.4.	Restoring Damaged Improvements.....	20
9.5.	Relationships with Other Properties .....	20
<b>Chapter 10</b>	<b>Provision of Services.....</b>	<b>20</b>
10.1.	Provision of Services to Units .....	20
10.2.	Provision of Services to Service Areas .....	21
10.3.	Community Technology .....	21
10.4.	Recycling Programs.....	22
10.5.	Alternative Fuel and Electric Vehicles.....	22
10.6.	Right to Install Water Reclamation Devices.....	22
10.7.	Environmental Preservation.....	22
<b>Chapter 11</b>	<b>Association Insurance.....</b>	<b>22</b>
11.1.	Required Coverages.....	23

11.2.	Deductibles .....	23
11.3.	Policy Requirements .....	23
11.4.	Insurance Premiums .....	24

**Chapter 12 Association Finances ..... 24**

12.1.	Association Expenses .....	25
12.2.	Budgeting for and Allocating Association Expenses .....	25
12.3.	Special Assessments .....	26
12.4.	Specific Assessments .....	26
12.5.	Authority to Assess Owners; Time of Payment .....	26
12.6.	Obligation for Assessments.....	26
12.7.	Lien for Assessments.....	27
12.8.	Exempt Property .....	27

**PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY . 29**

**Chapter 13 Easements ..... 29**

13.1.	Easements in Common Area.....	29
13.2.	Easements of Encroachment .....	29
13.3.	Easements for Utilities, Etc.....	30
13.4.	Easements to Serve Additional Property .....	30
13.5.	Easements for Maintenance, Emergency, and Enforcement .....	30
13.6.	Easements for Lake and Pond Maintenance and Flood Water .....	31
13.7.	Easements for Cross-Drainage .....	31
13.8.	Easement for Installation, Maintenance, and Repair of Solar Power or Wind Energy Equipment.....	31
13.9.	Easements for Trails, Paths, and Walkways .....	32

**Chapter 14 Disclosures and Waivers ..... 32**

14.1.	Facilities and Services Open to the Public .....	32
14.2.	Safety and Security .....	32
14.3.	Changes in Master Plan.....	33
14.4.	View Impairment .....	33
14.5.	Notices and Disclaimers as to Community Systems .....	33
14.6.	Relationship with Governmental and Tax-Exempt Organizations .....	33
14.7.	Right To Designate Sites for Governmental and Public Interests.....	33
14.8.	Use of Reclaimed Water for Irrigation Purposes .....	34
14.9.	Radio and Telecommunication Towers .....	34

**Chapter 15 Rights of Lenders ..... 34**

15.1.	Notices of Action .....	34
15.2.	Special FHLMC Provision .....	34
15.3.	Other Provisions for First Lien Holders .....	35
15.4.	Amendments to Documents .....	36
15.5.	No Priority .....	36
15.6.	Notice to Association.....	36
15.7.	Failure of Mortgagee to Respond.....	36

15.8.	Construction of Chapter 15 .....	36
15.9.	HUD/VA Approval .....	36

**PART FIVE: COMMUNITY DEVELOPMENT ..... 37**

**Chapter 16 Expansion of the Community ..... 37**

16.1.	Expansion by Founder .....	37
16.2.	Expansion by the Association .....	37
16.3.	Additional Covenants and Easements .....	37
16.4.	Effect of Filing a Supplement.....	37
16.5.	Unit Conversions.....	37

**Chapter 17 Additional Rights Reserved to the Founder ..... 38**

17.1.	Withdrawal of Property.....	38
17.2.	Marketing and Sales Activities.....	38
17.3.	Right to Make Improvements, Replat .....	38
17.4.	Right to Approve Changes in HARVEST SPRINGS Standards.....	38
17.5.	Additional Covenants and Restrictions .....	38
17.6.	Exclusive Rights to Use Name of Development .....	38
17.7.	Community Systems .....	38
17.8.	Easement to Inspect and Right to Correct.....	39
17.9.	Right to Notice of Design or Construction Claims .....	39
17.10.	Development of Open Space .....	39
17.11.	Right to Use Common Area for Special Events .....	39
17.12.	Right to Stormwater Runoff.....	40
17.13.	Right to Transfer or Assign the Founder's Rights .....	40
17.14.	Termination of Rights .....	40

**PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS.. 41**

**Chapter 18 Dispute Resolution and Limitation on Litigation..... 41**

18.1.	Agreement to Encourage Resolution of Disputes Without Litigation .....	41
18.2.	Dispute Resolution Procedures .....	41
18.3.	Initiation of Litigation by Association .....	42

**Chapter 19 Changes in the Common Area ..... 43**

19.1.	Condemnation.....	43
19.2.	Partition.....	43
19.3.	Transfer or Dedication of Common Area .....	43

**Chapter 20 Termination and Amendment of Community Declaration  
43**

20.1.	Term and Termination.....	44
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## TABLE OF EXHIBITS

<b><i>EXHIBIT</i></b>	<b><i>TITLE</i></b>	<b><i>PAGE</i></b>
A	Initial Property	47
B	Master Plan Property	48
C	Expansion Property	49
D	Initial Rules	50
E	Association By-Laws	53

# HARVEST SPRINGS

## PREAMBLE

Harvest Springs Joint Venture has been established for the purpose of developing the Harvest Springs community. This Community Declaration ("**Declaration**") has been established and recorded in order to form a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of Harvest Springs as a Creative Community in Chubbuck, Idaho. Harvest Springs is proposed to be a mixed-use community consisting of multiple housing types, recreational, civic, and commercial uses surrounded by open space and parks. An integral part of the development plan is the formation of the Harvest Springs Community Association, Inc. ("**Association**"), a nonprofit corporation to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration, and to own and manage any potential common areas within the development.

The guiding principles of Harvest Springs JV, in developing the Harvest Springs community, are to:

- Community
  - People living in harvest Springs will have trails, open space, and a commercial center within walking distance. The design guidelines provide guidance on creating human-scale architecture, providing visual interest, and encouraging the use of outdoor spaces.
- Open Space
  - Homes in Harvest Springs will be placed to take advantage of the generous open space. Not only will homes have views of opens space, they will also have convenient access to this space. Homes will have either side garage access, a rear loading garage, or garage will be set back 15 feet from the front of the house
- Quality
  - Quality is fundamental to Harvest Springs. The design guidelines outline the requirements that must be adhered to in order to maintain the highest level of quality within the neighborhood and commercial parcels.
- Massing and Scale of Houses
  - Houses will be set to create a social and pedestrian-oriented environment. Entries to homes will be clearly visible and directly accessible from the street upon which they front.
- Variety of Design
  - A unique character for the streetscape will be achieved by avoiding the repetition of identical buildings. Color, variation in roofline and materials, and other details will be used to create variety and interest throughout the neighborhood.

# DECLARATION OF COVENANT

Harvest Springs JV, its successors and assigns (the "**Founder**") and the owners of the property described in Exhibit "A" if other than the Founder, by executing and recording this Declaration, declares that the property described in Exhibit "A" and any additional property made subject to this Declaration in the future by amendment or supplement, shall constitute the "**Community**" of Harvest Springs referred to in this Declaration. This Declaration shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon the Founder and the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Declaration shall also be binding upon Harvest Springs Community Association, its successors and assigns.

By taking title to property in Harvest Springs, all owners join in and accept the intent, purposes, and objectives of this Declaration and agree to be bound by it. Each party bound by the terms of this Declaration acknowledges the benefits received from its existence and the Founder's actions and accepts these benefits and the burdens that accompany them.

## PART ONE: INTRODUCTION TO THE COMMUNITY

### Chapter 1

## Governing Documents

*Harvest Springs is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agree to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.*

#### 1.1. Scope and Applicability

Harvest Springs has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Declaration as the "**Governing Documents**," include this Declaration and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

#### 1.2. Additional Covenants

The owner of any property within the Community may impose additional covenants on its property with such approval as may be required pursuant to Chapter 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Declaration, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

#### 1.3. Conflicts

If there are conflicts between any of the Governing Documents and Idaho law, Idaho law shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.



If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances. Any conflicts with local law are also superseded by local law.

**1.4. Definitions**

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

<b>GOVERNING DOCUMENTS</b>	
Community Declaration	This Community Declaration for Harvest Springs, which creates obligations that are binding upon the Association and all present and future owners of property in Harvest Springs.
Supplements	A recorded supplement to this Declaration, which may submit additional property to this Declaration, create easements over the property described in the supplement, impose additional obligations or restrictions on such property, and/or designate special areas as described herein.
Association Organization	Documents relating to the organization of the community association.
Design Guidelines/ Narrative	The design standards and architectural and aesthetic guidelines adopted, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units.

**Chapter 2**

**Community Administration**

*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.*

**2.1. The Founder**

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The initial phase of the development for Harvest Springs is described in Exhibit "A." In addition, the Founder's proposed plan for development is described in the land use plan(s) for Harvest Springs approved by the City of Chubbuck, Idaho, (the "**City**") as it may be supplemented and amended, which encompasses all of the property described in Exhibit "B" (the "**Master Plan**"), as such Master Plan is further described in the Master Development Agreement for the Harvest Springs Development Project. However, the Founder is not obligated to submit any portion of the property shown on the Master Plan or any other property to this Declaration. In addition, the Founder may submit property to this Declaration that is not shown on the Master Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 16. A "**Founder Affiliate**" is any Person that is owned or controlled by the Founder.

The Founder has reserved other rights that may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). The Founder Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) when 75% of the total number of Units permitted by applicable zoning for the property described in the Master Plan have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;
- (b) December 31, 2050; or
- (c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Founder Affiliate or any person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties, and shall not prevent Founder from assigning its status and rights for any other property subject to this Declaration.

## **2.2. The Association**

The Founder has established or will establish the Association as the primary entity responsible for administering Harvest Springs in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Idaho law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

## **2.3. The Board**

On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Idaho law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or nonbinding arbitration, litigation, or administrative proceedings in matters pertaining to any Area of Common Responsibility, as defined in Section 3.1, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## **2.4. The Owners**

Each Person that holds record title to a Unit, as defined in Section 3.1, is referred to in the Governing Documents as an "**Owner.**" However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument), a church or religious organization that holds title to property used for religious or worship services, and any governmental or public entity who holds title shall not be considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

## **2.5. Builders**

Much of the responsibility and credit for helping to create Harvest Springs rests with the "**Builders**" - those Persons who purchase one or more unimproved or improved lots or parcels of land within Harvest

Springs for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

## **2.6. Neighborhood Associations**

Portions of the Community may be developed under a condominium form of ownership, may have special requirements, or in the Founder's discretion may lead the Founder to establish a separate condominium or owners association to administer additional covenants applicable to that particular area ("**Neighborhood Association**"). However, nothing in this Declaration requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which it owns or which its covenants designate as being for the common benefit of its members.

## **2.7. Mortgagees**

If a Unit, as defined in Section 3.1, is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

# **Chapter 3**

## **Community Structure and Organization**

*The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units are grouped into Neighborhoods to facilitate voting on Association matters.*

### **3.1. Designations of Properties Comprising the Community**

**Units.** A "Unit" is a subdivided lot or condominium unit within Harvest Springs depicted as a separately identified parcel on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family and is sometimes referred to as a "**Residential Unit**"

The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public.

**Common Area.** Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area**." The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association.

**Limited Common Area.** Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of less than all Units. Limited Common Areas might include such things as entry features, recreational facilities, lakes, green space, green courts, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the

Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

**Area of Common Responsibility.** All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility (including any maintenance obligations), are collectively referred to in the Governing Documents as the "**Area of Common Responsibility**," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way, trails, parks, and open spaces. The initial Area of Common Responsibility is described in Chapter 9.

### **3.2. Neighborhoods**

Units are grouped into "**Neighborhoods**" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 4.

The Founder initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

### **3.3. Election Districts**

The Founder or the Board may designate "**Election Districts**," consisting of the Units within one or more Neighborhoods, for the purpose of electing directors to the Board. The By-Laws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

## **Chapter 4**

# **Association Membership and Voting Right**

*The Association is an entity through which each Owner can participate in the governance and administration of Harvest Springs. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.*

### **4.1. Membership**

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder.

**Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Areas available for use by Owners.

**Founder Membership.** The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

The Founder may, by Supplement, create additional classes of membership comprised of the owners of Units within any portion of the additional property submitted to this Declaration. The Founder shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

#### **4.2. Voting**

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8. Further, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder or a Founder Affiliate owns; rather, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

Due to the number of Units that may be developed in Harvest Springs, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect "**Voting Delegate**" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents.

#### **Association Membership and Voting Rights**

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter, other than election of directors, for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

## PART TWO: COMMUNITY STANDARDS

### Chapter 5

## Architecture, Landscaping, and Aesthetic Standards

*The Community derives its unique character from a mix of architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.*

### 5.1. General

All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with plans and specifications by a licensed contractor unless the Founder or its designee in its sole discretion otherwise approves.

Approval under this chapter is not a substitute for any approvals, inspections, or reviews required by the County, the City, or any governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Founder's or any Founder Affiliate's design and construction activities or to the Association's activities during the Founder Control Period.

### 5.2. ARCHITECTURAL CONTROL Authority

Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board of Directors will appoint a ARCHITECTURAL CONTROL Committee to review applications for proposed improvements. The Founder or the ARCHITECTURAL CONTROL Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

**(a) Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committee, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

**(b) ARCHITECTURAL CONTROL Committee.** Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this chapter, the Board shall appoint a ARCHITECTURAL CONTROL Committee ("**ARCHITECTURAL CONTROL Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or

this chapter, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this chapter, the DRC shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters.

**(c) Reviewer.** For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the “**Reviewer.**”

**(d) Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

### **5.3. Guidelines and Procedures**

The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines may also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

**(a) Design Guidelines.** The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Harvest Springs as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners, Builders, and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Builders, Owners, and their contractors upon request. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

**Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any property within Harvest Springs until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications, which shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 19 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the complete application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. The Reviewer may exempt certain activities from the application and approval requirements of this chapter if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

**Appeals Process.** After the Board's appointment of the DRC, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

#### **5.4. No Waiver of Future Approvals**

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **5.5. Variances**



When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

## **5.6. Limitation of Liability**

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Harvest Springs; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications; for compliance with building codes and other governmental requirements; or for ensuring that all dwellings are of comparable quality, value, size, or design or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder, Founder Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit; or (e) any injury, damage, or loss arising out of an earthquake, Act of God, or any other natural disaster. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

## **5.7. Certificate of Compliance**

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

# **Chapter 6**

## **Maintenance, Repair, and Replacement**

*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

### **6.1. Maintenance by Owners**

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, and the City shall maintain any property within Harvest Springs that it owns or controls in a manner consistent with the Governing Documents and the community wide standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law.

Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public or private right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public or private right-of-way within 12 feet of the Unit boundary; provided, trees within the area may be maintained with the City, or the Association's irrigation

system, if one is provided. However, Owners may not remove or replace trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

## **6.2. Maintenance of Neighborhood Association Property**

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 12 feet of its boundary. A Neighborhood Association shall not remove or replace trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

## **6.3. Maintenance by the Association**

The Association shall maintain the Area of Common Responsibility in a manner consistent with the Governing Documents, as further described in Section 9.2.

The Association may also assume maintenance responsibility for property in any Neighborhood Association, either upon designation of the Neighborhood Association as a Service Area pursuant to Section 3.4 or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association need not treat all similarly situated Neighborhood Associations the same.

## **6.4. Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Within 90 days after any damage to or destruction of a structure on a Unit, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood Association or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This section shall apply to a Neighborhood Association with respect to common property of the Neighborhood Association in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit.

## **6.5. Maintenance and Repair of Party Walls and Similar Structures**

Except as may otherwise be provided by law, a written agreement between Owners of adjacent Units, or other recorded documents applicable to adjacent Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

(d) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

## **6.6. Maintenance of Alleys**

Access to certain Units within the Community shall be provided by shared alleys located adjacent to the boundaries of the Units so served. The alleys shall be dedicated to the City as public streets under the jurisdiction and control of the City. In the case the City fails to maintain the alleys in a manner consistent with the Governing documents, the Association may maintain the alleys in a manner consistent with the Governing documents and the Community-Wide Standard, as further described in Section 9.2.

All costs associated with the routine maintenance, repair, and replacement of alleys shall be allocated among the Units served by such alley and assessed against such Units as a Specific Assessment in accordance with Section 12.4. An alley serves a Unit if the alley provides access to the Unit.

## **6.7. Maintenance of Irrigation Lines**

The lake and any stormwater runoff shall be available for irrigation purposes within Harvest Springs. The City shall be responsible for the maintenance, repair, and replacement of any irrigation lines or equipment within Harvest Springs to the boundary of any Unit or any Association common property. City responsibility shall begin once lines, as determined, have been dedicated and accepted.

Any irrigation lines installed by an Owner and lines lying solely within or serving only a single Unit or Common Area shall be the responsibility of the Owner or the Association, as applicable. In addition, each Owner shall comply with all federal, state and local laws regarding stormwater runoff.

# **Chapter 7**

## **Use and Conduct**

*In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.*

### **7.1. Use, Occupancy, and Transfer of Interests in Units**

**(a) Residential and Related Uses.** Units designated as residential units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, or by clients, customers, suppliers, or other business invitees, or involve door-to-door solicitation within the Community; and

(iv) does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

So long as the business activity does not violate any City ordinance or regulation, the following business activities may be operated within the residential Unit if such operation is in accordance with the requirements set forth in subsection (a)(i) through (iv): the practice of law, accounting services, insurance services, real estate brokerage offices, architecture, or engineering offices, direct sales, computer based telecommunications and research, literary, artistic or craft activities, and providing education. Other professional business activities may be operated within the residential Unit if approved by the Board, and the consent of the Founder during the Founder Control Period. The Board, with the consent of the Founder during the Founder Control Period, may prohibit previously approved business activities if any such activity interferes with the residential nature of Harvest Springs or becomes a nuisance.

In addition to any prohibitions set forth in an ordinance of the City, the following activities are specifically not permitted in a residential Unit: cafes or restaurants; retail discount, or thrift shops; tanning parlors, massage parlors, and it is prohibited in any unit within Harvest Springs to have any establishment which offers entertainment or service by nude or partially dressed male or female persons; "adult entertainment uses," which terms shall mean, for the purposes of this Declaration, any establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which is rated "X" by the movie production industry (or any successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices, or similar merchandise; or commercial overnight lodging. The Board reserves the right, from time to time, to designate other activities, which shall not be permitted.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

**(b) Leasing.** For purposes of this Declaration, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to Chapter 5 may be leased separate from the main dwelling.

**All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.**

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.

**(c) Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

**(d) Subdivision and Combination of Units.** No Person other than the Founder and Builders whom the Founder may authorize shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

**(e) Timesharing.** No Unit shall be used for operation of a timesharing, fraction sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

## **7.2. Rulemaking Authority and Procedures**

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "D" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

**(a) Board Authority.** Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

**(b) Membership Authority.** Subject to the notice requirements in subsection (c), the Voting Delegates representing a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Founder membership exists, any such action shall also be subject to the Founder's approval.

**(c) Notice.** The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

**(d) Effective Date.** A Rules change adopted under this section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners either via standard mail or electronic mail.

Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board shall have the authority to adopt and modify rules as needed to address new or changing circumstances.

**(e) Conflicts.** No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control. Notwithstanding, neither this Declaration nor the Rules or Design Guidelines shall have limit or lessen the application or effect of any ordinance or regulation of the City.

## **7.3. Protection of Owners and Others**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "D," all Rules shall comply with the following provisions:

**(a) Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by location, use, or other distinct characteristics of areas within Harvest Springs.

**(b) Displays.** No Rule shall prohibit an Owner or occupant from displaying political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

Notwithstanding the above regulation, an Owner or occupant may display one portable and removable United States flag on his or her Unit by a bracket or other device mounted to the dwelling, so long as the flag is displayed in a respectful manner, provided, the Association may adopt reasonable time, place, and manner restrictions with respect to the display of the United States Flag, including a reasonable limitation on size.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

**(d) Activities Within Dwellings.** No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance. The Association's authority to impose such Rules shall in no way lessen the effect of any ordinances or regulations of the City.

**(e) Allocation of Burdens and Benefits.** No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

**(f) Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms may vary by location, use, or housing type. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

**(g) Abridging Existing Rights.** No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

This provision protects the existing personal property of Owners. It is intended to prevent a situation in which an Owner is forced to get rid of an item that was allowed prior to a change in the Rules.

**(h) Reasonable Rights to Develop.** No Rule may unreasonably interfere with the ability of the Founder or any Founder Affiliate to develop, market, and sell property in Harvest Springs.

**(i) Interference with Easements.** No Rule may unreasonably interfere with the exercise of any easement.

#### **7.4. Owners' Acknowledgment and Notice to Purchasers**

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

## **Chapter 8**

# **Compliance and Enforcement**

*The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that*

someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

## **8.1. Compliance**

All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Areas.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units and for any damage to the Area of Common Responsibility that such Persons may cause.

## **8.2. Remedies for Non-Compliance**

The Association, the Founder, any Founder Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

**(a) Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) require an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Chapter 5 and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, with all charges and fees associated with such action being charged to the Owner pursuant to Section 12.4, and any such action shall not be deemed a trespass;

(vii) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5, including the Design Guidelines, from continuing or performing any further activities in Harvest Springs;

(viii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(ix) record a notice of violation with respect to any Unit on which a violation exists.

**(b) Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

**(c) Additional Powers Relating to Neighborhood Associations.** In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be averse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to affect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

### **8.3. Board Decision to Pursue Enforcement Action**

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### **8.4. Attorneys Fees and Costs**

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

### **8.5. Enforcement of Ordinances**



The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the County or the City may enforce ordinances within Harvest Springs.

# PART THREE: ASSOCIATION OPERATIONS

## Chapter 9

### Property Management

*While it is not the intent of the Founder for the Association to own or manage property within the Community, in the event that common property is to be owned by the Association, this chapter establishes the Association's obligation to accept property that the Founder designates as Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Harvest Springs.*

#### **9.1. Acceptance and Control of Association Property**

**(a) Transfers and Conveyances by Founder.** The Founder, its designees, or any Founder Affiliate may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder any unimproved real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

**(b) Management and Control.** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

#### **9.2. Maintenance of Area of Common Responsibility**

The Association shall maintain the Area of Common Responsibility (if any) deeded to the Association in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

- (a) the Common Area;
- (b) landscaping within public rights-of-way within or abutting Harvest Springs to the extent that responsible governmental authorities do not maintain it to the Community-Wide Standard; and
- (c) such portions of any additional property as may be dictated by the Founder, this Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association;
- (d) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association;
- (e) any facilities designed and operated for the storage of recreational vehicles within the Community, which may be designated as Limited Common Area; and
- (f) any irrigation facility designated by the Founder and utilized for irrigation purposes within Harvest Springs.

The HOA shall be responsible for proper functioning of the **stormwater drainage system** serving the Community, including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to or owned by the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### **9.3. Discontinuation of Operation**

The Association shall maintain the Common Area facilities (if any) in continuous operation unless the Founder, during the Development and Sale Period, and Voting Delegates representing 75% of the total votes in the Association, consent in writing to discontinue such operation. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

### **9.4. Restoring Damaged Improvements**

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area or Units within a Service Area, any decision not to restore the damaged improvements shall also require the approval of at least 75% of the Owners of Units in the affected Service Area. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

### **9.5. Relationships with Other Properties**

The Association may contract with the owner of any neighboring property or with any other owners' associations to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities; or (b) provision of mutually beneficial services.

## **Chapter 10**

## **Provision of Services**

*In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.*

### **10.1. Provision of Services to Units**

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or any other third party, including the City and any other governmental entity. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services and technology services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

### **10.2. Provision of Services to Service Areas**

**(a) Service Areas Designated by Founder.** The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.4 as required by the terms of any Supplement applicable to the Service Area.

**(b) Service Areas Designated by Board.** In addition to Service Areas which the Founder may designate pursuant to Section 3.4, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

### **10.3. Community Technology**

**(a) Community Systems.** Without limiting the generality of Sections 10.1 and 10.2, the Association is specifically authorized to provide, or to enter into, or take assignment from the Founder or the Council and/or assume, contracts with other Persons to provide, in addition to services the Council provides, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance and upgrades, or modifications to the Community Systems as the Board determines appropriate.

The Association shall have no obligation to utilize any particular provider(s). However, except for cause (as defined by written agreement with the provider), the Association may not, without the Founder's consent, terminate or refuse to renew any contract entered into during the Founder Control Period.

The Association may charge use fees for any of the Community Systems or the Board may include the cost of Community Systems in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

**(b) Opportunities for Community Interaction.** The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association sponsored activities. To the extent Idaho law permits, and unless

otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

#### **10.4. Recycling Programs**

The Association and/or the Council may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials the recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of this and other programs.

#### **10.5. Water Conservation**

All Owners acknowledge and understand that Harvest Springs has been developed to recapture some portions of the stormwater and other water runoff and that such recapture may affect the use and enjoyment of their Unit. By accepting title to a Unit, each Owner agrees to abide by any and all water conservation requirements affecting his or her Unit, including, but not limited to, any and all plumbing and system requirements set forth in the Design Guidelines. Every Owner agrees to cooperate with the Association, and the City in their compliance with any and all water conservation requirements and agrees to grant access to the Association to inspect the Unit and to provide any and all documentation requested by the Association to make such determination.

#### **10.6. Right to Install Water Reclamation Devices**

Subject to any City regulations or ordinances, the Founder reserves for itself the right to install, operate, and maintain water reclamation devices throughout Harvest Springs. Such rights include the reservation of an easement over Harvest Springs for access, and for installation and maintenance of such devices. This Section may not be amended without Founder's consent, and the rights created in this Section shall survive termination of this Declaration.

Each Owner, subject to the Design Guidelines and approval by the DRC, may install a water reclamation device on his or her Unit for the collection of rain, snow, and other precipitation for use by the Owner. Each Owner shall be responsible for the installation and maintenance of such device.

#### **10.7. Environmental Preservation**

The Association, subject to approval by the Founder, so long as Founder or a Founder Affiliate owns land subject to the Declaration, is authorized to establish and implement an environmental preservation program for Harvest Springs which may include, without limitation, designation of certain areas within Harvest Springs as natural landscape zones, slope maintenance zones, underground storage and recovery zones, fire buffer zones, and similar special purpose zones in order to enhance and protect the environment and vegetation within Harvest Springs.

The Association, subject to approval by Founder, so long as Founder or a Founder Affiliate owns any land subject to this Declaration, shall be authorized to promulgate specific use restrictions within such zones (including, but not limited to, prohibitions on cutting trees, lighting fires, and irrigation) and to require Owners within such zones to comply with specific guidelines to minimize or avoid the risk of fire, erosion, and other environmentally destructive occurrences. The expense of developing, implementing, and monitoring such environmental preservation programs shall be included in the Association's annual budget.

## **Chapter 11**

### **Association Insurance**

*The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance. This section is only applicable if the Association owns property or provides a service that would require insurance.*

#### **11.1. Required Coverages**

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;

(d) Directors and officer's liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Chubbuck area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

## **11.2. Deductibles**

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

## **11.3. Policy Requirements**

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Idaho that satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties, and, if reasonably and financially practicable, name the Founder, the Founder Affiliates and their respective officers, directors, and employees as additional insured parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a coinsurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner, any household member of an Owner and the Founder and any Founder Affiliate, and any of their respective officers, directors, and employees; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation. In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insured's and provide:

(i) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(ii) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

#### **11.4. Insurance Premiums**

Premiums for all Association insurance shall be a Common Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

## **Chapter 12**

### **Association Finances**

*While it is the intention of the Founder to not have association assessments within the development, should the need or desire arise to have the Association begin to assess properties to be able to meet the demands of any common property or community service contracts, this chapter will provide for various types of funding to cover expenses that the Association may incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments, which this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.*

### 12.1. Association Expenses

**(a) Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless Voting Delegates (other than Founder appointees) representing a majority of the total vote in the Association approve such expenditure.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, or any other recorded covenants or agreements.

### 12.2. Budgeting for and Allocating Association Expenses

**(a) Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments pursuant to subsection (b).

**(b) Calculation of Base Assessments.** The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 12.5 and levied as a "**Base Assessment.**"

**(c) Notice of Budget and Assessment; Right to Disapprove.** The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Voting Delegates representing at least 75% of the total votes in the Association and by the Founder Member, if such exists. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners of at least 2/3 of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by 10% shall continue in effect until a new budget is determined.

### 12.3. Special Assessments



The Association may levy "**Special Assessments**" to cover Common Expenses that are nonroutine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates representing more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units.

#### **12.4. Specific Assessments**

The Association may levy "**Specific Assessments**" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

#### **12.5. Authority to Assess Owners; Time of Payment**

The Founder hereby establishes, and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the first anniversary of the date on which title was transferred to the Unit, except for transfers to a Founder or a Founder Affiliate; or (b) the date on which a certificate of occupancy is issued for a dwelling on the Unit or the Unit is actually occupied, whichever first occurs. The first annual Base Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### **12.6. Obligation for Assessments**

**(a) Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Idaho law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or setoff shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

**(b) Founder's Financial Obligations to Association.** The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Founder Control Period, the Founder may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Founder otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.6 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

### **12.7. Lien for Assessments**

**(a) Existence of Lien.** The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Idaho law), and costs of collection (including attorney's fees and expenses). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

**(b) Enforcement of Lien.** The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

**(c) Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.6, including such acquirer, its successors and assigns.

### **12.8. Exempt Property**

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Founder or any Founder Affiliate as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority, public school, or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

(d) Any property owned by any religious organization or house of worship.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

# PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

## **Chapter 13**

### **Easements**

*The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.*

#### **13.1. Easements to Association Common Area (if any)**

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Association owned Common Area. Municipal owned parks shall be governed by the municipality. This provision applies to association owned common areas, if any, and is subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association (such conveyance may occur at any time and from time to time at the sole discretion of the Founder);
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
  - (ii) suspend an Owner's right to use Common Area facilities;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
  - (v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vii) permit use of any Common Area facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and
  - (viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 15.9.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

#### **13.2. Easements of Encroachment**

An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent

Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### **13.3. Easements for Utilities, Etc.**

**(a) *Installation and Maintenance.*** During the Development and Sale Period, the Founder reserves for itself and grants to the Association, the City, and all utility providers, perpetual nonexclusive easements throughout Harvest Springs (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve Harvest Springs, other Community Systems, security and similar systems, and stormwater and drainage systems;

(ii) install walkways, pathways and trails, streetlights, and signage on property the Founder, a Founder Affiliate, or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to the City, or any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

**(b) *Specific Easements.*** The Founder also reserves the nonexclusive right and power to grant and record such specific easements consistent with Section 13.3(a) as it deems necessary to develop the property described in Exhibits "A," "B," and "C." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

**(c) *Minimal Interference.*** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall make reasonable efforts to restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

### **13.4. Easements to Serve Additional Property**

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area, if any, for the purposes of enjoyment, use, access, and development of the property described in Exhibits "B" and "C," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property that is not submitted to this Declaration, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

### **13.5. Easements for Maintenance, Emergency, and Enforcement**

By this Declaration, the Founder grants to the Association easements over Harvest Springs as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons; to perform maintenance; to inspect for compliance with

the Governing Documents; and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### **13.6. Easements for Lake and Pond Maintenance and Flood Water**

The Founder reserves for itself, the Association, and their respective successors, assigns, and designees, the City the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within Harvest Springs and/or the Area of Common Responsibility to:

(a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility;

(b) construct, maintain, and repair structures and equipment used for retaining water; and

(c) maintain such areas in a manner consistent with the Community-Wide Standard. The Founder, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of Harvest Springs which abuts or contains bodies of water or wetlands, to the extent reasonably necessary to exercise their rights under this section.

The Founder further reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within Harvest Springs, in order to

(a) temporarily flood and back water upon and maintain water over such property;

(b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and

(c) maintain and landscape the slopes and banks pertaining to such areas.

All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

The Founder further reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual nonexclusive right and easement, but not the obligation, to enter upon the Area of Common Responsibility and such other areas within Harvest Springs as hereafter may be dedicated to the City or any other governmental entity, to install, construct, operate, maintain, repair, or replace pumps, pipelines, structures or related equipment for the treatment or cleansing and transportation of groundwater, irrigation and/or culinary water.

### **13.7. Easements for Cross-Drainage**

All portions of Harvest Springs shall be burdened with easements for natural drainage of stormwater runoff from other portions of Harvest Springs; provided, no Person shall alter the natural drainage on any Unit to increase materially the drainage of stormwater onto adjacent portions of Harvest Springs without the consent of the Owner(s) of the affected property, the Directors, and Founder, as long as it owns any property described in Exhibit "A" or "B."

### **13.8. Easement for Installation, Maintenance, and Repair of Solar Power or Wind Energy Equipment**

Founder reserves unto itself, so long as it or a Founder Affiliate owns any property described in Exhibit "A" or "B", and grants to the Association a perpetual easement for the purpose of access and maintenance upon, across, over, and under all portions of Harvest Springs to the extent reasonably necessary to install, replace, repair, and maintain photovoltaics, solar collector panels, equipment, conduits, lines, wind mills, and anything else necessary for the production and generation of electricity from solar or wind energy. Founder and/or the Association may assign these rights to any company to provide, install, or otherwise maintain such solar and/or wind power equipment.

Any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

### **13.9. Easements for Trails, Paths, and Walkways**

Certain Units may be subject to an easement permitting public access trails, paths, or walkways within the boundaries of such Units ("**Path Easement**"). Any Path Easement shall be shown and described on a Plat, and no Path Easement shall be newly created on a Unit without the written consent of the Owner. Founder grants to the Association a perpetual, non-exclusive easement on, over, under, through, and across any such Path Easement for maintenance purposes and the Owners and occupants of all Units shall have an easement permitting the use of the Path Easements for the intended purposes. In addition, the public may be granted similar use rights over any Path Easement. The use of any Path Easement shall be subject to Board rules and regulations. The Association shall maintain the Path Easements as a Common Expense in accordance with the Community-Wide Standard.

All work associated with the maintenance of the Path Easement shall be performed in such manner as to minimize interference with the use and enjoyment of those portions of a Unit lying outside of the Path Easement. The Association shall use reasonable efforts to confine all work associated with such easement rights to the Path Easement area; provided, to the extent reasonably necessary to perform such work, access over other portions of a Unit shall be permitted. Upon completion of any work, the Association shall restore any disturbed portion of the Unit to the extent reasonably possible to its condition prior to the commencement of the work.

No Person shall place or construct any improvement or thing within a Path Easement area without the Association's prior written consent, which consent may be withheld in the Association's discretion, and no Person shall take any action that otherwise interferes with the exercise of the easement rights provided under this Section.

## **Chapter 14**

# **Disclosures and Waivers**

*This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.*

### **14.1. Facilities and Services Open to the Public**

Certain facilities and areas within Harvest Springs may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, lakes, other neighborhood spots conducive to gathering and interaction, roads, sidewalks, alleys, and medians. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of a recorded plat, or the Board may so designate at any time thereafter.

### **14.2. Safety and Security**

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Harvest Springs. The Association may, but shall not be obligated to, maintain or support certain activities within Harvest Springs designed to promote or enhance the level of safety or security, which each person provides for himself or herself and his or her property. However, the Association, the Founder, or any Founder Affiliate shall not in any way be considered insurers or guarantors of safety or security within Harvest Springs, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Harvest Springs, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, the Founder, and a Founder Affiliate are not

insurers or guarantors of security or safety and that each Person within Harvest Springs assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### **14.3. Changes in Master Plan**

Each Owner acknowledges that Harvest Springs is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses, design, layout, or density of property within Harvest Springs, or (b) changes in the Master Plan or Master Development Agreement, without the Founder's prior written consent; or (c) changes in the price or price ranges for Units. In addition, each Owner acknowledges that the Founder is not obligated to submit property shown on the Master Plan to this Declaration. It is the Founder's sole discretion to submit additional property to this Declaration. Each Owner acknowledges that the Founder, along with the City, has the absolute right to amend or modify the Master Plan and/or the Master Development Agreement without the consent of any party, including, without limitation, any Owner, the Association, any Neighborhood Association, or the Council. Furthermore, no one, including any Owner, the Association or any Neighborhood Association, or the Council, is a third party beneficiary to the Master Development Agreement.

#### **14.4. View Impairment**

The Founder, any Founder Affiliate, and the Association do not guarantee or represent that any view over and across the Units, any open space within the Community, or any lake or wetland will be preserved without impairment. The Founder, the Association, and the Council shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) and the Council (with respect to any property within Harvest Springs owned by the Council) have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

#### **14.5. Notices and Disclaimers as to Community Systems**

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Founder, Founder Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

#### **14.6. Relationship with Governmental and Tax-Exempt Organizations**

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Owners. The Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

#### **14.7. Right to Designate Sites for Governmental and Public Interests**

For so long as Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B," Founder may, but is not obligated to, designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. For property dedicated in accordance with this Section, the use of portable or temporary buildings shall be prohibited on such property, and development of the property shall be in accordance with the Design Guidelines as set forth in Section 5.1. Subject to the approval requirements set forth in Section 19.4, the sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Founder.



#### **14.8. Use of Reclaimed Water for Irrigation Purposes**

Each Owner acknowledges that the development and operation of Harvest Springs include the implementation of water conservation techniques. As part of these techniques, the Association and the City have the right to use recycled or reclaimed water and stormwater runoff to irrigate Public Areas and Areas of Common Responsibility and any property located within Harvest Springs.

#### **14.9. Radio and Telecommunication Towers**

Every Owner and occupant of a Unit is hereby advised that radio and telecommunication towers and related equipment may now or hereafter be located within or in the vicinity of Harvest Springs. The Founder, any Founder Affiliate, Builders, the Association, or the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of or proximity to, radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Harvest Springs.

### **Chapter 15**

## **Rights of Lenders**

*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies that guarantee and insure mortgage loans made by institutional lenders.*

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in Harvest Springs. The provisions of this chapter apply to both this Declaration and the By-Laws, notwithstanding any other provisions contained therein.

#### **15.1. Notices of Action**

An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of Harvest Springs or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant that is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action, which would require the consent of a specified percentage of Eligible Holders.

#### **15.2. Special FHLMC Provision**

If a condominium has been established in the Community, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of Harvest Springs regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### **15.3. Other Provisions for First Lien Holders**

To the extent consistent with Idaho law, if a condominium has been established in the Community, then:

(a) Any restoration or repair of Harvest Springs after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

### **15.4. Amendments to Documents**

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 15.3(a) and (b), or to the addition of land in accordance with Chapter 16. If a condominium has been established in the Community, then:

(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it or a Founder Affiliate owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of the Association representing at least 67% of the total votes in the Association and of the Founder, so long as it or a Founder Affiliate owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of property in Harvest Springs; expansion or contraction of Harvest Springs or the addition, annexation, or withdrawal of property to or from the Association's jurisdiction;

(vii) boundaries of any Unit;

(viii) leasing of Units;

(ix) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(x) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xi) any provisions included in the Governing Documents, which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

#### **15.5. No Priority**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### **15.6. Notice to Association**

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### **15.7. Failure of Mortgagee to Respond**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### **15.8. Construction of Chapter 15**

Nothing contained in this chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or Idaho law for any of the acts set out in this chapter.

#### **15.9. HUD/VA Approval**

As long as there is a Founder Member, the following actions may require the prior approval of the U.S. Department of Housing and Urban Development ("**HUD**") or the U.S. Department of Veterans Affairs ("**VA**"), if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws.

Notwithstanding anything to the contrary in this chapter, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership, or HUD or VA.

## **PART FIVE: COMMUNITY DEVELOPMENT**

### **Chapter 16**

#### **Expansion of the Community**

*Due to the need to pace development to the needs of the Community and the market demand for Units or Common Areas, the Community may be developed in phases. The Founder or the Association may expand the initial property submitted to the Declaration as set forth in this chapter.*

##### **16.1. Expansion by Founder**

From time to time, the Founder may submit to the terms of this Declaration all or any portion of the property described in Exhibits "B" and "C" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand Harvest Springs under this section expires when all property described in Exhibits "B" and "C" has been submitted to this Declaration or 30 years after this Declaration is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to a Founder Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A," "B," or "C." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Declaration shall require the Founder or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" or "C" in any manner whatsoever.

##### **16.2. Expansion by the Association**

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

##### **16.3. Additional Covenants and Easements**

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Assessments. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

##### **16.4. Effect of Filing a Supplement**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

##### **16.5. Unit Conversions**

In the event that any development or building now or hereafter constructed within Harvest Springs is used or operated for nonresidential purposes, such as retail, office, or other commercial uses, and such development is later converted or operated for residential purposes, the owner of such property may submit such property to the provisions of this Document by recording a Supplement describing the property and specifically submitting it to the terms of this Document. Such Supplement shall not require the consent of the Association but shall require the signature of an officer of the Association acknowledging it. In addition,

the Founder's prior written consent shall be necessary so long as the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B."

## **Chapter 17**

# **Additional Rights Reserved to the Founder**

*This chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

### **17.1. Withdrawal of Property**

During the Development and Sale Period, the Founder may amend this Declaration to remove any unimproved portion of Harvest Springs from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

### **17.2. Marketing and Sales Activities**

Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles in designated parking areas.

### **17.3. Right to Make Improvements, Replat**

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing improvements, including cellular towers, on the Common Area and to the Exhibit "B" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder may replat property that it or a Founder Affiliate owns and convert Units it or a Founder Affiliate owns into Common Area.

### **17.4. Right to Approve Changes in Harvest Springs Standards**

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

### **17.5. Additional Covenants and Restrictions**

During the Development and Sale Period, no one other than the Founder or a Founder Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

### **17.6. Exclusive Rights to Use Name of Development**

No Person shall use the name " Harvest Springs " or any derivative of such name or in any logo or depiction associated with Harvest Springs in any printed or promotional material without the Founder's prior written consent. However, Owners may use the name " Harvest Springs " in printed or promotional matter where such term is used solely to specify that particular property is located within Harvest Springs, and the Association shall be entitled to use the word " Harvest Springs " in its name.

### **17.7. Community Systems**

The Founder reserves for itself, Founder Affiliates, and its respective successors and assigns, a perpetual right and easement over all property in Harvest Springs to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

#### **17.8. Easement to Inspect and Right to Correct**

The Founder, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, and if entering an enclosed structure on the Unit, obtain the Owner's prior consent unless it is an emergency.

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within Harvest Springs, including Units, and a perpetual nonexclusive easement of access throughout Harvest Springs to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

#### **17.9. Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Harvest Springs in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

#### **17.10. Development of Open Space**

Plans for Harvest Springs identify or may identify certain areas as "Open Space." Founder shall have the right, in its discretion, to determine appropriate uses for, or improvements that may be constructed on, such Open Space areas. In addition, for any Open Space owned by the City, the City shall have the right, with the approval of Founder, to determine appropriate uses for, or improvements that may be constructed on such Open Space. Appropriate uses or improvements may include, without limitation, signage, walls, landscaping, conservation, drainage, parks, green areas, pathways, or cellular towers. Open Space areas may be owned and maintained by the Association or the City.

#### **17.11. Right to Use Common Area for Special Events**

As long as Founder or a Founder Affiliate owns any property described in Exhibit "A," "B," or "C," Founder may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Founder shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) Founder shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Founder shall have the right to assign its rights to charitable organizations or foundations selected by Founder. Founder's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

### **17.12. Right to Stormwater Runoff**

Founder reserves for itself and its designees and its assigns all rights to ground water, surface water, and stormwater runoff located within Harvest Springs, and each Owner agrees, by acceptance of a deed to a Unit, that Founder shall retain all such rights. Such rights shall include the reservation of an easement over Harvest Springs for access, and for installation and maintenance of facilities and equipment to capture and transport such water, and runoff. All such water shall be available for use by Founder, the Association and/or the City, for irrigation, fire protection, and similar purposes, as such right of use may be designated by the Founder from time to time. Founder may establish programs for reclamation of stormwater runoff and wastewater for appropriate uses within or outside Harvest Springs and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from his or her Unit.

This Section may not be amended without Founder's consent, and the rights created in this Section shall survive termination of this Declaration.

### **17.13. Right to Transfer or Assign the Founder's Rights**

Any or all of the Founder's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a onetime or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

### **17.14. Termination of Rights**

The rights contained in this chapter shall not terminate until the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

# PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

## Chapter 18

### Dispute Resolution and Limitation on Litigation

*From time to time, disputes may arise between Owners or between an Owner and the Association, the Founder, or others involved in the Community. This chapter commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

#### 18.1. Agreement to Encourage Resolution of Disputes Without Litigation

**(a) Bound Parties.** The Founder; the Association and its officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

**(b) Claims.** As used in this chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this chapter.

**(c)** The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Founder, a Founder Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 8.2;
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend
- (vi) the Claim's statute of limitations to comply with this chapter;

#### 18.2. Dispute Resolution Procedures

**(a) Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:



- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

**(b) Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

**(c) Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall pay an equal share of the mediator's fees.

**Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### **18.3. Initiation of Litigation by Association**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Delegates entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Founder Control Period;
- (b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **Chapter 19**

### **Changes in the Common Area**

*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area, partition of the Common Area, and condemnation.*

#### **19.1. Condemnation**

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.3, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.3.

#### **19.2. Partition**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Sections 15.9 and 19.4.

#### **19.3. Transfer or Dedication of Common Area**

The Association may dedicate portions of the Common Area to the City, or to any other local, state, or federal governmental or quasi-governmental entity, any religious organization, or any land trust or organization dedicated to the preservation and protection of natural resources; may subject Common Area to a security interest; or may transfer or convey Common Area if, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association, and the Founder during the Development and Sale Period.

In addition, the Association shall obtain such approval as may be required under Section 15.9.

The proceeds from the sale or mortgaging of Common Area shall be an asset of the Association to be used as the Board determines. No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

## **Chapter 20**

### **Termination and Amendment Community Declaration**

*As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Declaration to address such changes.*

## 20.1. Term and Termination

This Declaration shall be effective for a minimum of 30 years from the date it is recorded. After 30 years, this Declaration shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Community Declaration is terminated, and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

## 20.2. Amendment

**(a) By Founder.** In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Founder Control Period, the Founder may unilaterally amend this Declaration for any purpose.

Thereafter, the Founder may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

**(b) By Owners.** Except as otherwise specifically provided above and elsewhere in this Charter, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 75% of the total votes in the Association, including 75% of the total votes held by Owners other than the Founder. In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**(c) Validity and Effective Date.** No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 15 shall be met, if applicable.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**(d) Exhibits.** Exhibits "A," "B," and "C" are incorporated by this reference, and this chapter shall govern amendment of those exhibits. Exhibit "D" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this section. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits.

THIS COMMUNITY DECLARATION is made by Harvest Springs JV, and in witness thereof, it has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Founder: Harvest Springs JV**

View Pointe Developments, LLC

Satterfield Realty & Development, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF IDAHO     )  
                                  ) ss  
COUNTY OF BANNOCK)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_ known to me, who being duly sworn, said that he resides in \_\_\_\_\_ County, Idaho, that he is the \_\_\_\_\_ of Harvest Springs JV described herein, who executed the foregoing instrument.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public  
[Notarial Seal]

My commission expires: \_\_\_\_\_



# EXHIBIT "A"

## Land Initially Submitted

A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, DESCRIBED MORE PARTICULARLY AS FOLLOWS:

COMMENCING AT THE CENTER 1/4 CORNER OF SECTION 35, BEING MONUMENTED BY A 5/8" REBAR WITH 2" ALUMINUM CAP MONUMENT AS DESCRIBED IN CORNER PERPETUATION RECORDED AS INSTRUMENT NO. 20616613 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY; THENCE NORTH 89°48'40" WEST" WEST, ALONG THE LATITUDINAL CENTERLINE OF SAID SECTION 35, A DISTANCE OF 1585.80 FEET TO A POINT ON THE PRESENT CENTER LINE OF THE FORT HALL MAIN CANAL AS DEPICTED ON RECORD OF SURVEY FOR THE ADAMS COMPANY, RECORDED AS INSTRUMENT NO. 20900258 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY; THENCE NORTH 0°35'06" EAST, ALONG THE CENTERLINE OF THE FORT HALL MAIN CANAL, A DISTANCE OF 631.15 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG THE CENTERLINE OF THE PRESENT FORT HALL MAIN CANAL AS DEPICTED ON SAID RECORD OF SURVEY OVER THE FOLLOWING (2) COURSES:

1. NORTH 0°35'06" EAST A DISTANCE OF 398.59 FEET;
2. NORTH 9°31'31" EAST A DISTANCE OF 362.94 FEET TO A POINT OF NON-TANGENCY WITH A 550.00-FOOT-RADIUS CURVE WHOSE CENTER BEARS NORTH 3°07'01" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 3°30'35" FOR AN ARC LENGTH OF 33.69 FEET (THE CHORD OF SAID CURVE BEARS SOUTH 88°38'17" EAST A DISTANCE OF 33.69 FEET) TO A POINT OF TANGENCY;

THENCE NORTH 89°36'26" EAST A DISTANCE OF 509.60 FEET TO A POINT OF TANGENCY WITH A 1050.00-FOOT-RADIUS CURVE WHOSE CENTER BEARS SOUTH 0°23'34" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 6°36'29" FOR AN ARC LENGTH OF 121.10 FEET (THE CHORD OF SAID CURVE BEARS SOUTH 87°05'19" EAST A DISTANCE OF 121.03 FEET) TO A POINT OF TANGENCY;

THENCE SOUTH 83°47'05" EAST A DISTANCE OF 395.56 FEET; THENCE SOUTH 6°32'40" WEST A DISTANCE OF 594.13 FEET; THENCE NORTH 83°27'20" WEST A DISTANCE OF 19.47 FEET;

THENCE SOUTH 6°32'40" WEST A DISTANCE OF 31.83 FEET; THENCE SOUTH 2°45'35" EAST A DISTANCE OF 27.65 FEET; THENCE SOUTH 77°56'25" WEST A DISTANCE OF 167.50 FEET TO A POINT OF NON-TANGENCY WITH A 253.00-FOOT-RADIUS CURVE WHOSE CENTER BEARS NORTH 77°56'20" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°14'30" FOR AN ARC LENGTH OF 5.48 FEET (THE CHORD OF SAID CURVE BEARS NORTH 11°26'25" WEST A DISTANCE OF 5.48 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 79°10'50" WEST A DISTANCE OF 123.50 FEET TO A POINT OF NON-TANGENCY WITH A 376.50-FOOT-RADIUS CURVE WHOSE CENTER BEARS NORTH 79°10'50" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 5°50'57" FOR AN ARC LENGTH OF 38.44 FEET (THE CHORD OF SAID CURVE BEARS NORTH 7°53'41" WEST A DISTANCE OF 38.42 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 85°01'47" WEST A DISTANCE OF 149.00 FEET TO A POINT OF NON-TANGENCY WITH A 525.50-FOOT-RADIUS CURVE WHOSE CENTER BEARS NORTH 85°01'48" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 3°24'01" FOR AN ARC LENGTH OF 31.19 FEET (THE CHORD OF SAID CURVE BEARS NORTH 3°16'11" WEST A DISTANCE OF 31.18 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 88°50'57" WEST A DISTANCE OF 149.77 FEET;

THENCE SOUTH  $1^{\circ}27'11''$  EAST A DISTANCE OF 26.36 FEET; THENCE SOUTH  $88^{\circ}32'49''$  WEST A DISTANCE OF 139.51 FEET; THENCE SOUTH  $1^{\circ}29'04''$  EAST A DISTANCE OF 19.83 FEET TO A POINT OF TANGENCY WITH A 270.00-FOOT-RADIUS CURVE WHOSE CENTER BEARS NORTH  $88^{\circ}30'56''$  EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF  $2^{\circ}31'36''$  FOR AN ARC LENGTH OF 11.91 FEET (THE CHORD OF SAID CURVE BEARS SOUTH  $2^{\circ}44'52''$  EAST A DISTANCE OF 11.91 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH  $85^{\circ}54'12''$  WEST A DISTANCE OF 60.00 FEET; THENCE NORTH  $89^{\circ}24'54''$  WEST A DISTANCE OF 243.17 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 17.55 ACRES, MORE OR LESS.

## **EXHIBIT "B"**

### **Land Subject to the Master Plan for HARVEST SPRINGS**

All Property Identified and Zoned as Harvest Springs Creative Community Zoning in the City of Chubbuck  
Code Chapter 18.34

#### **Note to clerk and title examiners:**

**This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 16.**



## **EXHIBIT "C"**

### **Land Subject to Annexation**

Any real property that directly abuts the proposed boundaries or future boundaries of that certain development known as Harvest Springs, the first phase of which is described in Exhibit "A," and which may include all of the property described in Exhibit "B."

#### **Note to clerk and title examiners:**

**This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "C." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 16.**

# EXHIBIT "D"

## **Initial Rules**

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of Harvest Springs until such time as they are modified pursuant to the Charter.

**1. General.** Harvest Springs shall be used only for purposes consistent with the Master Plan, this Declaration, and any Supplement.

**2. Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Harvest Springs:

(a) Parking any vehicles on public or private streets or thoroughfares or parking of commercial vehicles or equipment, mobile homes, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages, and the parking of recreational vehicles on any Unit; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, and recreational vehicles may be parked in driveways for no longer than four hours in any four-day period for the loading and unloading of the recreational vehicle;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(l) Any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Harvest Springs or that use excessive amounts of water or that result in unreasonable levels of sound or light pollution;

(m) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;

(n) Any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals; (collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Harvest Springs, should any master system or systems be utilized by the Association and require such exterior apparatus; and

(o) Holding or conducting of any garage or yard sale on any Unit shall be prohibited; however, the Association shall be permitted to conduct an annual community-wide garage or yard sale for the Owners within Harvest Springs at a time and place it designates.

**3. Prohibited Conditions.** The following shall be prohibited at Harvest Springs:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Harvest Springs;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Permanent basketball goals, portable basketball goals, basketball standards, or backboards which are or would be visible from any street or Common Area; provided, permanent basketball goals may be placed on a Unit without prior approval but may only be placed or installed on the garage of a Unit so that it is not visible from the street. Freestanding pole-mounted or portable backboards, whether permanent or sleeve set, shall be prohibited on the Unit; provided, freestanding pole-mounted or portable backboards may be placed on a Unit, if placed more than 30 feet from the curb adjacent to the front yard of the Unit and to the side yard of a Units located at the intersection of two streets or alleys;

(d) No solar heating equipment or device is permitted outside any enclosed structure on the Unit except such devices whose installation and use is approved by the Reviewer. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Chapter 5 prior to installation and approval will be granted only if:

(i) First, such equipment or device is designed for minimal visual intrusion when installed (*i.e.*, is located in a manner which minimizes visibility from the street or an adjacent Unit and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations

In any event, and notwithstanding the above list of prohibited conditions, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Unit requires prior Reviewer approval in accordance with Chapter 5, unless specifically made exempt under the Design Guidelines; and

(e) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within Harvest Springs; provided, this subsection shall not apply to the activities of Founder or its designees.

**4. Wetlands, Lakes, and Other Water Bodies.** Wetlands, lakes, ponds, and streams within Harvest Springs, if any, are part of the Harvest Springs' stormwater management system, and no active use of lakes, ponds, streams, or other bodies of water within the Community is permitted, except the use of non-motorized watercraft and the City's operation of the lake within Harvest Springs. In addition, water within the lakes may be used for irrigation purposes under a separate agreement with the Association, if required. Neither the Founder, the Association, nor the City shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to Harvest Springs.

**EXHIBIT "E"**

**By-Laws of Harvest Springs Community Association, Inc.**