

UPON RECORDING, PLEASE RETURN TO:

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WEST JORDAN, UTAH 84088

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR ELKHORN RIDGE ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this  
\_\_\_\_\_ day of \_\_\_\_\_, 2006, by ELKHORN RIDGE, LLC, a Limited Liability  
Company.

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## **Part One: INTRODUCTION TO THE COMMUNITY**

*Elkhorn Ridge, LLC, has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Elkhorn Ridge Estates as a planned community.*

### **ARTICLE I Creation of the Community**

1.1 Purpose and Intent. Declarant, as the owner of the real property described in Exhibit "A" is Recording this Declaration to establish a general plan of development for Elkhorn Ridge Estates, a planned community. This Declaration provides for the Community's overall development, administration, maintenance, and preservation, and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of Elkhorn Ridge Estates Homeowner's Association, a corporation comprised of all Elkhorn Ridge Estates property owners, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents. This document does not and is not intended to create a condominium under Idaho law.

1.2 Mission Statement. The Elkhorn Ridge Estates Homeowner's Association's mission is to preserve, promote and manage Elkhorn Ridge Estates' natural resources to ensure that the community lives in harmony with its surroundings. As environmental steward, the Homeowner's Association will manage the open spaces and common areas and develop and maintain the community's common areas. It is also charged with administering Elkhorn Ridge Estates' design guidelines and the design review process when delegated by Declarant.

1.3 Binding Effect. This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future by a Recorded Supplemental Declaration. This Declaration shall run with the land and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

Declarant, the Homeowner's Association, any Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration shall be effective for a minimum of 20 years from the date it is Recorded. After 50 years, this Declaration shall continue automatically for successive 10 year periods unless a 75% majority of the then Owners sign a document stating that the Declaration is terminated and that document is Recorded within the year before the Declaration expires. In such case, this Declaration shall expire on the date specified in the termination document.

1.4 Governing Documents. The Governing Documents create a general development plan for Elkhorn Ridge Estates. The plan may be supplemented by additional covenants, conditions, and

restrictions applicable to particular phases of Elkhorn Ridge Estates. The following diagram identifies and summarizes the Governing Documents, each as they may be amended:

|  |   |
|--|---|
| Declaration (Recorded)   | Creates obligations which are binding upon the Homeowner's Association and all present and future owners of property in Elkhorn Ridge Estates                                       |
| Supplemental Declaration (Recorded)  | Adds property to Elkhorn Ridge Estates; may impose additional obligations or restrictions on such property  |
| Articles of Incorporation (filed with the Division of Corporation under Idaho law) | Establishes the Homeowner's Association as a non-profit   |
| By-Laws (Board adopts)   | Governs the Homeowner's Association's internal affairs, such as voting rights, elections, meetings, officers, etc.  |
| Design Guidelines (Declarant adopts)   | Establish site planning, thematic and architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots |
| Use Restrictions (initial set attached as Exhibit "C")                             | Govern use of property and activities within Elkhorn Ridge Estates  |
| Board Resolutions and Rules (Board adopts)   | Establish rules, policies, and procedures for internal governance and Homeowner's Association activities; regulate operation and use of Common Area                                 |

Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of Elkhorn Ridge Estates. The more restrictive provisions will be controlling over the less restrictive provisions in this Declaration. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of Elkhorn Ridge Estates Estate without Declarant's written consent, so long as Declarant owns any property described in Exhibit "A" or "B." Any instrument Recorded without the required consent is void and of no force and effect.

The Governing Documents apply to all Owners and any occupants of a Lot. They also apply to tenants, guests, visitors, and invitees.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

Diagrams in the Governing Documents illustrate concepts and assist the reader. The diagrams are for illustrative purposes only. If there is a conflict between any diagram and the text

of the Governing Documents, the text shall control.

## **ARTICLE II**

### **Concepts and Definitions**

*The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:*

“Architectural Review Committee” or “ARC”: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural and design controls described in Article IV.

“Articles”: The Articles of Incorporation of The Elkhorn Ridge Estates Homeowner’s Association, filed with Idaho’s Secretary of State, as they may be amended.

“Benefited Assessment”: Assessments charged against a particular Lot or particular Lots for Homeowner’s Association expenses as described in Section 8.6.

“Board of Directors” or “Board”: The body responsible for the general governance and administration of the Homeowner’s Association, selected as provided in the By-Laws.

“Builder”: Anyone acquiring a Lot or Lots for the purpose of constructing homes for later sale to consumers, or who purchases land within the Community for further subdivision, development, and/or resale in the ordinary course of its business.

“By-Laws”: The By-Laws of The Elkhorn Ridge Estates Homeowner’s Association, as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit “D.”

“Class “B” Control Period”: The time period during which the Class “B” Member may appoint a majority of the Board members. The Class “B” Control Period ends when any one of the following occurs:

- (a) when 90% of the Lots permitted under all Phases of the development, including any acreage added by expanding to adjacent properties are issued certificates of occupancy and are owned by Class “A” Members other than Builders;
- (b) December 31, 2030; or
- (c) When, in its discretion, the Class “B” Member so determines.

“Common Area”: All real and personal property, including easements, which the Homeowner’s Association owns, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Limited Common Area, as defined below. Common Areas exclude all Private Amenities.

“Common Expenses”: The actual and estimated expenses the Homeowner’s Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board finds necessary or appropriate. Common Expenses do not include any expenses incurred during the Class “B” Control Period for initial development or other original construction costs unless a majority of the Class “A” Members approve.

“Common Maintenance Areas”: The Common Area, together with any other area for which the Homeowner’s Association has or assumes maintenance or other responsibility.

“Community” or “Elkhorn Ridge Estates”: The real property described in Exhibit “A,” together with such additional property as is subjected to this Declaration in accordance with Article IX.  
“Community Enhancement Fee”: Fees levied upon certain real property transfers for the benefit of Elkhorn Ridge Estates and other designated Persons.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific landscape or house maintenance requirements, and subjective elements, such as matters subject to the Board’s or the ARC’s discretion. The Community-Wide Standard may evolve as development progresses and as Elkhorn Ridge Estates changes.

“Declarant”: Elkhorn Ridge, LLC, a corporation, or any successor or assign who takes title to any portion of the property described in Exhibit “A” or “B” for development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

“Design Guidelines”: The Community’s architectural, construction, design, landscaping and site planning guidelines and review procedures as provided herein and amended pursuant to Article IV.

“Homeowner’s Association”: The Elkhorn Ridge Estates Homeowner’s Association, an Idaho not-for-profit corporation, its successors or assigns.

“Limited Common Area”: A portion of the Common Area primarily benefitting one or more, but less than all, Owners, as more particularly described in Article XII.

“Lot”: A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Residence is intended for development, use, and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Residence, on the Lot. The boundaries of each Lot shall be shown on a Plat; each Residence shall be a separate Lot.

“Member”: Each Lot Owner, subject to Section 6.2.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Owner”: The Record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Phase”: A group of Lots designated by Declarant as a separate Phase in accordance with Section 6.4(a). Lots within a Phase may share Limited Common Areas and/or receive benefits or services from the Homeowner’s Association which are not provided to all Lots. A Phase may include more than one housing type and may include parcels which do not border on each other. If the Homeowner’s Association provides benefits or services to less than all Lots within a particular Phase, then the Homeowner’s Association may levy a Phase Assessment against just those Lots for such benefits or services. This Declaration does not require the creation of any Phases.

“Phase Assessments”: Assessments levied against the Lots in a particular Phase or Phases to fund Phase Expenses, as described in Section 8.2.

“Phase Expenses”: The actual and estimated expenses which the Homeowner’s Association incurs or expects to incur for the benefit of Owners within a particular Phase, including any reserve for capital repairs and replacements and administrative charges authorized by this Declaration or the Supplemental Declarations applicable to such Phase.

“Person”: An individual, a corporation, a partnership, a trustee, or, any other legal entity.

“Phase Organization”: Any owners organization having jurisdiction over a Phase which is subordinate to the Homeowner’s Association’s rights under this Declaration. This Declaration does not require the creation of any Phase Organization. A Phase Organization may only be formed by Declarant or by the Board of Directors with the consent of Declarant.

“Plat”: Any Recorded land survey plat for all or any portion of Elkhorn Ridge Estates.

“Private Amenities”: Real property and facilities located adjacent to, near, or within the Community, which Persons other than the Homeowner’s Association own and operate for recreational/resort and related purposes on a membership basis or otherwise and which is designated by Declarant as being a Private Amenity.

“Record,” “Recording,” or “Recorded”: To file, the filing of, or filed of record a legal instrument

in the Office of the Recorder of Oneida County, Idaho, or such other place designated as the official Oneida County location for recording documents affecting title to real estate.

“Regular Assessment”: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

“Residence”: Any building, or part of a building, on a Lot which is intended for use and occupancy as a separate residence.

“Special Assessment”: Assessments charged against all Owners or all Owners in a phase in accordance with Section 8.5.

“Supplemental Declaration”: A Recorded instrument which subjects additional property to this Declaration, designates phases, identifies Common Area and Limited Common Area, and/or imposes additional restrictions and obligations on the land described.

“Use Restrictions”: The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and the Common Areas set forth in Exhibit “C,” as they may be changed in accordance with Article III or otherwise amended.

## **Part Two: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, and architecture at Elkhorn Ridge Estates are what give the Community its identity and make it a place that people want to call "home." This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for Community standards to evolve as the Community changes and grows.*

### **ARTICLE III Use and Conduct**

3.1 Restrictions on Use, Occupancy, and Alienation. The restrictions set forth in this Section may be amended only in accordance with Article XIX.

(a) Residential and Related Uses. Subject to Section 3.1(b), the Community shall be used only for residential, recreational and related purposes. Related purposes may include offices for the Homeowner's Association or its management agent(s), Declarant's business or sales office(s) (including ongoing real estate resale brokerage operations), and any business use which meets the conditions of Section 3.1(b). In addition, the Homeowner's Association or Declarant may permit any other commercial activity that does not detract from the Community's residential and recreational character.

(b) Business Use. Declarant shall be entitled to designate, develop and operate such commercial uses as may be approved by Oneida County in such locations as Declarant may determine. No business shall be conducted in or from any Lot, except that an Owner or a resident of the Lot may conduct business activities within the Residence if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside the Residence;

(ii) complies with applicable zoning requirements;

(iii) does not involve excessive visitation of the Residence by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous, offensive or illegal use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the

producer receives a fee, compensation, or other form of consideration, regardless of whether

(A) such activity is engaged in full or part time

(B) such activity is intended to or does generate a profit, or

(C) a license is required.

This Section does not apply to designated Private Amenity Areas, or to Declarant's activities, or the activities of Persons which Declarant approves, with respect to the development and sale of property or to the provision of services in the Community. Additionally, this Section shall not apply to any Homeowner's Association activity related to operating, maintaining, or advancing the Community's residential character.

Leasing a Residence is not a "business" within the meaning of this subsection.

(c) Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Residence by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. The Residence, if leased, may be leased only in its entirety (e.g., separate rooms within the same Residence may not be separately leased).

All leases shall be in writing, must require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents, and shall have a term of at least one month, except: (a) with the Board's prior written consent, or (b) as Declarant initially authorizes in a Supplemental Declaration for Lots located within certain Phases.

Within ten days of the lease being signed, an Owner shall notify the Board or the Homeowner's Association's managing agent of any lease and provide any additional information the Board may require. The Owner must give the tenant copies of the Governing Documents. The Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

The restrictions on lease terms set forth in this paragraph shall not apply to Lots Declarant owns or Lots owned by a Builder where Declarant approves an exception to the foregoing restrictions.

(d) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations and losses they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

Except for Tenant-in-common ownership with no more than 8 separate owners, timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of

years is prohibited.

3.2 Framework for Regulation. As part of the general plan of development, the Governing Documents establish a framework of covenants, easements, and restrictions which govern the Community. This includes the Use Restrictions set forth in Exhibit "C." Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the initial Use Restrictions to respond to such changes.

3.3 Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions as amended, expanded, and otherwise modified from time to time. Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Homeowner's Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Homeowner's Association.

3.4 Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Homeowner's Association and the Members, the Board may change (i.e., modify, cancel, limit, create exceptions to, or expand) the Use Restrictions. The Board shall send notice to all Owners of any proposed change at least twenty business days before the Board meeting to consider the change. Any Owner shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by Owners representing a majority of the Homeowner's Association's Class "A" votes, or by the Class "B" Member, if any. The Board is not obligated to call a meeting of the Owners to consider disapproval unless it receives a petition which meets the By-Law's requirements for special meetings. If the Board receives such a petition before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(b) Alternatively, the Owners representing a majority of the Class "A" votes in the Homeowner's Association, at a Homeowner's Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change shall require approval of the Class "B" Member, if any.

(c) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until 30 days following distribution to Owners. The Homeowner's Association shall provide to any requesting Member or Mortgagee, without cost, a copy of the Use Restrictions then in effect.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

3.5. Protection of Owners and Others. Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit “C,” the Homeowner’s Association’s actions with respect to Use Restrictions and rules must comply with the following:

(a) Similar Treatment. Similarly situated Owners must be treated similarly; however, the Use Restrictions and rules may vary by neighborhood or Phase.

(b) Displays. Subject to Design Guideline restrictions on construction and exterior lighting, Owners’ rights to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods or Phases shall not be abridged, except that the Homeowner’s Association may adopt time, place, and manner restrictions with respect to such displays. The Homeowner’s Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria). All other signs, posters, circulars, and billboards, including “for sale” and “for rent” signs, are prohibited except those required by law or those which meet the standards set forth in the Design Guidelines. Notwithstanding the foregoing, a single “for sale” and “for rent” sign of a reasonable size and design may be placed upon any Lot.

(c) Household Composition. The Homeowner’s Association shall not interfere with any Owner’s freedom to determine the composition of his/her household, except that it may limit the total number of Persons entitled to permanently occupy a Residence based upon the fair use of the Common Area and impacts on all Community services.

(d) Activities within Dwellings. The Homeowner’s Association shall not interfere with activities carried on within a Residence, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Homeowner’s Association or other Owners, that are illegal, that create a danger to anyone’s health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residence, or that are an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The Homeowner’s Association shall not reallocate financial burdens among the various Lots or change Common Area use rights to the detriment of any Owner over that Owner’s written objection. This does not prevent the Homeowner’s Association from changing the Common Area available, from adopting generally applicable rules for using the Common Area, or from denying use privileges to anyone who is late in paying assessments, who abuses the Common Area, or who violates the Governing Documents. This provision does not affect the right to levy Phase Assessments or to increase the amount of assessments as provided in Article VIII.

(f) Alienation. Except as provided in Section 3.1(c) above, the Homeowner's Association shall not prohibit leasing or transfer of any Lot, or require the Homeowner's Association's or the Board's consent prior to leasing or transferring a Lot. The Homeowner's Association may require that Owners use lease forms that include specific lease terms. Section 3.1(c) imposes a minimum lease term.

(g) Abridging Existing Rights. The Homeowner's Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(h) Reasonable Rights to Develop. The Homeowner's Association may not unreasonably impede Declarant's right to develop Elkhorn Ridge Estates.

(i) Interference with Private Amenities. The Homeowner's Association may not interfere with the use or operation of any Private Amenity, any approved commercial activity or any use within a Common Area designated by Declarant.

The limitations in subsections (a) through (g) of this Section shall only limit rule-making authority exercised under Section 3.3; they shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

#### **ARTICLE IV Architecture and Landscaping**

4.1 General. No structure or thing shall be placed, erected, or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place upon any Lot within Elkhorn Ridge Estates, except in compliance with this Article and the Design Guidelines.

No design review approval shall be required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of structures (including the Residence) on his or her Lot without design review approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure are subject to design review approval. Although design review is not required under the limited circumstances set forth above, each Owner will still have the responsibility to comply with any applicable Board rules and any applicable laws.

Each Residence shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant, in its sole discretion, or its designee otherwise approves.

This Article shall apply to any future commercial structures, all outbuildings and structures in the Common Area. The same mountain ranch design philosophy governing the design of homes and non-residential uses within Elkhorn Ridge Estates shall apply to these parcels. Designs on these parcels need to be especially sensitive to:

Building Massing – Incorporate smaller masses as much as possible and practicable.

Roof Forms – Utilize sloping roofs as much as possible and practicable.

Vehicular traffic and parking lot layout – Buffer parking and vehicular traffic with the buildings, landscaping, walls and berming.

Lighting – Exterior lighting shall be designed to minimize nuisance to homesites within Elkhorn Ridge Estates consistent with Elkhorn Ridge Estates's low level lighting requirements.

Streetscape along Elkhorn Ridge Estates's entrance road – Should enhance Elkhorn Ridge Estates's entrance and be consistent with Elkhorn Ridge Estates's emphasis on native vegetation.

Signage – The signage system shall be consistent with Elkhorn Ridge Estates's signage system.

Mechanical Equipment – Buffer from Elkhorn Ridge Estates homesite view and sound.

This Article does not apply to Declarant's activities nor to the Homeowner's Association's activities during the Class "B" Control Period.

#### 4.2 Architectural Review.

(a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article IV shall continue for as long as Declarant owns any portion of the Community or has a unilateral right to annex property, unless Declarant earlier terminates its rights in a Recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing applications. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to the Homeowner's Association's Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to

(i) Declarant's right to revoke such delegation at any time and reassume its prior

jurisdiction, and

(ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason.

So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the ARC shall assume jurisdiction over architectural matters. When appointed, the ARC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced at the Board's discretion. Members of the ARC need not be Members of the Homeowner's Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

As long as Declarant owns any portion of the Community or has the unilateral right to annex property, the ARC shall notify Declarant of any action to be taken under this Article. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action the ARC takes; provided, Declarant's right to veto must be exercised within 10 days after it receives notice of the ARC's action. The party submitting the plans for approval shall not be notified of the ARC's approval or disapproval until after Declarant's right to veto has been exercised or has expired.

The Board may create and appoint subcommittees of the ARC. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the ARC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ARC's decisions, and the ARC. Notwithstanding the above, neither the ARC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

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

(c) Reviewer. For purposes of this Article, the "Reviewer" is the entity having jurisdiction in a particular case. Declarant and the Homeowner's Association may employ architects, engineers, or other Persons to perform the review.

In reviewing applications and other materials, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective

and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

#### 4.3 Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Elkhorn Ridge Estates as well as specific provisions that may vary from one part of the Community to other parts. The Design Guidelines are intended solely to provide guidance to Owners and Builders. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Community or has a unilateral right to annex property to the Community. Declarant's right to amend the Design Guidelines shall continue even if reviewing authority is delegated to the ARC, unless Declarant also delegates the power to amend the Design Guidelines to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines at its sole discretion.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Subject to the Community-Wide Standard, the scope of amendments to the Design Guidelines is unlimited, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Elkhorn Ridge Estates. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Any design review procedures set forth in the Design Guidelines shall govern the application and review process. Unless the Design Guidelines provide otherwise, no construction activities or other activities described in Section 4.2(a) may begin until a request is submitted to and approved by the Reviewer. The request must be in writing and accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require.

The Reviewer shall make a determination on each application after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may

- (i) approve the application, with or without conditions;

(ii) approve a portion of the application and disapprove other portions; or

(iii) disapprove the application.

Reviewer approval is not a substitute for any approvals or reviews required by Oneida County or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

The Reviewer shall notify the applicant in writing of the final determination on any application within 15 days after its receipt of a completed application and all required information. If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's right to veto pursuant to Section 4.2(a). However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, approval shall be deemed withdrawn and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Homeowner's Association, Declarant, or any aggrieved Owner.

The Reviewer may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

4.4 No Waiver of Future Approvals. Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or

additionally submitted for approval.

4.5 Variances. The Reviewer may authorize variances from compliance with the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent for so long as Declarant owns any portion of the Community or has the unilateral right to annex property.

4.6 Limitation of Liability. The standards and procedures established by this Article are a mechanism for maintaining and enhancing the overall aesthetics of Elkhorn Ridge Estates; they do not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Residence is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, the Homeowner's Association, its officers, the Board, the ARC, any committee, or any member of any of the foregoing (the "Released Parties") shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Homeowner's Association shall defend and indemnify any Released Party as provided in Section 7.6.

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

4.8 Enforcement. Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Homeowner's Association or Declarant, Owners shall, at their own cost and expense and within a reasonable time frame identified in the request, cure the violation or restore the Lot and/or Residence to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Homeowner's

Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with the interest at the rate the Board establishes (not to exceed the maximum rate then allowed by Idaho law), may be assessed against the benefited Lot and collected as a Benefited Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Homeowner's Association may enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Benefited Assessment, which shall be due 10 days after it is assessed.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Community. In such event, neither Declarant nor the Homeowner's Association, or their officers and directors, or any other person associated with the Community shall be held liable to any Person for exercising the rights granted by this paragraph.

The Homeowner's Association shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Homeowner's Association fails to take appropriate enforcement action within a reasonable time period, Declarant, for so long as it owns any portion of the Community or has the unilateral right to annex property thereto, may, but shall not be obligated to, exercise the enforcement rights set forth above. In addition to the foregoing, the Homeowner's Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. If the Homeowner's Association or Declarant prevail, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

## **ARTICLE V**

### **Maintenance and Repair**

5.1 Maintenance of Lots. Each Owner shall maintain his or her Lot, including the Residence and all landscaping and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Homeowner's Association or a Phase Organization under any Supplemental Declaration or additional covenants applicable to such Lot.

5.2 Maintenance of Phase Property. Upon Board resolution, Owners within any Phase created in accordance with this Declaration shall be responsible for paying, through Phase Assessments, the costs of operating, maintaining, and insuring certain portions of the Common Maintenance

Areas within or adjacent to such Phase. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Phase and adjacent public roads, private streets within the Phase, and lakes or ponds within the Phase, regardless of ownership and regardless of the fact that the Homeowner's Association may perform such maintenance. In any event, all Phases which are similarly situated shall be treated the same.

The Homeowner's Association may assume maintenance responsibility for property within any Phase, in addition to that designated by any Supplemental Declaration, either by agreement with the Owners of Lots in that Phase or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Phase Assessment only against the Lots within the Phase to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Homeowner's Association shall maintain all common property, common areas and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

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

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Homeowner's Association carries such insurance (which they may, but are not obligated to do). If the Homeowner's Association or any Phase Organization assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

### **Part Three: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Homeowner's Association as a mechanism by which each Owner is able to participate in the governance and administration of Elkhorn Ridge Estates. While many powers and responsibilities are vested in the Homeowner's Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Homeowner's Association's membership -the Lot Owners.*

#### **ARTICLE VI**

##### **The Homeowner's Association and its Members**

6.1 Function of The Homeowner's Association. The Homeowner's Association is the entity responsible for management, maintenance, operation, and control of the Common Maintenance Areas. In addition, the Homeowner's Association may perform such other community services and undertake such other responsibilities as its Board may deem advisable from time to time. The Homeowner's Association also has primary responsibility for enforcing the Governing Documents. The Homeowner's Association shall perform its functions in accordance with the Governing Documents and Idaho law.

6.2 Membership. Every Owner is a Member of the Homeowner's Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3(c) and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Homeowner's Association's Secretary.

6.3 Voting. The Homeowner's Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members are all Owners except the Class "B" Member, if any. Class "A" Members have one equal vote for each Lot they own, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.9.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote, but may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents. The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Class "B" Control Period; or

(ii) when, in its discretion, Declarant declares in a Recorded instrument.

Upon termination of the Class “B” membership, Declarant shall be a Class “A” Member entitled to one Class “A” vote for each Lot it owns.

(c) Exercise of Voting Rights. For each Lot the Owner shall be entitled personally to exercise the vote for his or her Lot. In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Homeowner’s Association in writing prior to the vote being taken. Absent such advice, the Lot’s vote shall be suspended if more than one Person seeks to exercise it.

6.4 Phases. Declarant may designate in Exhibit “A” to the Declaration or in Supplemental Declarations one or more Phases within the Community. This Declaration does not require the establishing of any Phases. Lots within a particular Phase may be subject to covenants in addition to those contained in this Declaration and, if required by law or if Declarant otherwise approves, the Owners within the Phase may be members of a Phase Organization, if one is established by the Declaration or a Supplemental Declaration, in addition to the Homeowner’s Association.

Exhibit “A” to this Declaration and Supplemental Declarations submitting additional property to this Declaration initially may assign property to a specific Phase (by name or other identifying designation), which Phase may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to create Phases or redesignate Phase boundaries. However, two or more existing Phases shall not be combined without the consent of Owners of a majority of the Lots in the affected Phases. After Declarant no longer has the right to annex additional property, Phases may be established by the Board with the consent of Declarant.

Owners within any Phase or Owners within a specified portion of the Community not included within a Phase may request that the Homeowner’s Association provide a higher level of service than the Homeowner’s Association generally provides to all Phases or may request that the Homeowner’s Association provide special services for the benefit of Lots in such Phase or specified portion of the Community. The Board shall have complete discretion whether or not to grant any such request; provided, however, that if the Board agrees to any such request, the Board shall assess the cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at the same rate per Lot to all Lots receiving the same service), against the Lots within such Phase or specified portion of the Community as a Phase Assessment or a Benefitted Assessment. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Lots within the Phase or all of the Lots within any other specified portion of the Community, the Homeowner’s Association may agree to provide the requested services if

approved by the Board.

**ARTICLE VII**  
**Homeowner's Association Powers and Responsibilities**

7.1 Acceptance and Control of Homeowner's Association Property.

(a) The Homeowner's Association may acquire, hold, mortgage or pledge as security, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property. The Homeowner's Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by Community organizations and by other third parties for the general benefit or convenience of Owners and other Elkhorn Ridge Estates residents.

(b) Declarant and its designees may transfer to the Homeowner's Association, and the Homeowner's Association shall accept, personal property and fee title or other property interests in any improved or unimproved real property described in Exhibits "A" or B." Upon Declarant's written request, the Homeowner's Association shall transfer back to Declarant any unimproved real property originally conveyed to the Homeowner's Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Homeowner's Association is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Homeowner's Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. Further, the Board may lease, or borrow funds to acquire, operate or maintain equipment and facilities used in Common Areas or the performance of the Homeowner's Association's other duties under this Declaration or other agreements. Such equipment and facilities may be leased, or such funds may be borrowed from any source, including Declarant, on commercially reasonable terms and conditions.

7.2. Maintenance of Common Maintenance Areas. The Homeowner's Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to:

(a) all portions of the Common Area, including the entrance gates and other entrance features, perimeter fences, all private roads, any and all landscaping, structures, and other improvements on the Common Areas;

(b) all landscaping, and other flora, sidewalks, streetlights, and signage within public rights-of-way within or abutting Elkhorn Ridge Estates, any landscaping and other flora within any public utility easement within Elkhorn Ridge Estates, and any landscaping and other flora abutting any area adjacent to the Community;

(c) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Homeowner's Association; and

(d) all ponds, streams, and/or wetlands located within Elkhorn Ridge Estates which serve as part of the Community's storm water drainage system, including associated improvements and equipment.

The Homeowner's Association may maintain other property which it does not own, including property dedicated to the public, conservation areas and wetlands dedicated to governmental agencies, and any and all trails and paths located on such parcel if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Homeowner's Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Homeowner's Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs, unless Owners of Lots representing 75% of the Class "A" votes in the Homeowner's Association agree in writing to discontinue such operation. Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" to this Declaration.

The costs associated with maintenance, repair, and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Homeowner's Association may seek reimbursement from the owners of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. The maintenance, repair, and replacement of Limited Common Areas shall be a Phase Expense assessed against the Lots within the benefitted Phase(s) or shall be an expense assessed against benefitted Lots as a Benefitted Assessment where identified Limited Common Areas are outside of a Phase.

### 7.3 Insurance.

(a) Required Coverages. The Homeowner's Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a

“special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Maintenance Areas to the extent that the Homeowner’s Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All Homeowner’s Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Maintenance Areas, insuring the Homeowner’s Association and its Members for damage or injury caused by the negligence of the Homeowner’s Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

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

(vi) Automobile and such other coverages as the Board may deem necessary or advisable in connection with the operation of the Elkhorn Ridge Estates services.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits.

Premiums for Common Maintenance Area insurance shall be a Common Expense, except that

(i) premiums for property insurance on Lots within a Phase shall be a Phase Expense;

(ii) premiums for insurance on Limited Common Areas within a Phase may be a Phase Expense unless the Board reasonably determines that other treatment of the

premiums is more appropriate; and

(iii) premiums for insurance on Limited Common Areas outside of a Phase may be allocated to benefitted Lots as a Benefitted Assessment unless the Board reasonably determines that other treatment of the premises is more appropriate or the allocation of the expense is not material or cannot reasonably be accomplished.

(b) Policy Requirements. The Homeowner's Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Oneida County, Idaho area. All Homeowner's Association policies shall provide for a certificate of insurance to be furnished to the Homeowner's Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Phase Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owners and their Lots as a Benefitted Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in Idaho which satisfies the requirements of the Federal National Mortgage Corporation, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Homeowner's Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Homeowner's Association and its Members. Policies secured on behalf of a Phase shall be for the benefit of the Owners within the Phase and their Mortgagees, as their interests may appear;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Homeowner's Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Homeowner's Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Homeowner's Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Homeowner's Association's Board, officers, employees, and its manager, the Owners and their tenants, servant, agents, and guests;

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

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

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

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Homeowner's Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the

condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners representing at least 75% of the total Class "A" votes in the Homeowner's Association and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 75% of the Owners to which such Limited Common Area is assigned vote not to repair or reconstruct and the Class "B" Member, if any, consents. If either the insurance proceeds or estimates of the loss, or both, are not available to the Homeowner's Association within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

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

The Homeowner's Association shall return any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, for the benefit of the Members or the Owners of Lots to which a damaged Limited Common Area is assigned as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

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

#### 7.4 Compliance and Enforcement.

(a) The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

- (i) imposing reasonable monetary fines, not to exceed \$1,000.00 per violation (or per day in the case of a continuing violation) or \$10,000.00 in the aggregate, which shall constitute a lien upon the violator's Lot (fines may be imposed within a graduated range);
- (ii) suspending an Owner's right to vote (except that suspension may be automatic

if the Owner is more than 90 days delinquent in paying any assessment or other charge owed to the Homeowner's Association);

(iii) suspending any Person's right to use Common Area amenities; provided nothing shall authorize the Board to prevent access to a Lot;

(iv) suspending any services provided by the Homeowner's Association (except, that suspension may be automatic if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Homeowner's Association);

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents); and

(vi) levying Benefitted Assessments to cover costs incurred by the Homeowner's Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(vii) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including towing vehicles that are in violation of parking rules and regulations);

(viii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or

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

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility or otherwise fails to comply with any provision of this Declaration, the Homeowner's Association may record a notice of violation or perform the required maintenance or other obligation or otherwise take steps to abate the violation and assess its costs against the Lot and the Owner as a Benefitted Assessment. If the Lot in violation is located within a Phase, with a Phase Organization, that Phase Organization shall have the obligation to correct the violation and to enforce rights against the Owner in question. If a Phase Organization fails to perform its maintenance responsibilities, the Homeowner's Association may perform the maintenance and assess the costs as a Benefitted Assessment against all Lots within the Phase. Except in an emergency situation, the Homeowner's Association shall provide the Owner and any Phase Organization reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All sanctions and remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Homeowner's Association prevails in any action to enforce the Governing Documents it shall be entitled to recover all costs incurred in the action, including, without limitation, court fees and reasonable attorneys fees.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentences, the Board may determine that under the circumstances of a particular case:

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

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

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

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

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

By contract or other agreement, the Homeowner's Association may enforce applicable city and county ordinances, and Oneida County may enforce its ordinances within Elkhorn Ridge Estates. Specifically, and as more fully set forth in Section 7.16, the Homeowner's Association is obligated to comply and to enforce owner compliance with certain obligations contained in the Elkhorn Ridge Estates Estate's final approval with Oneida County. The provisions of Section 7.4 shall be applicable to any violations of the conditions of the final approval.

7.5 Implied Rights; Board Authority. The Homeowner's Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Homeowner's Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Homeowner's Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing

Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Homeowner's Association or the Members.

In exercising the Homeowner's Association's rights and powers, making decisions on the Homeowner's Association's behalf, and conducting the Homeowner's Association's affairs, Board members are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6 Indemnification of Officers, Directors, and Others. The officers, directors, and committee members, acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Homeowner's Association's behalf (except to the extent that such officers or directors may also be Members of the Homeowner's Association).

Subject to Idaho law, the Homeowner's Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Homeowner's Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7 Safety and Security. Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and the security of their property in Elkhorn Ridge Estates. The Homeowner's Association may, but is not obligated to, maintain or support certain activities within the Community which are designed to enhance the level of safety or security which each person provides for himself and his property. However, the Homeowner's Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Homeowner's Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Elkhorn Ridge Estates assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

7.8 Powers of the Homeowner's Association Relating to Phases. A Phase Committee is a committee of the Homeowner's Association, and the Board shall have all of the power and control over Phase Committees that it has over other Homeowner's Association committees.

The Homeowner's Association shall have the power to require that specific action be taken by a Phase Organization in connection with its obligations and responsibilities, such as requiring that specific maintenance or repairs or aesthetic changes be made and requiring that a proposed budget include certain items and that expenditures be made therefore. A Phase Organization shall take such action within the reasonable time frame set by the Homeowner's Association. If the Phase Organization fails to comply, the Homeowner's Association may take such action on behalf of the Phase Organization and levy Benefitted Assessments to cover the costs, as well as an administrative charge and sanctions.

7.9 Provision of Services. The Homeowner's Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Homeowner's Association's budget as a Common Expense and assess it as part of the Regular Assessments if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, internet access, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Homeowner's Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.10 Relationships with Other Properties. The Homeowner's Association may enter into contractual agreements or covenants to share costs with any neighboring properties or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.11 View Impairment. Neither Declarant nor the Homeowner's Association guarantee or represent that any view over and across the Lots or any open space within the Community will be preserved without impairment by structures or landscaping and neither shall be obligated to

relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Homeowner's Association (with respect to the Common Area) and Private Amenity owners (with respect to Private Amenity property) have the right to construct improvements and add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

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

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

7.13 Right to Designate Sites for Governmental, Public Interests and Easement Rights. For so long as Declarant owns any property described in Exhibits "A" or "B," Declarant may designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, health care and for utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Declarant may also retain for use by Declarant or, as approved solely by Declarant, for use by others, non-exclusive private easement rights for underground utilities, whether or not intended to serve the Community. The sites may include Common Area, in which case the Homeowner's Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

7.14 Use of Technology. In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Homeowner's Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Idaho law permits, and unless otherwise specifically prohibited in the Governing Documents, the Homeowner's Association may send required notices by electronic means; hold Board or Homeowner's Association meetings and permit attendance and voting by electronic means; send and collect assessment and other invoices over the computer; sponsor a Community cable television channel; create and maintain a Community intranet or Internet home page offering interactive participation opportunities for users, and maintain an "online" newsletter or bulletin board.

A computer information system (the "Elkhorn Net") may be established to provide

Owners, residents, tenants, occupants, and invitees, (the “Elkhorn Net Users”) with access to advanced information technology in order to encourage interaction between and among the Elkhorn Net Users to stimulate participation in Community life, disseminate information about activities and programs and foster a sense of community. Declarant shall have the exclusive right to establish the Elkhorn Net. If the Elkhorn Net is established, Declarant shall have the sole authority to select providers of services and components. Declarant is authorized to enter into use and cost sharing agreements with individuals outside the Community permitting access to the Elkhorn Net.

Notwithstanding the amendment provisions set forth in Article XIX, so long as Declarant owns any portion of the Community or has the unilateral right to annex property to this Declaration, Declarant shall have the right to amend this Declaration to implement the Elkhorn Net. Such amendments may include, without limitation, establishing that funding of the Elkhorn Net and the fees to be paid will be mandatory, establishing who may access the Elkhorn Net, and establishing and limiting the number of connections entitled by each Elkhorn Net User.

7.15 Recycling Programs. The Homeowner’s Association may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the recycling program or center is set up to accommodate. The Homeowner’s Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of new programs.

## **ARTICLE VIII**

### **Homeowner’s Association Finances**

8.1 Budgeting and Allocating Common Expenses. The Homeowner’s Association is authorized to levy Regular Assessments equally against all Lots subject to assessment under Section 8.7 to fund the Common Expenses; provided, however, that the assessments on Lots owned by Declarant shall be governed by Section 8.8. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior years’ surplus, any non-assessment income, and anticipated assessment income.

- Association Funds
- General Operating Fund
- Reserve Fund for Repair and Replacement of Capital Items
- Primary Sources of Income
- Regular Assessments
- Phase Assessments
- Special Assessments

- Declarant Subsidy (if any)
- One-time Contributions to Working Capital
- Secondary Sources of Income
- Facilities Rental
- Monetary Penalties
- Interest on Reserves and Delinquent Assessments
- Late Charges

In determining the Regular Assessment, the Board may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Homeowner's Association and Declarant.

The Board shall send a copy of the final budget and notice of the amount of the Regular Assessment to each Owner at least 30 days before the fiscal year begins. The budget shall automatically become effective unless disapproved at a meeting of Owners representing at least 75% of the total Class "A" votes in the Homeowner's Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on the filing with the Board of a petition sufficient to require the calling of a special meeting as provided in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

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

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2 Budgeting and Allocating Phase Expenses. The Homeowner's Association is authorized to levy Phase Assessments equally against all Lots subject to assessment in a Phase to fund Phase Expenses; provided, if specified in a Supplemental Declaration or if a majority of the Owners within the Phase requests in writing, any portion of the assessment intended for the exterior maintenance of structures, insurance on structures, or replacement reserves pertaining to particular structures shall be levied on each of the benefited Lots in proportion to the benefit received.

At least 60 days before the beginning of each fiscal year, the Board shall prepare the Homeowner's Association's annual budget, including therein any separate Phase budgets covering the estimated Phase Expenses, if any, for each Phase during the coming year. Each such budget shall include any costs for additional services or a higher level of services approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, including any prior years' surplus, any anticipated non-assessment income, and assessment income anticipated from the Lots in any Phase.

The Board shall send a copy of the Homeowner's Association's annual budget and any Phase budget and notice of the amount of the Homeowner's Association assessment and any Phase Assessment for the coming year to each Owner at least 30 days before the fiscal year begins. The Phase budget shall become effective automatically unless disapproved at a special meeting as provided in Section 8.1.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the year before shall continue for the current year.

The Board may revise the budget for the Homeowner's Association or any Phase and the amount of the Homeowner's Association assessment or any Phase Assessment from time to time during the year, subject to the notice requirements for affected Lot Owners and the right of the affected Lot Owners to disapprove the revised budget as set forth above.

All amounts the Homeowner's Association collects as Phase Assessments shall be held in trust for and expended solely for the benefit of the Phase for which they were collected. Such amounts shall be accounted for separately from the Homeowner's Association's general funds.

8.3 Budgeting for Reserves. The Board shall prepare and review periodically a reserve budget for the Common Maintenance Areas and for any Phase for which the Homeowner's Association maintains capital items as a Phase Expense. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget or the Phase Expense budgets, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. These policies may differ for general Homeowner's Association purposes and for each Phase. So long as Declarant owns any property described in Exhibits "A" or "B," neither the Homeowner's Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's

prior written consent.

The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide reserve funds as needed on a “cash basis” in lieu of the Homeowner’s Association funding reserves on an accrual basis. Further, the Board may enter into lease or financing arrangements with Declarant to cover initial capital equipment and facilities requirements and ongoing capital requirements not met by funded reserves. The initial capital equipment to be acquired by the Homeowner’s Association and that may be financed by Declarant includes equipment for road maintenance, snow removal and Common Area maintenance, transit vehicles, and furniture, fixtures, vehicles and equipment necessary for the operation of the Homeowner’s Association and other similar items.

8.4 Special Assessments. In addition to other authorized assessments, the Homeowner’s Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments may be levied against the entire membership, if the Special Assessment is for Common Expenses, or against the Lots within any Phase, if the Special Assessment is for Phase Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members or Members representing at least a majority of the total votes allocated to Lots which will be subject to the Special Assessment, and the affirmative vote or written consent of the Class “B” Member, if any. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5 Benefitted Assessments. The Homeowner’s Association may levy Benefitted Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Homeowner’s Association may offer (which might include the items identified in Section 7.9). Benefitted Assessments for special services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefitted Assessment under this subsection; and to cover costs, including overhead and administrative costs, of maintaining Limited Common Areas identified and of particular benefit to a Lot or group of Lots.

The Homeowner’s Association may also levy a Benefitted Assessment against the Lots within any Phase to reimburse the Homeowner’s Association for costs incurred in bringing the Phase into compliance with the provisions of the governing documents, provided the Board gives

prior written notice to the Owners of Lots in the Phase and an opportunity for such Owners to be heard before levying the assessment.

8.6 Commencement of Assessment Obligation; Time of Payment. The obligation to pay assessments commences as to each Lot on the first day of the month following:

- (a) the month in which the Lot is made subject to this Declaration, or
- (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Regular Assessment and Phase Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the Regular Assessment and any Phase Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

8.7 Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from the assessment's due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to Idaho law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Design Guidelines may provide a procedure and standards for joining two adjacent lots into a single homesite, upon approval of the Architectural Review Committee and the Board. Upon such approval, and provided the Owner of the two lots executes and records a covenant, acceptable to the Board, perpetually joining such lots into a single homesite, the Board may, in its sole discretion on a case-by-case basis, and in the interest of increasing open space within the community, determine that thenceforth, such combined lots shall be considered as a single lot for purposes of assessments.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligations to pay assessments. In such event, each Owner shall continue to pay Regular Assessments and any applicable Phase Assessments on the same basis as during the last year for which an assessment is made, if any, until a new assessment is levied, at which time the

Homeowner's Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Homeowner's Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

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

(b) Declarant's Limited Assessment Obligation. During the Class "B" Control Period and so long as there is a budget deficit calculated as provided in this subparagraph, Declarant may elect either to pay assessments on fully-improved Lots which it owns at a rate established by Declarant from time to time that is not less than 33 1/3% of the rate of the assessment applicable to a fully improved Lot owned by another Owner, or by funding the budget deficit for the year in question. For purposes of this paragraph, the budget deficit is the difference between the amount of assessments levied on Class "A" Member-owned Lots and the amount of the Homeowner's Association's actual expenditures during the fiscal year, including debt service and reserve contributions. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of a fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year if there continues to be a budget deficit during the subsequent year. During the Class "B" Control Period, Declarant shall not be required to pay assessments on fully-improved Lots which it owns or to fund the activities of the Homeowner's Association if there is no budget deficit.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots at 33 1/3% of the rate of the assessment applicable to fully improved Lots owned by other Class "A" Members.

8.8 Lien for Assessments. The Homeowner's Association shall have a lien against each Lot, including Declarant's Lots, to secure payment of delinquent assessments by the Owner of such Lot, as well as interest, late charges (subject to Idaho law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Homeowner's Association's lien, when assessments become delinquent, may be enforced by suit, judgment, and judicial or nonjudicial

foreclosure.

At a foreclosure sale, the Homeowner's Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Homeowner's Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien. Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment under Section 8.5, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Homeowner's Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Homeowner's Association.

8.9 Exempt Property. The following property shall be exempt from payment of Regular Assessments, Phase Assessments, and Special Assessments:

- (a) all Common Area and other portions of the Community which are not Lots;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) property owned by any Phase Organization for the common use and enjoyment of its members, or owned by the members of a Phase Organization as tenants-in-common.

In addition, both Declarant and the Homeowner's Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, or Lots owned by and used by Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code.

8.10 Capitalization of Homeowner's Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Homeowner's Association in an amount equal to one-sixth of the annual Regular Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the Lot's annual Regular Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and then disbursed to the Homeowner's Association for use in covering operating expenses and other expenses incurred by the Homeowner's Association pursuant to this Declaration and the By-Laws.

8.11 Use and Consumption Fees. The Board may charge use and consumption fees to any

Person using Homeowner's Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users.

## **Part Four: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Elkhorn Ridge Estates and to accommodate changes in the master plan which inevitably occur as a community the ultimate, contemplated size of Elkhorn Ridge Estates grows and matures.*

### **ARTICLE IX Expansion of the Community**

9.1 Annexation by Declarant. Declarant may, from time to time, subject to this Declaration, annex all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section expires when all property described in Exhibit "B" has been subjected to this Declaration or 40 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a Recorded instrument executed by Declarant. Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2 Annexation by the Homeowner's Association. The Homeowner's Association also may annex property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Annexation by the Homeowner's Association shall require the affirmative vote or written consent of Owners representing more than 75% of the Class "A" votes and the consent of the property owner. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Homeowner's Association, by the owner of the property, and by Declarant, if Declarant's consent is required.

9.3 Additional Covenants and Easements. By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Homeowner's Association to maintain and insure specific property and authorizing the Homeowner's Association to recover its costs through Phase Assessments or Benefitted Assessments. If the property is owned by someone other than Declarant, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4 Private Amenities. Portions of the real property on Exhibit “B” may be annexed as Private Amenities. No uses within such areas shall be included as Lots and no uses shall have any liability to pay any Common Expenses or Homeowner’s Association Assessments unless so provided by Declarant in the Supplemental Declaration.

9.5 Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon Recording unless otherwise specified. The Lots subjected to this Declaration by Supplemental Declaration shall have equal voting rights in the Homeowner’s Association and equal pro rata liability for Regular Assessments with all other Lots.

## **ARTICLE X**

### **Additional Rights Reserved to Declarant**

10.1 Withdrawal of Property. Declarant reserves the right to amend this Declaration, so long as it has a right to annex property pursuant to Section 9.1, to remove any unimproved portion of Elkhorn Ridge Estates from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than 10 percent. “Unimproved” means that no structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the Owners of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Homeowner’s Association shall consent to such withdrawal.

10.2 Marketing and Sales Activities. Notwithstanding anything in the Governing Documents to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in Declarant’s opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things include but are not limited to business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder’s rights under this Section are subject to Declarant’s approval.

10.3 Right to Develop. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Exhibit “B” property, as it deems appropriate in its sole discretion.

Each Owner acknowledges that Elkhorn Ridge Estates is a multi-phased community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes proposed by Declarant in uses or density of property outside the Owner’s Phase or portion of a subdivision served by any local street (as distinguished from a

collector or arterial street) serving Owner's Lot, or (b) changes proposed by Declarant in subsequent phases as it relates to property outside the Owner's Phase or portion of Owner's subdivision served by a local street.

10.4 Right to Approve Changes in Elkhorn Ridge Estates Standards. No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community or has a unilateral right to annex property in accordance with Section 9.1.

10.5 Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring the entire right. In such case, a Recorded instrument is not required.

10.6 Exclusive Rights to Use Name of Development. No Person shall use the name "Elkhorn Ridge Estates" or any derivative of "Elkhorn Ridge Estates" in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Elkhorn Ridge Estates" where such term is used solely to specify that particular property is located within Elkhorn Ridge Estates.

10.7 Right to Use Common Area for Special Events. As long as Declarant owns any property described in Exhibits "A" or "B," Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Homeowner's Association;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Homeowner's Association against any loss or damage resulting from the special event; and

(c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Homeowner's Association in the same general condition as existed prior to the special events.

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

10.8 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of Elkhorn Ridge Estates, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency or in the case of an inspection relating to construction or in a case involving enforcement of a violation of this Declaration, the Design Guidelines or any condition of design review approval, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into the interior of an occupied Residence or other structure on a Lot shall be permitted without the Owner's consent. Except where entry is necessary to abate a violation of this Declaration, the Design Guidelines or any condition of design review approval, the Person exercising this easement shall promptly repair, and pay for, any resulting damage.

10.9 Right to Notice of Design or Construction Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Elkhorn Ridge Estates in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

10.10 Termination of Rights. Rights granted under Sections 10.1 to 10.9 of this Article shall terminate upon the earlier of

- (a) the period specified in the particular Section;
- (b) 40 years from the date this Declaration is Recorded; or
- (c) Declarant's Recording of a statement that all sales activity and resale activity within Declarant's control has ceased.

Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Homeowner's Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article shall not be amended without the written consent of Declarant so long as Declarant owns any property described in Exhibits "A" or "B."

10.11 Special Natural Gas Arrangements. Declarant reserves the right to install or not install natural gas service as a part of the Community improvements. In the event natural gas service is not installed, each Owner of an improved Lot desiring gas service will be required to install propane gas service. Declarant has ascertained that, due to the Community's size and remote location, natural gas service will require the installation of special high pressure gas pipelines and related pressure reducing facilities in addition to gas distribution infrastructure normally installed by a developer, and that the cost of the high pressure lines and pressure reducing facilities alone, excluding typical gas mains and service laterals, is likely to equal or exceed the

total cost of owner-installed propane service to all proposed Lots within the Community. Declarant will attempt to arrange for natural gas service under an agreement with the gas supplier to include the cost of the high pressure lines and related pressure reducing facilities in the rate structure for gas service, at such time as natural gas is available to the property. In the event Declarant is required to pay for all or any part of the high pressure lines and related facilities, and Declarant elects to proceed with natural gas service to the Lots, a gas facilities connection fee may be charged by the Homeowner's Association at the time of application for Design Review pursuant to the Design Guidelines and the provisions of Article IV above. The fee will be calculated so as to reimburse Declarant for Declarant's cost of the high pressure gas lines and related pressure reducing facilities with accrued interest and shall be paid by the Homeowner's Association to Declarant when received.

10.12 Private Water Connection Arrangements. Neither the Home Owner's Association nor the Declarant will provide water to lots. All arrangements for culinary or secondary water shall be the responsibility of each Owner, whether by the drilling of private wells or by obtaining water from some other source approved by governmental entities then having jurisdiction over water services.

## **Part Five: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Homeowner's Association, and others within or adjacent to the Community.*

### **ARTICLE XI Easements**

11.1 Easements in Common Area. Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Homeowner's Association;
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use any Common Area amenity
    - (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and
    - (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any Common Area recreational facilities on an exclusive or nonexclusive short-term basis to any Person;
  - (v) permit use by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred; and

(vii) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

11.2 Easements of Encroachment. Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one person's property on to another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3 Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" or "B," and may in its sole discretion grant to the Homeowner's Association and utility providers, perpetual non-exclusive easements throughout Elkhorn Ridge Estates (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve Elkhorn Ridge Estates, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Homeowner's Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

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

(iv) access and read utility meters.

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

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, to develop the property described in Exhibits "A" and "B." The location of the

easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

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

11.4 Technology Utility Easements. Declarant reserves exclusive easements in or adjacent to all Homeowner's Association-owned roads, and any trails and public trail rights-of-way throughout Elkhorn Ridge Estates, on behalf of itself, and its nominees, successors, and assigns, for installing, operating, maintaining, repairing, and replacing telephone, cable television, telecommunications, security, and other systems for sending and receiving data and/or other electronic signals ("Technology Utilities"), serving Elkhorn Ridge Estates. Declarant shall have ownership and exclusive control of all conduit, cable, lines or other means of distributing Technology Utilities serving Elkhorn Ridge Estates. Declarant may grant or convey these easements to third parties. Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of Technology Utilities and may grant exclusive rights to access or use the Technology Utilities.

Declarant may require that the Board enter into a bulk rate service agreement with Declarant or its assignee for the provision of Technology Utilities services to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefitted Owners) shall pay the service provider directly for such services, or the Homeowner's Association may assess the costs as a Phase Assessment or Benefitted Assessment, as appropriate.

11.5 Easements to Serve Additional Property. Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities.

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

11.6 Easements for Maintenance, Emergency, and Enforcement. Declarant grants to the Homeowner's Association easements over Elkhorn Ridge Estates as necessary for the Homeowner's Association to fulfill its maintenance responsibilities under Section 7.2. The Homeowner's Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Homeowner's Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys fees, shall be assessed against the Lot Owner as a Benefited Assessment.

11.7 Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves for itself, the Homeowner's Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Maintenance Areas to

- (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Maintenance Areas;
- (b) construct, maintain, and repair structures and equipment used for retaining water; and
- (c) maintain such areas in a manner consistent with the Community-Wide Standard.

Declarant, the Homeowner's Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Homeowner's Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Residence or other structure) adjacent to or within 100 feet of bodies of water and wetlands within Elkhorn Ridge Estates, in order to

- (a) temporarily flood and back water upon and maintain water over such portions of Elkhorn Ridge Estates;
- (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Maintenance Areas; and

(c) maintain and landscape the slopes and banks pertaining, to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements.

Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

11.8 Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owners of the affected property, the Board, and Declarant as long as it owns any property described in Exhibits “A” or “B” to the Declaration.

11.9 Rights to Stormwater Runoff, Effluent, and Water Reclamation. Declarant reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture, transport and discharge such water, runoff, and effluent. This Section may not be amended without Declarant’s consent, and the rights created in this Section shall survive termination of this Declaration.

## **ARTICLE XII**

### **Limited Common Areas**

12.1 Purpose. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Phase or Phases or a group of Owners outside of a Phase as designated by Declarant in a Supplemental Declaration. For example, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-desacs, lakes, and other portions of the Common Area within a particular Phase or Phases or benefitting a particular group of Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Phase Expense allocated among the Owners in the Phases to which the Limited Common Areas are assigned, or shall be assigned as a Benefitted Assessment to benefitted Owners.

12.2 Designation. Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Homeowner’s Association, or on a Plat; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Phases, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

In addition, a portion of the Common Area may be assigned as Limited Common Area, and Limited Common Area may be reassigned, upon Board approval and the vote of Owners representing a majority of the total Class "A" votes in the Homeowner's Association, and Members representing a majority of the Class "A" votes within the Phase(s) or other areas outside Phases affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's written consent also is required.

12.3 Use by Others. If a majority of Owners of Lots within the Phase or other specified area to which any Limited Common Area is assigned approve, the Homeowner's Association may permit Owners of Lots outside of the Phase or other benefitted area to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Phase Expenses attributable to such Limited Common Area.

### **ARTICLE XIII Party Walls and Other Shared Structures**

13.1 General Rules of Law to Apply. Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

13.2 Maintenance; Damage and Destruction. Unless otherwise specifically provided in additional covenants relating to such Lots, the cost of necessary or appropriate party structure repairs and maintenance shall be shared equally by the Owners sharing the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure may restore it. If other Owners thereafter share in the use of the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **Part Six: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Elkhorn Ridge Estates as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the community.*

### **ARTICLE XIV Dispute Resolution and Limitation on Litigation**

#### **14.1 Agreement to Encourage Resolution of Disputes without Litigation.**

(a) Declarant, the Homeowner's Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving Elkhorn Ridge Estates without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 14.2.

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

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) any dispute between an Owner and an owner or user of property outside of Elkhorn Ridge Estates, which dispute relates to the agricultural operations of the non-Elkhorn Ridge Estates party;

(iv) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(1) any Homeowner's Association action to collect assessments or other amounts due from any Owner;

(2) any Homeowner's Association or Declarant action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the

status quo and preserve the Homeowner's Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of Community standards);

(3) any suit between Owners, which does not include Declarant or the Homeowner's Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(4) any suit in which any indispensable party is not a Bound Party; and

(5) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article.

#### 14.2 Dispute Resolution Procedures.

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

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

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

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

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

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

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

(e) Adjacent Property Disputes. The Development Agreement contemplates that disputes between Elkhorn Ridge Estates Owners and the owners or user of adjacent agricultural lands will be addressed by the Homeowner's Association, and the Homeowner's Association and all Bound Parties will follow the foregoing dispute resolution procedures with respect to any such Claims on the condition that the non-Elkhorn Ridge Estates parties also agree to be bound by such procedures. The Homeowner's Association shall use reasonable efforts to obtain the agreement of any such non-Elkhorn Ridge Estates parties to become "Bound Parties" and to follow the procedures set forth above in resolving disputes. In the event the non-Elkhorn Ridge Estates parties refuse, the Homeowner's Association shall use reasonable efforts to attempt to resolve any such dispute and to mitigate any adverse impacts caused by Elkhorn Ridge Estates parties upon the agricultural operations of neighboring property owners and users.

## DISPUTE RESOLUTION TIMELINE

### Claim Between Bound Parties

| Day 1                   | Days 1-30                    | Days 30-60   | Days 60-90+  |
|-------------------------|------------------------------|--|--|
| Written Notice of Claim | Negotiations                 | Request Mediation                                      | Mediation Agency supplies rules  |
| Factual Basis           | Good faith effort            | Claimant must submit claim                             | Fee split between parties  |
| Legal Basis             | Parties meet in person       | Mediator assigned by Association or independent agency | Written summary from each side   |
| Propose a resolution    | May request Board assistance |  |  |
| Send copy to Board      |                              | If claim is not submitted, it is waived                | Supervised negotiation<br>Contractual settlement or termination of mediation |

*Diagram 14.2 - Dispute Resolution Timeline*

14.3 Initiation of Litigation by Homeowner's Association. The Homeowner's Association shall not initiate any judicial or administrative proceeding unless first approved by Members entitled to cast at least 75% of the total Class "A" votes in the Homeowner's Association, except that no such approval shall be required for actions or proceedings:

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

## ARTICLE XV Private Amenities

15.1 Right to Use the Private Amenities. Neither membership in the Homeowner's Association nor ownership or occupancy of a Lot shall automatically confer any right to use any Private Amenity. Rights to use any Private Amenity, and the terms and conditions of use, are determined

only by the Private Amenity owner. Any Private Amenity owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions relating to use of the Private Amenity, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written membership agreements or documents.

15.2 Conveyance of Private Amenities. All Persons, including all Owners, are advised that no representations or warranties have been or are made by Declarant, the Homeowner's Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity or. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of any Private Amenity. The ownership or operation of any Private Amenity (or any portion of a Private Amenity) may change at any time. Consent of the Homeowner's Association or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity or Resort area, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

15.3 Assumption of Risk and Indemnification. By purchasing a Lot in the vicinity of any Private Amenity, each Owner expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of such Private Amenity, including, without limitation:

- (a) noise from maintenance equipment (it being specifically understood that maintenance typically takes place around sunrise or sunset),
- (b) noise caused by Private Amenity users,
- (c) use of pesticides, herbicides, and fertilizers,
- (d) potential use of effluent in the irrigation of green spaces,
- (e) reduction in privacy caused by constant traffic on or around the Private Amenity or the removal or pruning of shrubbery or trees, and
- (f) street traffic or noise.

Each Owner agrees that Declarant, the Homeowner's Association, any Private Amenity owner(s), and any of Declarant's affiliates or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Lot to the Private Amenity, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of

Declarant's affiliates or agents, or the Homeowner's Association. The Owner agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Homeowner's Association against any and all such claims by Owner's visitors, tenants, and others upon such Owner's Lot.

15.4 View Impairment. Neither Declarant nor the Homeowner's Association guarantees or represents that any view will be preserved without impairment. This Declaration does not create an obligation of the Homeowner's Association, Declarant, or any Private Amenity owner to relocate, prune, or thin trees or other landscaping except as provided in Article V. In its sole and absolute discretion, any Private Amenity owner may add trees and other landscaping to such Private Amenity from time to time. In addition, any Private Amenity owner may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees from time to time. Any such additions or changes to such Private Amenity may diminish or obstruct the view from the Lots. Any express or implied easements for view purposes or for the passage of light and air are expressly disclaimed.

15.5 Rights of Access and Parking. There is established for the benefit of any Private Amenity and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and non-exclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between an entrance to the Community and the Private Amenity and over those portions of the Community (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members, guests and invitees of any Private Amenity or Resort area shall have the right to park their vehicles on the roadways located within the Community, in areas where resident/guest parking is otherwise permitted and at reasonable times before, during, and after functions held by or at the Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

15.6 Architectural Control. Declarant, the Homeowner's Association, any Phase Organization, or any committee shall not approve any construction, addition, alteration, change, or installation on, or to any portion of the Community which is adjacent to any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Phase Organization, if any.

15.7 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the affected Private Amenity owner. The foregoing shall not apply, however, to amendments made by Declarant.

15.8 Jurisdiction and Cooperation. Declarant intends that the Homeowner's Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Community and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Homeowner's Association shall have no power to promulgate Use Restrictions affecting activities on or use of any Private Amenity or Resort without the prior written consent of the owners of the Private Amenity affected thereby.

## **ARTICLE XVI**

### **Mortgage Provisions**

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

16.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Homeowner's Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Elkhorn Ridge Estates or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

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

(c) Any lapse, cancellation, or material modification of any Homeowner's Association insurance policy; or

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

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

16.3 Notice to Homeowner's Association. Upon request, each Owner shall be obligated to furnish to the Homeowner's Association the name and address of the holder of any Mortgage

encumbering the Owner's Lot.

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

## **Part Seven: CHANGES IN THE COMMUNITY**

*Communities such as Elkhorn Ridge Estates are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Elkhorn Ridge Estates and its Governing Document must be able to adapt to these changes while protecting the things that make Elkhorn Ridge Estates unique.*

### **ARTICLE XVII Changes in Ownership of Lots**

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

### **ARTICLE XVIII Changes in Common Area**

18.1 Condemnation. Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The Board may convey Common Area under threat of condemnation only if approved by the Declarant, as long as Declarant owns any property described in Exhibits "A" or "B."

The award made for such taking shall be payable to the Homeowner's Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, the Homeowner's Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration, agrees. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Homeowner's Association and used for such purposes as the Board shall determine.

18.2 Partition. Except as permitted in this Declaration, the Common Area shall remain

undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3 Transfer, Dedication or Preservation of Common Area. The Homeowner's Association may dedicate portions of the Common Area to Oneida County, Idaho or to any other local, state, or federal governmental or quasi-governmental entity, or grant conservation easements over any such property.

## **ARTICLE XIX Amendment of Declaration**

19.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary

- (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination;
- (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots;
- (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or
- (d) to add additional property to this declaration;
- (e) to satisfy the requirements of any local, state, or federal governmental agency.

So long as Declarant owns or controls property described on Exhibits "A" or "B" for development as part of Elkhorn Ridge Estates, it may unilaterally amend this Declaration for any other good faith purpose relating to the development of the community.

19.2 By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of at least 75% of the votes in the Community. In addition, so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. The approval requirements set forth in Article XVI also shall be met, if applicable.

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

19.3 Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

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

19.4 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by reference and may be amended as provided in Article III or pursuant to Sections 19.1 and 19.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

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

DECLARANT:

ELKHORN RIDGE, LLC

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By Wayne L. Palmer, It's Manager

EXHIBIT A  
LAND INITIALLY SUBMITTED  
(18 lots in phase 1)

**EXHIBIT B**  
**LAND SUBJECT TO ANNEXATION**  
(remaining 37 lots in preliminary plat and the 270 acres)

EXHIBIT C  
INITIAL USE RESTRICTIONS

- (a) Animals and Pets. A reasonable number of animals of any kind, as determined in the Board's discretion, including livestock and poultry, may be raised, bred, or kept on that portion of any lot that lies behind the corner of the residence that is furthest from the road the residence faces, subject to any and all regulations governing animals with any local body of municipal jurisdiction. In the case of corner lots, no animals shall be kept nor any animal housing structures built any closer to the side road (as determined by the orientation of the residence) than the predominant side wall of the residential structure closest to the side road. Each Residence shall be permitted a reasonable number of usual and common household pets, as determined in the Board's discretion. Animals and pets shall not be permitted by their Owners to roam free, outside of that portion of the lot designated for animals above, and any which are permitted to roam free, or, in the Homeowner's Association's sole discretion, endanger the health, make objectionable noise or odors, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community, shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the animal(s) or pet(s) to be removed at the Owner's expense. Unless specifically authorized by Oneida County or such other governmental body having jurisdiction, no pets shall be kept, bred, or maintained on any homesite for any commercial purpose.
- (b) Wildlife. Capturing, killing, or trapping wildlife is prohibited within the Community, except in circumstances imposing an imminent threat to the safety of Persons or pets.
- (c) Firearms. The discharge of firearms within the Community is prohibited except to the extent such discharge is confined within the facilities of a Private Amenity created for such purpose. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.
- (d) Nuisances. No Owner shall engage in any activity which constitutes a nuisance (meaning offensive or detrimental activity, as determined by the Board), which materially disturbs or destroys the vegetation, wildlife, or air quality within the Community, or which results in unreasonable levels of sound or pollution.
- (e) Exterior Lighting. All exterior lighting must conform to the requirements of the Design Guidelines. Excessive exterior lighting on any Lot is prohibited. The Board in its sole discretion shall determine whether any exterior lighting is excessive.
- (f) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Homeowner's Association), or, if not in active use, and stored in an unkempt or unsightly condition on as determined by the Board on any portion of a Lot which is visible from outside the Lot is prohibited.

(g) Barns, sheds, corrals, pens, dogs runs and animal enclosures of any kind shall only be allowed if properly screened and approved in accordance with Article IV;

(h) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a Residence or other improvements shall be removed immediately after the completion of construction or repair;

In any event, and notwithstanding the above list of restrictions, as set forth in Article IV, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

(i) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to others.

(j) Signs. No sign shall be erected within the Community except in accordance with the criteria set forth in the Design Guidelines. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or a Builder. The Homeowner's Association shall have the right to erect signs on the Common Area.

(k) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Residences if the decorations are of the kinds normally displayed in single family residential areas, are of reasonable size and scope, and do not disturb other Owners and residents by excessive sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from three weeks before to one week after any nationally recognized holiday.

(l) Antennas and Satellite Dishes. No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Residence, except those devices whose installation and use is protected under federal law or regulations. Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Architectural Review Committee for approval and approval will be granted only if:

(1) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(2) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Architectural Review Committee shall consider any such application on an expedited basis.

Notwithstanding the above, Declarant and/or the Homeowner's Association may erect an antenna, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Elkhorn Ridge Estates, should any master system or systems be used by the Homeowner's Association and require such exterior apparatus.

(m) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall be screened from view outside of the Lot except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Rubbish, trash, and garbage must be removed from the Lots and may not accumulate on any Lot. Outdoor incinerators may not be kept or maintained on any Lot.

(n) Pool Equipment. All pool equipment stored on any Lot shall be screened from view from outside the Lot.

(o) Unightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in any manner which is unsanitary, unsightly, offensive or detrimental to any other portion of the Community, as determined by the Board.

Woodpiles or other material shall be properly screened and stored in such a manner so as not to attract rodents, snakes, and other animals and or create a fire hazard, as the Board determines. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are or might be unsafe or hazardous to any Person or property. Open fires are prohibited within the Community, except in a contained outdoor fireplace or barbecue unit while attended and in use.

(p) Vehicles and Parking. As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, snowmobiles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of the Community except in a garage, carport, barn, shed, driveway, designated on street parking spaces or other area designated or approved by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, snowmobiles, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable

vehicles within the Community other than in enclosed garages, conforming sheds or carports or in an area on the Lot that shall be screened from view from the street. This Section shall not apply to emergency vehicle repairs.

(q) Wetlands, Lakes, and Other Water Bodies. Wetlands, lakes, ponds, and streams within the Community, if any, are aesthetic amenities only, and no active use of lakes, ponds, streams, or other bodies of water within the Community is permitted except for fishing in designated locations only. The Homeowner's Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community.

(r) Solar Equipment. Solar heating and electrical generation equipment or devices shall be permitted on the exterior of a Residence provided the device's installation and use is specifically approved for use by the Board. An application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if

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

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

EXHIBIT D  
BY-LAWS OF THE ELKHORN RIDGE ESTATES HOMEOWNER'S ASSOCIATION  
(See Accompanying Homeowner's Association By-Laws Document)