

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID PIONEER TITLE CO

1997 May 29 PM 2:25

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FEE 5100 OF J. Weatherly
RECORDED AT OF DISTRICT OF

CHANNEL CENTER SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by BB ONE, L.C., an Idaho limited liability company, hereafter referred to as "Declarant."

WITNESSETH

WHEREAS, Declarant is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as "the properties," more particularly described as follows:

CHANNEL CENTER SUBDIVISION, according to the official plat thereof, recorded in Book 73 of Plats at Pages 7602 and 7603, as Instrument No. 97040198, recorded on the 23rd day of May, 1997, records of Ada County, Idaho; and

WHEREAS, Declarant desires to subject the above described properties to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the properties and their present and subsequent Owners as hereinafter specified, and will convey the properties subject thereto;

NOW, THEREFORE, Declarant hereby declares that all of the properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following terms shall have the following meanings:

Section 1. "ASSOCIATION" shall mean and refer to North Channel Property Owners Association, Inc. a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinabove described.

Section 3. "COMMON AREA" shall mean all real property and improvements thereon (including private streets, parking areas, pedestrian pathway easements, greenbelt area easements, any common drainage facilities, and the irrigation water supply system) owned or maintained by the Association for the common use and enjoyment of the Owners and their invitees. The Common Areas to be owned by the Association at the time of conveyance of the first Lot is described as follows:

Lot 9, Channel Center Subdivision, according to the official plat thereof, recorded in Book 73 of Plats at pages 7602 and 7603, as Instrument No. 97040198, recorded on the 23rd day of May, 1997, records of Ada County, Idaho, together with the pedestrian pathway and greenbelt area easements as depicted on the said plat and further described in Article IV, Section 3, below; and

Section 4. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties or portion thereof held in separate ownership, with the exception of the Common Areas.

Section 5. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "DECLARANT" shall mean and refer to BB ONE, L.C., an Idaho limited liability company, its successors, heirs and assigns, if such successors, heirs or assigns should acquire more than one undeveloped Lot from Declarant for the purpose of development.

Section 7. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the office of the County Recorder of Ada County, State of Idaho.

Section 8. "MORTGAGE" shall mean any mortgage, deed of trust or other security instrument by which a Lot or any improvement thereon is encumbered.

Section 9. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Section 8.

Section 10. "FIRST MORTGAGEE" shall mean any Mortgagee, as defined in Section 9, possessing a lien on any Lot or improvement thereon first and prior to any other Mortgage, as that term is defined in Section 8.

Section 11. "INSTITUTIONAL HOLDER" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 12. "IRRIGATION WATER SUPPLY SYSTEM" shall mean all real property and improvements thereon and all wells, pumps, pipes, and any other conveyancing apparatus and all easement rights for the installation and maintenance of the system by which irrigation water is delivered to each Lot, owned by the Association for the purpose of providing an irrigation water supply to the Owners.

Section 13. "PLAT" shall mean a final subdivision plat covering any real property in Channel Center Subdivision, as recorded in the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 14. "SUBDIVISION" shall mean the Channel Center Subdivision as shown on a final Subdivision Plat recorded in the Office of the County Recorder, Ada County, Idaho.

ARTICLE II: ENJOYMENT OF COMMON AREA

Each owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of the Association to levy reasonable assessments as provided in Article III, Section 3, below.
- B. The rights of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien thereagainst; provided that the Common Area may not be mortgaged or conveyed without the consent of at least two-thirds of the votes of the members of the Association who are voting in person or by proxy at a meeting duly held for this purpose, and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.
- C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the consent of at least two-thirds of the vote of the members who are voting in person or by proxy at a meeting duly held for this purpose.
- D. The right of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the members of that Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including without being limited thereto, reasonable regulations and restrictions regarding vehicle parking.

ARTICLE III: PROPERTY OWNERS ASSOCIATION

Section 1. Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to the number of votes which is equal to the percentage that the number of square feet of area in the Lot or Lots owned by each member bears to the total number of square feet of area contained in the Subdivision. By way of example, if a member owns a Lot containing 70,000 square feet and the Subdivision consists of a total of 700,000 square feet, that member is entitled to cast ten votes, his Lot containing ten percent of the number of square feet contained in the Subdivision. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall the vote cast with respect to any Lot be split. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B member(s) shall be Declarant and shall be entitled to the number of votes which is equal to the percentage that the number of square feet of area in the Lot or Lots owned by Declarant bears to the total number of square feet of area contained in the Subdivision, multiplied by three (3). The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- B. On December 31, 2006.

Section 3. Assessments:

- A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:
 1. Regular annual or other regular periodic assessments or charges; and
 2. Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular and special assessments, together with interest, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

- B. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of operating the Association, maintaining, improving and repairing the Common Area and improvements thereon including any Association owned private streets, street lights, common drainage facilities, the Irrigation Water Supply System, and any pedestrian pathway easements and greenbelt area easements.
- C. Amount of Annual Assessment: Annual assessments shall be levied against each Lot in the Subdivision in accordance with the number of square feet contained in the said Lot. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be \$0.0471 per square foot of area contained in each Lot. Thereafter, the Board of Directors of the Association may fix the annual assessment at such an amount as it deems necessary in the exercise of the best business judgment of the Board of Directors to cover the anticipated expenses of the Association, including a reserve for contingencies; and said assessments shall be payable to the Association in regular monthly or quarterly installments as may be determined by the Board of Directors.
- D. Initiation Assessment: Upon the initial conveyance of each lot, the purchaser thereof shall pay an initiation assessment in the amount of \$0.0471 PER SQUARE FOOT OF AREA CONTAINED IN EACH LOT; EQUALS ANNUAL ASSESSMENT.
- E. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including any Association owned private streets, street lights, common drainage facilities, the Irrigation Water Supply System, the pedestrian pathway easements, the greenbelt area easement, and any fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be allocated among the Lots in the same manner as regular assessments (i.e., based upon the number of square feet of area contained in each Lot) and shall be payable over such a period as the Association shall determine.
- F. Notice and Quorum for Any Action Authorized Under Section 3.E.: Written notice of any meeting called for the purpose of taking any action authorized under Section 3.E., above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes

of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- G. Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day of the month following the initial conveyance of the said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- H. Effect of Nonpayment of Assessments; Remedies of Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- I. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- J. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:
1. All property expressly dedicated to and accepted by a Local public authority;
 2. The Common Area;
 3. All other properties owned by Declarant or the Association; and
 4. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.

Section 4. Dissolution: The Association may not be dissolved nor may it be relieved of its maintenance responsibilities and obligations as contained herein without the prior approval of the City of Eagle.

ARTICLE IV. EASEMENTS

Section 1. Future Easements: The Association shall have the future right to provide for such easements across, upon and under the surface of its Common Area as may be reasonably necessary to serve the interests and convenience of the property Owners of this subdivision for public or private ways, public utilities (including cable television), drainage, access, subterranean irrigation lines, and eave and balcony overhangs.

Section 2. Easement for Maintenance: Declarant and the Association shall have a permanent easement to go upon the privately owned property of Owners in this subdivision to perform maintenance upon the Properties, the Common Area, including, but not limited to, snow removal, landscape maintenance, utility service and drainage system maintenance, subterranean irrigation water system maintenance, roadway maintenance, and pathway maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems.

Section 3. Pedestrian Pathway and Greenbelt Area Easements: Declarant hereby reserves for the benefit of the Association, the Owners and their invitees, an easement for pedestrian access, ingress and egress across all pedestrian pathways and greenbelt areas as are depicted on the plat. Declarant further reserves to itself and the Association the right to install, maintain, replace, and restore such landscaping and pathway improvements as may be deemed appropriate by the Declarant or the Association. Any such landscaping and pathway improvements shall be owned and maintained by the Association in accordance with the provisions of Article V, below.

Section 4. Access Easement: Declarant hereby grants, for the benefit of the Association, the Owners and their invitees and members of the public, a perpetual and indefeasible easement over and across Lot 9, Block 1, for the purpose of ingress to and egress from each of the Lots in the Subdivision. The perpetual right of ingress and egress over and across the said Lot may not be terminated or extinguished without the written consent of all Owners, the Association, any and all parties having an interest in any Lot in the Subdivision, and the City of Eagle. Declarant reserves to itself and the Association the right to install, maintain, replace, and restore such street and landscaping improvements as may be deemed appropriate by the Declarant or the Association. Any such landscaping and street improvements shall be owned and maintained by the Association in accordance with the provisions of Article V, below.

ARTICLE V: MAINTENANCE RESPONSIBILITY

Section 1. Association Responsibility: The Association shall provide maintenance to and be responsible for the Common Areas and improvements thereon, including any Association-owned private streets, street lights, common drainage facilities, the Irrigation Water Supply System, the pedestrian pathway easements, and the greenbelt area easements. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner or his invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject. An initial maintenance reserve equal to 10% of the cost of the construction of the private streets (including curbs and gutters) will be established by the Declarant upon the initial conveyance of the first Lot in the subdivision.

Section 2. Owner Responsibility: Each Owner shall be responsible for maintaining and keeping in good order and repair all improvements located on his Lot including, but not limited to, all buildings, landscaping improvements, parking areas, sidewalks and drainage facilities associated with his Lot, except those which are specifically identified herein to be maintained by the Association. Each owner or occupant shall remove, at his own expense, any rubbish or trash of any character which may accumulate on his Lot.

ARTICLE VI: IRRIGATION WATER SUPPLY SYSTEM

Section 1. Irrigation Water Supply: Each Lot shall have access to an Irrigation Water Supply System to be constructed by Declarant and owned and operated by the Association. All Owners to which the system has been extended shall be required to pay the assessment therefore as provided for hereinabove, regardless of actual use or non-use of water from the irrigation system.

Section 2. Operation of the Irrigation Water Supply System: The Irrigation Water Supply System shall be operated in accordance with the laws of the State of Idaho and all rules and regulations as may be promulgated from time to time by the Association and any governmental entity having jurisdiction thereof. The water supplied by this system is non-potable and cross-connection with the separate domestic water supply system presents a health risk and is prohibited. The right to receive water from the Irrigation Water Supply System is subject to availability of water, which is intended to be supplied from existing artesian wells located on the Property pursuant to a license which is subject to adjudication. Declarant makes no representations or warranties respecting the continued availability of water from the source or the future validity of the license and shall have no liability therefor. The Association shall regulate the use of water to conserve its availability for Lots. Neither Declarant nor the Association shall have liability for any temporary interruptions in water supply service so long as necessary repairs are made in a reasonably prompt manner. The Association shall be permitted to enter into a contract with a qualified water system management and maintenance entity for the management and maintenance of the Irrigation Water Supply System.

Section 3. Easement for Irrigation Water Supply System: The Declarant and the Association shall have a permanent easement for the construction, maintenance and repair of the Irrigation Water Supply System and related wells, pumps, pipes, and any other conveyancing apparatus in the public utilities, drainage and irrigation easements as depicted on the Plat,

together with the right of ingress to and egress from the easement premises over and across the privately owned property of Owners to perform maintenance upon the well, pump, pipes and other conveyancing apparatus comprising the Irrigation Water Supply System together with all rights necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement.

ARTICLE VII: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the properties and shall be for the benefit of and limitations upon all present and future Owners of said property, or of any interest therein:

- A. Lot Use: No Lot shall be used except for such uses as are permitted pursuant to the ordinances of the city of Eagle and have been approved by the Architectural Control Committee as provided hereinbelow. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations.
- B. Garbage and Refuse Disposal: No part of said property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. Any incinerators or other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee and shall be kept in a clean and sanitary condition.
- C. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Owners
- D. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement.
- E. Leasing Restrictions: Any lease between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease.

F. Parking: Each Owner shall be responsible to provide such parking areas as are required by any governmental authority with jurisdiction thereof; provided, however, that each Lot Owner shall provide, at a minimum, parking in accordance with the following:

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|------------------------|---|
| Restaurant: | One space per two seats |
| Condominium/Apartment: | Two spaces per unit plus adequate visitor parking |
| Office/Retail: | One space per 200 square feet gross area. |

G. Antennas/Satellite Dishes: No exposed radio or television antenna or satellite dishes shall be erected on the Properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion.

ARTICLE VIII. BUILDING RESTRICTIONS

Section 1. Building Restrictions: No buildings shall be erected, altered, placed or permitted to remain on any Lot other than those which have been approved pursuant to the ordinances of the city of Eagle and which have been further approved by the Architectural Control Committee as provided for hereinbelow.

Section 2. Setbacks: No improvements may be constructed or maintained on a Lot within the minimum building setback lines as provided for by the Zoning Ordinance of the City of Eagle or the below table, whichever may be more restrictive:

River	
Parking lot - from high waterline	35'
Building - from high waterline	50'
Eagle Road and Bypass	
Parking lot	25'
Building	40'
Private Interior Street	
Building - from street right-of-way	15'
Parking lot - from street right-of-way	5'
Parking lot - from pedestrian way	5'
Interior Lot Line	
Building	15'
Parking lot	5'

Section 3. Permits: Each Owner shall be responsible to obtain, at his sole expense, such permits as may be required by any governmental authority having jurisdiction thereof for the Owner's proposed use. In addition, each Owner shall be responsible for all fees and charges

of any description whatsoever imposed by any governmental authority as a result of the proposed use for the Owner's Lot.

ARTICLE IX. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Board of Directors of the Association. The Board of Directors of the Association shall appoint members to the Architectural Control Committee at each annual meeting of the Board.

Section 2. Approvals Required: No building or other structure (including but not limited to fences, walls, signs, and parking areas) or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, color, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

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

Section 3. Submissions: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee including, without limitation, the following:

- A. Site Plan. A site plan showing the location of buildings and all other structures and improvements, including parking areas, sidewalks, fences, and walls on the Lot, Lot drainage and all setbacks or other pertinent information related to the improvements.
- B. Building Plan. A building plan shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior

specifications for each building which shall indicated, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used.

- C. Landscape Plan. A landscape plan for that portion of the Lot to be landscaped which shall show the location, type, and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas, and walkways.
- D. Sign Plan. A signage plan showing the location, design, size, color, and material proposed for all exterior signs.

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

Section 6. Waivers: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 7. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 8. Certification by Secretary: The records of the Secretary of the Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Association showing

that the plans and specifications for the improvement or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Association shall have appeared of record in the office of the County Recorder of Ada County, State of Idaho, or unless legal proceedings shall have been instituted to enforce completion or compliance.

Section 9. Construction and Sales Period Exception: During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Lots; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale.

ARTICLE X: INSURANCE AND BOND

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

The Association may secure and maintain at all times the following insurance and bond coverage:

- A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100 %) of the insurable value (based upon replacement cost).
- B. The Association must, if available at a reasonable cost, have a comprehensive policy of public liability insurance covering all of the common areas in the Properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

- C. The Association may obtain liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association in such amount as may be reasonable in the premises.
- D. The following additional provisions shall apply with respect to insurance:
1. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
 2. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, or agents; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.
 3. All policies shall be written by a company licensed to write insurance in the State of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.
- E. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
- F. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

ARTICLE XI: CONDEMNATION

Section 1. Consequences of Condemnation: If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the Association and shall be further

identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens (unless waived) and the balance remaining to each respective Owner.

ARTICLE XII: MORTGAGEE PROTECTION

Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws of the Association:

- A. The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.
- B. The holders of First Mortgages shall have the right to examine the books and records of the Association and to require annual reports or other appropriate financial data.
- C. Any lien which the Association may have on any Lot for the payment of assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date notice of such assessment lien is duly recorded.
- D. Unless all institutional holders of First Mortgages have given their prior written approval, no Association shall:
 1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the improvements on the Properties or the maintenance of the Common Area.
 4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XIII: GENERAL PROVISIONS

Section 1. Enforcement: The Association or any Owner or the owner of any recorded Mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of membership. Any amendment must be recorded.


Section 4. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned, and upon any such corporation or association evidencing its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of said property.

IN WITNESS WHEREOF, Declarant has caused its corporate name to be hereunto subscribed and its corporate seal affixed this 29 day of May, 1997.

DECLARANT:

BB ONE, L.C.

By



Dennis M. Baker, Managing Member

