

INSTRUMENT NO. 90346

A 1 of 35

DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIGHLAND ESTATES SUBDIVISION

THIS DECLARATION is made this 31st day of January, 1996 by PAYETTE RIVER DEVELOPMENT COMPANY, INC., an Idaho corporation. (herein "Declarant"). This Declaration of Covenants, Conditions and Restrictions for Highland Estates is a statement in its entirety of the covenants, conditions and restrictions for the Highland Estates Subdivision and is as follows:

ARTICLE 1
RECITALS

1.1 **Property Covered.** Declarant is the owner of certain real property (the Property") described as: Highland Estates Subdivision, formerly known as Phase IV of the MeadowCreek Subdivision, Adams County, Idaho. The legal description of the Property is provided in Exhibit A attached hereto.

1.2 **Purpose.** Declarant hereby subjects all of the Property to certain protective covenants, conditions and restrictions for the benefit of the Property and present and future owners thereof. This Declaration of Covenants, Conditions and Restrictions ("Declaration") is intended to preserve the value, desirability and attractiveness of the Property, to create and protect the highest quality development of the Property and to ensure proper maintenance thereof.

1.3 **Goals.** The project is being developed to provide a limited number of recreational residential sites within the 200+ acre Highland Estates Subdivision. The Property provides many unique natural resources including its meadows, forests and wildlife populations. The project has been designed and will be managed to preserve and enhance these natural resources for the benefit of all Lot owners.

ARTICLE 2
DECLARATION

2.1 **Scope of Declaration.** Declarant hereby declares that all of the Property and each Lot therein, is and shall be held, sold and conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements and

INSTRUMENT NO. 90346

DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIGHLAND ESTATES SUBDIVISION

THIS DECLARATION is made this 31st day of January, 1996 by
PAYETTE RIVER DEVELOPMENT COMPANY, INC., an Idaho corporation, (herein
"Declarant"). This Declaration of Covenants, Conditions and Restrictions for Highland Estates is a
statement in its entirety of the covenants, conditions and restrictions for the Highland Estates
Subdivision and is as follows:

ARTICLE 1
RECITALS

1.1 **Property Covered.** Declarant is the owner of certain real property (the Property")
described as: Highland Estates Subdivision, formerly known as Phase IV of the MeadowCreek
Subdivision, Adams County, Idaho. The legal description of the Property is provided in Exhibit A
attached hereto.

1.2 **Purpose.** Declarant hereby subjects all of the Property to certain protective
covenants, conditions and restrictions for the benefit of the Property and present and future
owners thereof. This Declaration of Covenants, Conditions and Restrictions ("Declaration") is
intended to preserve the value, desirability and attractiveness of the Property, to create and protect
the highest quality development of the Property and to ensure proper maintenance thereof.

1.3 **Goals.** The project is being developed to provide a limited number of recreational
residential sites within the 200+ acre Highland Estates Subdivision. The Property provides many
unique natural resources including its meadows, forests and wildlife populations. The project has
been designed and will be managed to preserve and enhance these natural resources for the benefit
of all Lot owners.

ARTICLE 2
DECLARATION

2.1 **Scope of Declaration.** Declarant hereby declares that all of the Property and
each Lot therein, is and shall be held, sold and conveyed, encumbered, hypothecated, leased, used,
occupied and improved subject to the following covenants, conditions, restrictions, easements and

equitable servitudes which are for the purpose of protecting the value and desirability of, and which shall run with, the Property. The covenants, conditions and restrictions contained in this Declaration shall:

A. Be binding upon all persons having or acquiring any right, title or interest in or to the Property or any Lot and their successors or assigns;

B. Inure to the benefit of every portion of the Property or any Lot or any interest therein;

C. Inure to the benefit and be binding upon Declarant and his successors and assigns and each grantee and his/her respective successors in interest; and

D. Be enforced by Declarant or its agent, by any Owner or grantee or his/her successors in interest or by the Highland Estates Homeowners Association ("Association").

2.2 Rights of Declarant. Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit Declarant's right to complete development of the Property and to construct improvements thereon, nor Declarant's right to maintain construction, sales or similar facilities on any portion of the Property, nor Declarant's right to post signs incidental to construction, sales or leasing on any portion of the Property.

2.3 Other Restrictions. The covenants, conditions and restrictions contained in this Declaration are IN ADDITION to any other land use restrictions, zoning ordinances, laws, rules and decisions of other governmental authorities, including judicial authorities. This Declaration does not supersede or replace any such land use restrictions which are in force and must be satisfied independent of this Declaration.

ARTICLE 3 DEFINITIONS

Unless the context requires otherwise, the following words and phrases, when used in these Restrictions, shall have the meanings hereinafter specified:

3.1 ACCESSORY DWELLING shall mean a dwelling not exceeding 800 square feet in Net Floor Area located in an Outbuilding for use by domestic help or occasional guests.

3.2 AGRICULTURAL shall mean the harvesting of crops and timber. It shall also

INSTRUMENT NO. 90346

mean feeding, breeding, management and sale of livestock and any other agricultural or horticultural use.

3.3 **ARTICLES** shall mean the Articles of Incorporation of the Association which have been or shall be filed in the office of the Secretary of the State of Idaho, and as may be amended from time to time.

3.4 **ASSESSMENTS** shall mean those payments required of the Highland Estates Homeowners Association, Inc., including regular and special assessments as further defined in this Declaration.

3.5 **ASSOCIATION** shall mean the Highland Estates Homeowners Association, Inc., the non-profit Idaho corporation described in this Declaration, its successors and assigns.

3.6 **ASSOCIATION EASEMENTS** shall mean, collectively, all roads shown on the recorded plats of Highland Estates Subdivision and all easements granted to Owners and the Association for the benefit of its members in this Declaration and in recorded conveyances or as established by the Board over the Common Areas designated for use by the Members.

3.7 **ASSOCIATION RULES** shall mean the rules and regulations of the Association and as may be amended from time to time.

3.8 **BARN** shall mean an Outbuilding for the storage of vehicles, farm equipment and feed and for the housing of farm animals.

3.9 **BASEMENT** shall mean a building floor below natural grade by an average of at least 4 feet on three or more sides.

3.10 **BENEFICIARY** shall mean a mortgagee under a mortgage or a beneficiary or holder under a deed of trust, which mortgage or deed of trust encumbers parcels of real property on the Property.

3.11 **BOARD** shall mean the Board of Directors of the Highland Estates Homeowners Association, Inc.

3.12 **BUILDING FOOTPRINT** shall mean that area of a Lot covered by any part of a building, including porches, decks and overhangs.

INSTRUMENT NO. 90346

3.13 BYLAWS shall mean the Bylaws of the Association which have been or shall be adopted by the Board, as such Bylaws may be amended from time to time.

3.14 COMMON or COMMON AREAS shall mean available for use by all Owners and their guests, or by the general public.

3.15 DECLARANT shall mean PAYETTE RIVER DEVELOPMENT CO., INC., or any person, persons, entity or entities to whom the rights of the Declarant under this Declaration are specifically transferred by the Declarant.

3.16 DECLARATION shall mean this instrument and as it may be amended and supplemented from time to time.

3.17 DEED OF TRUST shall mean a mortgage or a deed of trust, as the case may be.

3.18 DESIGN REVIEW COMMITTEE RULES OR RULES shall mean the rules adopted by the Design Review Committee ("DRC") pursuant hereto recorded July 17, 1996 as Instrument No. 90347, and incorporated herein by reference. Said Rules may be modified from time to time by the Board.

3.19 HEIGHT shall mean the limit to the vertical extent of a building, fence or other Improvement that is measured in feet relative to the natural grade of the Lot. Height limits do not apply to chimneys, lightning rods and weather vanes which may be of any height approved by the Design Review Committee.

3.20 HOMESITE shall mean that portion of each Lot as shown on the Regulating Plan within which the house and up to three Outbuildings must be located.

3.21 HOUSE shall mean a single family residential structure designed to accommodate no more than a single family, domestic help and occasional guests.

3.22 IMPROVEMENT shall mean all things constructed upon, above, or below the Property and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, barns, garages, carports, roads, driveways, parking areas, fences, corrals, walls, stairs, decks, landscaping, windbreaks, poles, signs, site grading, underground utilities, timber removal, irrigation devices, drain fields, antennae, sport courts, satellite dishes, or equipment, whether temporary or permanent, fixed or removable. Improvement shall also mean any alteration, excavation or fill for any purpose to any Lot, vegetation, diversion dam, stream, spring, seep,

ditch, fill, or other device.

3.23 INDEPENDENT BUILDING shall mean a building having no interior passage to an adjacent building.

3.24 LOT shall mean each of Lots 1 through 23, as shown on the official plat for Highland Estates Subdivision, recorded in the office of the recorder of Adams County, Idaho.

3.25 MEMBER shall mean any person who is a member of the Association as described in section 6.2 of the Declaration.

3.26 MORTGAGE shall mean any mortgage or deed of trust or other conveyance or hypothecation of a Lot to secure the performance of an obligation which will be void and reconveyed upon the completion of such performance.

3.27 NATURAL GRADE shall mean the natural elevation at a point on a Lot existing prior to any site preparation or improvement.

3.28 NET FLOOR AREA shall mean the enclosed area of a building, excluding unglazed porches, colonnades and balconies.

3.29 NOTICE AND HEARING shall mean 30 days notice and public hearing before the Board at which time the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense.

3.30 OUTBUILDING shall mean an Independent Building in addition to and to the rear or side of the House.

3.31 OWNER shall mean the person or persons or other legal entity or entities, including Declarant, holding a fee simple interest in a Lot or, as the case may be, the purchaser of a Lot under an executory contract of sale (but excluding those having such interest merely as security for the performance of an obligation). For the purposes of Articles 4 and 5 only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner. Notwithstanding anything in this section to the contrary, the Association, as owner of the private road system within Highland Estates and the Common Areas, shall not be deemed an "Owner" for the purposes of this Declaration.

3.32 PERSON shall mean an individual or other entity with the legal right to hold

title to real property.

3.33 **RESTRICTIONS** shall mean this Declaration, as said Declaration may be amended from time to time, and the Rules from time to time in effect.

3.34 **REGULATING PLAN** shall mean the Subdivision Plat attached hereto as Exhibit B.

**ARTICLE 4
GENERAL AND SPECIFIC RESTRICTIONS**

Except upon prior written approval of the Design Review Committee, the Property shall be held, used and enjoyed subject to the following limitations and restrictions:

4.1 **Design Review Committee.** There shall be no excavation or alteration of any Lot, no action to construct, place or erect any Improvement or structure on any Lot (or which in any way alters the exterior appearance of any Improvement or Lot or removal of any Improvement) without the prior written approval of the Design Review Committee in accordance with this Declaration and the Exhibits to the Declaration, all of which are incorporated herein by reference as if restated in full. These requirements shall apply only to the exterior appearance of said Improvements and not the interior thereof.

4.2 **Insurance Rates.** Nothing shall be done or kept on any Lot or the Property which shall increase the rate or result in the cancellation of insurance payable by any Owner, the Association or Declarant, or which would be in violation of any Association Rule or Adams County Regulation.

4.3 **No Further Subdivision.** No Lot may be further subdivided, nor may any easement or other interest therein, less than the whole, be conveyed by the Owner thereof other than for underground utilities and underground drainage facilities.

4.4 **Animals.** No more than 4 dogs and 4 cats (and other indoor household pets) may be kept except with the approval of the Board, and provided that they are not kept, bred or maintained for any commercial purpose and not allowed to run at large, chase wildlife or bark excessively. Owners with farm animals shall maintain pasture grasses and fence pastures according to the alignment shown on the Regulating Plan. Farm animals (other than pigs, chickens and other burrowing animals) shall not exceed 2 animals per 5 acres owned unless approved by the Board; including, but not limited to, horses, cattle, llamas, sheep, deer, elk, etc. No farm animals shall be

INSTRUMENT NO. 90346

allowed on any Lot unless contained by fencing. No pigs, chickens and/or burrowing animals shall be allowed on any Lot within the Property.

4.5 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. No noise, including, but not limited to, noise created by people, animals, equipment, electronic device, audio receiver, television, stereo, musical instrument and/or machinery, or any other audible nuisance, shall be permitted which is offensive or detrimental to any other Lot in the vicinity thereof or to its occupants.

4.6 Maintenance of Improvements. No improvement upon any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.

4.7 Disrepair. If any Owner permits any Improvement of which he is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon 15 days prior written notice to such Owner, may correct such condition and enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall create a lien in the same manner as other assessments, as set forth in this Declaration. Such Owner shall be personally liable, and his property may be subject to a mechanic's or other lien, for all costs and expenses incurred by the Association in taking such corrective actions, plus all costs incurred in collecting the amounts due. Each such Owner shall pay all amounts due for the work within 10 days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to amounts payable by such Owner as a regular Assessment.

4.8 Watercourses, Irrigation Ditches and Drainage. All watercourses, irrigation ditches and drainage shall be managed in the best interest of the Association. There shall be no alteration, improvement, or interference with any established watercourse, irrigation ditch or drainage pattern over any Lot within the Property unless approved in writing by the Design Review Committee and the Board. Any alteration, improvement, or interference with any watercourse, ditch, or drainage shall also comply with applicable local, state and federal regulations.

For purposes of this Declaration, "alterations" shall mean to obstruct, diminish, fill, pond, dredge, destroy, alter, modify, relocate or change. "Watercourses" (either natural or made) shall include streams (both perennial and intermittent), wetlands, lakes and ponds, springs, seeps, dry washes and any associated culverts, ditch or water control structures. Irrigation ditches shall include any ditch, canal and any associated culvert or water control structure used to convey water

INSTRUMENT NO. 90346

for irrigation purposes. "Established" is defined as the watercourse, ditch or drainage which exists at the time of the grading of the Lot or Property, or as shown on any plans approved by the Design Review Committee or the Regulating Plan of the Property.

4.9 **Common Areas.** The Common Areas, if any, shall be managed by the Association, and no alterations within said areas shall be allowed except by approval of the Association's Board of Directors.

4.10 **Sewage and Water Supply Facilities.** All residential structures on Lots other than those specifically identified herein shall be provided, at the Owner's expense, with a water well(s). All residential structures on all Lots shall be provided, at the Owner's expense, with adequate sewage treatment facilities, including septic tank and drain field. Individual sewage and water systems shall be permitted on any Lot, provided such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Design Review Committee and is approved by the Adams County Health District and all other applicable governmental authorities. Individual Lots may require additional sewage treatment facilities based on soil types and hydrology conditions, the determination of which shall be the responsibility of the Lot Owner. All such facilities shall be adequately maintained so as to cause no offensive odors or aboveground discharge.

4.11 **Fire Protection.** The Regulating Plan currently requires Declarant, as Owner, to install a fire hydrant system for fire protection for the Property. To enable access by the local fire protection agency, all private driveways which extend more than 150-feet from the nearest access road must be a minimum of 20-feet wide and have a maximum 7% grade. Adams County Fire and Building Codes may require a Lot Owner to install additional fire protection measures on said Owner's Lot or within the Improvements on said Lot. Construction of all Improvements must comply with Adams County Fire and Building Codes.

4.12 **No Hazardous or Offensive Activities.** No activities shall be conducted on the Property and no Improvements constructed on any Lot which might be unsafe or hazardous to any person or property. No firearms shall be discharged upon any Lot or the Property. No hunting shall be allowed at any time. Hunting on neighboring lands is allowed according to applicable local, state and federal regulations. No open fires shall be lighted or permitted on any portion of any Lot, except those controlled and attended fires required for clearing or maintenance of land, and previously approved in writing by the Board and applicable regulatory agencies, or those within a contained and safe area for cooking and recreational purposes.

4.13 **Unightly Articles.** Trailers, motor homes, trucks (other than pickups), boats,

tractors, vehicles (other than automobiles), campers (on or off a vehicle), snowmobiles, snow removal equipment, garden or maintenance equipment, camping and recreational equipment, dilapidated or unrepaired vehicles and similar equipment shall be stored in a neat and orderly fashion at all times. All vehicles must be operational and must have current licenses.

Refuse, garbage and trash shall be kept in a covered container and appropriately screened from view at all times. No lumber, grass, shrub or tree clippings, compost piles or plant waste, metals, bulk materials, unused building materials, or refuse or trash or other materials shall be kept, stored or allowed to accumulate on any Lot unless appropriately screened from view. Firewood shall be stored in a neat and orderly fashion.

4.14 Temporary Structures. No temporary structure or Improvement shall be placed upon any Lot. However, a well-built temporary structure or trailer will be permitted to be used during construction of Improvement(s) on a Lot, provided it is located on the Lot on which construction of Improvement(s) is occurring, and it shall be removed within 14 days of substantial completion of the Improvement, but in no event shall any temporary structure or trailer remain on any Lot for more than 1 year.

4.15 No Mining or Drilling. Except as provided in paragraph 4.10, no property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, except that the Association may, by appropriate permit, grant, license or by easement, allow the drilling of wells for the extraction of water for domestic use and gardening and landscape irrigation if such use is in accordance with applicable governmental authorities.

4.16 Vehicles. The use of all on and off-road vehicles, including, but not limited to, trucks, automobiles, motorcycles, snowmobiles, ATV's, "dirt bikes" and other "off-road" type recreational vehicles shall be confined to designated roadways only. Ingress and egress to adjacent lands shall be allowed only through existing private and County roads. The Board shall have the right to adopt further rules and regulations concerning the use of on and off-road vehicles on the Property.

Unless otherwise posted, the speed limit on all Association roads is 25 miles per hour. The Board may, from time to time, establish additional rules concerning the use of Association roads, including the posting of signs and street name signs.

The Idaho Vehicle Code shall be enforced on all Association roads, Improvements, easements and Common Areas.

4.17 Building Footprints. Building Footprint(s) of the House and up to 3 Outbuildings shall be wholly contained within the Homesite of each Lot as designated on the Regulating Plan.

4.18 Landscaping. Within 180 days after substantial completion of an Owner's residence (unless such time is extended by the Design Review Committee), such Owner shall install the landscaping as provided for the Landscape Plan as approved by the Design Review Committee or shall restore all areas disturbed by construction to their pre-existing condition and shall thereafter maintain the landscaping in a weed-free and well-maintained condition. Landscaping is limited to the Homesite. All areas outside the Homesite disturbed during construction shall be re-established with native vegetation. Trees, shrubs, and grasses for landscaping and re-vegetation shall be selected from the Landscape Materials List as provided by the Design Review Committee. Sod will be allowed only in the Homesite. Pastures shall be planted and maintained with native grasses. Vegetation shall be maintained in accordance with local fire protection recommendations.

Every Owner, whether or not his Lot contains any Improvements, shall take all action necessary to restrict the growth of, and to remove, noxious weeds and grasses in accordance with all applicable local, state and federal requirements. Whenever practical, weed control actions shall not be chemically dependent, but shall utilize plantings and other means of control. The control and maintenance of noxious weeds using chemical control methods shall be in accordance with United States EPA label restrictions.

The Board may adopt additional rules regulating landscaping, including maintenance. If any Owner shall fail to install and maintain landscaping in conformance with these rules or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, or shall fail to remove noxious weeds and grasses as required above, the Board, upon 30 days prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall create a lien enforceable in the same manner as other Assessments, as set forth in this Declaration.

4.19 Construction Debris. No Owner shall allow any person or persons constructing Improvements upon his Lot (or providing similar services) to deposit rubbish or debris of any kind or to allow litter to accumulate in excess of normal construction practices.

4.20 Violation of Property Restrictions. There shall be no violation of the Association Rules or the Design Review Committee Rules. If any Owner, his family, or any licensee, lessee or

invitee is in violation thereof, the Board may, in addition to any other legal remedies it may have, impose a special assessment upon such person(s) of not more than One Hundred Dollars (\$100.00) per day for each violation and/or may suspend the right of such person(s) to use the Association Easements, under such condition as the Board may specify, for a period not to exceed one year for each violation. Before invoking any such assessment or suspension, the Board shall give such person reasonable notice of the violation and a reasonable opportunity to cure the violation and/or to be heard regarding the violation, and/or any assessment or suspension of rights. Any assessment imposed which remains unpaid for a period of 10 days or more, shall become a lien upon the Owner's Lot and the Improvements thereon.

4.21 Existing Vegetation/Utility Installation. "Vegetation" shall mean trees, shrubs and grasses of all types, whether natural or planted, and whether maintained by the Owner or the Association. No existing native vegetation shall be over-irrigated to the extent that it is damaged or dies. To minimize impacts to existing vegetation, all utilities, Improvements, hookups, wires, pipes, conduit, lines, cables and the like shall follow the designated driveway to the Homesite, even if the distance is longer, unless otherwise approved by the Board.

4.22 Existing Wildlife Management. The Property will be managed to promote wildlife. The goal will be to maintain and enhance wildlife populations through a variety of management techniques including: restoration, establishment and maintenance of native vegetation, natural drainage of water and grass meadows; controls on dogs and/or other animals to prohibit wildlife harassment, restrictions on artificial feeding programs, bans on hunting, and controls on the installation of fencing.

4.23 Exemption of Declarant. Nothing in the Restrictions shall limit the right of Declarant to complete excavation, grading and construction of Improvements to any Lot, or to alter or to make such additional Improvements as Declarant deems advisable in the course of development of the Property so long as any Lot remains unsold. The rights of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant.

This Declaration shall not limit the right of Declarant any time prior to acquisition of title to a Lot by a purchaser from Declarant to establish on that Lot additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may from time to time be reasonably necessary to the proper development of the Property. Declarant need not seek nor obtain Design Review Committee approval of any Improvement constructed or placed by Declarant on any portion of the Property owned by Declarant.

4.24 Timber and Existing Vegetation Removal. Commercial timber removal shall not

be allowed. Existing vegetation removal and selected timber removal on individual Lots shall be allowed with approval of the Board. Plans for timber and existing vegetation removal for building construction, driveway corridors and view corridors must be submitted for review and approved by the Board prior to any removal activity and shall comply with landscaping and re-vegetation requirements.

ARTICLE 5
PERMITTED USES AND IMPROVEMENTS

5.1 Permitted Uses. All of the Lots in the Property shall be improved and used solely for residential use. The Property is currently in the Adams County R-2 zone. All private roads shown on the recorded plats for the Property shall be granted in fee by Declarant to the Association prior to the conveyance of any Lot by Declarant.

5.2 Improvements. All Improvements of any kind shall require written approval of the Design Review Committee (DRC) in accordance with the terms hereof and the Design Review Committee Rules. If the House is not the initial Improvement, any other Improvement(s) is subject to the approval of the DRC.

5.2.1 The House and up to three Outbuildings may be constructed within the Homesite. Additionally, garden walls, fences and landscaping may be constructed within the Homesite.

5.2.2 One Accessory Dwelling, not to exceed 800 square feet Net Floor Area, may be located in an Outbuilding.

5.2.3 Improvements outside the Homesite are limited to private roads, fences, garden walls, gates and native plant species planted in a natural manner as approved by the DRC.

5.2.4 Private roads and all utilities upon any Lot for the transmission of utilities, telephone service, audio/visual reception, all fuel tanks and all pipes for water, gas, sewer, drainage, or other utility purposes shall be installed and maintained in the private road easement and the Homesite below the surface of the ground or screened from view.

5.2.5 Sports Courts. No tennis, squash, paddle tennis, basketball or other sports area or structure shall be illuminated.

5.2.6 Certain Lots may benefit from the further development of view corridors by

the selective removal of trees. View corridors have been planned to provide views from each Homesite. Prior to tree removal, an on-site review by the DRC shall be performed to determine the impact of corridor construction on the privacy to neighboring Lots, extent of timber removal planned, erosion potential to soils, re-vegetation needs and the effect on wildlife habitat.

5.2.7 Construction of each Improvement on any Lot shall be pursued diligently and continuously from time of commencement thereof until the exterior of each structure is fully completed, each of which shall be completed within 12 months of commencement of construction unless prevented by cause beyond the control of Owner or builder, and then only for the period such cause continues.

5.2.8 No House shall be used for any purpose other than as a single family residence. No automobile garage shall be used as living quarters at any time. An Accessory Dwelling may be adjacent to, above, or part of an automobile garage. No business, profession, trade or other non-residential use that requires the visitation of clients, customers and/or storage of materials and supplies for use in a trade or business shall be conducted on any Lot, except as approved by the Board. Nothing in this Declaration shall prevent the rental of property by the Owner for residential purposes. Residential buildings must be rented together to the renting party (i.e., the buildings may not be rented separately). No guest house or domestic help quarters shall be rented separately from the residence.

5.3 Private Roads (Driveways). All private roads, driveways and parking areas constructed on the Lots by individual Owners shall be constructed of gravel, decomposed granite, concrete, brick pavers or asphalt paving, or such other material as approved by the Design Review Committee and shall be located within private road easement and driveway locations approved by the DRC, and the Homesite. In all events, all such private roads and driveways will/shall be constructed to meet minimum County and local fire protection standards. All such private roads and driveways shall be at grade, or where required to exceed grade, shall be culverted to allow free flow of water. In the event any adjoining Owners enter into an agreement to share driveways or private roads over any Lot owned by such Owners, said Owners shall enter into a maintenance agreement setting out their respective rights and duties.

ARTICLE 6

HIGHLAND ESTATES HOMEOWNERS ASSOCIATION, INC.

6.1 Association. The Association is a non-profit Idaho corporation charged with the duties and vested with the powers prescribed by law and as set forth in its Articles, Bylaws and this

Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Membership.

6.2.1 **Qualifications.** Each Owner (including Declarant), by virtue of being such an Owner and for so long as he is such an Owner, shall be deemed a member of the Association. Each Lot shall have one membership, and joint Owners of a Lot shall share that membership.

6.2.2 **Transfer of Membership.** The Association membership of each Owner (including Declarant) shall be appurtenant to said Lot and shall not be severed, transferred, pledged or alienated in any way, except in conjunction with the transfer of legal and equitable title to said Lot, and then only to the transferee of such title. Any attempt to make a prohibited transfer shall be void. Any transfer of legal and equitable title to said Lot shall operate automatically to transfer said membership to the new Owner thereof.

6.3 Voting.

6.3.1 **Number of Votes.** The Association shall have two classes of voting membership:

Class A: Class A members shall consist of all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. Declarant shall become a Class A member with regard to Lots owned by Declarant upon the conversion of Declarant's Class B membership to Class A membership as provided below. The Owner of each Lot may, by notice to the Association and signed proxy, designate a person (who need not be an Owner) to exercise the vote for such Lot. Said proxy shall be revocable by the Owner at any time by notice to the Association. Such proxy may be granted or revoked by the guardian, by the parent entitled to his custody, or during the administration of an Owner's estate, by his personal representative or administrator where the deceased Owner's interest in said property is subject to estate administration.

Class B: The Class B member shall be Declarant. Upon the first sale of a Lot to an Owner, Declarant shall thereupon be entitled to three (3) votes for each Lot owned by Declarant. Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:

- (1) When the total votes in the Class A membership exceeds the total votes in the

Class B membership, or

(2) Ten (10) years from the transfer of legal and equitable title by Declarant of the first Lot to an Owner.

6.3.2 Joint Owner Disputes. The vote for each such Lot shall, if at all, be one, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he/she/they are acting with the authority and consent of all other Owners of the same Lot.

6.3.3 Meetings of Owners. There shall be a meeting of the Owners on the second Saturday of June each year at such place within Adams County or Valley County, Idaho, or time (not more than 30 days before or after such date) as may be designated by notice of the Board given to the Owners by depositing the same in the United States mail, postage prepaid, not less than 15 nor more than 60 days prior to the date fixed for said meeting. A special meeting of the Owners may be called at any reasonable time and place within Adams County or Valley County, Idaho by notice of the Board or by the Owners having 20% of the total votes and delivered to all other Owners not less than 15 days prior to the date fixed for said meeting. The presence at any meeting, in person or by proxy, of the Owners entitled to vote at least a majority of the total votes shall constitute a quorum.

The president of the Association (or the vice president, in his absence) shall act as chairman of all meetings of the Owners, and the secretary of the Association (or an assistant secretary thereof in his absence) shall act as secretary of all such meetings. Members of the Board shall be elected by non-cumulative voting. At each annual meeting, the Board shall present a written accounting of the funds received by the Association, itemizing receipts and disbursements for the preceding calendar year and the allocation thereof to each Owner.

6.4 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws of the Association, as the same may be amended from time to time. The initial Board of Directors of the Association shall be appointed by Declarant and shall hold office until the first annual meeting, at which time a new Board may be elected in accordance with the provisions set forth in the Bylaws.

6.5 Powers and Duties of the Association.

6.5.1 Powers. The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration and exhibits to this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration and exhibits thereto, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the proper management and operation of the Association Easements and the performance of the other responsibilities herein assigned, including, without limitation:

(1) Assessments. The power to levy Assessments on the Owners of Lots and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

(2) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise.

(3) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees or to any person, firm or corporation to act as manager, and to contract for the maintenance, repair, replacement and operation of Association Easements. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the person to whom the authority was delegated of any such duty or power to delegated.

(4) Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable (the Association Rules). The Association Rules shall govern the use of Association Easements, including, but not limited to, the private roads by the Owners, by the families of the Owners, or by an invitee, licensee, lessee or contract purchaser of an Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery and posting, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between any such Association Rules and any other provision of this Declaration, or the Articles or Bylaws, the

provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

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

(6) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under any non-exclusive Association Easement as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of the health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating, or maintaining:

(a) Underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes;

(b) Common sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

(c) Any similar public or quasi-public improvements or facilities.

(7) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper for the operation of the Association, enforcement of the Restrictions and the Association Rules, or performance of any other duties or rights of the Association.

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

(1) **Operation, Maintenance of Association Easements.** Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Areas and Association Easements, including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired (by easement or otherwise)

INSTRUMENT NO. 90346

by the Association. The Board, on behalf of the Association, may contract for the operation, management and maintenance of Association Easements. The Association shall also take such actions and arrange for such maintenance as may be necessary or desirable for the upkeep of landscape, roads and all other easements.

(2) **Water Rights and Other Utilities.** Any existing riparian water rights otherwise appurtenant to the Property will be transferred from the Declarant to the Homeowners Association prior to the conveyance of any residential Lot by the Declarant, to be allocated to each Lot and to instream uses for aesthetics, fisheries and wildlife. The Association will acquire, provide and/or pay for water, electrical and other necessary services for the Association Easements owned and managed by it.

(3) **Taxes.** To pay all real property taxes and assessments which are or could become a lien on any property owned by the Association.

(4) **Insurance.** Unless otherwise determined by the Board, obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:

(a) Fire insurance including those risks embraced by coverage of the type now known as "all risk" or special extended coverage endorsement on a blanket, agreed-amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Association Easements managed by it.

(b) Comprehensive public liability insurance insuring the Board, the Association, the Declarant, and the individual Owners and agents and employees of each of the foregoing against any liability incident to the use of the Association Easements managed by it. Limits of liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and property damage.

(c) Full coverage directors' and officers' liability insurance with a limit of Two Hundred Fifty Thousand Dollars (\$250,000).

(d) Such other insurance, including Worker's Compensation insurance, to the extent necessary to comply with all applicable laws, indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions, or to insure the Association against any loss from malfeasance or

INSTRUMENT NO. 90346

dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

(e) The Association shall be deemed trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive the interests in such proceeds and to deal therewith.

(f) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

(5) **Rule Making.** Make, establish, promulgate, amend and repeal the Association rules.

(6) **Design Review Committee.** Appoint and remove members of the Design Review Committee, subject to the provisions of this Declaration.

(7) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

(8) **Roads.** To snowplow and maintain, or provide for the snow plowing and maintenance of all roads and culverts which are the subject of Association Easements and to keep all Improvements in good order and repair as is necessary to maintain such easements in a neat and usable condition, and to participate in any joint maintenance arrangement necessary to maintain access roads to the Property.

6.6 Board Rules. The Board may adopt such rules as it deems proper to enable it to properly perform its duties hereunder. A copy of said Rules, as they may from time to time be adopted, amended or repealed, may (but need not) be mailed or otherwise delivered to each Owner of record at Adams County or owner's agent or designee. Upon such mailing, delivery or recording, said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

6.7 Personal Liability. No member of the Board, or any committee of the Association, or any officer of the Association, or the Declarant, or any member of the Design Review Committee, or the manager of the Association, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the

manager, if any, or any other representative or employee of the Association, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

6.8 Budgets and Financial Statements. Financial Statements for the Association shall be regularly prepared and copies shall be distributed to each Owner of the Association as follows:

6.8.1 An operating budget for each fiscal year shall be distributed not less than 60 days before the beginning of each fiscal year.

6.8.2 A balance sheet and an operating statement, as of an accounting date which is the last day of the month closest in time to six months from the date of the closing of the first sale of a Lot, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of Assessments received and receivable identified by the Lot number and the name of the person or entity assessed.

6.8.3 Within 60 days after the close of each fiscal year, the Association or its agent shall cause to be prepared a balance sheet as of the last day of the Association's fiscal year, and an annual operating statement reflecting the income and expenditures of the Association for its fiscal year. Copies of said documents shall be distributed to each Owner within 90 days after the end of each fiscal year.

6.9 Amendment. The provisions of sections 6.1, 6.2 and 6.3 hereof may only be amended with the unanimous vote or written consent of all the Owners entitled to vote.

ARTICLE 7 ASSESSMENTS

7.1 Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular and Special Assessments or charges made by the Association. Such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting same, shall be a charge on the land and shall be a continuing lien upon the Property against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment is due. The personal obligation for delinquent Assessments shall not pass from the Owner to his successor in title unless expressly assumed by them.

7.2 Assessments.

7.2.1 Initial Assessment. An initial assessment against each Lot shall be made for the balance of the calendar year on the first day of the first month following the closing of the initial sale of the first residential Lot by Declarant ("Initiation Date"). The initial assessment against each such lot shall be for the period from the Initiation Date until January 1 of the calendar year immediately following the Initiation Date. The initial assessment against each such Lot shall be equal to 1/23 of the total amount of the initial assessment as determined by the Association.

7.2.2 Regular Assessments. Not less than 30 days, nor more than 60 days, prior to the beginning of each calendar year following the Initiation Date, the Board shall estimate the total amount of funds necessary to defray the expenses of the Association for the next calendar year and shall assess the Owner of each Lot 1/23 of such total amount in December of each year for the next year. Regular assessments shall include an amount allocated to an adequate reserve fund which is to be established for maintenance, repairs and replacement of the Common Areas and the Association Easements. The Regular Assessment shall be paid by each Owner of a Lot as provided in section 7.5.

7.3 Special Assessments.

7.3.1 In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will become inadequate to meet the expenses of such Association for any reason, including, but not limited to, costs of maintenance and unexpected repairs upon the Association Easements, the Board shall determine the approximate amount necessary to defray such expenses and levy a Special Assessment. The Board may, at its discretion, pro-rate such Special Assessment over the remaining months of the calendar year or levy such Assessments over the remaining months of the calendar year or levy such Assessments immediately against each Lot.

7.3.2 Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

7.4 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments must be fixed at a uniform rate for all Owners.

7.5 Assessment Period. The Regular Assessment period shall commence on January 1 of each year and terminate December 31 of such year; provided, however, the initial Regular Assessment period shall commence on the Initiation Date and terminate on December 31 of such year; provided, however, the initial Regular Assessment period shall commence on the Initiation

Date and terminate on December 31 of the year in which the Initiation Date occurs. The first Regular Assessment shall be adjusted to the number of months remaining in the calendar year, to be payable in quarterly installments on the first day of January, April, July and October of each year.

7.6 **Notice and Assessment Due Date.** Ten days' prior written notice of Regular and Special Assessments shall be sent to the Owner of every Lots subject thereto. The due dates for Regular Assessments and Special Assessments shall be the first day of January, April, July and October, unless some other due date is established by the Board. Each installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within 30 days after the levy thereof. There shall accrue with each delinquent installment and Special Assessment a late charge of Twenty-five Dollars (\$25.00), together with interest at the lesser of 10% or the maximum rate permitted by law calculated from the date of delinquency to and including the date full payment is received by the Association. The Association making the Assessment may bring an action at law against the Owner personally obligated to pay the same to foreclose the lien against said owner's Lot as provided in this Declaration. Each Owner is personally liable for said Assessments, and no Owner of any Lot may exempt himself from liability for his contribution by a waiver of the use or enjoyment of any of the Association Easements or by abandonment of his Lot.

7.7 **Zstoppel Certificate.** The Association, upon not less than 20 days' prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of such Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this section may be relied upon by any prospective purchaser or mortgagees of said Owner's Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had actual knowledge.

7.8 **Special Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of either levying a Special Assessment pursuant to this Article, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment pursuant to this Article, shall be sent to all Owners of such Association not less than 30 days, nor more than 60 days, in advance of the meeting. Owners (or their proxies) of Lots totaling 60% of the total voting power of such Association 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 Owners (or their proxies) of Lots totaling 50% of the total voting

power of the Association. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

ARTICLE 8
ENFORCEMENT OF ASSESSMENTS: LIENS

8.1 **Right to Enforce.** The right to collect and enforce the Assessments made by the Association is vested in the Association. Each Owner of a Lot, upon becoming an Owner of such Lot, is and shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees or any other relief or remedy obtained against said Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay the Assessments provided for in this Declaration by commencement and maintenance of a suit, at law or in equity, or such Board may exercise the power of sale pursuant thereto to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

8.2 **Assessment Lien.**

8.2.1 **Creation.** There is hereby created a claim of lien with power of sale in favor of the Association on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Property pursuant to this Declaration, together with interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorney's fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on said Lot(s) upon recording a claim of lien with the County Recorder. Said lien shall be prior and superior to all other liens or claims created subsequent to the recording of the notice of delinquency and claim of lien, except for tax liens for real property taxes on any Lot and any assessment on any Lot in favor of any municipal or other governmental assessing body which, by law, would be superior.

8.2.2 **Claim of Lien.** Upon default of any Owner in the payment of any Regular or Special Assessment required hereunder, the Association may cause to be recorded in the Office of the County Recorder in Adams County a claim of lien. Said claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such

INSTRUMENT NO. 90346

notice), a sufficient description of the Lot against which the same has been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and relief of such delinquent sums and charges. The Association may demand and receive the cost of recording such release before recording the same. Any purchaser or encumbrancer, acting in good faith and for value, may rely upon such notice of satisfaction and relief as conclusive evidence of the full satisfaction of the sums paid in the notice of delinquent sums.

8.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by exercise of the power of sale by the Association, its attorney or other person authorized to make the sale, such sale to be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint as its attorney any officer or Director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale foreclosure.

8.4 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially by power of sale or otherwise, until the expiration of 30 days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot described in such notice of delinquency and claim of lien, and a copy of the Assessment is recorded in the Office of the County Recorder of Adams County.

8.5 Subordination to Certain Trust Deeds. The lien for the Assessment provided for herein in connection with a given Lot shall not be subordinated to the lien of any deed of trust or mortgage, except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessment(s). Except as expressly provided in this Article with respect to a first mortgagee who acquires title to a Lot, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether prior to, on or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

8.6 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no

amendment of this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any deed of trust or mortgage upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Lot shall remain subject to this Declaration as amended.

**ARTICLE 9
INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS**

9.1 Owner's Right of Inspection. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Owner, at the Owner's expense, or by his duly appointed representatives, at the office of the Association or at such other place within the Property as the Board of such Association shall prescribe, at any reasonable time and for a purpose reasonably related to his interest as an Owner.

9.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to:

9.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.

9.2.2 Hours and days of the week when such inspection shall take place.

9.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this article.

9.3 Director's Right of Inspection. Every current member of the Association's Board of Directors shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association of which he is a Director, and the physical properties owned or controlled by such Association. The right of inspection by a Director includes the right to make copies of documents.

**ARTICLE 10
DESIGN REVIEW COMMITTEE**

10.1 Members of Committee. The Design Review Committee (sometimes referred to as "DRC") shall consist of three members. The following persons are hereby designated as the initial members of the Committee:

1. Steve Schrimsher
2. Roy Perry
3. Kathy Mullen

Each of said persons shall hold office until such time as he has resigned or has been removed, and his successor has been appointed, as provided herein. Except for Roy Perry and Steve Schrimsher, or their designated representatives, members of the Design Review Committee may be removed at any time without cause.

10.2 Declarant's Rights of Appointment. So long as Declarant is the Owner of more than 50% of the Lots, Declarant shall have the right to appoint and remove all members of the Design Review Committee. When the Declarant no longer has ownership of at least 50% of the Lots, the Board shall have the right to remove and appoint members of the Design Review Committee, including Declarant. Notwithstanding any other provision of this Declaration (including those allowing amendment of this Declaration) the Design Review Committee shall at no time have more than three voting members.

10.3 Duties of DRC. Except as to changes by Declarant, no changes in the existing state of any Lot within the Property shall be made or permitted without the prior written approval of the Design Review Committee. The Design Review Committee shall issue Rules setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval or additional factors which it will take into consideration in reviewing submissions and additional standards for approval. The initial DRC Rules are attached hereto and incorporated herein by reference as if restated in full and may be amended from time to time in accordance with their terms.

The Design Review Committee shall have sole authority to determine the proper use, appearance, design and aesthetic quality of any proposed Improvement. For purposes of this paragraph, "changes in the existing state" of any Lot include, but are not limited to, construction of dwellings, Improvements (including utilities), the excavation, alteration, filling, or similar disturbance of the surface of the land (including, without limitation, change of grade, stream bed, ground level or drainage pattern), the clearing, marking, defacing or damaging of trees, shrubs or other vegetation, the landscaping or planting of trees, shrubs, lawn or plants, and the proposed use of a Lot other than as a single family residence, and any change in color, texture or exterior appearance of any previously approved change in the existing state of Property.

The DRC shall consider and act upon any and all proposals or plans and specifications

submitted for its approval pursuant to the terms of this Declaration and the DRC Rules, and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the DRC.

The Design Review Committee shall have the authority to maintain a list of approved construction materials and to add or subtract therefrom, from time to time. The DRC may condition its approval of proposals or plans and specifications or other information prior to approving or disapproving materials submitted. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and/or samples of exterior material and colors and sworn affidavits as to intended use of the proposed Improvement(s).

Any Owner desiring DRC approval of any Improvement or other change in the existing state of any Lot shall make application in writing, together with two sets of all plans required by the DRC for review. All approvals and disapprovals shall be in writing. Until receipt by the Design Review Committee of any required plans and specifications, the Design Review Committee may postpone review of any plan submitted for approval.

10.4 Meetings of the Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. It may from time to time, by resolution unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on its behalf, except the granting of variances. In the absence of such designation, the vote of any two members of the Design Review Committee, or the written consent of any two members of the Design Review Committee taken without a meeting, shall constitute an act of the Design Review Committee.

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

10.6 Final Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

10.6.1 Upon the completion of any work for which approved plans are required

under this Article, the Owner shall give notice of completion to the Design Review Committee.

10.6.2 Within 60 days thereafter, the Design Review Committee, or its duly authorized representative, may inspect such Improvement. If the Design Review Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such 60 day period, specifying the particulars of non-compliance, and shall require the Owner to remedy same.

10.6.3 If, upon the expiration of 30 days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Design Review Committee shall notify the Board in writing of such failure. Upon Notice and hearing, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing same. If a non-compliance exists, the Owner shall remedy or remove same within a period of not more than 45 days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its discretion, may correct or remedy the non-complying Improvement, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid to the Association by the Owner, the Board shall levy an Assessment against such Owner for reimbursement pursuant to Article 7 and Article 8 hereof.

10.6.4 If the Design Review Committee fails to notify the Owner of any non-compliance within sixty (60) days after the receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

10.7 **Non-liability of Design Review Committee Members.** Neither the Design Review Committee nor any member thereof shall be liable to the Association or to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to the willful misconduct or bad faith of such member. The Design Review Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of its intended use, aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property in general. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or any warranty that the Improvement is fit for any particular purpose of habitation.

INSTRUMENT NO. 90346

10.8 Variances. The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area, set backs or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and must be signed by at least two members of the Design Review Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including, but not limited to, zoning ordinances, the lot set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE 11 EASEMENTS

11.1 Utility Easement. A non-exclusive easement is hereby reserved to the Declarant over a 12-foot strip of land lying within each Lot and abutting and lying parallel with the subdivision's private road system. Underground electrical and telephone utilities will be installed within the private roads to be conveyed to the Association pursuant to paragraph 5.1 of the Declaration by the Declarant, or within a 12-foot strip of land over each Lot that abuts any such road. The rights and duties of the Owners of the Lots within the Property with respect to utilities shall be governed by the following:

11.1.1 Wherever utility connections, if any, are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by other than the Owner of the Lot served by said connections, said Owner(s) served shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots or to have their agent enter upon the Lots within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary.

11.1.2 Whenever utility connections, if any, are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to full use and enjoyment of such portions of said connections as service Owner's Lot.

INSTRUMENT NO. 90346

11.2 Private Road Easements. Notwithstanding anything in Article 4 to the contrary, for any Lot over which an unplatted road exists at the date hereof, the Owner of any such Lot may construct a private road or driveway over such existing unplatted road for access to individual Homesites shown on the Regulating Plan (easements may occur on these roads).

11.3 Landscape Easement. An easement is hereby reserved to the Association, its contractors and agents, to enter portions of Lots for the purpose of pest and weed control.

11.4 Watercourse Easement. The Declarant hereby reserves for the benefit of the Association an easement for all irrigation ditches and drainage (or other bodies of water) and related pipes, pumps and other related equipment over, across and under all Lots and Association Easements owned by the Association to the extent reasonably required to protect the Association's water rights and to maintain and service the irrigation ditches and drainage system as existing or installed by Declarant on the Property or pursuant to plans and specifications approved by the Design Review Committee.

11.5 No Construction Within Easements. No Improvement shall be made within any easement without the prior written approval of the Design Review Committee.

11.6 Reservation of Easements. Declarant expressly reserves for the benefit of the entire Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Lots and Association Easements resulting from the normal use of adjoining Lots or Association Easements, and for necessary landscape, emergency situations and other maintenance. Such easement(s) may be used by Declarant, its successors, purchasers, the Association and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walk-ways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot or Association Easement.

ARTICLE 12
MISCELLANEOUS

12.1 Term. The covenants, conditions and restrictions of this Declaration shall run until the year 2026 unless amended as herein provided. After such date, such covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by at least 75% of the Owners, and such written instrument is recorded with the Adams County Recorder.

12.2 Amendment.

12.2.1 By Declarant. So long as Declarant has no less than 50% ownership of the Lots, the provisions of this Declaration, other than this Article 12, may be amended only by a vote of the Owners of at least 60% of the Lots no longer owned by Declarant, and the written consent of the Declarant. Any amendment hereunder shall be effective only upon recordation with the Adams County Recorder of an instrument in writing signed and acknowledged by Declarant and the other consenting Owners setting forth the amendment.

12.2.2 By Owners. When the Declarant no longer owns more than 50% of the Lots, the provisions of the Declaration, other than this Article 12, may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying that such amendment has been approved by the vote or written consent of at least 75% of the Owners. Such an amendment shall be effective upon its recordation with the Adams County Recorder.

12.2.3 Rights of Beneficiary. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the Beneficiary under any recorded deed of trust or mortgage upon a lot made in good faith and for value, provided that after the foreclosure of any such deed of trust or mortgage, such Lot shall remain subject to this Declaration, as amended.

12.3 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 72 hours after a copy of same has been deposited in the United States Mail, postage prepaid, or by facsimile, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or the residence of such person, if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

12.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and preservation of the Property in a manner designed to protect and enhance the aesthetic and economic value of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

12.5 Enforcement and Non-waiver.

12.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner

of any Lot within the property shall have the right to enforce any or all of the provisions of the Restrictions upon any Lot within the Property.

12.5.2 Violations and Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant, or the Association, or any Owner or Owners of Lots within the Property.

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

12.5.4 Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive.

12.5.5 Non-waiver. The failure to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision, or any other provisions of said Restrictions.

12.6 Construction.

12.6.1 Restrictions Construed Together. All of the provisions of the Restrictions shall be liberally construed together to promote and effectuate Declarant's goals in making this Declaration, as set forth in the preamble.

12.6.2 Restrictions Severable. Notwithstanding the provisions of section 12.6.1, each of the provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

INSTRUMENT NO. 90346

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

INSTRUMENT NO. 90346
State of Idaho)
County of Adams) ss.

PAYETTE RIVER DEVELOPMENT CO., INC.,
an Idaho corporation

Filed for record at the request of
MeadowCreek Property Management

30 min. past 1 o'clock P.M.
this 17th day of July, 1996

MICHAEL FISK, RECORDER
by Peggy Lindal

Fee: \$102.00

and

By: [Signature]
Steve Schrimsher

Its: _____

By: [Signature]
Roy Perry

Its: _____

STATE OF IDAHO,)
County of Adams.) ss.

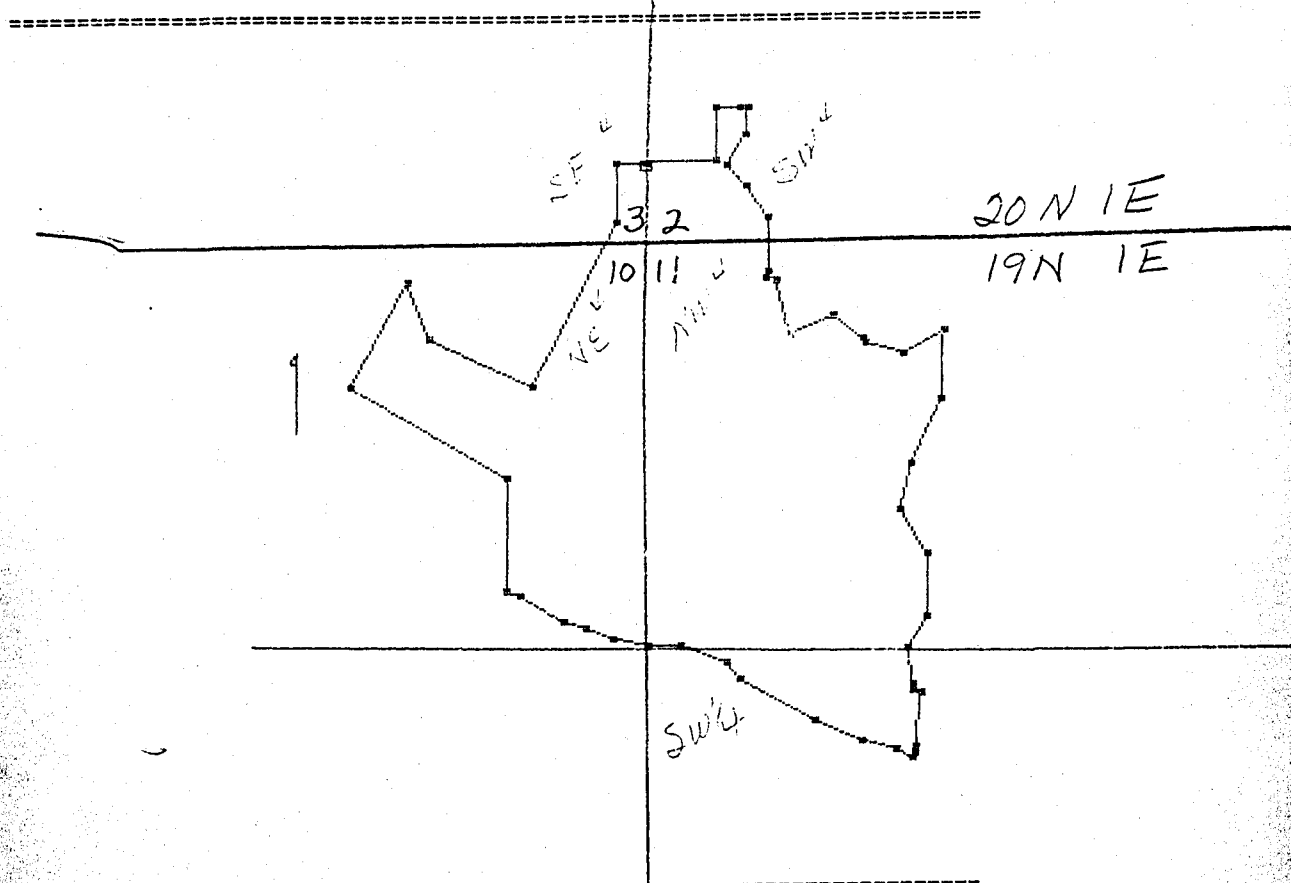
On this 31 day of January, 1996, before me, the undersigned Notary Public, in and for said county and state, personally appeared STEVE SCHRIMSHER and ROY PERRY, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Signature]
Notary Public for Idaho
Residing at: New Meadows
Commission Expires: 3/5/99.

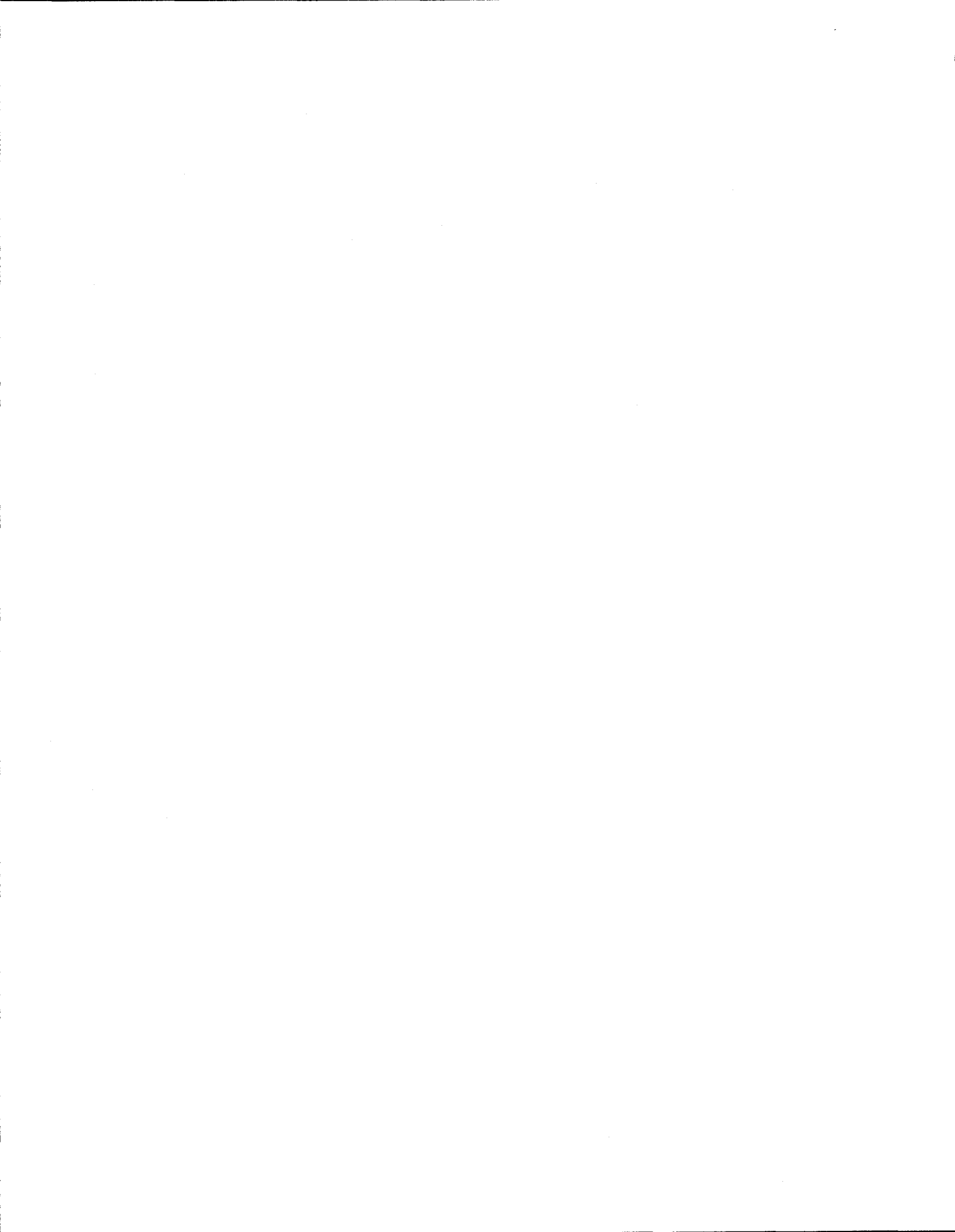


Plat of Deed Calls for: Payette river d



Payette river d	AREA	CLOSING ERROR
Scale : 1151 ft/in	Acres : 211.811	Bearing: N88.3608W
North Shift: +0	Sq. Feet : 9226483	Feet : 0.13
East Shift : +0	Sq. Meters: 857167.5	Meters : 0.040
DMS Rotated: +000.0000	Perimeter : 16793.24	Precision: 1/128712

- | | |
|-------------------------------|----------------------|
| 1. /N00.0301W 819.86 | 13. S13.2724E 403.8 |
| 2. N88.3424E 492.19 | 14. N66.3417E 326.96 |
| 3. N00.0402W 371.22 | 15. S53.0909E 264.79 |
| 4. N88.3448E 179.23 | 16. S38.0538E 50 |
| 5. S89.0839E 50 | 17. S74.2337E 267.11 |
| 6. S04.3109W 190.15 | 18. N62.0026E 330 |
| 7. S35.1356W 256.44 | 19. S01.2605W 495.55 |
| 8. S40.5742E 220 | 20. S25.5828W 500 |
| 9. S33.5834E 267.39 | 21. S12.2021W 327.57 |
| 10. S00.00W 395 | 22. S33.1354E 346.7 |
| 11. S14.1945W 50 | 23. S00.00W 460 |
| 12. C1 Left, Radius= 649.39 | 24. S30.3445W 255.54 |
| Bng= S79.0154E Dist= 76.14 | 25. S06.4120E 270.82 |
| Del= 06.4319 Len= 76.19 | 26. S07.1530W 50 |
| Tan= not given Rdl= not given | 27. S82.4330E 75 |



Highlands Estates Homeowners Association, Inc.
Amendment No. 1 to Declaration of Protective Covenants, Conditions & Restrictions for Highland Estates Subdivision

Whereas the President and the Secretary of the Association by their signatures below certify the following amendment has been approved by vote of at least 3/4 of the Lot Owners, as required by Article 12, Section 12.2.2 of the CC & R's at the Association's Annual Meeting on November 10, 2001. The CC & R's are hereby amended:

Article 1 Section 1.1

The last sentence in Article 1 Section 1.1 is changed to as follows:

The legal description of the Property is provided in Exhibits A & B attached hereto.

Steve R. Schrimsher
President

Dated: 5-27-02

Nancy Ann
Secretary

Dated: 5-27-02

STATE OF IDAHO)
) SS
COUNTY OF Valley)

Instrument # 101660
COUNCIL, ADAMS, IDAHO
2002-05-28 01:41:17 No. of Pages: 4
Recorded for : STEVE SCHRIMSHER
MICHAEL FISK Fee: 12.00
Ex-Officio Recorder Deputy, Sarah Wilson
Index to: COVENANTS

On this 27th day of May, 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Steve R. Schrimsher, known or identified to me to be the President of the above named Homeowners' Association acknowledged that he was authorized to and did execute the same on behalf of the owners of lots in the Highlands Above MeadowCreek Subdivision.

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

DAVID ENGEN
☆ NOTARY PUBLIC ☆
STATE OF IDAHO
My Commission Expires 4-15-2004.

David Engen
NOTARY PUBLIC FOR THE STATE OF IDAHO
Residing at: McCall, Idaho
My commission expires: 4/15/04

STATE OF IDAHO)
COUNTY OF Valley)^{SS}

On this 27th day of May, 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Nancy S. Schrimsher, known or identified to me to be the Secretary of the above named Homeowners' Association acknowledged that she was authorized to and did execute the same on behalf of the owners of lots in the Highlands Above MeadowCreek Subdivision.

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

DAVID ENGEN
☆ NOTARY PUBLIC ☆
STATE OF IDAHO
My Commission Expires 4-15-2004.

David Engen
NOTARY PUBLIC FOR THE STATE OF IDAHO
Residing at: McCall, Idaho
My commission expires: 4/15/04

EXHIBIT B

**PRELIMINARY PLAT
 THE HIGHLANDS ABOVE MEADOWCREEK
 SUBDIVISION-PHS 2**

A REPLAT OF A PORTION OF KIMBERLAND MEADOWS SUB. NO 2

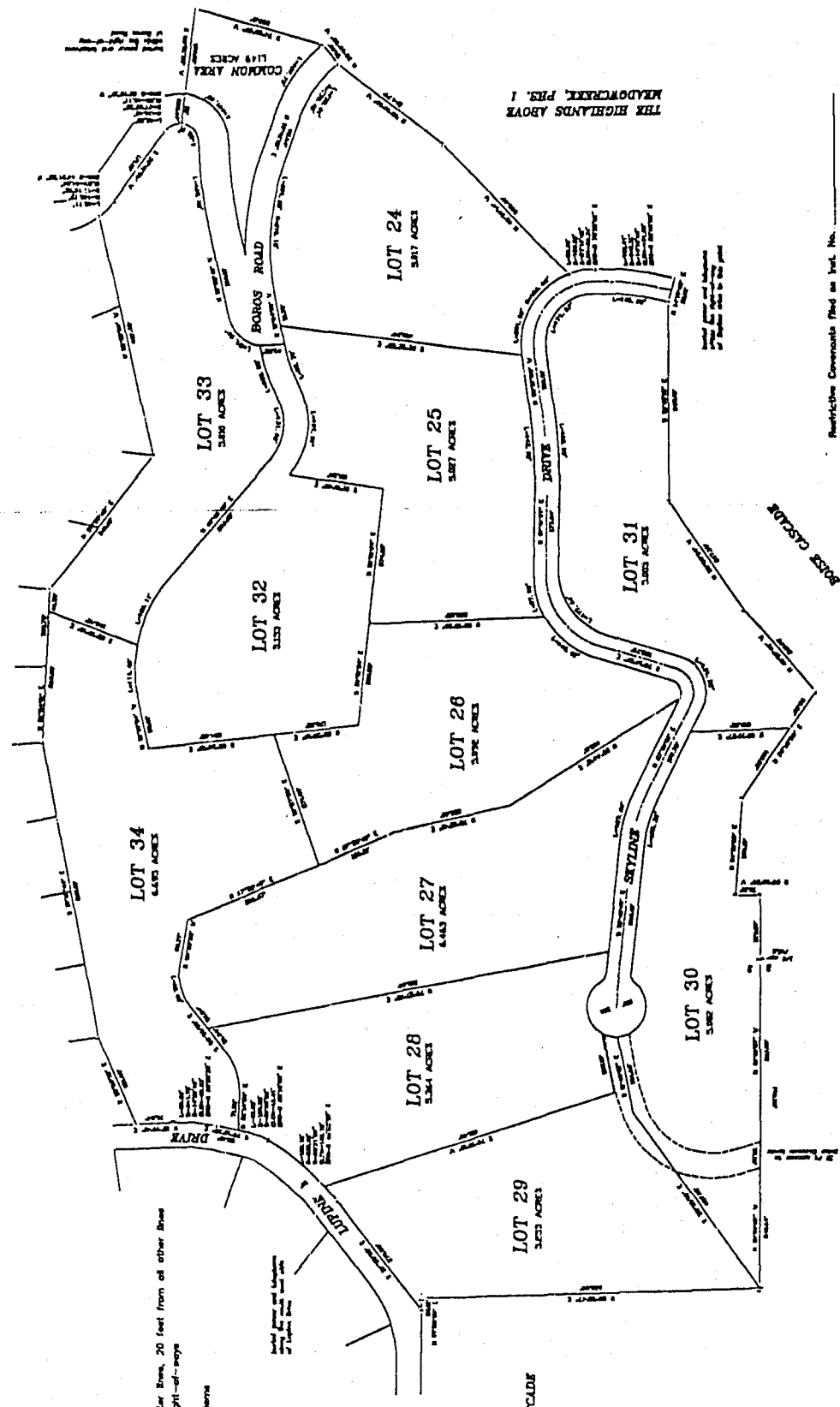
situate in
 Section 2, T. 19 N., R. 1 E., B.M.
 Adams County, Idaho
 CIRCULAR LAND SURVEYING 208-834-7398
 SEPT., 2001

SUBDIVISION ORDER:
 Payette River Development, Inc.
 10000 W. Adams, PHS
 PO Box 820
 New Meadows, ID 83854
 208-347-3064

SURVEYOR:
 Drysdale Land Surveying
 1000 W. Adams
 PO Box 69
 McCall, ID 83858
 208-834-7388

BUILDING SETBACKS: 80 feet from street center lines, 20 feet from all other lines
UTILITY EASEMENTS: 12 feet along all road right-of-ways
 Private roads built to County Standards
 Private individual wells and septic drainfield systems

CURRENT ZONING IS R1
LOT DATA, 11 LOTS:
 Largest Lot = 8,935 acres
 Smallest Lot = 3,000 acres
 Average Lot = 5,354 acres
 Area in streets = 3,838 acres
 Total area in Subdivision = 83,975 acres



INSTRUMENT NO. 101660
 PAGE 3 OF 4



LEGEND
 • Found 5/8 inch rebar
 □ Found aluminum cap
 ▨ Set 1/2" x 24" rebar w/plastic cap
 Bearings based on the plat of Kimberland Meadows

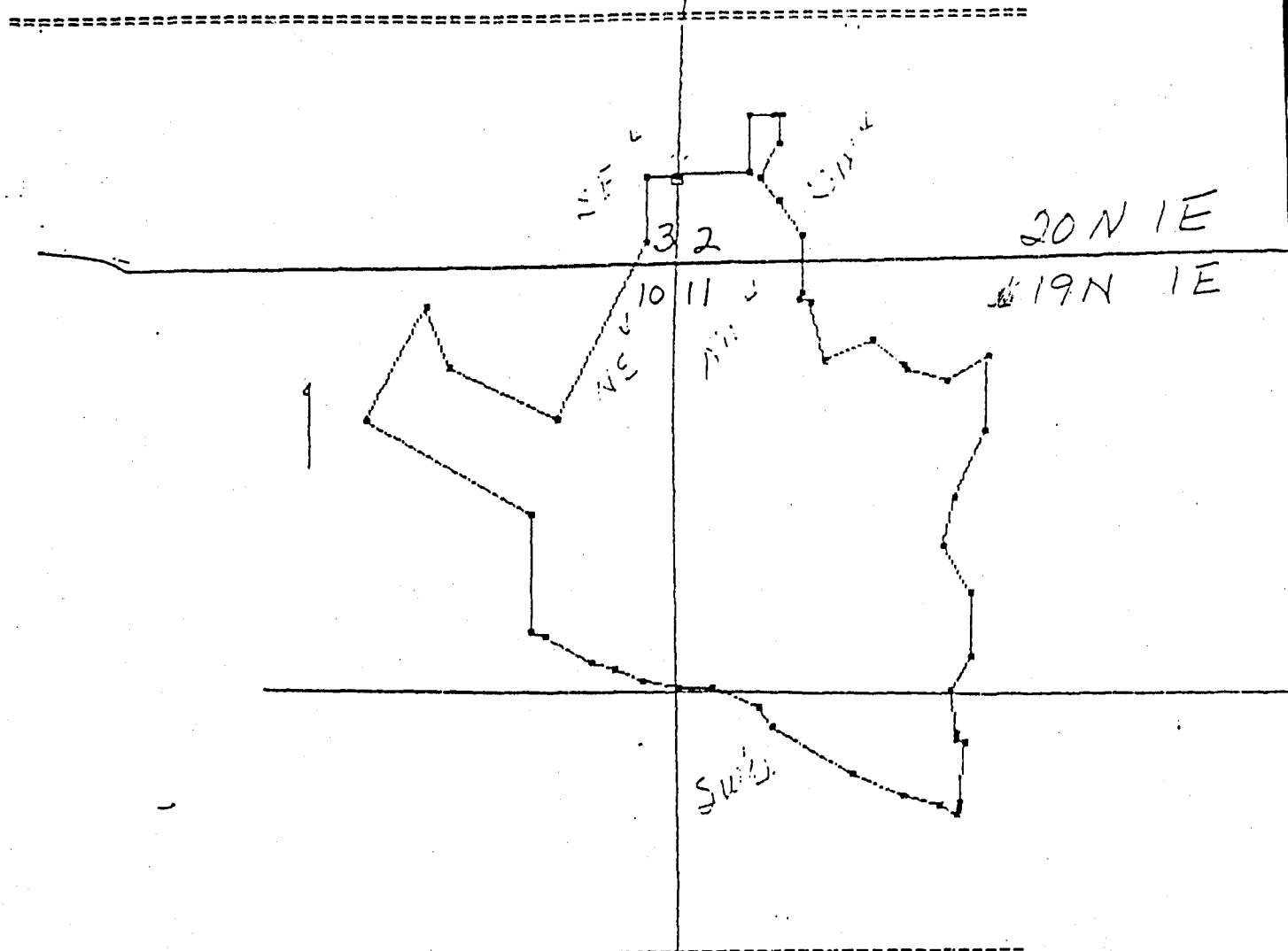
Restrictive Covenants filed as Inst. No. _____

This plat is subject to compliance with I.C. Section 31-3603.
 No triplication marker will be supplied to any lot hereon.

No building or shelter which will require a water supply or a sewage disposal facility for people using the premises shown such building or shelter is to be erected until written approval is first obtained from the State Board of Health, by its administrator or its delegate operating under and in accordance with the provisions of the Idaho Health Code, Title 24, Chapter 01, Sections 24-0101 through 24-0109, and/or any other applicable laws, rules and regulations.

EXHIBIT A

Plat of Deed Calls for: Payette river d



Payette river d		AREA	CLOSING ERROR
Scale : 1151 ft/in	Acres : 211.811	Bearing: N88.3608W	
North Shift: +0	Sq. Feet : 9226483	Feet : 0.13	
East Shift : +0	Sq. Meters: 857167.5	Meters : 0.040	
DMS Rotated: +000.0000	Perimeter : 16793.24	Precision: 1/128712	

- | | |
|-------------------------------|----------------------|
| 1. /N00.0301W 819.86 | 13. S13.2724E 403.8 |
| 2. N88.3424E 492.19 | 14. N66.3417E 326.96 |
| 3. N00.0402W 371.22 | 15. S53.0909E 264.79 |
| 4. N88.3448E 179.23 | 16. S38.0538E 50 |
| 5. S89.0839E 50 | 17. S74.2337E 267.11 |
| 6. S04.3109W 190.15 | 18. N62.0026E 330 |
| 7. S35.1356W 256.44 | 19. S01.2605W 495.55 |
| 8. S40.5742E 220 | 20. S25.5828W 500 |
| 9. S33.5834E 267.39 | 21. S12.2021W 327.57 |
| 10. S00.00W 395 | 22. S33.1354E 346.7 |
| 11. S14.1945W 50 | 23. S00.00W 460 |
| 12. Cl Left, Radius= 649.39 | 24. S30.3445W 255.54 |
| Bng= S79.0154E Dist= 76.14 | 25. S06.4120E 270.82 |
| Del= 06.4319 Len= 76.19 | 26. S07.1630W 50 |
| Tan= not given Rdl= not given | 27. S82.4330E 75 |