

MAPLE CREEK RANCHES, PHASE 1 SUBDIVISION ~ FRANKLIN COUNTY,  
IDAHO

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF MAPLE  
CREEK RANCHES SUBDIVISION

This Declaration of Covenants, Conditions, and Restriction regulating and controlling the use and development of certain real property as hereinafter described, see Article I paragraph 9, is made to be effective as of the 31<sup>st</sup> day of July, 2004 ("Declaration"), by Silcock Ward Properties, LLC, hereinafter referred to as "Declarant," and Owner, or beneficial owner of Lots 1 through 16, of Maple Creek Subdivision ("the Subdivision") in accordance with the plat to be filed for record in the Office of the Franklin County Clerk in Franklin County, Idaho, ("the Plat"), which shall hereinafter be referred to as the "Property." The Property, prior to the Declarant's acquisition, had been owned by the W. Dean Gibson family lineage and operated as a working ranch since 1860. It is of high scenic and natural value, and in an effort to maintain its beauty and agricultural utility, while creating a residential setting of the highest quality, desirability, and attractiveness, the Declarant is adopting the following Covenants, Conditions, and Restrictions to preserve and maintain the natural character and value of the Property for the benefit of all Owners of the Property or any part thereof.

NOW, THEREFORE, Declarant hereby declares that all of the Property described shall be owned, held, sold, conveyed, encumbered, leased, used, occupied, and developed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner of any part thereof.

ARTICLE I - DEFINITIONS

- 1. "Association" shall mean and refer to the Maple Creek Ranches Property Owners Association and its successors and assigns.

Recorded at the request of  
Guy E. Arnell

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2. "Board" shall mean the Board of Directors of the Association established to administer and enforce the terms and conditions of this Declaration set forth herein.
3. "Common Areas" shall mean the private roadways within the Property which provide access to individual Lot lines from Franklin County Maple Creek Road, the equestrian and walking trails and the open space areas, as such, all as designated on the Plat, and any and all improvements associated with any surface irrigation water system including without limitation faucets, valves, etc. and water distribution pipelines. It is anticipated that future Phases of the Subdivision may contain additional common areas to include equestrian riding areas, picnic areas and other similar facilities.
4. "Common Services" shall mean the maintenance and any snow removal services for the Common Areas, utility line maintenance and repair services, if any, for utility lines located in the rights-of-way of such roads, and maintenance of any water system.
5. "Declarant" shall mean and refer to Silcock Ward Properties, LLC.
6. "Lot" shall mean and refer to any of the single-family residential plots of land described above and shown upon that certain recorded subdivision plat of the Property filed by the Declarant in the Office of Franklin County Clerk.
7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract buyers and Owners of a beneficial interest, but excluding those having such interest merely as security for the performance of an obligation.
8. "Principal Residence" shall mean the single-family residential Structure, constructed on any Lot of the Property, which is the principal use of such Lot, and to which the other authorized Structures on such Lot are accessory.

9. "Property" shall mean and refer to that certain real property known as the Maple Creek Ranches Subdivision, Phase 1, in accordance with the plat which is filed for record in the Office of the Franklin County Clerk in Franklin County, Idaho as Plat No. 227134, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.
10. "Structure" shall mean anything built or placed on the ground, excluding fences.

#### ARTICLE II - PROPERTY RIGHTS

1. Owners' Easements of Enjoyment. Every Owner shall have the right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provision:
  - a. The right of the Association to charge reasonable assessments, charges and user fees for the use and maintenance of the Common Areas as hereinafter set forth.
  - b. The right of the Association to establish rules and regulations, including speed limits, for the use of Common Areas and to impose reasonable sanctions for the violations of the published rules and regulations.
  - c. The right of Declarant and their heirs, successors, assigns, and invitees to use of the Common Areas is perpetuity.
2. Delegation of the Association of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to Common Areas only to the members of his family, his tenants, or contact purchasers who reside on the Property.

#### ARTICLE III - ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

1. Association Membership. Declarant shall have all of the rights, powers, and authority of the Association until the Lot Owners have formally established the Association, either as a corporation, unincorporated association, or other legal entity of their choosing. The Lot Owners shall establish the Association when 15 of the Lots have been sold by Declarant.  Every Owner of a Lot shall be a member of the Association. For purposes of voting and

meetings of the members there shall be one vote for each Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

2. Management of Association and Property. The management and maintenance of the Property and the business, Property and affairs of the Association shall be managed by a Board of Directors as provided in the Declaration, its organizational documents and bylaws ("governing documents"). All agreements and determinations with respect to the Property lawfully made or entered into by the Board.
3. Board of Directors of the Association. The Board of Directors (the "Board") of the Association shall consist of three (3) members, or such additional number as may be approved by the members in accordance with its governing documents. The term of a member shall be three (3) years, except that the terms of the members of the initial Board shall be one, two, and three years. Thereafter, all members shall serve for a term of three (3) years. The Board shall be elected by a majority vote of the members of the Association. All Board members shall be an owner or an office, partner, shareholder, or member of an owner. Until 15 of the Lots have been sold and title transferred to new Owners, the Declarant reserves the right to appoint and remove all members of the Board and to exercise the powers and responsibilities otherwise assigned by this Declaration to the Association. By express written declaration, Declarant shall have the options, at any time, to turn over the Association the total responsibility for electing and removing members of the Board.
4. Authority and Duties. The duties and obligations of the Board and rules governing the conduct of the Association shall be set forth in the governing documents as they may be amended from time to time.
5. Limited Liability of Board of Directors, etc. Members of the Board and their officers, assistant officers, agents, and employees acting in good faith on behalf of the Association:

- a. shall not be liable to the Owners as a result of their activities as such for any mistakes of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;
- b. shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- c. shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;
- d. shall have no personal liability arising out of the use, misuse, or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

#### ARTICLE IV – COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, except unsold Lots owned by Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these covenants and agrees to pay the Association:
  - a. Annual assessment of charges; and
  - b. User fees or charges; and
  - c. Water system connection fees; and
  - d. Special assessments for capital improvements, such as assessments to be established and collected as hereinafter provided.

A general continuing lien is hereby imposed on each Lot in the Subdivision for the payment of annual and special assessments imposed on Lots according to this Declaration. In connection with the general lien, all such assessments together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the entity or person who was the Owner of such Property at the time when the assessment fell due.

In addition, for the collection of delinquent user fees or charges, the Board may by resolution enact such policies and procedures or rules and regulations as it deems appropriate including

without limitation imposition of service charges, collection of attorney fees or other costs of collection, disconnecting or otherwise terminating services, or the filing of a lien against the Lot for the amount due.

2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the Common Areas, to include road, trail and open space maintenance, maintenance of any water system, Association employees' wages, mailing costs, and other related expenses incurred on behalf of the Association.
3. **Annual Budget.** The Board shall prepare an annual budget estimate for Common Services and administration of the Association and fix the amount of the annual assessment based on its estimate. Such annual budget shall be prepared and approved by the Board at least thirty (30) days in advance of each annual assessment period.
4. **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement, or a capital improvement including the Common Areas and shared access road, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least seventy-five percent (75%) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
5. **Notice and Quorum for Any Action Authorized under Sections 3 and 4.** Written notices of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days following the preceding meeting. At the first such meeting called, the presence of members or of proxies entitles to cast 60 percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum

at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6. **Uniform Rate of Assessment.** Except for lots owned by the Developer, both the annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or other periodic basis as determined by the Board. Lots owned by the Declarant shall not be assessed or required to pay assessments of any kind.
7. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots subject to assessment on the first day of the month following conveyance of the first Lot. The first annual assessment for the Lots purchased thereafter shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.
8. **Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property in the same manner as real estate mortgages with power of sales are foreclosed in Idaho pursuant to Idaho Statute 6-101 et seq., and successor or replacement statutes thereto. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Areas or abandonment of his Lot.
9. **Priority of the Assessment Lien.** Sale or transfer of any Lot or the recording of any mortgage or other lien against any Lot shall not affect the priority of the assessment lien.

## ARTICLE V – ARCHITECTURAL STANDARDS

1. Architectural/site Committee: Organization. There shall be an Architectural/site Committee consisting of the Board as soon as the Board has been organized and is operating.
2. Initial Architectural/site Committee. The initial Architectural/site Committee shall be Robert D. Silcock, Stephen A. Ward, and Guy E. Arnell.
3. Architectural/site Committee duties. No Lot Owners shall construct any Structure on a Lot without prior approval of all plans for such construction by the Architectural/site Committee. It shall be the duty of the Architectural/site Committee to consider and act upon such proposals for the plans submitted to it from time to time, to adopt Architectural/site Committee rules pursuant to Section 5 of this Article, and to perform such other duties from time to time delegated to it by the Association.
4. Architectural/site Committee: Meetings: Action: Expenses. Architectural/site Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of its members shall constitute an act by the Architectural/site Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Architectural/site Committee shall keep and maintain a record of all action from time to time taken by the Architectural/site Committee at such meetings or otherwise. Unless authorized by the Association, the members of the Architectural/site Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural/site Committee function.
5. Architectural/site Committee Rules. Architectural/site Committee may, from time to time, and in its sole discretion, adopt, amend, and repeal by unanimous vote, rules and regulations, to be known as "Architectural/site Committee Rules." A copy of the Architectural/site Committee rules, as they may from time to time be adopted, amended



or repealed, and certified by any member of the Architectural/site Committee, shall have the same force and effect as if they were part of the Declaration. The Architectural/site Committee may record the same if deemed necessary.

6. Non-Waiver. The approval by the Architectural/site Committee of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Architectural/site Committee under the Covenants, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval.
7. Liability. Neither the Architectural/site Committee nor any member thereof shall be liable to the Association or to any Owner or project committee for any damage, loss, or prejudice suffered or claimed on account of (a) the approval of any plans, drawings, specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development or manner of development, of any property within the Property, or (d) the execution and filing of a certificate pursuant to Section 7 above, of this Article, whether or not the facts therein are correct; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Architectural/site Committee, or any member thereof, may, but is not required to, consult with or hear the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural/site Committee.

#### ARTICLE VI – DESIGN STANDARDS

1. General Standards. The following standards and restrictions are applicable to the construction, remodeling, alteration, and exterior refinishing of any and all Structures and improvements and site preparation upon each Lot.

2. **Uniform Codes.** All structures or improvements shall be erected in accordance with the current edition of the following uniform codes;
  - a. Uniform Building Code;
  - b. International Conference of Building Officials;
  - c. National Plumbing Code;
  - d. National Electric Code; and
  - e. National Fire Protective Association International
  
3. **Design Character.** All buildings shall be constructed in character with each other specifically by using complementary exterior roofing, building material, and coloring on each building on the properties. All buildings will be painted or faced in colors that blend into the natural environment and landscape of the area.
  - a. Exterior materials will be of brick, natural wood, stucco, stone, or similar textured natural material. No aluminum siding, metal siding, or cinder blocks shall be used as exterior material. Vinyl siding may be used as an accent material only and may not comprise more than 30% of the exterior elevation. Roof materials shall be of asphalt, cedar shake, or slate shingle. While not encouraged, metal roofs consisting of natural, subdued earth tones shall be acceptable. No metal roofs of bright, reflective tones or colors will be allowed.
  - b. All buildings must comply with either the current editions of the Uniform Building Code, the National Plumbing Code, and the National Electrical Code, or, if applicable, State of Idaho, and/or Franklin County Building and Safety Codes.
  - c. Exterior colors shall be earth tones or such other colors as are approved by the Architectural/site Committee.
  
4. **Building Design.** The design of all buildings is subject to the following:
  - a. No Structure or improvements shall be constructed on the properties other than one (1) single-family dwelling to be occupied by the owner, his lessee, guests and servants, garage(s), a guest house for the use of guests and not for rent, storage building(s) to be used to house vehicles, equipment or supplies, and barn(s) to be used to house livestock. All improvements shall be of new, permanent

construction using good quality workmanship and materials and in character with the architecture of all other Structures on the Lot.

- b. The minimum floor area of any single-family residence shall not be less than 1,500 square feet as measured by the exterior building dimensions on the ground floor, exclusive of the garage, carport, or unenclosed porches or decks. All residences must also include a garage large enough for at least two (2) automobiles.
- c. No Structure shall be erected, altered, placed, or permitted to remain on the property which shall exceed two (2) stories in height. This shall not include a walkout basement or underground garage.
- d. Roofs shall have a minimum pitch of five feet in twelve feet. All primary roofs shall have a minimum overhang of two feet. Solar collectors shall not be considered roofs.
- e. Solar collectors may be of any construction, materials, or pitch required for efficient operation, but they shall not be placed on any Structure in a manner which causes objectionable glare to any neighboring resident. Solar collectors shall be integrated into the structure of a residence, garage, carport, or other accessory building and shall not be freestanding.
- f. Large satellite dishes and large antennas, for whatever purpose, shall not be allowed.
- g. Setbacks shall not be less than thirty (30) feet from any side or rear boundary without prior Architectural/site Committee approval.

5. Site Design. Site design shall comply with the following requirements.

- a. Fencing shall comply with the following requirements: in the effort to maintain the historic ranch atmosphere, open areas without fences will be encouraged. The intent will be to fence only for the containment of horses and cattle, therefore, only three (3) rail post fences will be allowed, with a maximum distance between posts to be twelve (12) feet. However, working corrals may be of metal construction.
- b. All fuel tanks, water tanks, or similar storage facilities shall either be constructed as an integral part of a Structure, or shall be installed or constructed underground

- c. Sanitary Facilities. Each sewage system is the responsibility of the individual property owner and shall be installed at the expense of the individual property owner and shall be constructed in conformity with the laws of the State of Idaho and Franklin County, and no privy, outside latrine, or other like facility shall be permitted except during construction of a principal residence in which case it is required by the Declaration to have such a facility. Every Owner shall refrain from causing any water or pollution emanating from his Lot.
  - d. All approaches from Lots to any Common Areas within the Subdivision shall include installation of a culvert to accommodate any water runoff.
6. Construction. The exterior of any building must be completed within twelve (12) months after the commencement of construction except where such completion would be impossible, due to size of project, or doing so would result in undue hardship to the Owner because of strikes, emergencies, or natural calamities; provided, however, that the Owner is nonetheless obligated to either diligently pursue completion or removal of the building.

#### ARTICLE VII – LAND CLASSIFICATION, USES AND RESTRICTIVE COVENANTS

1. Land Classifications. All land within the Property has been classified into the following areas:
  - a. Residential; and
  - b. Common Areas
2. General Restrictions. The following general restrictions shall apply to all land, regardless of classification;
  - a. No building, Structure, sign, fence, refinishing, or improvement of any kind shall be erected, placed, or permitted to remain on any Structure, Lot, or tract, and no excavation or other work which in any way alters any Lot from its natural or improved state existing on the date the Lot was first conveyed in fee by Declarant to Owner shall be erected, placed, done, or permitted to remain on any Structure, Lot, or tract until the plans and specification have been approved in writing and a

building permit has been issued by the Architectural/site Committee. Plans for buildings for the refinishing or improvement if the same shall include scaled floor plans, exterior elevations indicating height, a list of exterior materials, and a site plan.

- b. Two copies of any proposed plans and related data shall be furnished to the Architectural/site Committee, one of which may be retained by the Architectural/site Committee for its records. Any approval given by the Architectural/site Committee shall not constitute a warranty, express or implied, of compliance with any applicable building or safety codes for any other purposes other than the authority for the person submitting the plan to commence construction.

### 3. Residential Areas: Uses: Restrictions.

- a. Each residential Lot shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such residence; provided, however, that nothing in this subparagraph (a) shall be deemed to prevent:
  - (1) Construction of guest houses in accordance with this Declaration;
  - (2) Any home-based business that may be approved by the Architectural/site Committee; provided that no commercial business shall be allowed;
  - (3) The leasing of any lot from time to time by the Owner thereof, subject, however, to all of the restrictions as may be adopted from time to time by the Association.
- b. Each Lot, and any and all Structures and improvements from time to time located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at such Owner's sole cost and expense.
- c. There shall be no exterior fires whatsoever except barbecue fires contained within barbecue receptacles, properly constructed permanent outdoor fireplaces or fire pits, and such fires for vegetation and/or rubbish control as may from time to time be permitted by the Franklin County fire regulations during the winter months.

- d. No pigs, swine, goats, sheep, turkeys, chickens or fowl shall be maintained on any Lot. Owners of Lot(s) of less than four (4) acres may have two (2) horses, including foals, and 2 pair of cattle. Owners of Lot(s) of four (4) acres or more may have up to five (5) horses, including foals, and 3 pair of cattle. All owners of horses and/or cattle must maintain sufficient grass to pasture or graze their animals and have no dirt pastures. Owners of Lot(s) may have two (2) adult dogs and/or cats or other generally recognized house or yard pets; provided however, that all animals shall at all times be restrained or leashed and maintained on Owner's Lot so as not to be or become a nuisance or be allowed to run at large. Barking dogs constituting a nuisance shall be confined in a sound resistant enclosure during normal sleeping hours. Those residents participating in an authorized 4-H program may be granted a temporary variance from this animal provision, so long as their activities do not constitute a nuisance.
- e. No commercial signs whatsoever shall be erected or maintained upon any Lot. A wooden residential identification sign of combined total face area of three (3) square feet or less may be erected. A sign advertising the premises for sale may be erected as needed for such purposes, provided such sign does not exceed a combined total face area of six (6) square feet.
- f. No noxious, offensive, or noisy activity (disturbance to the peace and tranquility) shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Lots. In determining whether there has been a violation of this subparagraph, recognition must be given to the premise that Owners, by virtue of their interest in the Subdivision, are entitled to the reasonable enjoyment of its natural benefits and surroundings.
- g. No house trailer, mobile home, shack, or similar facility or structure shall be kept, placed, or maintained upon any Lot at any time. The terms "house trailer" or "mobile home" as used herein includes but is not limited to any building or structure with wheels and/or axles and any vehicle used at any time, or constructed so as to permit its being used for the transport thereof upon the public streets or highways and constructed so as to permit occupancy thereof as a

dwelling or sleeping place for one or more persons, and shall also mean any such building, structure, or vehicle, whether or not wheels and/or axles have been removed, after such building, structure, or vehicle has been placed either temporarily or permanently upon a foundation. However, Owners may keep a motor home, camp trailer, or similar recreational vehicle on a Lot so long as the vehicle is currently registered and not used for residential purposes on the Lot. Such R V's may be used on a temporary basis prior to permanent construction activities so long as they are not left unattended longer than a 24 hour period or kept in an approved storage Structure. No manufactured or modular house shall be allowed on any Lot except with the prior written consent of the Architectural/site Committee. The phrase "manufactured or modular house" means a house or other structure constructed at a location other than on the Lot where it is to be located and then moved in one or more pieces to the Lot.

- h. Each Lot Owner shall be responsible to pay annual assessments of Common Services in conjunction with all other Lot Owners as set forth herein. Bushes, shrubs, weeds, and all other vegetation shall be cleared and large trees pruned within the road rights-of-way to improve visibility, with related costs being common costs. The Association may impose special assessments, user fees and charges, and connection fees in accordance with this Declaration.
- i. No discharge of any firearms in the Subdivision will be allowed. No hunting of wildlife of any sort will be allowed within the confines of the Subdivision.
- j. No inoperative vehicle shall be kept on the premises for more than thirty (30) days unless parked in an enclosed building.
- k. All garbage and trash shall be placed and kept in covered containers, which shall be maintained so as not to be visible from neighboring property. The cost of commercial trash collection shall be paid by each owner, in accordance with the billing of the collector. No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot. No metal including without limitation scrap metal or metal drums shall be kept, stored, or allowed to accumulate on any Lot except in an enclosed structure.
- l. Owners shall not obstruct the Common Areas. No vehicles of any kind may be parked or left standing in the Common Areas.

## ARTICLE VIII – GENERAL PROVISIONS

1. Use of domestic well water. As surface irrigation water is provided to each Lot, from the canyon stream runoff that has historically irrigated this ranch Property, the use of domestic well water shall be limited to general household domestic use, including livestock. The maintenance of landscaped areas shall therefore be limited to ten thousand (10,000) square feet or less.
2. Lot Splitting: Consolidation. Two or more contiguous Lots within the Property may be combined. Such consolidated Lots may thereafter be treated as one Lot and building site, and as such may be subjected to this Declaration the same as a single Lot except for the purpose of levying and collecting assessments. No Lot may be divided or subdivided.
3. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to this Declaration may at any time be delegated, transferred, assigned, conveyed, or released by Declarant to the Association, and the Association shall accept the same, effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance, or release.
4. Condemnation of Common Area. If at any time, or from time to time, all or any portion of Common Areas, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party, or otherwise, in any proceeding relating to such condemnation, such right or participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of the Owners; provided, however, that the portion of any award relating to improvements which constitutes a private recreation facility shall be divided equally among the Owners who, at the time of such taking, are permitted users of such facility.



5. **Notices: Documents: Delivery.** Any notice or other document permitted or required by this Declaration shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage, prepaid, addressed as follows: if to the Association or to the Architectural/site Committee, at such address as the Association may determine and notify all Owners and Declarant in writing upon its organization; if to an Owner, than at any Lot within the Subdivision owned by the Owner; if to the Declarant, 535 East 300 South, Burley, ID 83318; provided, however, that any such address may be changed from time to time by an Owner, by the Architectural/site Committee, or by the Declarant by notice in writing, delivered to the Association, if organized, or if not to all Lot Owners, and to Declarant.
6. **General Maintenance.** The maintenance, alteration, replacement, and/or repair of the Common Areas shall be the responsibility of the Board. The Board, as part of its responsibilities, shall maintain, repair, and provide for snow removal and maintenance activities on all roadways. The maintenance, repair, and replacement of all improvements on each Lot shall be the responsibility of the Owner of such Lot.
7. **Drainage and Natural Runoff.** Removing, altering, or obstructing a natural drainage, spring, draw, or coulee, which results in the alteration of any existing surface drainage patterns, will not be allowed.
8. **Extracting of Minerals.** No mining, drilling, or exploration for extraction of oil, minerals, rocks, stone, gravel, or earth, other than that which is reasonably incidental to construction, will be allowed.

#### ARTICLE IX – ENFORCEMENT, DURATION, AND AMENDMENT

1. **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. If such a proceeding is successfully brought, the party against whom the action was brought shall

pay to the enforcing party all costs thereof including without limitation a reasonable attorney fee in addition to any other relief that may be granted. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition, the Association may establish fines and the time for payment thereof for violation of the provisions of this Declaration. If any such fines are not paid when due, the Association shall have a lien on the Lot of the Owner who owes the fine and shall have the right to collect the fine in the same manner as annual assessments.

2. Duration of Restrictions. All of the covenants, conditions, and restrictions set forth in this Declaration shall continue to remain in full force and effect at all times against the Property and the Owners thereof, subject to the right of amendment or modification provided for in this Article, for a term of twenty (20) years, after which time the covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless rescinded or amended by at least seventy-five percent (75%) of the Owners of the Property.
3. Amendment. This declaration may be amended during the first twenty (20) year period by an instrument in writing signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument in writing signed by not less than seventy-five percent (75%) of the Lot Owners, which amendment becomes effective when the instrument is recorded in the Office of the County Clerk in Franklin County, Idaho. The Declarant shall have the right in its sole discretion, during such time as Declarant owns not less than ten (10) Lots, to amend or modify this Declaration by an instrument in writing, and all Lots within the Subdivision including those previously sold shall be subject to such modification. Any such amendments shall be duly executed by the Declarant and are effective when recorded in the Office of the County Clerk of Franklin County, Idaho.
4. Annexation. Additional residential property or common area may be annexed to the Property by Declarant at any time, provided that all of such additional Property and Owners shall be subject to this Declaration.

5. **Violation Constitutes Nuisance.** Every act or omission, whereby any restriction, condition, or covenant in this Declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by Declarant or its successors in interest, the Association and/or by any Lot Owners; and such remedies shall be deemed cumulative and not exclusive.
6. **Construction and Validity of Restrictions.** All of said covenants, conditions, and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of the said conditions, covenants, or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or restrictions, or any part thereof shall be thereby affected or impaired; and the Declarant, grantor and grantee, their heirs, successors and assigns, shall be bound by Article, section, subsection, paragraph, sentence, clause, or phrase of this Declaration, irrespective of the fact that any Article, section, subsection, paragraph, sentence, clause, or phrase be declared invalid or inoperative or for any reason becomes unenforceable.
7. **No Waiver.** The failure of the Declarant, the Board or its agents, and the Owners to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions in this Declaration, or to exercise any right or options herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition, or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agent of payment of any assessment from an Owner, with the knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board.
8. **Variances.** Architectural/site Committee, in its sole discretion, may allow reasonable variances and adjustments of the foregoing covenants, conditions, and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the restrictions granted by the said Committee, or any acquiescence or

failure to enforce any violations of the conditions and restrictions herein, shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

Date August 9, 2004

*Robert D. Silcock*

ROBERT D. SILCOCK, Partner  
Silcock Ward Properties, LLC

ACKNOWLEDGEMENT

State of Idaho >

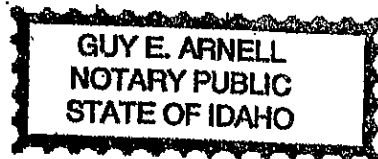
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County of Franklin >

On this 9 day of August, 2004, before me, the undersigned NOTARY PUBLIC, for the State of Idaho, personally appeared ROBERT D. SILCOCK, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

*Guy E. Arnell*  
Notary Public for Idaho



Residing at: Burley  
My Commission Expires: 7/15/2010