

Instrument # 110152

COUNCIL, ADAMS, IDAHO

2005-10-12 01:51:15 No. of Pages: 49

Recorded for : TIMBERLINE TITLE & ESCROW

MICHAEL FISK Fee: 147.00

Ex-Officio Recorder Deputy Peggy Pinkal

Index to: COVENANTS

**MASTER DECLARATION OF
COVENANTS, CONDITIONS
& RESTRICTIONS
FOR
ELK CROSSING SUBDIVISION**

NOTICE

THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH POTENTIAL RESIDENT AND OWNER OF PROPERTY WITHIN THE ELK CROSSING SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND RESPONSIBILITIES OF ALL ELK CROSSING SUBDIVISION PROPERTY OWNERS.

THE GRANTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION **NOT** SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY GRANTOR. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING THE TOTAL OR THE TYPES OF ASSESSMENTS TO BE LEVIED AGAINST AN OWNER TO PAY FOR ANY ASPECT OF THE ELK CROSSING SUBDIVISION SHOULD BE DISREGARDED IN THEIR ENTIRETY AND IN ALL EVENTS THE TERMS AND CONDITIONS OF THIS MASTER DECLARATION SHALL CONTROL.

POTENTIAL RESIDENTS AND OWNERS ARE ADVISED TO REVIEW THIS MASTER DECLARATION WITH THEIR LEGAL AND OTHER ADVISORS PRIOR TO ACQUIRING A LOT.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. RECITALS.....	1
1.1 Property Covered.	1
1.2 Residential Development.	1
1.3 Purpose of Master Declaration.....	1
ARTICLE 2. DECLARATION	1
ARTICLE 3. DEFINITIONS	2
3.1 "Abandoned or Inoperable Vehicle"	2
3.2 "Articles".....	2
3.3 "Assessments"	2
3.4 "Association"	2
3.5 "Association Rules"	2
3.6 "Board"	2
3.7 "Building Envelope"	2
3.8 "Bylaws"	3
3.9 "Common Area".....	3
3.10 "Common Area Lots"	3
3.11 "Design Committee"	3
3.12 "Design Guidelines"	3
3.13 "Development Plan"	3
3.14 "Discretion"	3
3.15 "Expenses"	3
3.16 "First Mortgage"	3
3.17 "Grantor"	3
3.18 "Improvement".....	3
3.19 "Limited Assessment"	4
3.20 "Lot"	4
3.21 "Maintenance Property"	4
3.22 "Master Declaration"	4
3.23 "Member"	4
3.24 "Mortgage"	4
3.25 "Occupant"	4
3.26 "Oversized Vehicles"	4
3.27 "Owner"	4
3.28 "Person(s)"	5
3.29 Intentionally Omitted	5
3.30 "Plat"	5
3.31 "Project Documents"	5
3.32 "Property"	5
3.33 "Regular Assessment"	5
3.34 "Restricted Area"	5
3.35 "Special Assessment".....	5
3.36 "Supplemental Declaration".....	5

3.37	“Waterway”	6
ARTICLE 4. ASSOCIATION GOVERNANCE AND ADMINISTRATION		6
4.1	Organization of the Association.....	6
4.2	Membership.	6
4.3	Membership Voting.	6
4.4	Board of Directors and Officers.....	7
4.5	Power and Duties of the Association.	7
4.6	Meetings of the Association.....	12
4.7	Budgets and Financial Statements.	13
4.8	Manager.....	13
4.9	Personal Liability.	13
ARTICLE 5. GOVERNANCE AND ADMINISTRATION:.....		13
DESIGN COMMITTEE		13
5.1	Creation; Grantor's Right of Appointment.....	13
5.2	Appointment of Design Committee Representative.	14
5.3	Improvements Generally.....	14
5.4	Expenses.....	15
5.5	Non-Liability of Design Committee Members.	15
5.6	Variances.....	16
5.7	Grantor's Exemption.	16
ARTICLE 6. ASSESSMENTS		16
6.1	Covenant to Pay Assessments.....	16
6.2	Uniform Rate of Assessment.	16
6.3	Regular Assessments.....	16
6.4	Special Assessments.	18
6.5	Limited Assessments.....	18
6.6	Assessment Period.	18
6.7	Notice and Assessment Due Date.	18
6.8	Estoppel Certificate.....	19
6.9	Special Notice and Quorum Requirements.....	19
ARTICLE 7. ENFORCEMENT OF ASSESSMENTS; LIENS.....		19
7.1	Right to Enforce.	19
7.2	Assessment Liens.	20
7.3	Method of Foreclosure.	20
7.4	Subordination to Certain Trust Deeds.....	20
7.5	Rights of Mortgagees.	20
ARTICLE 8. RIGHTS TO COMMON AREAS, RESTRICTED AREAS		21
AND MAINTENANCE PROPERTY		21
8.1	Use of Common Area.....	21
8.2	Designation of Common Area, Restricted Area and Maintenance Property.	22

8.3	Delegation of Right to Use.....	22
8.4	Damages.....	22
8.5	Association's Responsibility.....	22
ARTICLE 9. GENERAL AND SPECIFIC RESTRICTIONS		22
9.1	Improvements - Generally.....	22
9.2	Exterior Maintenance; Owner's Obligations.....	23
9.3	Building Restrictions.....	23
9.4	Obligation to Complete Construction.....	24
9.5	Landscaping.....	24
9.6	Mailboxes.....	24
9.7	Nuisances.....	24
9.8	No Hazardous Activities.....	25
9.9	Discharge of Firearms.....	25
9.10	No Mining or Drilling.....	25
9.11	Insurance Rates.....	25
9.12	Vehicles and Equipment.....	25
9.13	Snowmobiles, ATVs, Motorcycles.....	26
9.14	Animals/Pets.....	26
9.15	No Mobile Homes or Temporary Structures.....	26
9.16	Drainage.....	26
9.17	Grading.....	26
9.18	Water Supply Systems.....	26
9.19	Sewage Disposal Systems.....	27
9.20	Water Rights Appurtenant to Subdivision Lands.....	27
9.21	Energy Devices, Outside.....	27
9.22	Signs.....	27
9.23	Antennae.....	27
9.24	No Further Subdivision.....	27
9.25	Leasing.....	28
9.26	Grantor's Right of Development.....	28
9.27	Compliance with Laws.....	29
ARTICLE 10. EASEMENTS		29
10.1	Owners: Easements of Enjoyment.....	29
10.2	Delegation of Use.....	29
10.3	Recorded Easements.....	29
10.4	Easements of Encroachment.....	29
10.5	Maintenance and Use Easement Between Walls and Property.....	29
10.6	Easements of Access.....	29
10.7	Drainage and Utility Easements.....	30
10.8	Rights and Duties Concerning Utility Easements.....	30
10.9	Disputes as to Sharing of Costs.....	31
10.10	General Landscape Easement.....	31
10.11	Grantor's Rights Incident to Construction.....	31
10.12	Easements Deemed Created.....	31
10.13	Waterway Easements.....	31

10.14	Reservation for Expansion.....	32
10.15	Emergency Easement.....	32
10.16	Maintenance Easement.....	32
ARTICLE 11. INSPECTION OF THE ASSOCIATION'S BOOKS AND RECORDS		32
11.1	Member's Right of Inspection.....	32
11.2	Rules Regarding Inspection of Books and Records.....	32
11.3	Director's Rights of Inspection.....	32
ARTICLE 12. MISCELLANEOUS		33
12.1	Annexation of Other Properties.....	33
12.2	Removal of Properties; Right of Grantor to Remove Properties.....	33
12.3	Term.....	33
12.4	Amendment.....	34
12.5	Mortgage Protection.....	34
12.6	Notices.....	37
12.7	Enforcement and Non-Waiver.....	38
12.8	Use of Trademark.....	38
12.9	Interpretation.....	38
12.10	Successors and Assigns.....	39

MASTER
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELK CROSSING SUBDIVISION

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELK CROSSING SUBDIVISION is made effective as of the 10th day of October, 2005, by Elk Crossing Development, LLC ("Grantor" and "Class B Member"). All capitalized terms not otherwise defined in the text hereof are defined in Article 3, and each reader of this Master Declaration should refer to Article 3 for a clear understanding of such capitalized terms.

ARTICLE 1. RECITALS

1.1 Property Covered. The property subject to this Master Declaration includes, but is not limited to, the property legally described on Exhibit A attached hereto and made a part hereof by this reference (the "Property") which Property consists of approximately 200 acres approved by the Adams County Planning and Zoning Department for the development of up to 17 residential units ("Elk Crossing").

1.2 Residential Development. Elk Crossing is a residential development which Grantor currently intends to develop in accordance with existing development approvals obtained by Grantor from Adams County, or any other development plan(s) for which Grantor may from time to time obtain approval from Adams County (collectively the "Development Plan"). The Property will be developed for single-family residential homes.

1.3 Purpose of Master Declaration. The purpose of this Master Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that will apply to the Property and the use of any and all portions of the Property. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; to ensure a well-integrated, high quality development; and to guarantee adequate maintenance of the Common Area, Restricted Area and Maintenance Property, including any Improvements located thereon in a cost effective and administratively efficient manner.

ARTICLE 2. DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms and Restrictions set forth herein shall run with the land constituting the Property, and

with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, each Person or Owner having or holding an interest in the Property and such Person's or Owner's successors in interest, and may be enforced by Grantor, any Owner or Owner's successors in interest, any Person having or holding an interest in the Property or such Person's successors in interest, or by the Association. In the event of any conflict between this Master Declaration and any other of the Project Documents, this Master Declaration shall control.

ARTICLE 3. DEFINITIONS

3.1 "Abandoned or Inoperable Vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of seven (7) days or longer.

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

3.3 "Assessments" shall mean those payments required of Owners who are Association Members and/or Local Association Members, including Regular, Special and Limited Assessments. The Association, and/or any Local Association shall have the right to require assessments from their respective Members, however, all Local Association Assessments shall be levied by and through the Association.

3.4 "Association" shall mean the Idaho profit or non-profit corporation, or its successors, organized and established by Grantor to exercise the powers and to carry out the duties set forth in this Master Declaration or any Supplemental Declaration. Grantor shall have the power, in its discretion, to name the Association the "EC Homeowners' Association, Inc.", or any similar name which fairly reflects its purpose. The Association shall have no right, title or interest in the name "Elk Crossing," stylized or otherwise, or any logo in connection therewith.

3.5 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.

3.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.7 "Building Envelope" shall mean the area within a Lot where a residential structure and accessory structures may be located, always subject to the prior written approval of the Design Committee. Building Envelopes shall be designated by the Grantor by describing such an area on a recorded Plat, reserving it in a deed or other instrument, or by designating it as such in this Master Declaration, any Supplemental Declaration or the Design Guidelines. If a Building Envelope is not so designated within a Lot, then the Building Envelope shall be that portion of the Lot not located within legal setback areas or designated easements.

3.8 “Bylaws” shall mean the Bylaws of the Association, as the same may be amended or revised from time to time.

3.9 “Common Area” shall mean any or all parcels of real property in which the Association holds an interest or which is held or maintained for the benefit of the Association and its Members, including personal property or improvements located thereon, including without limitation, all such parcels that are designated on a Plat or otherwise by Grantor as roads, Common Area Lots, streets, drives, parking areas or drives, common open space, pastures, wildlife habitat, common landscaped areas, storage facilities, recreational facilities, other amenities and facilities, and Waterways. Common Area may be established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Master Declaration or in any Supplemental Declaration. In addition, the Association may acquire any Common Area it deems necessary and/or beneficial to the Property. Common Area may include easement and/or license rights.

3.10 “Common Area Lots” shall mean any Lot within Elk Crossing as shown on any Plat and/or designated in this Master Declaration or any Supplemental Declaration as a "Common Area Lot." Common Area Lots shall be deemed Common Area for the purposes of this Master Declaration.

3.11 “Design Committee” shall mean the Design Committee, the Initial Improvement Committee and/or the Subsequent Improvement Committee created by Grantor pursuant to Article 5 hereof, whichever is appropriate in the context of this Master Declaration.

3.12 “Design Guidelines” shall mean the design guidelines and rules promulgated, published, amended and supplemented from time to time pursuant to Article 5.

3.13 “Development Plan” shall have the meaning ascribed to it in Section 1.2.

3.14 “Discretion” or “discretion” shall mean the freedom or authority to act according to one’s own judgment.

3.15 “Expenses” shall have the meaning ascribed to it in Section 6.3.1.

3.16 “First Mortgage” shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

3.17 “Grantor” shall mean Elk Crossing Development, LLC, or its successors in interest, or any Person to whom the rights under this Master Declaration are expressly transferred, in whole or in part, other than a transfer to individual Owners, by Elk Crossing Development, LLC, or its successors.

3.18 “Improvement” shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, residential structures, accessory buildings, fences, streets, drives, driveways, parking areas, sidewalks, bridges, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat

improvements, living and/or dead vegetation, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, Waterways, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, plantings, and landscaping, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

3.19 “Limited Assessment” shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, equal to the cost incurred by the Association in connection with corrective action or maintenance, repair, replacement, and operation activities performed pursuant to the provisions of this Master Declaration or any Supplemental Declaration, including, without limitation, damage to or maintenance, repair, replacement, and operation activities performed for any Common Area, Restricted Area, Maintenance Property or the failure of an Owner to keep the Owner's Lot in proper repair, and including interest thereon as provided in this Master Declaration or a Supplemental Declaration or for any goods or services provided by the Association benefiting less than all Owners.

3.20 “Lot” shall mean any Lot within Elk Crossing as shown on any Plat and/or specified in this Master Declaration or any Supplemental Declaration, upon which Improvements may be constructed. For voting, membership and Assessment purposes herein, "Lot" shall not include any lot designated on a Plat and/or by Supplemental Declaration as Common Area, Common Area Lots or Restricted Area.

3.21 “Maintenance Property” shall mean any real or personal property on the Property or the general vicinity of the Property not owned by the Association, but which the Association operates and/or maintains for the benefits which will accrue to the Property and its Owners, including, without limitation, any signs, benches, lights, trails, parks, or other open space and lands.

3.22 “Master Declaration” shall mean this Master Declaration of Covenants, Conditions and Restrictions for Elk Crossing Subdivision as it may be amended and supplemented from time to time.

3.23 “Member” shall mean each Owner holding a membership in the Association, including Grantor.

3.24 “Mortgage” shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

3.25 “Occupant” shall mean any resident or occupant of a Lot other than the Owner, including, without limitation, family members, guests, invitees and tenants.

3.26 “Oversized Vehicles” shall be defined as vehicles which are too high or too wide to clear the entrance of a normal residential garage door opening.

3.27 “Owner” shall mean the record owner, whether one or more Persons, including Grantor, holding fee simple interest of record to a Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as

security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

3.28 "Person(s)" shall mean any individual, partnership, corporation, trust, estate or other legal entity, including Grantor.

3.29 "Intentionally Omitted Plat" shall mean any subdivision plat covering any portion of the Property, including, without limitation, the Plat of Elk Crossing Subdivision, as recorded in the Adams County Recorder's Office as the same may be amended by duly recorded amendments thereof.

3.31 "Project Documents" shall mean the basic documents creating and governing the Property including, without limitation, this Master Declaration, any Supplemental Declaration, Articles of Incorporation and Bylaws of the Association, any Association Rules, the Design Guidelines and any other procedures, rules, regulations or policies adopted under such documents by the Association or the Design Committee.

3.32 "Property" shall mean those portions of the Property described on Exhibit A attached hereto, including, without limitation, each lot, parcel and portion thereof and interest therein.

3.33 "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area, Restricted Area and the Maintenance Property, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association, pursuant to the terms of this Master Declaration or a Supplemental Declaration.

3.34 "Restricted Area" shall mean that portion of the Property which is not Common Area or Lots, but is owned or leased, operated or maintained by the Association. Restricted Area may be established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Master Declaration, any Supplemental Declaration or the Design Guidelines. In addition, the Association may acquire any Restricted Area it deems necessary and/or beneficial to the Property and/or the Owners. Restricted Area may include easement, lease and/or license rights. Restricted Area shall not be subject to use by Members, Owners or any Person; provided however, that the Association shall have the power to convert any Restricted Area into Common Area or to allow limited or selective uses of the Restricted Area.

3.35 "Special Assessment" shall mean that portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized to be paid to the Association, pursuant to the provisions of this Master Declaration or a Supplemental Declaration.

3.36 "Supplemental Declaration" shall mean any Supplemental Declaration including additional covenants, conditions and restrictions that might be adopted by Grantor in connection with any Annexed Property, as defined in Section 12.1 hereof.

3.37 "Waterway" shall mean any surface water amenity, including, without limitation, any irrigation system, lake, pond, channel, slough, stream, or reservoir, natural or artificial, which is located on the Property.

ARTICLE 4. ASSOCIATION GOVERNANCE AND ADMINISTRATION

4.1 Organization of the Association. The Association shall be initially organized by Grantor as a profit or non-profit corporation under the applicable provisions of the Idaho Code, or such other legal entity as Grantor deems appropriate, and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. Grantor may, in its discretion, grant to the Association a revocable, non-exclusive license to use the name "Elk Crossing." Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration. Each Owner shall abide by and benefit from the provisions, covenants, conditions and restrictions contained in the Project Documents.

4.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association, and no Owner, except Grantor, shall have more than one membership in the Association. Memberships in the Association shall be appurtenant to, and may not be separated from ownership of the Lot. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title to a Lot and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

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

4.3.1 Class A Members. Class A Members shall be the Owners of Lots designated in this Master Declaration, any Supplemental Declaration or other recorded document, excluding the Grantor. Upon the Class B Member Termination Date, each Class A Member shall be entitled to one (1) vote for each Lot owned by said Members of the Association. Upon the Class B Member Termination Date, Grantor shall become a Class A Member and shall be entitled to one (1) vote for each Lot owned by the Grantor within the Property.

4.3.2 Class B Member. Grantor, by and through Grantor's designated representative (hereinafter "Grantor's Delegate"), shall be the Class B Member, and shall be entitled to five (5) votes for each of the 17 approved Lots for Elk Crossing, less five (5) votes for each Lot owned by a Person other than Grantor. The Class B Member shall cease to be a voting Member in the Association upon the earlier to occur of the following: (1) the date Grantor informs the Board in writing that Grantor no longer wishes to exercise its rights as the Class B Member hereunder; or (2) on June 1, 2020. This date may be referred to herein as the "Class B Member Termination Date."

In the event the number of anticipated Lots within Elk Crossing is increased beyond 17 approved Lots prior to the Class B Termination Date, the Class B member shall be entitled to an additional five (5) votes for each such additional Lot.

4.4 Board of Directors and Officers. The Board of Directors and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws shall carry out all of the powers and duties of the Association as set forth herein and in the Articles and Bylaws of the Association and shall be selected as follows:

4.4.1 Selection of Board Prior to Class B Member Termination Date. Until the Class B Member Termination Date, the Board shall consist of not less than three (3) members of the Board ("Directors") nor more than seven (7) Directors appointed by the Class B Member in the Class B Member's discretion. The Class B Member shall have the right to remove and replace any Director, with or without cause, in the Class B Member's discretion.

4.4.2 Selection of Board After Class B Member Termination Date. Subsequent to the Class B Member Termination Date, the Board shall be selected by the Members as more particularly set forth in the Articles and/or Bylaws of the Association.

Vacancies on the Board occurring prior to the Class B Member Termination Date shall be filled by the Class B Member. Thereafter, vacancies on the Board occurring between meetings of the Members may be filled by the majority vote of the remaining Directors then sitting on the Board. The Class B Member shall have the right to voluntarily terminate its right to appoint Directors and to fill vacancies pursuant to this Section, in which event the remaining Directors may fill vacancies occurring between meetings of the Members as provided herein. Except for Directors appointed by the Class B Member, all other Directors shall be Members.

4.5 Power and Duties of the Association.

4.5.1 Powers. The Association shall have all the powers of a profit or non-profit corporation organized under the applicable provisions of the Idaho Code subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents. The Association shall have the power and authority to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under the Project Documents, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper ownership, management and operation of the Common Area, Restricted Area, Maintenance Property and the Association's other assets, including water rights when and if received from Grantor, and the performance of the other responsibilities herein assigned, including, by way of illustration and not limitation:

4.5.1.1 Assessments. The power to levy Assessments on any Owner and Association Member, or any portion of the Property pursuant to the restrictions enunciated in this Master Declaration, and to force payment of such Assessments, all in accordance with the provisions of this Master Declaration. This power shall include the right of the Association to levy Assessments on any Owner of any portion of the Property to cover the operation and maintenance costs of the Common Area, Restricted Area and the Maintenance Property.

4.5.1.2 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 the Project Documents, and to enforce by injunction or otherwise, all provisions hereof.

4.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager, and to contract for the maintenance, repair, replacement and operation of any Common Area, Restricted Area or Maintenance Property. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any Common Area, Restricted Area or Maintenance Property shall be for a term not exceeding one (1) year, and shall be subject to review by the Board upon termination of the Class B membership.

4.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable and appropriate. The Association may govern the use of the Common Area by the Owners, their families, invitees, licensees, lessees or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Master 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, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Master Declaration. In the event such Association Rules are inconsistent with or less restrictive than any other provisions of this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, and/or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Master Declaration, Supplemental Declaration, the Articles, Bylaws, or Design Guidelines to the extent, but only to the extent, of any such inconsistency.

4.5.1.5 Improvements Within Public Right-of-Way. The authority to own, maintain, repair, replace and operate any Improvements, including, without limitation, landscaping islands, bridges, bridge facades, median strips and pathways located within any public right-of-way located within the Property or identified on a Plat.

4.5.1.6 Emergency Powers. The power, exercised by the Association or by any Person authorized by it, to enter upon any portion of the Property (but not inside any building constructed thereon) 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 the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by and at the expense of the Association.

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

4.5.1.7.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

4.5.1.7.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

4.5.1.7.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years after the death of the issue of the individuals executing this Master Declaration on behalf of Grantor who are in being as of the date hereof.

4.5.1.8 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to Members of the Association, the cost of which shall be included in Regular Assessments;

4.5.1.9 Other. Such other and further powers as the Association Board deems reasonable and appropriate, it being the intent of Grantor that the Association have broad power and authority consistent with the Project Documents and applicable law.

4.5.2 Duties. In addition to duties necessary and proper to carry out the powers delegated to the Association by the Project Documents, without limiting the generality thereof, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

4.5.2.1 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss, including any signs placed at the entrances to, or otherwise in the vicinity of the Property. All Waterways shall be

maintained in accordance with sound hydrological principles, with particular attention to the protection and husbandry of the wildlife habitat. The Association shall, at Grantor's discretion, operate and maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association.

4.5.2.2 Operation and Maintenance of Restricted Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of any Restricted Area.

4.5.2.3 Operation and Maintenance of Storm Drainage Facilities. Operate and maintain or otherwise provide for the operation and maintenance of all public storm drainage facilities, including, without limitation, drainage pipes and collection ponds ("facilities"), located on and through the Lots, Restricted Area, Maintenance Area, Common Area or rights-of-way, pursuant to the Storm Water Manual, and the repair and replacement of property damaged or destroyed by casualty loss.

4.5.2.4 Operation and Maintenance of Maintenance Property. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of any Maintenance Property the Association, in its discretion, has decided to operate and/or maintain due to the benefits flowing through to the Owners and Members, including, without limitation, any signs, benches, lights, trails, or parks. The rights and duties enunciated in this Subsection 4.5.2.4 shall include the right to levy Assessments on Owners as provided in Subsection 4.5.1.1.

4.5.2.5 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Area, Restricted Area and Maintenance Property;

4.5.2.6 Maintenance of Berms, Retaining Walls and Fences. Maintain any berms, retaining walls, and water amenities within and abutting any Common Area, Restricted Area and Maintenance Property. The Association shall also be responsible for maintaining or repairing the exterior surface of any fences abutting any Common Areas. For the purposes of this Master Declaration exterior surface shall be deemed the surface facing the Common Area or public right-of-way. If any repairs or replacements will affect the external appearance of such fences, the Association shall be responsible for such repairs or replacements. Costs of repair, replacement and maintenance of such fences shall be passed on to Owners as a Regular Assessment except for any repair or replacement made necessary as a result of the negligence or willful conduct of an Owner, which shall be the obligation of that Owner;

4.5.2.7 Improvements in the Public Right-of-Way. Maintain, improve, operate, repair and replace any facilities and Improvements, including, without

limitation, Maintenance Property, drainage systems or facilities, bridge facades, pathways, landscape islands or median strips, and landscaping or landscaping improvements located in any public rights-of-way which the Association is obligated, or otherwise deems advisable, to maintain, operate, repair and replace pursuant to the Development Plan, any Plat, or any license, easement or other agreement;

4.5.2.8 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Area, Maintenance Property, Restricted Area or against the Property, the Association and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state and/or local taxes, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation;

4.5.2.9 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area, and to own and/or manage for the benefit of Elk Crossing all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise;

4.5.2.10 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance:

4.5.2.10.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "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 Common Area and Restricted Area;

4.5.2.10.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor, and the individual grantees, tenants, agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of the Common Area, Restricted Area and Maintenance Property. Limits on 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 One Million Dollars (\$1,000,000) per occurrence with respect to property damage;

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

4.5.2.10.4 Such insurance as required by Section 14.4(n) herein;

4.5.2.10.5 Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other Person charged with the management or possession of any Association funds or other property;

4.5.2.10.6 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and

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

4.5.2.11 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable;

4.5.2.12 Design Committee. Appoint and remove members of the Design Committee, subject to the provisions of this Master Declaration; and

4.5.2.13 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Master Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Project Documents and any and all laws, ordinances, rules and regulations of Adams County also including, without limitation, the recordation of any claim of lien with the Adams County Recorder's Office, as more fully provided herein.

4.5.2.14 Compliance with Development Plan. All actions undertaken by the Association in performance of its duties under the Project Documents shall be performed in conformity with the Development Plan.

4.5.2.15 Duties Imposed During Entitlement Process. Carry out all duties imposed by any governmental, municipal or other agencies as part of the entitlement process for the development of Elk Crossing.

4.6 Meetings of the Association. The Association shall hold an annual meeting and special meetings all as provided for in the Bylaws.

4.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Association as follows:

4.7.1 A pro forma operating statement or budget representing the Association for each fiscal year shall be available for distribution not less than thirty (30) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

4.7.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available for delivery upon request to each Owner, a balance sheet as of the last day of the Association's fiscal year for the Association and annual operating statements reflecting the income and expenditures of the Association for the last fiscal year. Copies of the balance sheet and operating statement shall be available for distribution upon request to each Member within ninety (90) days after the end of each fiscal year.

4.8 Manager. The Association may employ or contract for the services of a professional manager or management company ("Manager"), provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association with or without cause and without payment of a termination fee; provided thirty (30) days or more prior written notice is provided. The Manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such Manager of any such duty, power or function so delegated by or on behalf of the Board. The Association may contract with Grantor or any affiliate of Grantor to act as Manager pursuant to the terms of this Section 4.8.

4.9 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officer of the Association, or Grantor, or the Manager, 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 officer, committee, or other representative or employee of the Association, Grantor, or the Design Committee, provided that such Person, upon the basis of such information as may be possessed by such Person, has acted in good faith without willful or intentional misconduct.

ARTICLE 5. GOVERNANCE AND ADMINISTRATION: DESIGN COMMITTEE

5.1 Creation; Grantor's Right of Appointment. Within thirty (30) days of the date on which Grantor first conveys a Lot to an Owner, Grantor shall appoint no less than three (3) and no more than five (5) individuals to serve on a design committee (the "Design Committee"). Thereafter, at any time, and from time to time, until such time as the Class B Member of the Association is terminated, Grantor shall have the exclusive right, in Grantor's discretion, to appoint, remove and replace all members of the Design Committee. At such time as the Class B Member of the Association is terminated, the Design Committee shall be divided into two committees consisting of not less than three (3) and not more than five (5) individuals each: (1)

the Initial Improvement Committee; and (2) the Subsequent Improvement Committee. Hereinafter, the term "Design Committee" shall mean the Initial Improvement Committee and Subsequent Improvement Committee, whichever is appropriate given the context thereof. As long as Grantor owns a Lot within the Property, Grantor shall continue to have the exclusive right to appoint, remove and replace all members of the Initial Improvement Committee. Following termination of the Class B Member of the Association, the Board shall have the right to appoint, remove and replace the members of the Subsequent Improvement Committee. At such time as Grantor no longer owns a Lot within the Property, the Board shall have the right to appoint, remove and replace all members of the Design Committee. The Initial Improvement Committee shall be responsible for review and approval of the initial residential Improvements proposed to be placed on any Lot pursuant to this Article 5. Following construction of a permanent residential Improvement on a Lot, any subsequent Improvements on such Lot or any changes to any existing Improvements shall be submitted to the Subsequent Improvement Committee for review pursuant to Article 5. If a vacancy on the Design Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting Member to serve for a specified temporary period not to exceed one (1) year. A member of the Design Committee need not be an Owner. Members of the Design Committee may be removed immediately by the Person appointing them at any time without cause. Pursuant to Section 5.3 below, the Design Committee shall review, study, and either approve or reject the proposed Improvements on the Property, all in compliance with the Master Declaration, any Supplemental Declaration, and the Design Guidelines. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of the proposed Improvements on the Property, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

5.2 Appointment of Design Committee Representative. The Design Committee, prior to the termination of the Class B membership in the Association, may appoint in writing one (1) of its members to act as its designated representative (the "Committee Representative"). The Committee Representative may be delegated all duties and obligations of the Design Committee. In the event a Committee Representative is appointed, it is intended that the Design Committee shall look to the Committee Representative to perform all functions of the Design Committee; provided however, the Design Committee shall make all final determinations and decisions regarding all Design Committee duties and obligations. Any action or decision made by three (3) members of the Design Committee shall be a binding decision of the entire Design Committee.

5.3 Improvements Generally. The initial Design Committee, as appointed by the Grantor, shall draft the Design Guidelines for the construction and reconstruction of all Improvements on the Property. No Improvements on any portion of the Property shall be constructed, reconstructed, placed on or removed from the Property without prior written consent of the Design Committee, and without being in compliance with the Project Documents and the Design Guidelines. The Design Guidelines shall be developed and used by the Design Committee to ensure that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and all aesthetic considerations, including guidelines designed to protect the special qualities of Elk Crossing, and to encourage creative design, by providing general architectural, design and

construction guidelines (including Building Envelope guidelines), landscape guidelines (including a description of existing, natural conditions and vegetation), submittal and review procedures, and fees and charges for review. The Design Guidelines shall be drafted to conform to this Master Declaration, the Articles and Bylaws, and must be approved by the Board prior to implementation. In the event of a conflict between the Design Guidelines and this Master Declaration, any Supplemental Declaration, the Articles and the Bylaws, this Master Declaration, the Supplemental Declaration, the Articles or Bylaws, as the case may be, shall govern. The content of the Design Guidelines may be modified and amended from time to time as provided in the Design Guidelines, and in all events can be modified and changed by a majority vote of the Board. Nothing contained in this Article 5 limits any Owner's obligation and duty to ensure that the Owner's Lot development is in compliance with this Master Declaration, any Supplemental Declaration, the Design Guidelines, any other Project Documents or applicable city, county and state laws, rules, regulations and ordinances.

5.4 Expenses. All expenses of the Design Committee shall be paid by the Association. The Design Committee shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the Design Committee from time to time and such fees shall be collected by the Design Committee and remitted to the Association to help defray the expenses of the Design Committee's operation, including reasonable payment to each member of the Design Committee for their services as provided herein. The Design Committee fee shall be not less than \$250.00 and not more than \$1,500.00; provided however, that in the event the Design Committee is reviewing maintenance, landscaping or remodeling Improvements to any Lot, the Design Committee shall be able to reduce the Design Committee review fee in its discretion. The Design Committee fees may also be increased from time to time as necessary to reflect increases in the cost of the Design Committee's performance of its duties and responsibilities under this Section.

5.5 Non-Liability of Design Committee Members. Approval by the Design Committee does not assure approval of the Improvements by any appropriate governmental or quasi-governmental agency, board or commission. Neither the Design Committee nor any of its members shall be responsible or liable to the Association or to any Person, Owner, or Grantor with respect to any loss, liability, claim or expense which may arise by reason of any approval or denial of any Improvements. Neither the Board, Design Committee or any agent thereof nor Grantor or any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the Design Committee shall be defended, indemnified and held harmless by the Association in any such suit or proceeding which may arise by reason of the Design Committee's decision. The Association, however, shall not be obligated to defend, indemnify and hold harmless any member of the Design Committee to the extent any such member of the Design Committee shall be adjudged (after exhausting any appeal rights) to be liable for willful misconduct or bad faith in the performance of such member's duty as a member of the Design Committee, unless and only to the extent that the court in which such action or suit may be brought shall determine that, despite the adjudication of liability, but in view of all circumstances of the case, such member is fairly and reasonably entitled to indemnification and defense for such expense if such court shall deem it proper.

5.6 Variances. The Design Committee may authorize variances from compliance with any of the Design Guidelines, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least three (3) members of the Design Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Master Declaration, any Supplemental Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration, any Supplemental Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Property, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

5.7 Grantor's Exemption. Any and all Improvements constructed by Grantor on or to the Property are not subject to review and approval by the Design Committee.

ARTICLE 6. ASSESSMENTS

6.1 Covenant to Pay Assessments. By acceptance of a deed to any Lot, each Owner of such Lot thereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Master Declaration, any Supplemental Declaration or other applicable Project Document.

6.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

6.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonably attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he or she remains an Owner.

6.2 Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for each Lot.

6.3 Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board. Additionally, upon the sale of any lot from the Grantor to the initial purchaser, a one-time, initial homeowners association set up fee shall be collected in an amount to be established by the Board.

6.3.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area, Restricted Area and Maintenance Property, including all Improvements located on such areas owned and/or managed and maintained by the Association (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement of those elements of the Common Area, Restricted Area and Maintenance Property, or other property of the Associations that must be replaced and maintained on a regular basis (the "Repair Expenses"). The Operating Expenses and the Repair Expenses, and any other expenses necessary to acquire all assets and services and to otherwise carry out the powers, duties and responsibilities of the Association, are collectively referred to herein as the "Expenses."

6.3.2 Computation of Regular Assessments. The Association shall compute the amount of its Expenses on an annual basis. The board of the Association shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Lot occurs in the Property for the purposes of the Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments by the Association shall take place not less than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year.

6.3.3 Amounts Paid by Owners. The Board can require, in its discretion or as provided in the Project Documents, payment of Regular Assessments to the Association in monthly, quarterly, semi-annual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its discretion. The Regular Assessment to be paid by any particular Owner for any given fiscal year shall be computed as follows:

6.3.3.1 As to the Association's Regular Assessment, each Owner, except for the Grantor, as provided further in Subsection 6.3.3.2 below, shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Lots attributable to the Owner by the total number of Lots in the Property; and

6.3.3.2 For two (2) years following the date assessments for any Lot are assessed against the Owners, Grantor shall not be assessed any Regular Assessments for each Lot of which Grantor is an Owner. However, during such two (2) year period, Grantor shall pay an amount equal to the Operating Expenses shortfall of the Association (the "Shortfall Payment"), which Shortfall Payment shall be the lesser of either (i) the actual Operating Expenses shortfall, or (ii) the Regular Assessments multiplied by the total number of Lots owned by Grantor on the date Regular Assessments are assessed against the Owners. Grantor's

Shortfall Payment shall end two (2) years after the date assessments begin. Thereafter, Grantor shall be assessed Regular Assessments for each Lot of which Grantor is an Owner.

6.4 Special Assessments.

6.4.1 Purpose and Procedure. In the event that the board of the Association shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon the Common Area, Restricted Area or Maintenance Property, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. The board of the Association shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

6.4.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Association.

6.5 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board of the Association may levy a Limited Assessment against a Member and/or such Member's Lot as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Lot into compliance with the provisions of the Project Documents, for damage caused by the Member, or any member of the Member's family, representatives or invitees, to any Common Area, Restricted Area, Maintenance Property or any other portion of the Property or for otherwise providing any goods or services benefiting less than all Members or such Members' Lots.

6.6 Assessment Period. Unless otherwise provided in the Project Documents, the Assessment period for the Association shall be determined by the Board. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in equal installments or in a single payment due at closing on the sale of a Lot, at the discretion of the Board.

6.7 Notice and Assessment Due Date. Except with regard to the first Assessment, thirty (30) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Lot subject thereto, and to any Person in possession of such Lot by the Association. The Association shall determine if payments for all Assessments shall be due monthly, quarterly, semi-annually or annually. The Assessment installment schedule shall be the same for all Association Assessments. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There may accrue, at the Board's discretion, with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment

payment which is delinquent for more than twenty (20) days may accrue, at the Board's discretion, interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may be exempt from such liability by a waiver of the use and enjoyment of the Common Area, or by lease or abandonment of such Owner's Lot.

6.8 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the Person making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default under the provisions of this Master Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Article 6 may be relied upon by any prospective purchaser or mortgagee of the Owner's Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

6.9 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in the Project Documents, written notice of any meeting called for the purpose of levying a Special Assessment by the Association, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment shall be sent to all Members of the Association and to any Person in possession of a Lot, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

ARTICLE 7. ENFORCEMENT OF ASSESSMENTS; LIENS

7.1 Right to Enforce. The Association has the right to collect and enforce its Assessments created hereby and pursuant to the provisions hereof. Each Owner of a Lot, upon becoming an Owner of such Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Master 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 Master Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity 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.

7.2 Assessment Liens.

7.2.1 Creation. There is hereby created a claim of lien on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to this Master Declaration together with interest thereon at 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 attorneys' fees. All sums assessed in accordance with the provisions of this Master Declaration shall constitute a lien on such respective Lots upon recordation of a claim of lien with the Adams County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Lot and Assessments on any Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

7.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Adams County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of preparing and recording such notice), a sufficient description of the Lot(s) against which the same have 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 of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

7.3 Method of Foreclosure. Such lien shall be foreclosed by appropriate action in court.

7.4 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a 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 Assessments. Except as expressly provided in this Article 7, 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 before, 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 Master Declaration.

7.5 Rights of Mortgagees. Notwithstanding any other provision of this Master Declaration, no amendment of this Master Declaration shall operate to defeat the rights of the beneficiary under any deed of trust or a mortgagee under any 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 or mortgage such Lot shall remain subject to this Master Declaration as amended.

ARTICLE 8. RIGHTS TO COMMON AREAS, RESTRICTED AREAS AND MAINTENANCE PROPERTY

8.1 Use of Common Area. Every Owner, unless expressly designated by Grantor in a Supplemental Declaration, shall have a right to use each parcel of the Common Area, and Maintenance Property and to the extent permitted by any Supplemental Declaration or other instrument, which right shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

8.1.1 The right of the Association holding or controlling such Common Area or Maintenance Property to levy and increase Assessments for the construction, protection, maintenance, repair, management and operation of Improvements on the Common Area and Maintenance Property, including the right to Special Assessments;

8.1.2 The right of the Association to suspend the voting rights and rights of use, or interest in, the Common Area or Maintenance Property by an Owner for any period during which any Assessment or charge against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association Rules;

8.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or other Person for such purposes and subject to such conditions as may be permitted by the Project Documents; provided however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by at least two-thirds (2/3) of the Members entitled to vote has been recorded;

8.1.4 The right of the Association to prohibit the construction of Improvements on all Common Areas or Maintenance Property;

8.1.5 The right of the Grantor to declare that Common Areas may be used by the Public or any other group of persons as established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Master Declaration or in any Supplemental Declaration (this includes, without limitation, the right of the Grantor to declare that the Common Areas may be used for the benefit of other properties in the vicinity of the Property as the same are developed by Grantor or Grantor's successors in interest);

8.1.6 Members/Owners shall not be entitled to use those areas established from time to time by Grantor on any portion of the Property as Restricted Area, unless expressly allowed by the Association or this Master Declaration or in any Supplemental Declaration; and

8.1.7 The Common Area cannot be mortgaged or conveyed without the approval of the Owners, excluding the Grantor, of at least two-thirds (2/3) of the total

voting power in the Association as cast by the Class A Members. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to an easement of the Owners of such Lots for the purpose of ingress and egress.

8.2 **Designation of Common Area, Restricted Area and Maintenance Property.** Grantor shall designate and reserve Common Area, Restricted Area and Maintenance Property in the Master Declaration, Supplemental Declarations and/or recorded Plats, deeds or other instruments.

8.3 **Delegation of Right to Use.** Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment to the Common Area, to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Lot. Only Grantor or the Association shall have the right to delegate the right of enjoyment to the Common Area to the general public, and such delegation to the general public shall be for a fee set by Grantor or the Association.

8.4 **Damages.** Each Owner shall be fully liable for any damage to any Common Area, Restricted Area or Maintenance Property which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Lot the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Lot and may be collected as provided herein for the collection of other Assessments.

8.5 **Association's Responsibility.** The Association shall maintain and keep the Common Area, Restricted Area and Maintenance Property in good repair, such maintenance to be funded as provided in this Master Declaration. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements situated within the Common Area, Restricted Area and Maintenance Property.

ARTICLE 9. GENERAL AND SPECIFIC RESTRICTIONS

9.1 **Improvements - Generally.** All Improvements shall be designed, constructed and used in such a manner as to promote compatibility between the types of uses contemplated by this Master Declaration. Specific design and construction guidelines are contained in the Design Guidelines. The Design Guidelines and the general instructions set forth in this Master Declaration shall govern the right of a Person or Owner, excluding the Grantor, to construct, reconstruct, refinish, remove, add, alter or maintain any Improvement upon, under or above the Property, and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on, under or over the Property, including, without limitation, any Lot. All Improvements by any Owner, excluding Grantor, must be pre-approved in writing by the Design Committee prior to their construction or reconstruction. In the event any Improvements are damaged or completely destroyed, the Owner shall repair or reconstruct such Improvements in accordance with the Design Guidelines governing such repair or reconstruction. No Lots, other than those owned by

Grantor, shall be permitted to remain in an unimproved condition, unless the Owner has received prior written approval from the Design Committee for a landscape plan.

All Lots shall be used exclusively for residential purposes and other appropriate uses permitted under any zoning ordinances applicable to the Property, provided such other appropriate uses are in compliance with the Development Plan. No Lot, other than the Lot(s) used for irrigation or utility facilities and services, shall be improved except with residential structures and accessory structures as permitted under the Design Guidelines. This Master Declaration is not intended to serve as authority for the Design Committee to control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size and height restrictions. This Master Declaration is intended to serve as authority for the Design Committee to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Property, height, grade and finished ground elevation, natural conditions, landscaping, and all aesthetic considerations as set forth in this Master Declaration and in the Design Guidelines.

The Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Master Declaration and/or the Design Guidelines and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred with such removal. Each violation of this Master Declaration and the Design Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner and/or Member shall be applicable.

9.2 Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining such Owner's Lot, the Association, upon thirty (30) days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

9.3 Building Restrictions. No building intended for use as a family residence shall be erected, altered, place or permitted to remain on any Lot which contains less than 1,600 square feet of living area; provided, however, that if the building intended for use as a family residence contains more than one story, the minimum square footage of the first floor shall be no less than 1,200 square feet. The square footage of living area shall be based on the exterior dimensions of

the building, exclusive of basement, porches, patios and garages. No building for residential purposes or otherwise shall be allowed within Elk Crossing that has more than two stories, unless the same is approved in writing by the Design Committee. No building for residential purposes or otherwise shall be placed closer than sixty (60) feet to the Owner's Lot lines; provided, however that the Design Committee may, but shall not be required to, waive this requirement based upon the unique circumstances of a particular Lot. In no event shall a manufactured home be erected, placed or permitted to remain on any Lot.

9.4 Obligation to Complete Construction. Following the commencement of construction, the Owner shall be obligated to diligently and continuously proceed therewith to complete the entire exterior of the residential building thereon within twelve months, except for incidental items which cannot be completed because of adverse weather, provided that such items shall be completed promptly when weather permits. During construction, the Owner shall take reasonable measures to minimize the impact of construction activity on neighboring Lots and the Property.

9.5 Landscaping. The Design Committee shall adopt guidelines regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such guidelines, or shall allow such Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Association, upon thirty (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 be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

9.6 Mailboxes. All mailboxes or any mailbox or mailbox post or structures shall be at a central location to be owned and maintained by the Homeowner' Association as Common Area. There shall be no mailbox upon any individual Lot.

9.7 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area and Restricted Area or vacant Lots, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No business or home occupation, no noise, no obstructions of pedestrian walkways, no unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity or to its occupants or residents, as determined by the Association, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes

which have been approved by the Design Committee), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Design Committee. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers and in areas approved by the Design Committee. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property.

9.8 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements shall be constructed on any Property which are or might be unsafe or hazardous to any Person or property.

9.9 Discharge of Firearms. There shall be no discharge of firearms on the Property for recreational purposes.

9.10 No Mining or Drilling. No portion of the Property shall be used for the purpose of blasting, mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This Section 9.7 shall not prohibit exploratory drilling or coring which is necessary to construct Improvements.

9.11 Insurance Rates. Nothing shall be done or kept on any Lot which will increase the rate of, or cancel any insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Lot which would result in the cancellation of insurance on any portion of the Property owned or managed by the Association or which would be in violation of any law.

9.12 Vehicles and Equipment. The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to any of the Project Documents which prohibit or limit the use thereof within the Property. Without limiting the foregoing, the following specific restrictions apply: 1) all on-street parking shall be limited to those specific areas where on-street parking is not expressly prohibited by the governmental or quasi-governmental agencies with responsibility therefor; 2) vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, pedestrian path, or Waterway unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Project Documents; 3) no motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, Abandoned or Inoperable Vehicles, Oversized Vehicles, dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and all other unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, parking areas and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Design Committee; 4) to the extent possible, garage doors shall remain closed at all times; and 5) the use of any electronic, gas or other fuel operated gardening, yard or snow removal equipment shall only be allowed from 8:00 a.m. to 8:00 p.m.

9.13 Snowmobiles, ATVs, Motorcycles. No snowmobiles, ATVs, motorcycles and other recreational vehicles and equipment shall be permitted to operate on the Common Areas or upon the Property, except for purposes of ingress and egress to or from a particular Lot to or from any public or private property allowing such use. If operated on the Common Area within the Property, the operation thereof shall comply in all respects with all applicable laws and regulations applicable to use of a motor vehicle upon a public highway. ALL TRAFFIC MUST YIELD TO HORSES AND RIDERS.

9.14 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property, except as provided in any Supplemental Declaration. This Section 9.14 is not intended to prohibit the keeping of domesticated dogs, domesticated cats, other household pets and horses and llamas for the Owner's personal use, provided, however, that (i) such animals are not kept, bred or maintained for any commercial purpose, (ii) no more than four (4) horses or llamas in the aggregate shall be kept or maintained on any Lot, (iii) such animals or pets do not unreasonably bother or constitute a nuisance to others as determined by the Board or applicable Local Association Board, in its reasonable judgment, and (iv) such animals are kept in compliance with the laws and ordinances of Adams County. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs, and/or an Owner's failure to clean-up the excrement of that Owner's dog shall be considered a nuisance. Each dog in the Property shall be subject to all "leash laws" of Adams County when such animal is off the premises of its owner. Animal structures are governed by the Design Guidelines.

9.15 No Mobile Homes or Temporary Structures. No house trailer, mobile home, tent (other than for short term recreational use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property. "Temporarily" with respect to construction activity shall mean no longer than three (3) weeks without written approval by the Design Committee.

9.16 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Design Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Design Committee, which may include drainage from Common Area and Restricted Area over any Lot in the Property.

9.17 Grading. The Owner of any Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved by any public agency, or by the Design Committee, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided for herein.

9.18 Water Supply Systems. Grantor is under no obligation to deliver domestic water or furnish rights of way in connection with the delivery of domestic water to any Lot. Each Owner is required to provide such domestic water by the drilling and installation of a domestic water well on the Owner's Lot. Each such domestic water well shall be located a minimum

distance of one hundred feet from the private sewage disposal facilities installed on such Lot by the Owner and shall otherwise comply with all requirements, standards and regulations of the government authorities having jurisdiction thereof. In the event that a community or city water system is installed to serve the Property, residences constructed after such installation and operation of the system shall be required to connect to such system.

9.19 Sewage Disposal Systems. All sewage disposal for each Lot shall be in a private sub-surface sewage disposal system consisting of a septic tank and drainage field which shall be designed, constructed and installed on each Lot in accordance with the requirements, standards and regulations of the government authorities having jurisdiction thereof. Grantor shall have no obligation for the construction or approval of any sewage disposal system or the connection thereof. Drainage from a septic tank located on a Lot shall be kept within the boundaries of the Lot on which it is located. All septic systems shall be pressurized and shall be pumped and maintained according to all specifications, requirements and regulations of the government authorities having jurisdiction thereof.

9.20 Water Rights Appurtenant to Subdivision Lands. Grantor may own certain water rights which are appurtenant to the Property and which may be utilized in the dual irrigation system which will supply non-potable irrigation water to the Property. Grantor hereby reserves unto itself any and all water rights appurtenant to the Property, and accordingly, Owners of any and all Lots shall have no right, title or interest in any of said water or water rights.

9.21 Energy Devices, Outside. No energy production devices, including, without limitation, generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Design Committee, except for mechanical equipment shown in the plans approved by the Design Committee. This Section 10.17 shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

9.22 Signs. No signs of any kind, including, without limitation, "for sale" and "open house" signs, shall be displayed on or from any portion of the Property except those signs approved by the Design Committee, or signs of Grantor or its representatives, agents, employees or assigns, or signs required by law.

9.23 Antennae. All exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be screened by a fence, landscaping or similar structures in accordance with the Design Guidelines, or as otherwise required to ensure the safety of the residents of the Property, except that screening shall not be required where it would unreasonably delay installation or unreasonably increase the cost of installation, maintenance or use of the antennae, or preclude the reception of an acceptable quality signal. No antennae may be installed until after an Owner has received Design Committee approval for construction of residential Improvements on the Owner's Lot.

9.24 No Further Subdivision. No Lot may be further subdivided unless expressly approved in writing by Grantor, so long as Grantor owns a Lot in the Property, and the Board of the Association. Any such further subdivision shall be consistent with all applicable city, county and state laws, rules, regulations and ordinances.

9.25 Leasing. The Owner of a Lot shall have the right to lease such Lot and residential dwelling thereon, subject to the following conditions: 1) all leases shall be in writing and a copy shall be provided to the Association; 2) the lease shall be specifically subject to the Project Documents, and any failure of a tenant to comply with the Project Documents shall be a default under the Lease; and 3) the Owner shall be liable for any violation of the Project Documents committed by the tenants of the Owner, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant. In all events, a tenant shall not be considered a Member or otherwise eligible to vote in the Association.

9.26 Grantor's Right of Development. Nothing contained in this Master Declaration shall limit the right of Grantor to grant licenses, to reserve rights-of-ways and easements for utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property or Elk Crossing. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Lot by a purchaser to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others as may from time to time be reasonably necessary for the proper development and disposal of the Property. Grantor may use any structures owned or controlled by Grantor on the Property as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Association, Local Association or Design Committee approval of any Improvement constructed or placed by Grantor, or its affiliated entities, on any portion of the Property. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property, by an express written assignment recorded in the Adams County Recorder's Office.

Grantor, in Grantor's discretion and in accordance with all applicable zoning laws, may amend and modify the Development Plan. By acceptance of a deed to any portion of the Property, each Owner of such Lot thereby acknowledges and agrees the Development Plan for the Property may be amended, modified or changed in Grantor's discretion, so long as the Development Plan is consistent with the zoning laws. Each Owner by acceptance of a deed to any Lot or other portion of the Property agrees that such Owner shall not object to or oppose any development of any portion of the Property, Elk Crossing or other property owned by Grantor and annexed to the Property. Such agreement not to oppose development is a material consideration to the conveyance of any portion of the Property by Grantor to any and all Owners.

No provision of this Master Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property or Elk Crossing, including any subdivision or resubdivision of the Property or Elk Crossing, or to construct Improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property or Elk Crossing, including the Common Area, Restricted Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing.

9.27 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances and other governmental or quasi-governmental regulations with respect to all or any portion of the Property, including, without limitation, any and all portions of the Property subject to regulation by the U.S. Army Corps of Engineers as wetlands areas.

ARTICLE 10. EASEMENTS

10.1 Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the Restrictions set forth in this Master Declaration, as supplemented and amended from time to time.

10.2 Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment in the Common Area, to such Owner's tenants, employees, family, guests or invitees.

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

10.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area or Restricted Area adjacent thereto, or as between adjacent Lots, due to the unwillful placement or settling or shifting of the Improvements including, without limitation, structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Master Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments within and over adjoining Lots that existed prior to the destruction may be reconstructed pursuant to the easement granted by this Section 10.4.

10.5 Maintenance and Use Easement Between Walls and Property. Whenever a fence or other structure constructed on a Lot pursuant to the Design Committee's approval is located within three (3) feet of the property line of such Lot, the Owner of such Lot is hereby granted an easement over and on the adjoining Lot (not to exceed three (3) feet from the property line of the Lot) for purposes of maintaining, repairing or replacing such fence or other structure, and the Owner of such adjoining Lot is hereby granted an easement for landscaping purposes over and on the area lying between the property line and such structure or fence so long as such use does not cause damage to the structure or fence.

10.6 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of 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, Common Areas and Restricted Areas resulting from the normal use of adjoining

Lots, Common Areas or Restricted Areas, and for necessary maintenance and repair of any Improvement including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot or Common Area.

10.7 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Master Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property or Elk Crossing. In addition, Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property or Elk Crossing, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property or Elk Crossing until close of escrow for the sale of the last Lot in the Property or Elk Crossing, whichever occurs later.

The Owners of Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage or utility easement areas as shown on the Plat(s) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose; provided, however that any Owner, Association, designated Person or the Grantor having an interest in the landscaping easement described in this Article 10, shall be entitled to install and maintain landscaping on such easement areas, subject to approval by the Design Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided further, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Lot where Improvements were so damaged, or in the event the easement area where Improvements were so damaged is located in a Common Area or Restricted Area, the Association shall be responsible for the damage sustained and may impose a Special or Limited Assessment therefore.

10.8 Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Lots within the Property with respect to utilities shall be governed by the following:

10.8.1 Access for Single Owners. Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary; and

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

10.9 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair, replacement or maintenance of any Improvement or utility connections, or with respect to the sharing of the cost therefor, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of the Association which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Master Declaration for Limited Assessments.

10.10 General Landscape Easement. An easement is hereby reserved to the Association, its contractors, employees, and agents, to enter those portions of Lots, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time.

10.11 Grantor's Rights Incident to Construction. Grantor, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Grantor; provided, however, that no such rights shall be exercised by Grantor in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or such Owner's family, tenants, employees, guests, or invitees.

10.12 Easements Deemed Created. All conveyances of Lots made after the date of the recording of the Master Declaration, as amended and supplemented from time to time whether by Grantor or otherwise, shall be construed to grant and reserve the easements contained in this Article 10, even though no specific reference to such easements or to this Article 10 appears in the instrument for such conveyance.

10.13 Waterway Easements. Grantor hereby reserves an easement for all Waterways and related pipes, pumps and other equipment over, across, under and through all Lots, Common Areas, and Restricted Areas to the extent reasonably required to maintain any Waterway system installed by Grantor on the Property, or pursuant to plans and specifications approved by the Design Committee. The Association shall have the right, but not the obligation, to maintain all Waterways to be maintained by a governmental or quasi-governmental authority, and to bill the applicable governmental or quasi-governmental authority for all such maintenance conducted by the Association. Any relocation of the water lines installed as a part of such system shall not be undertaken in any way which interrupts the flow of water through the system or damages the system in any other fashion. Grantor reserves the right to make any reconfiguration of any Waterway which it determines, in its discretion, to be necessary, expedient or desirable; provided, however, that nothing herein shall reserve unto Grantor the right to take any action which would disturb, encroach upon or endanger the foundation of any building, nor shall Grantor take any action which would materially alter any Waterway's proximity to improved property abutting such Waterway. Under no circumstances whatsoever shall the Waterways be used by any Owner, Member, tenants, invitees, and/or guests for recreational purposes including, without limitation, wading and/or swimming.

10.14 Reservation for Expansion. Grantor hereby reserves to itself and for the Owners a perpetual easement and right-of-way for access over, upon, across and through the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way must be approved and may be documented by Grantor by recorded instruments.

10.15 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

10.16 Maintenance Easement. An easement is hereby reserved to Grantor, which may be granted to any or all Associations, and any member of their board or manager, if any, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Lots and a right to make such use of the Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Project Documents, including without limitation (a) the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot as required by the Project Documents; and (b) the right to enter upon any Lot for the purpose of removing excess brush and small trees for fire mitigation. Fire mitigation will only occur when and if and as required by appropriate public authorities. Grantor shall have the power but will be under no additional obligation by virtue of this Master Declaration to go upon property that has been deeded to other persons to engage in fire mitigation.

ARTICLE 11. INSPECTION OF THE ASSOCIATION'S BOOKS AND RECORDS

11.1 Member'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 Member of the Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board of the Association shall prescribe. No Member or any other Person, excluding Grantor, shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of the Association.

11.2 Rules Regarding Inspection of Books and Records. The Board of the Association shall establish reasonable rules with respect to (1) notice to be given to the custodians of the records by the Persons desiring to make the inspection; (2) hours and days of the week when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents requested pursuant to this Article 12.

11.3 Director's Rights of Inspection. Every director of the Board of the Association shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE 12. MISCELLANEOUS

12.1 Annexation of Other Properties.

12.1.1 Right of Grantor to Annex Other Properties. Grantor and the Association may, in their discretion, at any time and from time to time and without having to obtain the consent, approval or signature of any Person or Association (other than the title holder of such additional real property), elect to bring additional real property (whether or not owned by it) within the jurisdiction of this Master Declaration (the "Annexed Property"); provided, however, that the addition of any Annexed Property must be consistent with the general purposes and intent of the Project Documents. Grantor is not obligated in any manner by this Master Declaration to annex additional real property to the Property or to annex any particular tract, or to annex tracts in any particular sequence, or to annex continuous tracts, it being the intention hereof that Grantor or the Association may decline to exercise the rights granted in this Article or may elect to exercise such rights only to a limited extent. No real property shall become Annexed Property to be included within the jurisdiction of this Master Declaration without the prior express written consent and approval of Grantor and/or the Association, whichever is appropriate under the circumstances. Notwithstanding the above, prior to the termination of the Class B Member, the decision to annex additional property shall be made solely by Grantor in Grantor's discretion.

12.1.2 Supplemental Declaration. The additions authorized by the provisions of this Article shall be made by recording in the Adams County Recorder's office a Supplemental Declaration with respect to any Annexed Property, which shall extend the jurisdiction of this Master Declaration to the property to be so annexed and shall be executed by the fee title holder(s) of such Annexed Property, as well as by Grantor or (subsequent to the termination of the Class B Member) the Association. In addition, each Supplemental Declaration shall contain such Restrictions as are not inconsistent with the intent and purpose of this Master Declaration. Upon recording any Supplemental Declaration, the provisions of this Master Declaration (except as modified, altered, limited or supplemented in the Supplemental Declaration) shall apply to such Annexed Property as if such Annexed Property had been part of the Property upon the effective date of this Master Declaration.

12.2 Removal of Properties; Right of Grantor to Remove Properties. Grantor may, in its discretion, at any time and from time to time, and without having to obtain the consent, approval or signature of any Person or Association, elect to remove any portion of the Property subject to the terms of this Master Declaration owned by Declarant from the potential jurisdiction of this Master Declaration (hereinafter "De-Annexed Property"); provided however, that the removal of any De-Annexed Property must be consistent with the general purposes and intent of the Project Documents. Such Property shall be considered De-Annexed Property upon a notice duly recorded in the real property records of Adams County, Idaho, stating that such De-Annexed Property has been removed from the jurisdiction of this Master Declaration.

12.3 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Master Declaration shall run until December 31,

2050, unless amended as herein provided. After December 31, 2050, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Members holding at least a majority of the voting power of the Association and such written instrument is recorded with the Adams County Recorder's Office.

12.4 Amendment.

12.4.1 By Grantor. Except as provided in Section 12.5, until the recordation of the first deed to a Lot, the provisions of this Master Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively "amendment") by Grantor by recordation of a written instrument setting forth such amendment. In addition, Grantor, regardless of whether it has conveyed any Lot(s) to an Owner, shall have the exclusive right, power and authority to amend this Master Declaration, any Supplemental Declaration or any of the Project Documents, at any time and at its discretion, to comply with any and all requirements and conditions of the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Housing Administration ("FHA"), the Veterans Administration ("VA") and the Federal Home Loan Mortgage Corporation ("FHLMC").

12.4.2 By Owners. Except as provided in Sections 12.4.1 and 12.4.3, after the recordation of the first deed to a Lot, any amendment to any provision of this Master Declaration, other than to this Article 12, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Members representing more than fifty one percent (51%) of the total voting power in the Association as cast by the Members, except where a greater percentage is required by express provision in this Master Declaration, and such amendment shall be effective upon its recordation with the Adams County Recorder's Office. Any amendment to this Article 12 shall require the vote or written consent of Members holding ninety-five percent (95%) of the voting power of the Association.

12.4.3 Effect of Amendment. Any amendment of this Master Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

12.5 Mortgage Protection. Notwithstanding any other provision of this Master Declaration, no amendment of this Master Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first Mortgage upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first Mortgage, such Lot shall remain subject to this Master Declaration, as amended. In order to induce the FHLMC, GNMA, FHA, VA and FNMA to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent those added provisions, pertaining to the rights of mortgagees, FHLMC, FNMA, GNMA,

VA and FHA, conflict with any other provisions of this Declaration or any other of these Covenants and Restrictions, these added restrictions shall control):

(a) Each first Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the Project Documents, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Every Owner, including every first mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot, pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

(c) Each holder of a first Mortgage who comes into possession of the Lot by virtue of foreclosure of the Mortgage or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take title to such Lot free of any claims for unpaid assessments and charges against the Lot, which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgaged Lot.

(d) Unless all of the first mortgagees have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Improvements thereon which are owned, directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association, or the transfer of the Common Area or Improvements to an unincorporated association of the Owners in accordance with the Articles of Incorporation of the Association, shall not be deemed a transfer within the meaning of this clause);

(2) change the ratio of Assessments or method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner, or the method of allocating distributions or hazard insurance proceeds or condemnation awards;

(e) Unless otherwise specified below, at least fifty-one percent (51%) of the first mortgagees (based upon one vote for each Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units on the Lots, the exterior maintenance of the dwelling units on the Lots or the upkeep of the lawns and planting on the Properties;

(2) fail to maintain Fire and Extended Coverage on insurable Common Area 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); or

(3) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction or such Improvements;

(4) abandon or terminate the covenants, conditions, and restrictions of this Declaration or any Supplement to this Declaration, or terminate the legal status of the project after substantial destruction or condemnation has occurred (termination of the project for reasons other than substantial destruction or condemnation requires a sixty-seven percent (67%) vote of first mortgagees);

(5) make any material amendment to the Project Documents (material amendment herein shall mean those amendments classified as material in the FNMA Project Standards applicable to the Property);

(f) First mortgagees, upon written request, shall have the right to (1) examine the Project Documents and books and records of the Association during normal business hours, (2) require from the Association audited annual financial reports and other financial data be available no later than 120 days from the Association's fiscal year-end, (3) receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend all such meetings.

(g) First mortgagees shall be given immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Area or any Lot whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notices or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

(h) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies, for such property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(i) The Board may contract for professional management of the Properties with a bondable professional manager. The agreement between the Association and its agent for such professional management shall provide that the management contract may be terminated for cause on not more than thirty (30) days' written notice, and the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

(j) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including but not limited to, employees of the professional manager.

(k) Any agreement for the leasing or rental of a Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Project Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the agreement.

(l) All taxes on the Common Areas must be assessable against those Common Areas only and the Association owning such Common Areas are solely responsible for payment of such taxes.

(m) Any provision in this Master Declaration which requires Owners to indemnify the Association, other Owners, or the Board of the Association against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance, the indemnitor is relieved of liability to the extent of insurance coverage.

(n) Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FNMA and/or GNMA, so long as either is a mortgagee or owner of a Lot within the project, except to the extent such coverage is not available or has been waived in writing by FNMA and/or GNMA.

(o) As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration, provided either of them is a mortgagee or owner of a Lot within the project:

- (1) Annexation of additional properties;
- (2) Dedication of Common Area;
- (3) Amendment of this Declaration.

In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Lots with dwelling units thereon. Each Owner hereby agrees that it will benefit all Associations and the membership of the Associations, as a class of potential Mortgage borrowers and potential sellers of their residential Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Each mortgagee is hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering such mortgagee's Lot.

12.6 Notices. Any notices permitted or required to be delivered as provided in this Master Declaration shall be in writing and may be delivered either personally, by fax or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, first class, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of

service of such notice, or to the residence of such Person if no address has been given to the Association or to the address of such Person as contained in the Adams County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Association.

12.7 Enforcement and Non-Waiver.

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

12.7.2 Violations and Nuisances. The failure of any Owner of a Lot to comply with any provision hereof, or with any provision of the Project Documents, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both.

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

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

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

12.8 Use of Trademark. Each Owner by acceptance of a deed for such Owner's Lot shall be deemed to acknowledge that "Elk Crossing" is a service mark and trademark of Grantor or its licensees, and to covenant that such Owner shall not use the terms "Elk Crossing" without the prior written permission of Grantor or its licensees.

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

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

12.9.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Subsection 12.9.1, each of the provisions of this Master Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

12.9.3 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.

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

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

[end of text]

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

Legal Description of Property

LEGAL DESCRIPTION (SUBDIVISION BOUNDARY) * * * * *

A TRACT OF LAND LOCATED IN A PORTION OF THE NW 1/4 SW 1/4 OF SECTION 5, AND IN PORTIONS OF THE SE 1/4, E 1/2 SW 1/4, SW 1/4 NE 1/4 AND SE 1/4 NW 1/4 OF SECTION 6, T.16 N., R.1 W., BOISE MERIDIAN, ADAMS COUNTY, IDAHO; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE 1/4 CORNER COMMON TO SECTIONS 6 AND 7, T.16 N., R.1 W., BOISE MERIDIAN, ADAMS COUNTY, IDAHO; THENCE S 89°48'00"W, 1363.13 FEET ALONG THE LINE COMMON TO SECTIONS 6 AND 7 TO THE SOUTHWEST CORNER OF THE E 1/2 SW 1/4 OF SECTION 6; THENCE N 00°30'26"W, 2630.92 FEET ALONG THE WEST LINE OF THE E 1/2 SW 1/4 OF SECTION 6 TO THE NORTHWEST CORNER OF THE E 1/2 SW 1/4 OF SECTION 6; THENCE N 25°10'00"E, 925.90 FEET; THENCE N 78°30'00"E, 838.98 FEET; THENCE N 83°50'15"E, 282.36 FEET; THENCE S 41°25'00"E, 740.47 FEET; THENCE S 19°20'00"E, 1749.10 FEET; THENCE N 61°45'00"E, 130.05 FEET; THENCE N 04°55'00"E, 118.98 FEET; THENCE ALONG A 1958.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 210.74 FEET (CHORD N 01°50'00"E, 210.64 FEET) TO A POINT ON A COMPOUND CURVE WITH CENTER BEING S 88°45'00"W, 208.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG SAID COMPOUND CURVE, AN ARC DISTANCE OF 186.96 FEET (CHORD N 27°00'00"W, 180.73 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING N 37°15'00"E, 192.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG SAID REVERSE CURVE, AN ARC DISTANCE OF 639.77 FEET (CHORD N 42°42'30"E, 382.26 FEET); THENCE S 41°50'00"E, 112.97 FEET; THENCE ALONG A 408.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 342.90 FEET (CHORD S 65°54'37"E, 332.90 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING S 00°00'45"W, 1942.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 465.62 FEET (CHORD S 83°07'07"E, 464.50 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING N 13°45'00"E, 158.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 157.18 FEET (CHORD N 75°15'00"E, 150.78 FEET); THENCE N 46°45'00"E, 234.20 FEET; THENCE ALONG A 242.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 62.74 FEET (CHORD N 54°10'39"E, 62.57 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING N 28°23'43"W, 18.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 25.89 FEET (CHORD N 20°24'11"E, 23.71 FEET); THENCE N 69°12'04"E, 12.00 FEET TO THE WESTERLY RIGHT-OF-WAY LIMIT OF OLD HORNET ROAD AND A POINT ON A NONTANGENT CURVE WITH CENTER BEING N 69°12'04"E, 3025.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG SAID NONTANGENT CURVE, AN ARC DISTANCE OF 70.46 FEET (CHORD S 21°27'58"E, 70.46 FEET); THENCE S 22°08'00"E, 50.33 FEET ALONG THE WESTERLY RIGHT-OF-WAY LIMIT OF OLD HORNET ROAD; THENCE S 67°47'08"W, 12.00 FEET TO A POINT ON A NONTANGENT CURVE WITH CENTER BEING S 67°47'08"W, 18.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG SAID NONTANGENT CURVE, AN ARC DISTANCE OF 32.03 FEET (CHORD N 73°11'26"W, 27.97 FEET) TO A POINT ON A COMPOUND CURVE WITH CENTER BEING S 34°10'00"E, 158.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG SAID COMPOUND CURVE, AN ARC DISTANCE OF 25.05 FEET (CHORD S 51°17'30"W, 25.02 FEET); THENCE S 46°45'00"W, 234.20 FEET; THENCE ALONG A 242.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 240.75 FEET (CHORD S 75°15'00"W, 230.94 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING S 13°45'00"W, 1858.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 445.48 FEET (CHORD N 83°07'07"W, 444.41 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING N 00°00'45"E, 492.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 413.50 FEET (CHORD N 65°54'37"W, 401.44 FEET); THENCE N 41°50'00"W, 112.97 FEET; THENCE ALONG A 108.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 359.87 FEET (CHORD S 42°42'30"W, 215.02 FEET) TO A POINT ON A REVERSE CURVE WITH CENTER BEING S 37°15'00"W, 292.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG LAST SAID REVERSE CURVE, AN ARC DISTANCE OF 262.46 FEET (CHORD S 27°00'00"E, 253.72 FEET) TO A POINT ON A COMPOUND CURVE WITH CENTER BEING S 88°45'00"W, 2042.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG LAST SAID COMPOUND CURVE, AN ARC DISTANCE OF 219.78 FEET (CHORD S 01°50'00"W, 219.67 FEET); THENCE S 04°55'00"W, 366.43 FEET; THENCE N 76°06'00"E, 524.92 FEET; THENCE S 16°38'00"E, 901.28 FEET TO A POINT ON THE NORTHERLY LIMIT OF THAT TRACT ON RECORD OF SURVEY INSTRUMENT NO. 104388; THENCE S 76°04'58"W, 2187.91 FEET ALONG THE NORTHERLY LIMIT OF THAT TRACT ON RECORD OF SURVEY INSTRUMENT NO. 104388 TO THE POINT OF BEGINNING; CONTAINING 205.105 ACRES, MORE OR LESS; BEING SURVEYED AND MONUMENTED ACCORDING TO THIS PLAT; SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD AND/OR APPARENT.

LEGAL DESCRIPTION (TEMPORARY EMERGENCY ACCESS EASEMENT) * * * * *
A STRIP OF LAND 60 FEET IN WIDTH, LOCATED IN PORTIONS OF THE NE 1/4 AND E 1/2 NW 1/4 OF
SECTION 6, T.16 N., R.1 W., BOISE MERIDIAN, ADAMS COUNTY, IDAHO; SAID STRIP BEING 30 FEET EACH
SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE 1/4 CORNER COMMON TO SECTIONS 5 AND 6, T.16 N., R.1 W., BOISE MERIDIAN, ADAMS
COUNTY, IDAHO; THENCE N 20°10'30"W, 1329.84 FEET TO A POINT ON THE CENTERLINE OF OLD HORNET ROAD
AND THE POINT OF BEGINNING OF THIS EASEMENT; THENCE N 89°10'00"W, 1235.75 FEET; THENCE ALONG A 1000.00
FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 228.35 FEET (CHORD N 82°37'30"W, 227.85 FEET);
THENCE N 76°05'00"W, 79.96 FEET; THENCE ALONG A 500.0 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE
OF 313.43 FEET (CHORD S 85°57'30"W, 308.33 FEET); THENCE S 68°00'00"W, 37.85 FEET; THENCE ALONG A 200.00
FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 43.34 FEET (CHORD S 74°12'30"W, 43.26 FEET); THENCE
S 80°25'00"W, 108.73 FEET; THENCE ALONG A 300.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF
38.83 FEET (CHORD S 76°42'30"W, 38.81 FEET); THENCE S 73°00'00"W, 81.32 FEET; THENCE ALONG A 125.00 FOOT
RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 91.08 FEET (CHORD N 86°07'30"W, 89.08 FEET); THENCE
N 65°15'00"W, 24.74 FEET; THENCE ALONG A 300.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 55.41
FEET (CHORD N 70°32'30"W, 55.34 FEET); THENCE N 75°50'00"W, 53.55 FEET; THENCE ALONG A 1100.00 FOOT RADIUS
CURVE TO THE LEFT, AN ARC DISTANCE 217.58 FEET (CHORD N 81°30'00"W, 217.23 FEET) TO A POINT ON A COMPOUND
CURVE WITH CENTER BEING S 02°50'00"W, 200.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG SAID
COMPOUND CURVE, AN ARC DISTANCE OF 49.16 FEET (CHORD S 85°47'30"W, 49.04 FEET) TO A POINT ON A REVERSE
CURVE WITH CENTER BEING N 11°15'00"W, 200.00 FEET RADIAL DISTANCE; THENCE CLOCKWISE ALONG LAST SAID REVERSE
CURVE, AN ARC DISTANCE OF 70.10 FEET (CHORD S 88°47'30"W, 69.75 FEET); THENCE N 81°10'00"W, 86.23 FEET;
THENCE ALONG A 140.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 84.30 FEET (CHORD N 63°55'00"W,
83.03 FEET); THENCE N 46°40'00"W, 14.14 FEET; THENCE ALONG A 175.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC
DISTANCE OF 94.94 FEET (CHORD N 62°12'30"W, 93.78 FEET) TO A POINT ON A COMPOUND CURVE WITH CENTER BEING
S 12°15'00"W, 370.00 FEET RADIAL DISTANCE; THENCE COUNTERCLOCKWISE ALONG LAST SAID COMPOUND CURVE, AN ARC
DISTANCE OF 110.32 FEET (CHORD N 86°17'30"W, 109.91 FEET); THENCE S 85°10'00"W, 70.33 FEET; THENCE ALONG A
25.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 40.80 FEET (CHORD S 38°25'00"W, 36.42 FEET); THENCE
S 08°20'00"E, 80.71 FEET; THENCE ALONG A 200.00 FOOT RADIUS CURVE TO THE LEFT, AN ARC DISTANCE OF 95.99 FEET
(CHORD S 22°05'00"E, 95.07 FEET); THENCE S 35°50'00"E, 49.23 FEET; THENCE ALONG A 70.00 FOOT RADIUS CURVE TO
THE LEFT, AN ARC DISTANCE OF 91.32 FEET (CHORD S 73°12'30"E, 84.98 FEET); THENCE N 69°25'00"E, 53.08 FEET;
THENCE ALONG A 250.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 77.81 FEET (CHORD N 78°20'00"E,
77.50 FEET); THENCE N 87°15'00"E, 67.03 FEET; THENCE ALONG A 400.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC
DISTANCE OF 123.92 FEET (CHORD S 83°52'30"E, 123.42 FEET); THENCE S 75°00'00"E, 111.69 FEET; THENCE ALONG A
600.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 190.24 FEET (CHORD S 65°55'00"E, 189.45 FEET);
THENCE S 56°50'00"E, 111.45 FEET TO THE NORTH LINE OF ELK CROSSING AND THE TERMINUS OF THIS EASEMENT.