

# SANDS 55 SUBDIVISION

HORIZONTAL DATUM IS STATE PLANE, IDAHO WEST,  
ZONE 1103. DISTANCES ARE GROUND DISTANCES  
AND ARE IN U.S. SURVEY FEET.



IN A PORTION OF THE SW1/4 OF THE NW14  
AND THE NW1/4 OF THE SW1/4, SECTION 3  
T.17N., R.3E., B.M.  
VALLEY COUNTY, IDAHO

## NOTES

- ALL PROPERTIES SHOWN OF THIS PLAT ARE SUBJECT TO AND GOVERNED BY THE PROVISIONS OF THE FOLLOWING DOCUMENTS FILED WITH THE VALLEY COUNTY, IDAHO RECORDER: DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR SANDS 55 SUBDIVISION ("DECLARATION") (# \_\_\_\_\_), ARTICLES OF INCORPORATION FOR SANDS 55 SUBDIVISION PROPERTY OWNERS ASSOCIATION (# \_\_\_\_\_).
- SEE DECLARATION OF INSTALLATION OF UTILITIES RECORDED AS INST. NO. \_\_\_\_\_.
- SEE SHARED ACCESS MAINTENANCE AGREEMENT RECORDED AS INST. NO. \_\_\_\_\_.
- MINIMUM BUILDING SETBACK LINES SHALL BE IN ACCORDANCE WITH THE ZONING ORDINANCE AT THE TIME OF ISSUANCE OF ANY BUILDING PERMIT.
- LIGHTING SHALL COMPLY WITH VALLEY COUNTY LIGHTING ORDINANCE.
- ONLY ONE WOOD BURNING DEVICE ALLOWED PER LOT.
- SURROUNDING LAND USES ARE SUBJECT TO CHANGE.
- IF LOTS ARE SOLD IN THE FUTURE, CONDITIONAL USE PERMITS MAY BE REQUIRED, DEPENDING ON THE USE.
- THE VALLEY COUNTY BOARD OF COMMISSIONERS HAVE THE SOLE DISCRETION TO SET THE LEVEL OF SERVICE FOR ANY PUBLIC ROAD; THE LEVEL OF SERVICE CAN BE CHANGED.
- NO ADDITIONAL DOMESTIC WATER SUPPLY SHALL BE INSTALLED BEYOND THE WATER SYSTEM APPROVED IN THE SANITARY RELEASE.
- REFERENCE IS MADE TO PUBLIC HEALTH LETTER ON FILE REGARDING ADDITIONAL RESTRICTIONS.
- LOTS SHALL NOT BE REDUCED IN SIZE WITHOUT PRIOR APPROVAL FROM THE HEALTH AUTHORITY.
- IN COMPLIANCE WITH THE DISCLOSURE REQUIREMENTS OF IDAHO CODE 31-3805(2), IRRIGATION WATER HAS NOT BEEN PROVIDED FOR BY THE OWNER, AND THE LOTS SHOWN ON THIS PLAT SHALL NOT BE SUBJECT TO ASSESSMENTS BY LAKE IRRIGATION DISTRICT.
- THE VALLEY COUNTY BOARD OF COMMISSIONERS HAVE THE SOLE DISCRETION TO SET THE LEVEL OF SERVICE FOR ANY PUBLIC ROAD; THE LEVEL OF SERVICE CAN BE CHANGED.
- FEMA FIRM PANEL(S): 16085C1004C  
FIRM EFFECTIVE DATE(S): 2/1/2019  
FLOOD ZONE(S): ZONE X  
BASE FLOOD ELEVATION(S): NA  
FLOOD ZONES ARE SUBJECT TO CHANGE BY FEMA & ALL LAND WITHIN A FLOODWAY OR FLOODPLAIN IS REGULATED BY TITLE 9 AND TITLE 11 OF THE VALLEY COUNTY CODE.
- SEE SHEET 2 FOR ADDITIONAL INFORMATION.

## LEGEND

- SUBDIVISION BOUNDARY
- LOT LINE
- EASEMENT LINE
- CENTERLINE
- EXISTING LOT OR PARCEL LINE
- PROPOSED EDGE OF GRAVEL
- PROPOSED EDGE OF PAVEMENT
- FOUND BRASS CAP MONUMENT
- SET 5/8" X 24" REBAR WITH PLASTIC CAP LS14217
- FOUND 5/8" REBAR AS NOTED
- CALCULATED POINT, NO MONUMENT SET OR FOUND

## HEALTH CERTIFICATE

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPTER 13, HAVE BEEN SATISFIED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL. SANITARY RESTRICTIONS MAY BE RE-IMPOSED IN ACCORDANCE WITH SECTION 50-1326 IDAHO CODE BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL.

DISTRICT HEALTH DEPARTMENT, EHS

DATE

INST. NO.



SHEET 1 OF 3

25 COYOTE TRAIL  
CASCADE, ID 83611

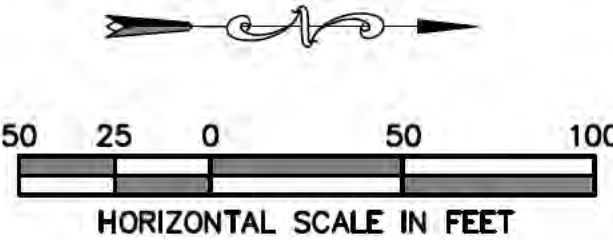
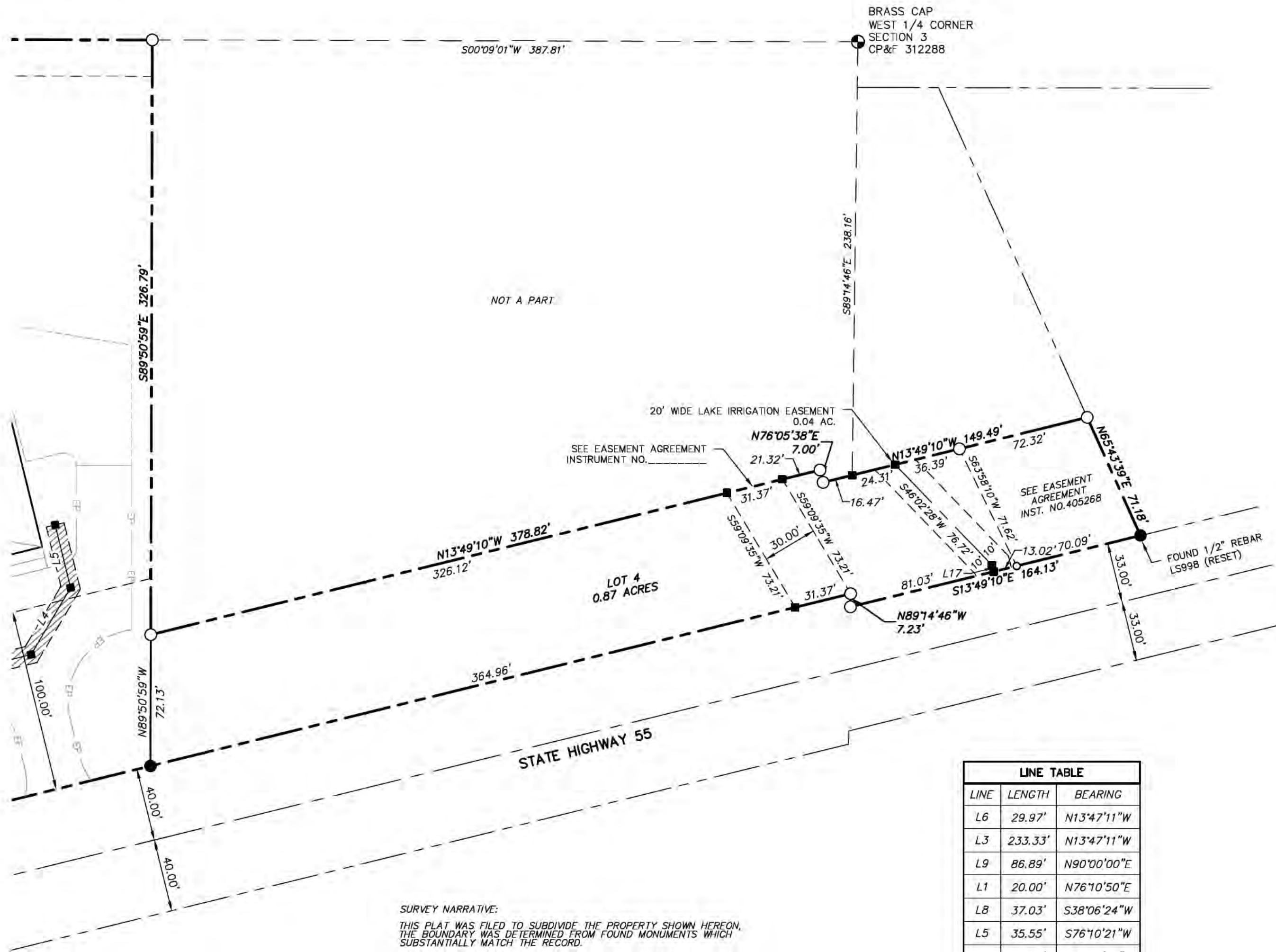
PHONE: \_\_\_\_\_  
WWW.DUNNLANDSURVEYS.COM





# SANDS 55 SUBDIVISION

IN A PORTION OF THE SW1/4 OF THE NW14  
AND THE NW1/4 OF THE SW1/4, SECTION 3  
T.17N., R.3E., B.M.  
VALLEY COUNTY, IDAHO



HORIZONTAL DATUM IS STATE PLANE, IDAHO WEST,  
ZONE 1103. DISTANCES ARE GROUND DISTANCES  
AND ARE IN U.S. SURVEY FEET.

## LEGEND

- SUBDIVISION BOUNDARY
- LOT LINE
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- FOUND BRASS CAP MONUMENT
- SET 5/8" X 24" REBAR WITH PLASTIC CAP LS14217
- FOUND 5/8" REBAR AS NOTED
- CALCULATED POINT, NO MONUMENT SET OR FOUND

SURVEY NARRATIVE:  
THIS PLAT WAS FILED TO SUBDIVIDE THE PROPERTY SHOWN HEREON.  
THE BOUNDARY WAS DETERMINED FROM FOUND MONUMENTS WHICH  
SUBSTANTIALLY MATCH THE RECORD.  
REFERENCES:  
RIGHT-OF-WAY DEED, INST. NO. 19920  
RECORD OF SURVEY, INST. NO. 138603  
RECORD OF SURVEY, INST. NO. 184543  
RECORD OF SURVEY, INST. NO. 405189  
RECORD OF SURVEY, INST. NO. 149888  
EASEMENT AGREEMENT, INST. NO. 405268  
PLEASANT ACRES SUBDIVISION, INST. NO. 79447

LINE TABLE		
LINE	LENGTH	BEARING
L6	29.97'	N13°47'11"W
L3	233.33'	N13°47'11"W
L9	86.89'	N90°00'00"E
L1	20.00'	N76°10'50"E
L8	37.03'	S38°06'24"W
L5	35.55'	S76°10'21"W
L4	42.69'	N59°22'48"W
L2	75.25'	S76°12'49"W
L13	124.08'	N90°00'00"E
L16	45.44'	S57°03'32"W
L15	122.52'	N90°00'00"E
L14	41.87'	N00°00'00"E
L11	199.03'	N90°00'00"E
L12	40.84'	S72°58'31"W
L10	28.66'	N00°00'00"W
L7	232.06'	N13°47'11"W



SHEET 2 OF 3

25 COYOTE TRAIL  
CASCADE, ID 83611  
PHONE: [REDACTED]  
WWW.DUNNLANDSURVEYS.COM





# SANDS 55 SUBDIVISION

IN A PORTION OF THE SW1/4 OF THE NW14  
AND THE NW1/4 OF THE SW1/4, SECTION 3  
T.17N., R.3E., B.M.  
VALLEY COUNTY, IDAHO

**CERTIFICATE OF OWNER**

KNOW ALL MEN BY THESE PRESENTS, THAT LAKE FORK 55, LLC, AN IDAHO LIMITED LIABILITY COMPANY IS THE OWNER OF THE REAL PROPERTY HEREAFTER DESCRIBED:

A PARCEL OF LAND LOCATED IN A PORTION OF THE SW1/4 OF THE NW1/4 AND THE NW1/4 OF THE SW1/4, SECTION 3, T.17N., R.3E., B.M., VALLEY COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS::

COMMENCING AT A FOUND BRASS CAP MONUMENT MARKING THE WEST 1/4 CORNER OF SAID SECTION 3, CP&F INSTRUMENT NO. 312288, CORNER RECORDS OF SAID VALLEY COUNTY;

THENCE A BEARING OF S 00°09'01" W, A DISTANCE OF 387.81 FEET, ON THE WEST BOUNDARY OF SAID SECTION 3 TO A FOUND 5/8 INCH REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE LEAVING SAID WEST BOUNDARY A BEARING OF S 89°50'59" E, A DISTANCE OF 326.79 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE A BEARING OF N 13°49'10" W, A DISTANCE OF 378.82 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE A BEARING OF N 76°05'38" E, A DISTANCE OF 7.00 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE A BEARING OF N 13°49'10" E, A DISTANCE OF 149.49 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE A BEARING OF N 65°43'39" E, A DISTANCE OF 71.18 FEET, TO A SET 5/8 INCH REBAR ON THE WEST RIGHT-OF-WAY BOUNDARY OF STATE HIGHWAY 55;

THENCE ON SAID RIGHT-OF-WAY BOUNDARY A BEARING OF S 13°49'10" E, A DISTANCE OF 164.13 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE ON SAID RIGHT-OF-WAY BOUNDARY A BEARING OF N 89°14'46" W, A DISTANCE OF 7.23 FEET, TO A FOUND 5/8 INCH REBAR;

THENCE ON SAID RIGHT-OF-WAY BOUNDARY A BEARING OF S 13°49'10" E, A DISTANCE OF 897.28 FEET, TO A SET 5/8 INCH REBAR;

THENCE ON SAID RIGHT-OF-WAY BOUNDARY A BEARING OF N 76°10'53" E, A DISTANCE OF 7.00 FEET, TO A SET 5/8 INCH REBAR;

THENCE ON SAID RIGHT-OF-WAY BOUNDARY A BEARING OF S 13°49'10" E, A DISTANCE OF 339.37 FEET, TO A SET 5/8 INCH REBAR;

THENCE LEAVINGS SAID RIGHT-OF-WAY BOUNDARY A BEARING OF N 89°50'59" W, A DISTANCE OF 608.57 FEET, TO A SET 5/8 INCH REBAR ON SAID WEST BOUNDARY OF SECTION 3;

THENCE ON SAID WEST BOUNDARY A BEARING OF N 00°09'01" E, A DISTANCE OF 813.78 FEET, TO THE POINT OF BEGINNING.

SAID DESCRIBED PARCEL OF LAND CONTAINS 10.27 ACRES, MORE OR LESS.

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE THE ABOVE DESCRIBED PROPERTY IN THE PLAT OF SANDS 55 SUBDIVISION. THE EASEMENTS SHOWN ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR THE USED SPECIFICALLY DEPICTED ON THE PLAT AND FOR ANY OTHER PURPOSES DESIGNATED HEREON. THE OWNERS HEREBY CERTIFY THAT THE INDIVIDUAL LOTS WILL NOT BE SERVED BY ANY WATER SYSTEM COMMON TO ONE (1) OR MORE LOTS BUT WILL BE SERVED BY INDIVIDUAL WELLS.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
RYAN MONTOYA, MANAGER, LAKE FORK 55, LLC

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID STATE OF IDAHO PERSONALLY APPEARED RYAN MONTOYA, KNOWN OR IDENTIFIED TO ME TO BE THE MANAGER OF LAKE FORK 55, LLC, THE IDAHO LIMITED LIABILITY COMPANY THAT EXECUTED THE INSTRUMENT OR THE PERSON WHO EXECUTED THE INSTRUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED TO ME THAT SUCH COMPANY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

\_\_\_\_\_  
NOTARY PUBLIC OF IDAHO

RESIDING AT \_\_\_\_\_

COMMISSION EXPIRES: \_\_\_\_\_

**CERTIFICATE OF VALLEY COUNTY SURVEYOR**

I, THE UNDERSIGNED COUNTY SURVEYOR FOR VALLEY COUNTY, DO HEREBY CERTIFY THAT THE PLAT OF SANDS 55 SUBDIVISION IS IN COMPLIANCE WITH TITLE 50, CHAPTER 13, IDAHO CODE, RELATING TO PLATS AND SURVEYS AND IS ALSO IN COMPLIANCE WITH THE VALLEY COUNTY SUBDIVISION REGULATIONS RELATING TO PLATS.

\_\_\_\_\_  
VALLEY COUNTY SURVEYOR

\_\_\_\_\_  
DATE

**APPROVAL OF THE  
VALLEY COUNTY PLANNING AND ZONING COMMISSION**

THE PLAT OF SANDS 55 SUBDIVISION IS HEREBY ACCEPTED AND

APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024,

BY THE VALLEY COUNTY PLANNING AND ZONING COMMISSION.

\_\_\_\_\_  
CHAIRMAN

**APPROVAL OF THE  
BOARD OF VALLEY COUNTY COMMISSIONERS**

THE PLAT OF SANDS 55 SUBDIVISION IS HEREBY

ACCEPTED AND APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024,

BY THE VALLEY COUNTY COMMISSIONERS.

\_\_\_\_\_  
CHAIRMAN



**CERTIFICATE OF VALLEY COUNTY TREASURER**

I, THE UNDERSIGNED COUNTY TREASURER IN AND FOR THE COUNTY OF VALLEY, STATE OF IDAHO, PER THE REQUIREMENTS OF IDAHO CODE 50-1308 DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAX FOR THE PROPERTY INCLUDED IN THE PLAT OF SANDS 55 SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY DAYS ONLY.

\_\_\_\_\_  
VALLEY COUNTY TREASURER

\_\_\_\_\_  
DATE

SHEET 3 OF 3

25 COYOTE TRAIL  
CASCADE, ID 83611

PHONE [REDACTED]  
WWW.DUNNLANDSURVEYS.COM





COA No.	Description of Item	Completed	Notes
4	Final plat shall be recorded within two years, or this permit will be null and void.	<input type="checkbox"/> Complete	Cynda approved email dated 07/19/2023.
5	Valley County Engineer approved storm water management and site grading plan.	<input checked="" type="checkbox"/> Complete	Easement shown on the plat.
6	Updated letter from U.S. Corps of Engineers	<input checked="" type="checkbox"/> Complete	Completed and emailed to Cynda on 7/24, permits received.
7	Bury conduit for fiber optics with utilities	<input type="checkbox"/> Complete	Completed and emailed to Cynda on 7/24, see plans.
8	Declaration of Installation of Utilities shall be recorded and noted on the face of the plat.	<input type="checkbox"/> Complete	Noted on plat and in Declaration, 2.1.2 and 2.8. Will record with plat.
9	Letter of approval is required from McCall Fire District.	<input checked="" type="checkbox"/> Complete	Received letter on 7/14/23, RM email Cynda to confirm the letter was sufficient.
10	CCR's should address septic maintenance, dark sky compliant lighting, wildfire prevention, noxious weeds, and limit each lot to one wood burning device.	<input checked="" type="checkbox"/> Complete	Septic, 5.1.8; Dark Sky - declaration 3.3; wood burning device, 4.9; noxious weeds and wildfire prevention, 5.1.9
11	Lighting must comply with the Valley County Lighting Ordinance.	<input checked="" type="checkbox"/> Complete	See plat.
12	Shall place addressing numbers on each building.	<input checked="" type="checkbox"/> Complete	See Declaration 2.1.1 and 2.1.4, confirm with VC on whether need to have a separate recorded document.
13	All easements shall be shown on the final plat.	<input checked="" type="checkbox"/> Complete	Lot 1, permits for the system have been issued and provided to VC.
14	Create a "Shared Access Maintenance Agreement" and note it on the plat as a recorded document.	<input type="checkbox"/> Complete	Plat shows irrigation ditch is not abandoned along with easements. See letter from LID, what else is needed (confirm with VC)?
15	Approval from CDH	<input checked="" type="checkbox"/> Complete	These have been included on the plat.
15	Approval from Lake Irrigation District	<input type="checkbox"/> Complete	
16	Planning and Zoning Director will need to approve proposed use for Lot 2. A conditional use permit may be required.	<input checked="" type="checkbox"/> Complete	Will have the language in the Declaration of Installation of Utilities. Is anything else needed (confirm with VC)?
17	If lots are sold in the future, conditional use permits may be required, depending on the use. This note should be placed on the final plat.	<input checked="" type="checkbox"/> Complete	Declaration and plat.
18	Notes for final plat - See CUP for list of items under #18	<input checked="" type="checkbox"/> Complete	Declaration, 3.14.5
19	Provide easement for ditch on Lot 1 and 4 in cooperation with Lake Irrigation District	<input checked="" type="checkbox"/> Complete <input type="checkbox"/> Complete	Noted on plat.
20	Idaho Transportation Department approval for access	<input checked="" type="checkbox"/> Complete	Need to talk with Cynda on the uses and how to provide this.
21	May or may not pave areas behind buildings.	<input checked="" type="checkbox"/> Complete	Noted on plat.
22	No short-term rental of the housing units.	<input checked="" type="checkbox"/> Complete	Removed from plat
23	Prior to prior plat, will submit a more specific list of approved uses for Lot 2.	<input type="checkbox"/> Complete	Declaration, 4.10

July 14, 2023

James Fronk Consulting, LLC.  
[REDACTED]

**Re: Lake Fork Industrial – Fire Suppression**

Dear Mr. Fronk,

Thank you for the invitation to meet with your design team. To recap, in lieu of meeting the fire flow requirements in Appendix B of the 2018IFC (International Fire Code), a 30,000-gallon water storage tank for fire protection shall be installed in accordance with NFPA 22, inspected, and made operable prior to building construction (501.4, IFC2018). The buildings that are mixed-use and/ or meet a sprinkler requirement based on square footage or use, are required to have a monitored automatic fire sprinkler system installed in accordance with Section 903 of the 2018IFC that can run for thirty minutes. The sprinkler system's 30-minute water duration need to be separate from the 30,000 gallons of water. A KNOX box is required on each building (506.1, 2018IFC). Fire extinguishers with a minimum rating of 2-A shall be located within 75 feet of travel distance throughout the business portion of the building, and 1-A fire extinguishers shall be installed in each dwelling unit (906, 2018IFC).

All sprinkler plans need to be submitted to the Idaho State Fire Marshal's Office for plan review: [sfm.planreview@doi.idaho.gov](mailto:sfm.planreview@doi.idaho.gov)

Sincerely,



Garrett de Jong  
Fire Chief

**From:** [REDACTED]  
**Sent:** Wednesday, July 19, 2023 4:40 PM  
**To:** 'Ryan Montoya'  
**Subject:** FW: Sands 55 Subdivision - Wetland Jurisdictional Determination - FW: NWW No. 062100020

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**From:** Cynda Herrick <[cherrick@co.valley.id.us](mailto:cherrick@co.valley.id.us)>  
**Sent:** Wednesday, July 19, 2023 4:31 PM  
**To:** [REDACTED]  
**Cc:** 'Ryan Montoya' [REDACTED]; Lori Hunter <[lhunter@co.valley.id.us](mailto:lhunter@co.valley.id.us)>  
**Subject:** Re: Sands 55 Subdivision - Wetland Jurisdictional Determination - FW: NWW No. 062100020

Hello Jim,

This email from the Army Corps of Engineers will suffice to meet condition of approval #6 for site grading purposes. The original letter stated they were not jurisdictional wetlands.

I spoke with Marve and he stated the official letter is forthcoming in September.

Cynda Herrick, AICP, CFM  
Valley County  
Planning and Zoning Director  
Floodplain Coordinator  
PO Box 1350  
Cascade, ID 83611  
(208)382-7116

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

**S**ervice **T**ransparent **A**ccountable **R**esponsive

---

**From:** [REDACTED] >  
**Sent:** Friday, July 14, 2023 9:30 AM  
**To:** Cynda Herrick <[cherrick@co.valley.id.us](mailto:cherrick@co.valley.id.us)>  
**Cc:** 'Ryan Montoya' [REDACTED]  
**Subject:** Sands 55 Subdivision - Wetland Jurisdictional Determination - FW: NWW No. 062100020

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Cynda,

Please see the email correspondence below from the ACOE concerning the Sands 55 Subdivision pervious 2005 authorized Wetland Jurisdictional Determination (File attached above).

With the Valley County approved grading and drainage plans and this correspondence from the ACOE can the Client commence site work on the Sands 55 Subdivision?

Thank you,

Jim  
James Fronk Consulting, LLC.

---

**From:** Griffith, Christen CIV USARMY CENWW (USA) <[Christen.M.Griffith@usace.army.mil](mailto:Christen.M.Griffith@usace.army.mil)>

**Sent:** Thursday, July 13, 2023 10:13 AM

**Subject:** RE: [Non-DoD Source] NWW No. 062100020 - Expired 2005 JD

Jim

Thank you for coordinating with the Corps regarding the expiration of the previously Approved Jurisdictional Determination. We have reviewed this request and current information available to our office, and believe that the extent and conditions of aquatic resources within the subject property have not changed since our original determination, however at this time the Corps is unable to complete Approved Jurisdictional Determinations.

In light of the recent U.S. Supreme Court's Decision the agencies are developing a rule to publish in the Federal Register, intended to be completed by September 1, 2023. Official Statement in the link below.

<https://www.usace.army.mil/Media/Announcements/Article/3440421/27-june-2023-update-supreme-court-ruling-in-sackett-v-environmental-protection/>

My apologies, and please let me know if there are additional questions.

Marve

Christen Marve Griffith  
US Army Corps of Engineers  
Boise Regulatory Office  
720 E. Park Blvd, Suite 245  
Boise Idaho, 83712  
[Christen.m.griffith@usace.army.mil](mailto:Christen.m.griffith@usace.army.mil)  
(208) 433-4470

---

**From:** [REDACTED] >

**Sent:** Monday, April 3, 2023 11:36 AM

**To:** Griffith, Christen CIV USARMY CENWW (USA) <[Christen.M.Griffith@usace.army.mil](mailto:Christen.M.Griffith@usace.army.mil)>

**Subject:** [Non-DoD Source] NWW No. 062100020 - Expired 2005 JD

Marve,

As we briefly discussed during our Teleconference call on 3/22/2023. The attached approved jurisdictional determination in 2005 has expired. The proposed Lake Fork Development Project in 2005 did not occur. The current Owner – (Lake Fork 55, LLC. Address: 4688 N. Arrow Villa Way, Boise ID. 83703) has obtained the property and is currently going through the CUP process with Valley County Idaho. The project is similar in nature to that of the project in 2005 (commercial land use).

Can you please review to see if the Wetland Jurisdictional Determination can be renewed or reissued.

Please let me know if you have any questions.

Thank you,

Jim Fronk  
James Fronk Consulting, LLC.  


Approved





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
201 NORTH TIRD AVENUE  
WALLA WALLA, WASHINGTON 99362

December 13, 2005

Regulatory Division

SUBJECT: NWW No. 062100020



Mr. Mike Voris  
Highway 55 LLC  
PO Box 432  
Donnelly, Idaho 83615

Dear Mr. Voris:

Enclosed is a copy of our approved jurisdictional determination indicating the site of your proposed Lake Fork Development project. This is located near Lake Fork in Valley County, Idaho and contains waters of the United States regulated under Section 404 of the Clean Water Act. We reviewed your September 27, 2005 wetland delineation map entitled Lake Fork Property, prepared by Mr. James Fronk and have determined the map accurately delineates the extent of waters of the United States, including wetlands for your project. A copy of the approved map is enclosed. The map shows the unnamed irrigation lateral is a waters of the United States. However, the wetland swale that extends across your project area is not a water of the United States and is not subject to jurisdiction under Section 404 of the Clean Water Act. Therefore, a Department of the Army permit is not required to conduct work in this wetland swale.

This jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision of the determination before the expiration date or the District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit reverification on a more frequent basis.

We are enclosing an appeals form that explains the options you have if you do not agree with this approved jurisdictional determination. If you decide to appeal this determination, you need to send the form to the Division Engineer, Northwestern Division, so he receives it within 60 days of this letter. If you have new information you want us to consider, you may send it to the Regulatory Division, Walla Walla District, at the letterhead address before you file the appeal.

Section 404 of the Clean Water Act (33 U.S.C. 1344) requires a Department of the Army permit be obtained for the discharge of dredged or fill material into waters of the United States, including wetlands. This includes excavation activities which result in the discharge of dredged material and destroy or degrade waters of the United States. If your proposed project will



involve discharging dredged or fill material into Mud Creek or adjacent wetlands, you will need to obtain a Department of the Army permit before you start work.

If you have any questions, please contact Mr. Gregory J. Martinez of our Boise Regulatory Office at 208-345-2154. A copy of this letter is being sent to Mr. James G. Fronk, PO Box 70, McCall, Idaho 83638; Mr. John Olson, Environmental Protection Agency, Idaho Operations Office, 1435 North Orchard Street, Boise, Idaho 83706; and Ms. Cynda Herrick, Valley County Planning and Zoning, PO Box 1350, Cascade, Idaho 83611.

Sincerely,

*Barbara C. Bengt*

for A. Bradley Daly  
Chief, Regulatory Division

Enclosures



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Lake Fork 55 LLC  
Attn: Ryan Montoya  
4688 N. Arrow Villa Way  
Boise, Idaho 83702

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(Space Above For Recorder's Use)

**MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND  
RECIPROCAL EASEMENT AGREEMENT  
FOR  
SANDS 55 SUBDIVISION**



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**MASTER DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RECIPROCAL EASEMENT AGREEMENT FOR  
SANDS 55 SUBDIVISION**

This Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement for Sands 55 Subdivision is made effective \_\_\_\_\_, 2023 (the “**Effective Date**”), by Lake Fork 55 LLC, an Idaho limited liability company (“**Declarant**”).

**RECITALS**

Capitalized terms used but not defined in the Recitals are defined in Article 1 below.

A. Declarant is the Owner of that certain real property located in unincorporated Valley County, Idaho, consisting of the real property more particularly described on Exhibit A attached hereto and incorporated herein (together with any Additional Property, if any, made subject to this Declaration via a Supplemental Declaration, the “**Project**”).

B. Declarant desires to (i) create certain easements for ingress, egress, utilities and other matters, for the benefit of each of the Parcels in the Project; (ii) impose obligations with respect to the common use, maintenance and repair of the Common Area and Parcel Maintenance Area; and (iii) impose certain limitations on the design and use of the Parcels and the improvements to be constructed thereon by the Owners, all as is more particularly set forth herein, for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project for the benefit of the Declarant and each Owner.

NOW, THEREFORE, Declarant does hereby establish and declare that the Project and every portion thereof shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, maintained, repaired, occupied and used subject to the covenants, conditions, restrictions, easements, rights, rights-of-way, liens, charges and other protective and beneficial provisions set forth in this Declaration, all of which (i) are declared and agreed to be in furtherance of a general plan for the protection, preservation, maintenance, platting, subdivision, improvement and sale of the Project and to enhance the value, desirability and attractiveness of the Project as an integrated, first class, master planned mixed use project consisting of high quality industrial, office, retail, and residential (multi-family and/or single family) components; (ii) are mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of the Project and each portion thereof and each Owner of a Parcel, and (iii) are hereby expressly declared to be binding upon the Parcels and each portion thereof and shall run with the land and each and every part thereof, inure to the benefit of and be a burden upon the Parcels and each portion thereof and shall bind the respective heirs, successors and assigns of the Owners of the Parcels. Upon recordation of this Declaration, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made by any Owner, shall be and hereby is deemed to incorporate by reference the provisions of this Declaration, as the same may from time to time be amended. In the event of any conflict between this Declaration and any other Project Document, this Declaration shall control, provided, however, that a Supplemental Declaration may impose additional covenants, restrictions and obligations on the Section Property covered by such Supplemental Declaration and in such event, the terms of the Supplemental Declaration shall control.

## ARTICLE 1 DEFINITIONS

**1.1 Approved Plans.** The term “Approved Plans” means the Submittal Plans approved or conditionally approved (or deemed approved) by the Approving Owners for the Improvements to be constructed on a Parcel, as provided in Article 3 below.

**1.2 Additional Property.** The term “Additional Property” means property located adjacent to or in the vicinity of the Project which may be annexed into the Project by Declarant from time to time by recordation of a Supplemental Declaration.

**1.3 Approving Owners.** The term “Approving Owners” means (i) Declarant until the Declarant Termination Date, and (ii) after the Declarant Termination Date, by mutual agreement of the Owners of the Parcels containing at least sixty percent (60%) of all the Floor Area then existing within the Project.

**1.4 Building.** The term “Building” means any permanently enclosed structure placed, constructed or located on a Parcel.

**1.5 Building Area.** The term “Building Area” means the area within a Parcel where Building(s) may be located as identified: (i) on the Site Plan; and (ii) on a Supplemental Declaration. If the Site Plan or applicable Supplemental Declaration does not designate a “Building Area” on a particular Parcel, then the Building Area for such Parcel shall be that portion of the Parcel not located within Common Area, Parcel Maintenance Area, Utility Lines, easements or setbacks identified on the Site Plan, the applicable Supplemental Declaration, as otherwise required this Declaration, or as required by Governmental Requirements.

**1.6 Claims.** The term “Claims” means all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees and court costs).

**1.7 Common Area.** The term “Common Area” means (i) the area identified as Common Area on Exhibit C attached hereto and incorporated herein (the “Common Area Exhibit”), together with all Improvements thereon; (ii) any real property designated as Common Area by Declarant on any Plat together with all Improvements thereon; and (iii) any real property designated as Common Area in any Supplemental Declaration together with all Improvements thereon.

Commented [RM1]: Review in relation to changes, update plans.

**1.8 Common Area Expenses.** The term “Common Area Expenses” means all reasonable costs and expenses of every nature and kind as may actually be paid or incurred by Operator to operate, maintain, repair and replace the Common Area.

Commented [RM2]: Confirm with changes of maintenance by tenant.

**1.9 Constant Dollars.** The term “Constant Dollars” means the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of recordation of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year this Declaration commences; the “Current Index Number” shall be the level of the Index for the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Owners



shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

**1.10 Declarant.** The term “**Declarant**” refers to Lake Fork 55 LLC, an Idaho limited liability company. Declarant may assign any or all of its rights under this Declaration to any Person in a written instrument that contains the assignee’s acceptance of such assignment and agreement to assume the obligations of Declarant pertaining to the rights assigned, which acceptance and assumption will be effective as of the date of execution. The assignment and assumption agreement will be recorded in the real property records of Valley County, Idaho, and a copy thereof will be given by Declarant to the Owners and, thereupon, the Declarant originally identified herein will be relieved of Declarant’s obligations pertaining to the rights assigned.

**1.11 Declarant Termination Date.** The term “**Declarant Termination Date**” means the earlier of (i) the date which is six (6) months after all Buildings identified on the Site Plan have been constructed, or (ii) the date that Declarant terminates its right to be the sole Approving Owners by notice to all Owners.

**1.12 Declaration.** The term “**Declaration**” means this Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement for Sands 55 Subdivision, as may be amended from time to time, and as may be supplemented pursuant to any one or more Supplemental Declarations.

**1.13 Default Interest Rate.** The term “**Default Interest Rate**” means the lesser of: (i) eighteen percent (18%) per annum, or (ii) the highest lawful rate.

**1.14 Floor Area.** The term “**Floor Area**” means the total number of square feet of floor area contained within a Building, but excluding the Floor Area of any sheds or outbuildings that are used for storage. Floor Area will be measured from the exterior line of the exterior walls of such Building.

**1.15 Governmental Requirements.** The term “**Governmental Requirements**” means all applicable laws, rules, regulations, orders, ordinances, restrictions and other requirements (including all requirements to have or to obtain permits) of any governmental agency or body with jurisdiction over any portion of the Project, including, without limitation, all restrictions and requirements contained in any applicable development agreements, conditional use permits, building permits, and other permits.

**1.16 Improvements.** The term “**Improvements**” means any Building and any structure, facility, system or object, whether permanent or temporary, which is installed, constructed, placed upon or allowed on, under or over any portion of the Project, including fences, streets, drives, driveways, parking areas, sidewalks, bridges, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, grass, vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction, and utility improvements.

**1.17 Irrigation Facilities.** The term “**Irrigation Facilities**” shall mean Water Rights and those facilities and systems, if any, for the transmission of pressurized irrigation and gravity irrigation to the Project, including but not limited to, ground water wells and related components, water mains, pump house, pipe delivery system, electrical conduits or systems, diversion structures, control structures, delivery piping, manhole structures, sedimentation ponds, amenity ponds, pressure irrigation intake piping, pond overflow structures, overflow ditch, and or other public utilities, private utilities and governmental entities providing service or services to one or more of the Parcels in common and shall also include any interest in real or personal property, including but not limited to, easement and/or license rights or other instruments of record.

**1.18 Mortgage.** The term “Mortgage” means any mortgage or deed of trust encumbering a Parcel.

**1.19 Mortgagee.** The term “Mortgagee” means a mortgagee under a mortgage, a grantee under a deed to secure debt, or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

**1.20 Occupant.** The term “Occupant” means any Owner or Person from time to time entitled to the use and occupancy of any portion of a Building in the Project under an ownership right or any lease, sublease, assignment, license, concession or similar occupancy agreement.

**1.21 Operator.** The term “Operator” initially means Declarant. The Operator may be replaced as provided in Article 5 of this Declaration.

**1.22 Outdoor Seating Areas.** The term “Outdoor Seating Areas” means areas located directly adjacent to or in close proximity to a Building which are used, from time to time, for outdoor seating by the Occupant of such Building in accordance with the terms of this Declaration.

**1.23 Owner.** The term “Owner” means the record holder of fee simple title to a Parcel (or any portion thereof), its heirs, personal representatives, successors and assigns, and includes Declarant at all times during which Declarant owns a Parcel or a portion thereof. If a Parcel is owned by multiple parties (“Multiple Owners”), the Multiple Owners shall designate in writing one of the Multiple Owners (“Designated Owner”) with the sole right to act for and bind all of the Multiple Owners of such Parcel, and the other Owners may rely on any consent, approval or decision made by the Designated Owner on behalf of the Multiple Owners.

**1.24 Parcel or Parcels.** The term “Parcel” or “Parcels” means that portion of the Project and any Additional Property annexed into the Project which is from time to time (i) subdivided as a legal lot pursuant to a Plat or otherwise legally created for separate use and/or ownership, or (ii) designated as Parcel by recordation of a Supplemental Declaration. As of the Effective Date, each of Lots 1, 2, 3, and 4, as legally described on Exhibit A, is a Parcel.

[Drafting Note: Need to confirm we are including Lot 4 in this Declaration?]

**1.25 Parcel Maintenance Area.** The term “Parcel Maintenance Area” means (i) the area identified as Parcel Maintenance Area on Exhibit D attached hereto and incorporated herein (the “Parcel Maintenance Area Exhibit”), together with all Improvements thereon; (ii) any real property designated as Parcel Maintenance Area by Declarant on any Plat together with all Improvements thereon; and (iii) any real property designated as Parcel Maintenance Area in any Supplemental Declaration together with all Improvements thereon.

**1.26 Parcel Maintenance Area Expenses.** The term “Parcel Maintenance Area Expenses” means all reasonable costs and expenses of every nature and kind as may actually be paid or incurred by Operator to operate, maintain, repair and replace the Parcel Maintenance Area on a particular Parcel.

**1.27 Permittees.** The term “Permittees” means the Operator, Owners and Occupants and their respective officers, directors, members, managers, partners, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires, provided, however, that persons engaged in civic, public or political activities within Project shall not be considered Permittees.

**1.28 Person or Persons.** The term “Person” or “Persons” means and includes individuals, partnerships, firms, associations, joint ventures, corporations, or any other form of business entity.

Commented [RM3]: Lot 4 will be a common area expense for maintaining, e.g. noxious weeds, maintenance of entrances, etc.?

Commented [RM4R3]: Yes and include as a common area.

Commented [RM5]: Review based on changes.

Commented [RM6R5]: Make sure we are now saying that each parcel owner is responsible for their own maintenance and operating. There will be shared expenses that the operator is responsible for, e.g. water tank. Each owner responsible for maintaining the common areas in that parcel?

Commented [RM7R5]: See comment in 5.4. need to change to each owner being responsible.



1.29 **Plat.** The term “Plat” means any subdivision plat covering all or any portion of the Project, as recorded in the Valley County Recorder’s Office, as the same may be amended from time to time.

1.30 **Project Design Standards.** The term “Project Design Standards” means the Design Standards for the Project as may be determined by the Declarant in its sole discretion from time to time. Nothing contained in this Declaration shall obligate Declarant to promulgate any Project Design Standards.

1.31 **Project Documents.** The term “Project Documents” means this Declaration, any Supplemental Declaration(s), each Plat, the Project Design Standards, and Signage Criteria, all as may be amended or supplemented from time to time.

1.32 **Project Lighting.** The term “Project Lighting” means the artificial lighting facilities, including but not limited to poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks and contacts that are located within the Common Area. Project Lighting does not include any lighting affixed to any Building.

1.33 **Project Objectives.** The term “Project Objectives” means the design, development, improvement and use of the Project as an integrated, first class mixed use project consisting of high quality industrial, office, retail, and residential (multi-family and/or single family) components.

1.34 **Project Sign(s).** The term “Project Signs” means certain freestanding signs, including, but not limited to, pylon and/or Project identification signs, and related improvements, elected to be constructed by Declarant in the Common Area in its sole discretion, as depicted and/or designated on the Site Plan or on any amendment to this Declaration or on any Supplemental Declaration. Placement on any Project Sign for an Owner or its Occupant is determined by the Approving Owners. Notwithstanding Section 6.1, with respect to any Project Sign(s) with multiple panels, including, but not limited to, pylon signs, each Owner whose signage (or whose tenant’s) signage is located on such Project Sign shall pay its proportionate share of the construction, replacement, maintenance and repair of such Project Sign based on the area of its panel as the numerator, with the area of all occupied sign panels on such Project Sign as the denominator.

Commented [RM8]: Need to provide the sign plan.

Commented [RM9R8]: Exhibit E, see 1.37.

1.35 **Project Utility Lines.** The term “Project Utility Lines” means any Utility Lines from time to time serving the Common Area.

1.36 **Service Facilities.** The term “Service Facilities” means trash compactors and enclosures, exterior lighting attached to a Building, drive-up or drive-through customer service facilities directly adjacent or in close proximity to a Building, side yards and rear yards used for outdoor storage or operations, loading docks, electrical facilities and transformers, truck ramps and other similar exclusive service facilities and outward extensions, and customer pickup areas directly adjacent to or in close proximity to a Building, whether or not described, labeled or depicted on the Site Plan. The Service Facilities are the exclusive property of the Owner of the Parcel on which such Service Facilities are located and not a part of the Common Area.

1.37 **Signage Criteria.** The term “Signage Criteria” means the signage criteria for the free-standing and exterior building signs constructed or located within the Project, as determined by the Declarant in its sole discretion, from time to time including, but not limited to, the Signage Criteria attached hereto as Exhibit E and incorporated herein.

Commented [RM10]: See comment 1.34

1.38 **Site Plan.** The term “Site Plan” initially means the Site Plan attached hereto as Exhibit B and incorporated herein, as it may be supplemented, modified or amended by recordation of an amendment

Commented [RM11]: Need updated site plan.



to this Declaration or a Supplemental Declaration in accordance with the provisions of this Declaration from time to time.

**1.39 Supplemental Declaration.** The term “Supplemental Declaration” has the meaning ascribed to it in Article 11 of this Declaration.

**1.40 Utility Lines.** The term “Utility Lines” means those facilities and systems for the transmission of utility services, including but not limited to Project Utility Lines, storm water drainage, detention or retention systems or structures, water mains, sewers, septic systems and facilities, lift stations, Irrigation Facilities including, but not limited to, sprinkler lines and related connections, electrical conduits or systems, gas mains, propane tanks and related systems, other public or private utilities providing service to one or more the Parcels in common.

**1.41 Water Rights.** The term “Water Rights” means any and all water and water rights, including, but not limited to, groundwater and groundwater rights, surface water and surface water rights, ditch and ditch rights, and storage and storage rights appurtenant to the Project. The Approving Owners shall have the power to acquire, provide and/or pay for Water Rights and manage the same for the benefit of the Project, and any costs related to such Water Rights shall be included in the Common Area Expenses. Declarant owns and/or controls any and all Water Rights which are appurtenant to the Project and which may be utilized in connection with the Irrigation Facilities as part of the Utility Lines. Declarant hereby reserves unto itself any and all such Water Rights. Upon conveyance of a Parcel, Declarant hereby reserves to itself all of Declarant’s right title and interest in and to any and all Water Rights appurtenant to the Project and accordingly, no Owner(s) shall have any right title, or interest in any of the Water Rights unless and until Declarant expressly conveys any portion of its Water Rights as determined in its sole discretion.

Commented [RM12]: Surface water, see LF email regarding the surface water rights.

## ARTICLE 2 EASEMENTS

**2.1 Easements.** Declarant hereby reserves unto Declarant and also grants to the Owners, for the reciprocal benefit of the Owners of each of the Parcels, and the use of the Permittees of such Owner, the following easements into, over, and across the Project, subject to any rights and restrictions set forth in this Declaration:

**2.1.1 Ingress and Egress.** Non-exclusive permanent easements over and across those portions of the Common Area which are from time to time improved as driveways, drive aisles, roadways, curb cuts, access ways, walkways, sidewalks, or similar vehicular or pedestrian access ways for vehicular and/or pedestrian ingress and egress (but not parking) to and from each Parcel and to and from the public streets abutting the Project (“Traffic Areas”).

Commented [RM13]: Shared access - CUP 14.

**2.1.2 Utilities.** Non-exclusive permanent easements into, over, under and across the Common Area for the installation, construction, maintenance, operation, repair and replacement of Utility Lines. The exact location or re-location of any Utility Lines shall be subject to the approval of the Approving Owners and the Owner of the burdened Parcel. The Owner performing such installation, construction, maintenance, operation, repair or replacement of a Utility Line (“Utility Line Work”) located on the Parcel of another Owner shall, at its sole cost and expense, (i) make adequate provision for the safety and convenience of all persons using the surface of such area; (ii) replace or restore the areas and facilities to the conditions in which they were in prior to the performance of the Utility Line Work, (iii) bear all costs, fees and expenses incurred as a result of such Utility Line Work; (iv) at least thirty (30) days prior to performing such Utility Line Work provide the Owner affected by such Utility line Work and the Operator with a written statement describing the need for such Utility Line Work, identify the proposed location of the Utility Line Work, the nature of the Utility Line Work to be performed (including backup materials



such as design and materials), evidence that the materials and design standards are equal to or exceed those originally used, and the anticipated commencement and completion dates for the Utility Line Work; (v) provide written evidence of the insurance coverage required by Article 8 of this Declaration, and (vi) use commercially reasonable efforts to minimize disruption of normal business operations and access to the Project.

**2.1.3 Drainage.** Non-exclusive permanent easements for the discharge of surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the an adjoining Parcel, upon the following conditions and terms: (i) the grades and surface water drainage/retention system for the Project shall remain in strict conformance with the Approved Plans for the grantee's Parcel, and (ii) no Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of surface water onto the adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swells and other drainage facilities and systems (collectively, "Drainage Systems") shall be maintained by each Owner, with respect to the portion of the Drainage System located on such Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof.

**2.1.4 Maintenance.** Non-exclusive permanent easements for ingress and egress, construction, inspection, operation, maintenance, repair and replacement as may be reasonably necessary for the purpose of permitting such Owner(s) to discharge its obligations and rights under this Declaration.

Commented [RM14]: Shared Access Maintenance Agreement - CUP 14.

**2.1.5 Encroachment Easements.** Non-exclusive permanent easements over, across and under the adjoining Parcel(s) for any portion of a Building located on a Parcel which may inadvertently encroach into or over the adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and Building encroachments does not exceed two (2) lineal feet from the property line, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet lineal fee from the property line. The easements created in this Section shall survive the expiration or termination of this Declaration and shall last so long as the encroaching Building is standing following initial construction or following reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation.

**2.1.6 Signage.** Non-exclusive easements to place, construct or locate, maintain, repair and replace Project Signs and/or Parcel Signs in the Common Area or as permitted in this Declaration, and/or to provide the same for an Owner of a Parcel Sign that may request locating its sign on Parcels owned by additional Owners in the Project subject to approval by such additional Owner(s) and the Approving Owners.

**2.2 Easement in Favor of Declarant and Operator.** Declarant hereby reserves unto itself and also grants to the Operator and its Permittees a permanent non-exclusive easement on, over, under and through such areas of the Project as may be necessary or convenient for the Declarant and Operator to exercise their respective rights and perform their respective obligations pursuant to the provisions of this Declaration.

**2.3 Easements for Common Area and Parcel Maintenance Area.** Declarant hereby reserves unto itself and also grants to the Operator and its Permittees a permanent non-exclusive easement on, over, under and through the Common Area and Parcel Maintenance Area for the placement, construction or location maintenance, repair and replacement of the Improvements in the Common Area and Parcel Maintenance Area.



**2.4 Scope of Easements; No Requirement of Confirmation.** Except for any easements granted to Operator, all easements herein shall be easements appurtenant and not easements in gross. In addition, all easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document.

**2.5 No Obstructions.** The Owners and Occupants of the Project, or any portion thereof, agree that nothing shall be constructed on any portion of the Traffic Areas, except for temporary obstructions for construction as provided in Section 3.11. Notwithstanding the foregoing, so long as the free flow of vehicular and pedestrian traffic between the Parcels and the public streets abutting the Project are not unreasonably impeded, an Owner may improve the Traffic Areas on its Parcel with lanes, curbs, parking bumpers, light poles, directional signs, refuse collection areas and enclosures and hydrants, transformers and other utility equipment which by its nature or governmental requirements is reasonably situated above-ground.

**2.6 No Charge for Use.** There shall be no charge for the use of the easements granted herein.

**2.7 Prohibition Against Granting Easements.** No Owner shall grant an easement or easements of the type set forth in this Article 2 for the benefit of any other Person or property which is not located within the Project without the prior written consent of the Approving Owners; provided, however, that the foregoing shall not prohibit (a) the Declarant from granting easements for ingress, egress and utilities over the Project (or portions thereof) for the use or benefit of the Project or property located adjacent to the Project, or (b) the Declarant from granting such other easements on, over or under the Project as may be reasonably necessary to serve the interests and convenience of the Owners and/or the development of the Project, or (c) an Owner from the granting or dedicating of easements for Utility Lines to Governmental Authorities or to public utilities, subject to the terms of Section 2.1.2, or (d) the use of any easements existing on the date of recordation of this Declaration, or (e) the Supplemental Declaration – Section Property from granting easements over any part of the Section Property covered by such Supplemental Declaration – Section Property.

**2.8 Underground Utilities.** All Utility Lines to be installed in any portion of the Project shall be underground, unless otherwise approved by the Approving Owners except for: (i) ground mounted electrical transformers and data/telecommunication pedestals, (ii) temporary utilities during periods of construction, reconstruction or repair, (iii) those required to be above ground by the provider of such service or Governmental Requirements; (iv) fire hydrants, detector check valves, and backflow prevention devices; (v) utility meters on the sides of Buildings; and (vi) propane tanks located in the rear (i.e. away from Highway 55) of Buildings or other areas approved by the Approving Owners.

Commented [RM15]: Do we need to include irrigation facilities?

**2.9 Duration.** The easements granted under this Article 2 shall continue in effect for the term of this Declaration and thereafter for so long as the Parcel utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such improvement if the same shall be destroyed, damaged or demolished).

### ARTICLE 3

#### DEVELOPMENT RESTRICTIONS, ARCHITECTURAL AND SITE PLAN APPROVALS AND CONSTRUCTION

**3.1 Development Restrictions.** No Improvements shall be built, constructed, erected, placed or materially altered on any Parcel unless and until the plans, specifications and site plan for the Improvements thereon have been reviewed in advance and approved by the Approving Owners in accordance with the provisions of this Article 3.



**3.2 Maximum Square Footage of Buildings and Height Restrictions.** No Buildings shall be constructed on any Parcel which (i) exceeds the maximum height for such Building, to the extent such maximum height is described, depicted or labeled on the Site Plan, (ii) is located outside of the Building Area, or (iii) exceeds the maximum Floor Area for such Building, to the extent such maximum Floor Area is described, depicted or labeled on the Site Plan. The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, mechanical equipment or similar appurtenance located on the roof of such Building. Notwithstanding the foregoing, the height restriction for any Building may be increased to accommodate the standard or prototype architectural features of such Occupant ("Architectural Features") provided such Architectural Features are not more than five (5) feet above the permitted height of the Building and the lineal distance on the Architectural Feature shall not exceed twenty percent (20%) of the total length of any given elevation of the Building. All mechanical and rooftop equipment shall be set back from the front of the Building and screened from view by the parapet so as not to be visible from Highway 55, assuming a view height of six (6) feet above such centerline.

Commented [RM16]: Make sure this is covered in the site plan.

**3.3 Lighting.** All exterior lighting and interior lighting reflecting outside: (i) shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Parcel(s) or any property located adjacent to the Project; (ii) shall be dark sky compliant; and (iii) shall comply with all county ordinances. All Project Lighting shall be installed in accordance with the Project Design Standards and approved by the Approving Owners.

**3.4 Self-Park.** Each Parcel shall provide adequate parking on its Parcel to comply with Governmental Requirements for parking, such that each Parcel shall be self-sufficient for vehicular parking without variance.

**3.5 Outdoor Seating Areas.** Subject to Governmental Requirements, the Occupant of a Parcel may provide an Outdoor Seating Area located adjacent to or in close proximity to the Building located on its Parcel, provided the Occupant (a) obtains the prior written approval of the Approving Owners for the location, dimensions and any screening for the Outdoor Seating Areas, (b) obtains the prior written approval of the Approving Owners for the number, design, color and location of all umbrellas, tables, seating areas, and other customary items to be located within the Outdoor Seating Area, provided that the same shall be removed from the Outdoor Seating Areas during seasons that they are not in use, (c) the use of such Outdoor Seating Area is for casual employee seating and is not for the service of food to customers, and (d) maintains the Outdoor Seating Area in a clean and attractive manner during all periods of use of the Outdoor Seating Area, including but not limited to (i) daily cleaning and washing of the area and furnishings to maintain the same in a neat and clean condition free of build up from food spills, dusts, dirt and other substances, (ii) daily removal of the trash containers, (iii) continuously during business hours cleaning, busing and wiping the tables and floor areas to keep them free to spills, (iv) steam cleaning the Outdoor Seating Area as and when the Operator deems reasonably necessary, and (v) maintaining the Common Area and Parcel Maintenance Area located in the vicinity of the Outdoor Seating Areas free of any debris from the use of the Outdoor Seating Areas.

Notwithstanding the foregoing, patios and decks ("Patios") may be attached or adjacent to any Building that is used for residential purposes, provided that Owners and their residential Occupants do not use the Patios for storage, including for the storage of pets, pet equipment, bicycles, boxes, storage sheds, and so forth, except that patio tables, chairs, and umbrellas may be stored thereon in accordance with this Section so long as same shall be removed from the Patios during seasons that they are not in use. No plants, shelving, or other storage devices are permitted on the Patios, and no items shall be hung from the Patios or any railings thereon. Patio Owners and their residential Occupants shall at all times keep the Patios in safe, clean, and orderly fashion.



**3.6 Grading and Drainage.** A site plan indicating the proposed grading and drainage of a Parcel must be approved by the Approving Owners before any construction is initiated. Parcel grading shall be kept to a minimum and Buildings are to be located for the preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design.

**3.7 Approval of Improvements.** No Owner or Occupant shall commence or permit the commencement of construction of any Improvement or alter any Improvement located on such Owner's Parcel without the prior written approval of the Submittal Plans (as defined below) by the Approving Owners. Approval of the Submittal Plans by the Approving Owners shall be based, among other things, on the Approving Owners's commercially reasonable judgment that the proposed Improvements will produce and contribute to an orderly and aesthetically complementary design and appearance consistent with the Project Objectives and the Project Documents, including but not limited to consideration of the: adequacy of the Parcel dimensions; conformity and harmony of location and external design of the other Improvements in the Project; the conformity of the Submittal Plans with the requirements of this Declaration and the Project Design Standards, the relationship of the topography, grade, finished ground elevation and landscaping of the Parcel being improved to that of neighboring Parcels; proper facing of the main elevation with respect to nearby streets; the relation of the floor elevations to flood elevations as defined by Governmental Requirements; the advancement of the Project Objectives; and such other matters reasonably determined by the Approving Owners to be necessary to maintain the Project in a manner consistent with the Project Objectives (collectively, "**Approval Standards**"). The Approving Owners shall not arbitrarily or unreasonably withhold its approval of the Submittal Plans if the Submittal Plans conform to the Approval Standards. The Approving Owners may authorize variances from compliance with the requirements or conditions of the Projective Objectives or Project Documents or any prior approval when, in the sole discretion of the Approving Owners, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or undue hardship may so require. The Approving Owners shall have the right to consider and grant a variance without notice to other Owners. If a variance is granted, no violation of the Project Objectives or Project Documents or the prior approval thereunder shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate or waive any of the terms and provisions of Project Objectives or Project Documents except as to the particular subject matter of the variance thereof and the specific Parcel covered thereby.

**3.7.1 Submission of Materials.** To request approval from the Approving Owners for the construction, alteration, modification, removal or demolition of any Improvements located on a Parcel, the Owner thereof shall submit a written request for approval accompanied by the following materials (collectively, "**Submittal Plans**") which shall be prepared in accordance with acceptable architectural standards:

3.7.1.1 Site plan showing the location of all Improvements on the Parcel, including but not limited to Building Area, Service Facilities, Outdoor Seating Areas, Common Area and Parcel Maintenance Area improvements, parking areas, stacking areas, exterior lighting, driveways, access ways, sidewalks, fences and walls, drainage, setbacks, curb cuts, and other pertinent information related to the Improvements.

3.7.1.2 Building plan which shall consist of (i) location of the Building, and any applicable Outdoor Seating Areas, Patios, and Service Facilities within the Building Area, (ii) the Floor Area and height of the Building (including any Architectural Features), (iii) elevation drawings of all sides of the Building (including any Architectural Features, rooftop mechanical equipment, parapet or screening from all sides of the Building), (iv) detailed exterior specifications which shall indicate, by sample if required by the Approving Owners, all exterior colors, materials and finishes, including roof to be used,

and (v) location, design, size and screening related to any Outdoor Seating Areas, Service Facilities and Communication Equipment.

3.7.1.3 Landscape plan which shall consist of plans showing (i) the location, type and size of trees, plants, ground cover and shrubs, (ii) the location and type of any berming, mounding, grading drainage, and (iii) the location and nature of the irrigation or sprinkler facilities.

3.7.1.4 Sign plan for all Parcel Signs, exterior building signs and other signs visible from the exterior of the Building showing the location, design, size, height and number of panels (as to the Parcel Sign) of all signs to be located on the Parcel.

3.7.1.5 Unless waived by the Approving Owners, a review fee of \$2,000.00 (the “**Review Fee**”), which shall be non-refundable and which shall be used by the Approving Owners for third party expenses incurred in connection with reviewing the Submittal Plans.

3.7.1.6 Unless waived by the Approving Owners, an additional deposit of \$3,000.00 which shall be used by the Approving Owners for third party expenses incurred in connection with reviewing the Submittal Plans to the extent such expenses exceed the Review Fee, and the unused balance, if any, shall be refunded within thirty (30) days following completion of the Building constructed accordance with the Approved Plans.

**3.7.2 Procedure for Approval.** The Approving Owners shall have thirty (30) days after receipt of the complete Submittal Plans to review the Submittal Plans. The decision of the Approving Owners (i) can be in the form of an approval, a conditional approval or denial, (ii) shall be in writing signed by the Approving Owners, and (iii) shall be mailed to the Owner at the address shown on the Submittal Plans (“**Review Notice**”). The Review Notice shall state that the Submittal Package were approved, or in the case of a conditional notice, the particular conditions upon which the Submittal Package is approved, or in the case of a denial, the particular reasons for such denial. If the Approving Owners deny the Submittal Package, the party submitting such Submittal Package (“**Submitting Owner**”) may modify the Submittal Package and resubmit the Submittal Package to the Approving Owners. Thereafter, the Approving Owners shall have fifteen (15) days to review the modified Submittal Package. If the Approving Owners fail to deliver the Review Notice during the periods specified above and the Submitting Owner delivers a reminder notice (“**Reminder Notice**”) to the Approving Owners advising of its failure to provide the Review Notice and further advising it/them that failure to respond within fifteen (15) days of the delivery of such Reminder Notice shall be deemed approval of the Submittal Package, then, unless the Approving Owners provides the Review Notice within such fifteen (15) day period, such Submittal Package shall be deemed approved. The approved (or deemed approved) Submittal Plans shall constitute the “**Approved Plans**”.

**3.7.3 Construction of Improvements.** Each Owner shall construct the Improvements on its Parcel in accordance with the Approved Plans. No changes, alterations, deletions or modifications shall be made to the Improvements from that shown on the Approved Plans without the prior written consent of the Approving Owners. Once Owner has commenced construction of the Improvements on its Parcel, it shall have ~~fifteen-eighteen~~ (18) months thereafter to complete same (the “**Construction Deadline**”). If the Owner does not complete the Improvements on or before the Construction Deadline, then: (a) during the first ninety (90) days after the Construction Deadline, the Owner is subject to a fine of \$100 per day for each day that the Improvements remain incomplete; and (b) at all times after the ninetieth day after the Construction Deadline, the Owner is subject to a fine of \$200 per day for each day that the Improvements remain incomplete. As used herein, “commenced construction” means that the Owner has mobilized to the Parcel and broken ground.

**3.7.4 Effect of Review.** The Approving Owners shall not be responsible for reviewing, nor shall its approval of any Submittal Package be deemed an approval from the standpoint of structural safety, architectural or engineering design or conformance with building or other Governmental Requirements. As a result of the approval of a Submittal Package, the Approving Owners shall not be liable for any damage, loss or prejudice suffered or claimed by an Owner or Occupant or any successor in interest to an Owner or Occupant.

**3.7.5 Inspection and Violations.** The Approving Owners may, but shall not be obligated to, inspect any Improvements within the Project at any time for the purpose of determining whether the Owner is proceeding with construction of such Improvements in accordance with the Approved Plans. Should the Approving Owners determine that there has been a deviation or violation of the Approved Plans, the Approving Owners may, but shall not be obligated to, issue a notice in writing thereof to the Owner and demand that the Owner immediately cease the activity which constitutes a deviation or violate, and/or the immediately take corrective measures.

**3.8 Improvements.** Once construction of any Improvement has been commenced, the Owner of such Parcel agrees to thereafter diligently prosecute to completion the construction of such Improvements to completion. Each Owner and Occupant shall, with respect to any Improvements constructed by such Owner or Occupant, construct the same, at such Owner's or Occupant's sole cost and expense, in a good and workmanlike manner, free of mechanics' or materialmen's liens, and in compliance with the Approved Plans, all Governmental Requirements, and this Declaration. Each Owner shall at all times maintain its Building(s) and related Improvements Parcel in a clean and neat condition, free of dust, vermin or debris.

**3.9 Communications Equipment.** Subject to Governmental Requirements, Project Design Standards and the requirements of this Declaration, an Owner shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Parcel provided: (i) the height of such Communications Equipment does not extend above the height limits established above, (ii) the Communication Equipment is set back from the front of the Building and screened from view by the parapet. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable, which are for the sole use of the Occupants conducting business in such Building.

Commented [RM17]: Should we change this to allow for a cell tower?

**3.10 Construction of Common Area and Parcel Maintenance Area.** Prior to any Owner's use or occupancy of any Building on its Parcel, such Owner shall complete construction of all Improvements to the Common Area and Parcel Maintenance Area on its Parcel in accordance with Governmental Requirements and the Approved Plans.

Commented [RM18R17]: Yes, subject to approval. Have this as an approved use, within certain conditions of approval.

**3.11 Interference by Construction.** Each Owner agrees that any construction work (including but not limited to Utility Line Work) to be undertaken by it or its Occupants shall be performed (i) so as not to cause any unreasonable increase in the cost of constructing the remainder of Project or any part thereof, (ii) so as not to unreasonably interfere with any construction work being performed on the remainder of Project, or any part thereof, and (iii) so as not to unreasonably interfere with and minimize disruptions of the access to, use, occupancy or enjoyment of the remainder of Project or any part thereof by the other Owners and the Permittees of the other Owners. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Owner's Parcel unless the prior written consent of the Operator and the Owner of the Parcel on which staging will occur is obtained, provided that such restriction shall not apply to Declarant. Any damage occurring to any portion of Project as a result of such construction work shall be the responsibility of the Owner performing such construction work or causing such construction work to be performed and shall be repaired by such Owner, at such Owner's sole cost and expense, to the same condition as existed immediately prior to such work promptly upon the completion of such construction work. During the course of any construction, the Person



undertaking such work, at its sole cost, shall (a) make adequate provisions for the safety and convenience of all Permittees, (b) control dust, noise and other effects of such work using methods commonly utilized to control such effects associated with construction projects, and (c) promptly remove all dirt and debris.

**3.12 Construction Indemnities.** Each Owner covenants and agrees to indemnify, protect, defend and hold harmless the other Owners from and against all Claims arising from or related to any construction activities undertaken by such Owner or its Permittees.

**3.13 Cost of Construction.** Except as otherwise set forth in this Declaration, or in a separate written agreement between Declarant and the Owner(s), each Owner shall be responsible for the cost and expense of all Improvements to be constructed on its Parcel.

**3.14 Signs.** Each Owner shall comply with all applicable Governmental Requirements and the Signage Criteria with respect to the erection and maintenance of any Parcel Sign and/or signs placed on the exterior of the Building, unless otherwise approved by the Approving Owners.

**3.14.1 Parcel Sign.** Subject to Governmental Requirements, compliance with the Signage Criteria and any necessary governmental approvals to be obtained by the Owner, the Owner of a Parcel may be entitled to erect one (1) freestanding sign on its Parcel outside of the Common Area and Parcel Maintenance Area at the Owner's expense ("**Parcel Sign**"). The Parcel Sign shall only display the designation of the Occupant(s) of such Parcel, unless otherwise approved by the Declarant and necessary governmental agencies.

**3.14.2 Submission of Signage Plans.** Prior to constructing, altering or replacing any exterior building signs or any Parcel Sign on its Parcel, the Owner or Occupant shall submit a signage plan showing the location, height, dimensions, design and other information deemed necessary by the Approving Owners to review the proposed Parcel Sign and exterior building signage ("**Signage Materials**").

**3.14.3 Procedure for Approval.** The Signage Materials shall be submitted and reviewed in the same manner as specified for the Submittal Package above.

**3.14.4 Sign Maintenance.** Each Owner shall operate, maintain and repair, in a clean, sightly and safe condition, the Parcel Sign, exterior building signs and all other signs, including components thereof, located upon its Parcel. All Parcel Signs shall be professionally-prepared.

**3.14.5 Door and Interior Signage.** Except for non-illuminated signage that identifies the name of the Occupant and/or its operating hours on the front door of any Building and/or the window next to such front door, no signage on the interior of the Building shall be visible from the exterior of the Building unless approved by the Approving Owners. Notwithstanding the foregoing, each address numbers shall be displayed on each Building.

#### **ARTICLE 4 USE RESTRICTIONS**

**4.1 Use in General.** The Parcels within the Project shall be used only for purposes that are consistent with the Project Objectives and that do not violate Governmental Requirements, including, without limitation, any applicable conditional use permits. The Supplemental Declaration – Section Property may further limit or restrict the use of some or all of the Parcels within the Section Property covered by such Supplemental Declaration. If the then-existing Governmental Requirements do not permit a specific use, then the Owner shall obtain written approval by the Approving Owners of any such non-

conforming use, in addition to any other governmental approvals that are required so as to permit the non-conforming use under the Governmental Requirements.

**4.2 Prohibited Uses.** No use shall be permitted in the Project which is inconsistent with the Project Objectives or for any of the following purposes:

**4.2.1** any indecent or pornographic uses, massage parlor, an adult type bookstore or other establishment selling, displaying or exhibiting “obscene” materials; provided, however, that this restriction does not apply to the sale of any book by a place of business selling a general range of books, or the sale or rental of any movies or other media by a place of business selling or renting a general line of movies or other media;

**4.2.2** any head shop store or any other similar store or club; and any business devoted to sale of articles or merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with illegal or controlled drugs or substances;

**4.2.3** a mobile home or trailer park, junkyard or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; a landfill, garbage dump or facility for the dumping, disposing, incineration or reduction of garbage (excluding Service Facilities); any gambling establishing, bingo parlor or betting parlor; any mortuary, crematory or funeral home;

**4.2.4** any ~~assembly~~, manufacturing, refining, smelting, agriculture or mining operations;

**4.2.5** any drilling for and/or removal of subsurface substances;

**4.2.6** any fire sale, flea market or second-hand store, “surplus” store, pawn shop, bankruptcy sale (unless pursuant to a court order) or auction house operation;

**4.2.7** any bar, nightclub or tavern, except that alcohol sales not to exceed forty percent (40%) of gross revenues shall be permitted in connection with a restaurant.

Nothing in this Section shall be construed to prohibit: (i) storage facilities for sale or lease to others as a permitted use within the Project; or (ii) using side yards and rear yards used for outdoor storage, provided that such uses do not violate Governmental Requirements.

**4.3 Additional Use Restrictions.** This Declaration may be amended from time to time to restrict certain uses on a particular Parcel or particular Parcels provided the amendment is specific and recorded.

**4.4 Use of Common Areas.** Except as expressly set forth in this Article 4, and subject to all other terms, limitations and conditions hereof and all Governmental Requirements, the Common Area, without regard to the ownership thereof, may only be used for the following purposes: pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses located or to be located within the Project; the placement, construction or location, operation, maintenance, repair, replacement, relocation and removal of the Improvements to the Common Area and Utility Lines; construction, replacement, reconstruction, maintenance and repair of sidewalks, driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, and landscaping; and the ingress and egress of delivery and service trucks and vehicles for the delivery of goods, wares, merchandise and the rendering of services to all Owners and Permittees. No structure of a

temporary character or similar equipment shall be permitted to remain within the Common Area, except for construction trailers utilized in the course of constructing Improvements so long as construction activities are being diligently pursued to completion and are in conformance with the requirements of this Declaration.

**4.5 Use of Sidewalks.** Except as may otherwise be permitted by the Approving Owners, and subject to all other terms, limitations and conditions hereof and all Governmental Requirements, the sidewalks on each Parcel, without regard to the ownership thereof, may only be used for pedestrian ingress and egress. No merchandise, equipment or services (including, but not limited to, kiosks, display tables, espresso carts, pushcarts, vending machines, ATM machines, promotional devices and similar items), shall be displayed, offered for sale or lease, or stored within the sidewalks unless the prior approval of the Approving Owners and Operator have been obtained.

**4.6 Employee, Contractor Parking.** Each Owner shall cause the Occupants and Permittees of its Parcel to park their vehicles only on such Parcel. The Operator may, but shall not be obligated, to ticket and fine any employees and/or contractors that park vehicles on the Parcel of another Owner, and Operator shall have the further right to have such vehicles towed at the expense of the offending vehicle owner and/or Owner.

**4.7 Nuisance.** No Owner will allow rubbish or debris of any kind to be placed or permitted to accumulate anywhere upon the Owner's Parcel, including the Common Area and Parcel Maintenance Area, if it renders any portion of the Project unsanitary, unsightly, offensive, or detrimental to the Project or its Occupants, or to any other property in the vicinity of the Project or its occupants. No Owner will allow any odor to arise from its Parcel if it renders the any portion of the Project unsanitary, offensive, or detrimental to the Project or its Occupants, or to any other property in the vicinity of the Project or its occupants. No noise, exterior fires, obstructions of pedestrian walkways, unsightliness or other nuisance will be permitted to exist or operate upon any portion of the Project so as to be: (a) unsanitary, unsightly, offensive, or detrimental to the Project or its Occupants, or to any other property in the vicinity of the Project or its occupants, as determined by the reasonably judgment of the Approving Owners, or (b) in violation of any federal, state or local law, rule, regulation, ordinance (including, without limitation, local noise ordinances), or order. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by Approving Owners), and no flashing lights or search lights will be located, used or placed on the an Owner's Parcel without the prior written approval of the Approving Owners.

**4.8 Animals.** No birds (including, without limitation, pigeons, hens, and roosters), reptiles, rodents, fish, swine, livestock, or other animals shall be raised, bred or kept on the Project, except that an each Occupant of each residential unit with the Project may raise or keep (but not breed) ~~two~~<sup>one</sup> (2+) domesticated dog and one (1) domesticated cat so long as such domesticated dogs and domesticated cats do not unreasonably bother or constitute a nuisance to other Occupants. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog within the Project shall be kept on a leash and otherwise controlled at all times when such dog is outside the residential unit occupied by its owner. Such Occupant shall clean up the defecation of its dog and/or cat immediately and place the same in property refuse containers. Failure to do so may result, at the Approving Owners' discretion, of a reasonable fine in an amount determined by the Approving Owners, which fines may increase for repeated offences.

**4.9 Wood Burning Devices.** No more than one (1) wood-burning device shall be permitted on any Parcel.



**4.10 Short Term Leasing Prohibited.** Owners shall not lease all or any portion of a residential dwelling unit on such Owner's Parcel to any Person for a term that is less than six (6) months. For purposes of this Section 4.10, the term "lease" will be deemed to include any rental, letting, subletting, licensing, demising or assignment of any interest, estate or right of use, enjoyment, occupancy or possession of any residential dwelling unit. Any Owner who leases a residential dwelling unit will comply with the Fair Housing Act to the extent it applies to such Owner or the residential dwelling unit being leased.

If an Owner leases a residential dwelling unit in violation of the restrictions set forth in this Section or otherwise fails to comply with this Section, such Owner will be in default of this Declaration, and will indemnify, defend and hold harmless the other Owners from and against any and all claims, loss or damage arising from or related to such violation, including any actions taken or fines or penalties imposed by any governing authorities, and will further be subject to the remedies described in this Declaration.

## **ARTICLE 5 MAINTENANCE OF IMPROVEMENTS**

**5.1 Maintenance of Parcels by Owners.** Except as provided in Sections 5.2, 5.3, and 5.4 with respect to the Common Area and the Parcel Maintenance Area located on the Owner's Parcel, respectively, each Owner, at its own expense, shall maintain, repair, and replace its Parcel and all Buildings, Outdoor Seating Areas, Service Facilities, and all other Improvements thereon in first class condition of maintenance and repair in compliance with all Governmental Requirements and this Declaration (collectively, "**Owner Maintenance Obligations**"), including without limitation:

Commented [RM19]: See comment on 5.4.

**5.1.1** Keeping all exterior surfaces of any Building painted, washed and cleaned regularly;

**5.1.2** Maintaining, repairing, seal coating, cleaning, sweeping, and when necessary, replacing, the asphalt, paved surfaces, and sidewalks in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and otherwise as necessary to such asphalt, paved surfaces, and sidewalks in a first-class, clean and orderly condition;

**5.1.3** Performing snow and ice treatment to all asphalt, paved surfaces, and sidewalks to the standard customary to similar developments in Valley County, Idaho;

**5.1.4** Removing papers, debris, filth and refuse and thoroughly sweeping the exterior areas of the Parcel to the extent reasonably necessary to keep the area in a clean and orderly condition;

**5.1.5** Maintaining, repairing, and when necessary, replacing all traffic directional signs, markers and lines;

**5.1.6** Maintaining, repairing, and when necessary, replacing, the all artificial lighting for the exterior areas of the Parcel;

**5.1.7** Watering, maintaining, repairing and, when necessary, replacing all landscaping, and operating, maintaining, repairing and, when necessary, replacing, all irrigation facilities; and

**5.1.8** Maintaining, repairing and, when necessary, replacing the septic systems that serve the Owner's Parcel.

**5.1.85.1.9 Maintaining its Parcel to prevent noxious weeds and buildup of debris that can cause or accelerate wildfire risk.**

Pending the construction of the Building(s) on its Parcel, each Owner shall keep its Parcel in a neat condition and shall not permit an unreasonable accumulation of rubbish and debris and shall keep weeds cut. In addition, as part of the Owner Maintenance Obligations, each Owner, at its sole cost, shall at all times be responsible for operating and providing electricity for artificial lighting facilities located on such Parcel, and keeping such Parcel fully illuminated at least from dusk until 10:00 pm each day and at least fifteen percent (15%) of the lighting on from 10:00 pm until dawn each day, or such other times as may be designated by the Operator from time to time.

**5.2 Maintenance Standards for Common Area.** The Common Area shall be maintained in a first class condition of maintenance and repair and in compliance with all Governmental Requirements and this Declaration, including but not limited to:

**5.2.1** Maintaining, repairing, seal coating, cleaning, sweeping, and when necessary, replacing, the asphalt, paved surfaces within the Common Area in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and otherwise as necessary to such asphalt, paved surfaces, and sidewalks in a first-class, clean and orderly condition;

**5.2.2** Performing snow and ice treatment to all asphalt, paved surfaces, and sidewalks in the Common Area to the standard customary to similar developments in Valley County, Idaho;

**5.2.3** Removing papers, debris, filth and refuse and thoroughly sweeping the Common Area to the extent reasonably necessary to keep the area in a clean and orderly condition;

**5.2.4** Maintaining, repairing, and when necessary, replacing all traffic directional signs, markers and lines;

**5.2.5** Maintaining, repairing, and when necessary, replacing, the Project Lighting; and

**5.2.6** Watering, maintaining, repairing and, when necessary, replacing all landscaping within the Common Area, and operating, maintaining, repairing and, when necessary, replacing, all irrigation facilities within the Common Area.

**5.3 Maintenance Standards for Parcel Maintenance Area.** The Parcel Maintenance Area shall be maintained in a first class condition of maintenance and repair and in compliance with all Governmental Requirements and this Declaration, including but not limited to:

**5.3.1** Maintaining, repairing, seal coating, cleaning, sweeping, and when necessary, replacing, the asphalt, paved surfaces within the Parcel Maintenance Area in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and otherwise as necessary to such asphalt, paved surfaces, and sidewalks in a first-class, clean and orderly condition;

**5.3.2** Performing snow and ice treatment to all asphalt, paved surfaces, and sidewalks in the Parcel Maintenance Area to the standard customary to similar developments in Valley County, Idaho;

**5.3.3** Removing papers, debris, filth and refuse and thoroughly sweeping the Parcel Maintenance Area to the extent reasonably necessary to keep the area in a clean and orderly condition;



5.3.4 Maintaining, repairing, and when necessary, replacing all traffic directional signs, markers and lines within the Parcel Maintenance Area;

5.3.5 Watering, maintaining, repairing and, when necessary, replacing all landscaping within the Parcel Maintenance Area, and operating, maintaining, repairing and, when necessary, replacing, all irrigation facilities within the Parcel Maintenance Area; and

5.3.6 [Engaging with any applicable trash company for the regular removal of trash from any trash container located within the Parcel Maintenance Area]

5.4 **Maintenance by Operator.** Subject to each Owner's Owner Maintenance Obligations: (a) the Operator shall operate, maintain and replace the Common Area commencing on the date this Declaration is recorded; and (b) the Operator shall operate, maintain and replace the Parcel Maintenance Area commencing on the date all Buildings on a given Parcel are completed and certificates of occupancy has been issued therefor. To the extent caused by the Operator, the Operator agrees to indemnify, defend and hold harmless each Owner from and against any and all claims resulting from the willful misconduct or gross negligence of the Operator in performing its obligations under this Section 5.4

Commented [RM20]: Review and make changes based on tenant to maintain. Also, need to have specific requirement to maintain septic system, see CUP.

## 5.5 Operator.

5.5.1 **Operator.** The Declarant shall, upon recordation of this Declaration, be the Operator until it resigns or is replaced pursuant to this Article 5. The Operator shall have and is hereby given the full right and authority to perform its obligations hereunder.

5.5.2 **Appointment of New Operator.** Operator shall have the right, at any time, upon at least thirty (30) days prior written notice ("Resignation Notice") to the Approving Owners, to cease performing the duties of the Operator, and the Approving Owners shall appoint a new Operator who shall be an Owner or Occupant of a Parcel to perform the obligations of Operator hereunder. In addition, if all of the Approving Owners determine that the Operator is not performing its duties as provided under this Declaration and provide written notice thereof to Operator specifying in reasonable detail the basis for the claims of non-performance by the Operator, and the Operator fails to correct such deficiencies within thirty (30) days after notice thereof signed by or on behalf of all of from the Approving Owners, or, if such failure cannot reasonably be cured within thirty (30) days, fails to commence to cure and diligently pursue the same to completion, then the Operator may be replaced or removed by a decision of the Approving Owners and written notice to the Operator. The designation of any Operator as provided for hereinabove shall be binding upon all of the Owners. The term of the new Operator shall continue until the earlier to occur of (i) the appointment of a new Operator, (ii) the date the Operator is no longer the Owner or Occupant of any Parcel in the Project, or (iii) thirty (30) days after the Operator submits a Resignation Notice.

5.5.3 **No Operator.** In the event of the termination or expiration of this Declaration and/or during any period of time when no Owner is performing the duties of Operator and no replacement Operator has been appointed as provided above, each Owner shall have the obligation to maintain the Common Area and Parcel Maintenance Area located on its Parcel, at its sole cost and expense, in a manner consistent with the provisions of this Declaration.

5.5.4 **Affiliates.** The Operator may hire companies affiliated with it or third party companies to perform its maintenance obligations hereunder, provided that the payment to such affiliate or third party company shall not be in addition to the Administrative Fee defined in Section 6.1 below.

5.5.5 **Limitation of Liability.** At such times as the Operator ceases to have an obligation to perform the duties and obligations described herein, such Operator shall cease to have any liability or



responsibility for any acts, events, or circumstances occurring subsequent to and not as a result of its performance or non-performance of its duties or obligations while Operator.

**5.6 Taxes.** Each Owner shall pay directly to the tax collector when due the real property taxes and other special taxes and assessments ("Taxes") assessed against the Owner's Parcel, including the portion of the Common Area and Parcel Maintenance Area located on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of the Taxes. If an Owner fails or refuses to pay such Taxes, then the Operator or any other Owner shall have the right to pay such Taxes on behalf of such Owner and shall have all rights and remedies provided in Article 10, including but not limited to the right to file a lien for the amount of Taxes paid by such curing Owner.

## **ARTICLE 6 COVENANT TO PAY COMMON AREA EXPENSES**

**6.1 Covenant to Pay Proportionate Share of Common Area Expenses.** Each Owner hereby agrees to pay to the Operator its proportionate share of Common Area Expenses ("Proportionate Share of Common Area Expenses") based on land area of such Owner's Parcel as compared to the total land area of all Parcels in the Project, provided that to the extent any Common Area Expense benefits only a portion of the Parcels in the Project, such as panels on a Project Sign as contemplated in Section 1.33, then such Common Area Expenses shall be allocated, based on land area or other equitable allocation as determined by Operator, between the Parcels benefitted by such Common Area Expense. The Approving Owners may, from time to time, execute and record a Supplemental Declaration for purposes of stating the land area of all Parcels in the Project, the land area of each Parcel and the Proportionate Share of Common Area Expenses allocated to each Parcel. The Common Area Expenses shall include an administrative and management charge ("Administrative Fee") provided that the amount of such Administrative Fee shall be approved by the Approving Owners and shall be in such amount as is customary, from time to time, for similar fees to manage a first class mixed use project in the geographic area in which Project is located. The Administrative Fee shall be paid to the Operator. The Administrative Fee shall be included in Common Area Expenses, or any portion thereof, without further reference.

Commented [RM21]: Should we have the specific allocations of land area?

### **6.2 Payment of Proportionate Share of Common Area Expenses.**

**6.2.1 Commencement of Obligations.** The obligations of each Owner to pay its share of Common Area Expenses shall commence upon the recordation of this Declaration.

**6.2.2 Budget.** Operator shall use commercially reasonable efforts to provide its services on a cost effective basis consistent with other first class mixed use developments. The Operator shall provide to each Owner, within thirty (30) days prior to the beginning of each calendar year, a budget for the Common Area Expenses for the following calendar year ("Budget"). The Budget of estimated expenses shall be based on the prior year's expenses, taking into account anticipated increases to such amounts, or if no prior year's expenses are available, then on Operator's reasonable estimate of the cost. The Operator shall reasonably estimate such costs for any partial year. Operator shall have the right to make unexpected or emergency repairs or incur additional unexpected costs which are not included in the Budget. Operator may submit a supplemental billing to each Owner, together with evidence supporting such payment, and each Owner shall pay its Proportionate Share thereof within thirty (30) days.

**6.2.3 Payment.** Each Owner shall pay to the Operator, in equal monthly payments in advance on the first day of each month, or in such other increments as otherwise determined by the Operator, the Common Area Expenses allocable to such Owner's Parcel based upon the amount set forth in the Budget. No offsets against any amounts due for an Owner's Common Area Expenses shall be permitted for any reason, including, without limitation, a claim that the Operator is not properly exercising its duties of



maintenance, operation or enforcement. Within approximately one hundred twenty (120) days after the end of each calendar year, Operator shall provide each Owner with a written statement ("Annual Statement") (and upon request, supporting invoices and backup materials), setting forth the actual Common Area Expenses ("Annual Expenses") incurred by the Operator for the performance of its obligations hereunder and the Annual Expenses allocated to such Owner. If the amount paid by an Owner for such calendar year shall have exceeded the Annual Expenses allocated to such Owner, the Operator shall, at its option, refund by check the excess to the Owner owning such Parcel at the time the Annual Statement is delivered or apply the overpayment of the Annual Expenses to the expenses due for the following year, or if the Annual Expenses paid by an Owner as stated in the Annual Statement shall be less than the Annual Expenses owed by such Owner, then the Owner shall pay the balance of the Annual Expenses to Operator within thirty (30) days after receipt of such Annual Statement. Notwithstanding the foregoing, failure of the Operator to provide the Annual Statement within such 120-day period shall not release an Owner from its obligations to pay any amounts due upon issuance of the Annual Statement.

**6.2.4 Inspection Rights.** For a period of ninety (90) days after receipt of the Annual Statement, any Owner, at its own expense, shall have the right, by written notice to Operator ("Inspection Notice") to inspect the Operator's books and records pertaining to the expenses for the calendar year shown on the Annual Statement. Failure to provide the Inspection Notice within ninety (90) days after the date of the Annual Statement shall be deemed to be such Owner's approval of the Annual Expenses shown in the Annual Statement. The Inspection Notice must designate the date of the proposed inspection, which shall be not less than fifteen (15) days after the date of the Inspection Notice. The Owner performing such inspection shall provide the Operator with a written notice of any discrepancy discovered during such inspection (together with backup documentation) and the amount of such claimed discrepancy ("Discrepancy Notice"). The Discrepancy Notice shall be given within thirty (30) days after the date the inspection occurs. The Operator shall have thirty (30) days after receipt of the Discrepancy Notice to respond to such matters. The parties shall use commercially reasonable efforts to resolve any disputes regarding the matters set forth Discrepancy Notice and the Operator's response. Any overpayment or underpayment of five percent (5%) of Annual Expenses shall be handled in the manner provided above.

**6.2.5 Late Payment.** If an Owner shall fail to pay such Owner's Common Area Expenses or any other amounts due under this Declaration, within thirty (30) days after the due date therefor, then (i) a late charge in the amount of ten percent (10%) of the delinquent amount, (ii) interest charged at the Default Interest Rate commencing from the date of delinquency, and (iii) reasonable costs of collection, including attorneys' fees and costs (collectively, "Delinquency Charges"), shall be levied by the Operator against such Owner. In addition, Operator shall be entitled to file a lien and recover its attorney's fees as provided in Article 10 below.

## ARTICLE 7

### COVENANT TO PAY PARCEL MAINTENANCE AREA EXPENSES

**7.1 Covenant to Pay Parcel Maintenance Area Expenses.** Each Owner hereby agrees to pay to the Operator the Parcel Maintenance Area Expenses that the Operator pays or incurs in connection with the Parcel Maintenance Area located on such Owner's Parcel. The Parcel Maintenance Area Expenses shall include the Administrative Fee. The Administrative Fee shall be paid to the Operator. The Administrative Fee shall be included in Parcel Maintenance Area Expenses, or any portion thereof, without further reference.

#### 7.2 Payment of Parcel Maintenance Area Expenses.

**7.2.1 Commencement of Obligations.** The obligations of each Owner to pay its share of Common Area Expenses shall commence the Operator's commencement of maintaining the Parcel Maintenance Area on each Owner's Parcel in accordance with Section 5.4.

Commented [RM22]: Confirm this conforms with any changes in 5.4.

**7.2.2 Budget.** Operator shall use commercially reasonable efforts to provide its services on a cost effective basis consistent with other first class mixed use developments. The Operator shall provide to each Owner, within thirty (30) days prior to the beginning of each calendar year, a budget for that Owner's Parcel Maintenance Area Expenses for the following calendar year ("**PMA Budget**"). The PMA Budget of estimated expenses shall be based on the prior year's expenses, taking into account anticipated increases to such amounts, or if no prior year's expenses are available, then on Operator's reasonable estimate of the cost. The Operator shall reasonably estimate such costs for any partial year. Operator shall have the right to make unexpected or emergency repairs or incur additional unexpected costs which are not included in the PMA Budget. Operator may submit a supplemental billing to each Owner, together with evidence supporting such payment, and each Owner shall pay the cost thereof within thirty (30) days.

**7.2.3 Payment.** Each Owner shall pay to the Operator, in equal monthly payments in advance on the first day of each month, or in such other increments as otherwise determined by the Operator or Declarant, the Parcel Maintenance Area Expenses for such Owner's Parcel based upon the amount set forth in the PMA Budget. No offsets against any amounts due for an Owner's Parcel Maintenance Area Expenses shall be permitted for any reason, including, without limitation, a claim that the Operator is not properly exercising its duties of maintenance, operation or enforcement. Within approximately one hundred twenty (120) days after the end of each calendar year, Operator shall provide each Owner with a written statement ("**PMA Annual Statement**") (and upon request, supporting invoices and backup materials), setting forth the actual Parcel Maintenance Area Expenses ("**PMA Annual Expenses**") incurred by the Operator for the performance of its obligations with respect to the Parcel Maintenance Area on such Owner's Parcel. If the amount paid by an Owner for such calendar year shall have exceeded the PMA Annual Expenses, the Operator shall, at its option, refund by check the excess to the Owner owning such Parcel at the time the PMA Annual Statement is delivered or apply the overpayment of the PMA Annual Expenses to the expenses due for the following year, or if the PMA Annual Expenses paid by an Owner as stated in the PMA Annual Statement shall be less than the PMA Annual Expenses owed by such Owner, then the Owner shall pay the balance of the PMA Annual Expenses to Operator within thirty (30) days after receipt of such Annual Statement. Notwithstanding the foregoing, failure of the Operator to provide the PMA Annual Statement within such 120-day period shall not release an Owner from its obligations to pay any amounts due upon issuance of the PMA Annual Statement.

**7.2.4 Inspection Rights.** For a period of ninety (90) days after receipt of the PMA Annual Statement, any Owner, at its own expense, shall have the right, by written notice to Operator ("**PMA Inspection Notice**") to inspect the Operator's books and records pertaining to the expenses for the calendar year shown on the PMA Annual Statement. Failure to provide the PMA Inspection Notice within ninety (90) days after the date of the PMA Annual Statement shall be deemed to be such Owner's approval of the PMA Annual Expenses shown in the PMA Annual Statement. The PMA Inspection Notice must designate the date of the proposed inspection, which shall be not less than fifteen (15) days after the date of the PMA Inspection Notice. The Owner performing such inspection shall provide the Operator with a written notice of any discrepancy discovered during such inspection (together with backup documentation) and the amount of such claimed discrepancy ("**PMA Discrepancy Notice**"). The PMA Discrepancy Notice shall be given within thirty (30) days after the date the inspection occurs. The Operator shall have thirty (30) days after receipt of the PMA Discrepancy Notice to respond to such matters. The parties shall use commercially reasonable efforts to resolve any disputes regarding the matters set forth PMA Discrepancy Notice and the Operator's response. Any overpayment or underpayment of five percent (5%) of PMA Annual Expenses shall be handled in the manner provided above.

**7.2.5 Late Payment.** If an Owner shall fail to pay such Owner's Parcel Maintenance Area Expenses or any other amounts due under this Declaration, within thirty (30) days after the due date therefor, then (i) a late charge in the amount of ten percent (10%) of the delinquent amount, (ii) interest



charged at the Default Interest Rate commencing from the date of delinquency, and (iii) Delinquency Charges shall be levied by the Operator against such Owner. In addition, Operator shall be entitled to file a lien and recover its attorney's fees as provided in Article 10 below.

## **ARTICLE 8 INSURANCE**

**8.1 Owner's Liability Insurance.** Each Owner shall procure and maintain (or cause to be procured and maintained) in full force and effect throughout the term of this Declaration commercial general liability insurance ("CGL") covering the Occupants' use thereof against claims for personal or bodily injury or death or property damage occurring in, at or upon the Parcel (including contractual indemnity and liability coverage), such insurance to afford protection to the limit of not less than \$2,000,000.00 combined single limit, in respect to injury or death to any number of persons and all property damage arising out of any one (1) occurrence. Such policy or policies shall cover each Owner's Parcel and any parking area, roads, hallways and sidewalks used in connection therewith. In no event shall the limits of any CGL maintained by any Owner pursuant to this Declaration be considered as limiting such Owner's liability under this Declaration.

**8.2 Property Insurance.** At all times during the term of this Declaration, each Owner shall keep (or cause to be kept) the Improvements on its Parcel (including the Common Area and Parcel Maintenance Area on its Parcel) insured against loss or damage by fire and other perils and events as may be insured against under an Insurance Services Office current "special causes of loss" form commercial Property insurance coverage policy (or its equivalent) for the full replacement cost of the insured Improvements ("Property Insurance"), with a deductible no greater than ten percent (10%) of replacement costs. The full replacement cost shall mean the cost to replace such Improvements, without deduction for depreciation or wear and tear, including costs attributable to improvements or upgrades required by changes in laws and regulations governing zoning, public access and accommodation, work place conditions, public health or safety or other matters, and shall include to the extent reasonably attainable a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement.

### **8.3 General Requirements.**

**8.3.1** The CGL insurance provided maintained by or on behalf of each Owner shall include the Operator and the other Owners (upon written request) as additional insureds as their respective interests may appear. The Property Insurance provided maintained by or on behalf of each Owner shall include the Operator and the other Owners (upon written request) as a loss payee, as their respective interests may appear. Each Owner shall furnish to the Operator or any Owner requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, evidencing that the CGL and Property Insurance required to be carried by such Owner is in full force and effect. Unless otherwise approved by the Approving Owners, all insurance required hereunder shall (i) be an occurrence basis policy (or policies); (ii) be issued by an insurance company having a rating of A-or better and a financial size of "VII" or better, as set forth in the most current issue of Best's Rating Guide, or equivalent rating from other recognized rating bureaus and licensed/approved to do business in the State; (iii) be primary insurance as to all claims thereunder; (iv) with respect to the CGL insurance, contain a cross-liability endorsement or severability of interest clause; (v) provide that the policy shall not be cancelled or allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; and (vi) except for reduction of aggregate limits due to loss payment, provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.

**8.3.2** Each policy of insurance described herein shall contain a waiver by said insurer of any and all rights of subrogation against the Operator and each Owner, and their respective officers, employees, agents, associates and representatives.

**8.4 Blanket and Excess Insurance.** Any insurance required to be carried pursuant to this Article 8 may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Article 8 in an amount not less than \$5,000,000 in Constant Dollars or if such blanket CGL policy or policies shall not have a per location general aggregate of at least \$5,000,000 in Constant Dollars, then such insuring Owner shall also maintain excess liability coverage necessary to establish a total liability limit of \$20,000,000 in Constant Dollars. Such limits may also be satisfied through a combination of primary and excess policies.

**8.5 Release.** Each Owner (the “**Releasing Owner**”) hereby releases and waives for itself, and each Person claiming by, through or under it, each other Owner (the “**Released Owner**”) from any liability for any loss or damage to property of such Releasing Owner located upon any portion of Project, which loss or damage is of the type for which property insurance is required to be maintained under this Article 8, but only to the extent such loss or damage is actually covered by insurance irrespective either of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Releasing Owner agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

**8.6 Indemnification.** To the extent not covered by the insurance required to be carried hereunder, each Owner shall indemnify, protect, defend and hold the other Owners and Operator harmless from and against any and all Claims arising from injury or death to person or damage to the Project that occurs on the indemnifying Owner’s Parcel as a result of the actions of such indemnifying Owner or Operator, except to the extent attributable to the negligence or willful misconduct of such other Owner. An Owner shall not be entitled to such indemnification for: (i) any damage caused to such Owner or the Operator by reason of its own negligence or willful misconduct, and (ii) any Claims arising from any matter covered by the indemnitee’s indemnity obligations under this Declaration.

## **ARTICLE 9 DAMAGE**

**9.1 Restoration of Common Area and Parcel Maintenance Area.** In the event of the destruction and damage to any extent to the Improvements to the Common Area or Parcel Maintenance Area located on a Parcel, the Operator shall diligently commence and pursue completion of the repair or restoration.

**9.2 Restoration of Building(s).** In the event of damage to or destruction of the Building(s) on an Owner’s Parcel such Owner may, but shall not be obligated to, restore and reconstruct such Building(s) (to the extent applicable under this Declaration) in accordance with the requirements of this Declaration. In the event an Owner so elects, such Owner shall restore and reconstruct such Building(s) to at least as good a condition as it or they were in immediately prior to such damage or destruction. All such restoration and reconstruction shall be performed at such Owner’s sole cost and expense and in accordance all Governmental Requirements and the applicable requirements of this Declaration.

**9.3 Clearing of Premises.** Whenever an Owner elects not to restore, repair or rebuild a Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, shall promptly (i) raze such Building(s) or such part thereof as has or have been damaged or destroyed, (ii) clear the premises of all debris, and (iii) all areas not restored to their original use shall be improved with, at the option of the Owner of such Parcel, either landscaping or pavement of like standard and design as the Common Area, as applicable, and maintained in a clean, orderly and sightly manner.

## **ARTICLE 10 REMEDIES**

**10.1 Legal Action Generally.** If any Owner breaches any provision of this Declaration, then the Approving Owners or any other Owner (“**Enforcing Owner**”) may institute legal action against the defaulting Owner (or any defaulting Occupant) for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. All remedies herein or at law shall be cumulative and not all-inclusive. As used herein, any reference to rights or remedies “at law” or “under applicable law” shall also include any rights or remedies “in equity”. As used in Sections 10.1, 10.2, 10.3, 10.7 and 10.8, “Enforcing Owner”, “Defaulting Owner”, and/or a “Non-Defaulting Owner”, shall also be deemed to include the Operator.

**10.2 Injunctive and Declaratory Relief.** In the event of any violation or threatened violation by any Owner or Occupant of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Declaration, the Enforcing Owner shall have the right to enjoin such violation or threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

**10.3 Owner’s Right to Cure or Abate.** If any Owner (a “**Defaulting Owner**”) violates any covenant, condition or restriction contained in this Declaration (including, without limitation, the obligation to pay Operator for the Common Area Expenses or the Parcel Maintenance Expenses and/or the obligation to maintain its Parcel), or permits or suffers any Occupant of its Parcel to violate any covenant, condition or restriction of this Declaration, then, in addition to any other remedy provided for in this Declaration, an Enforcing Owner (each or together, as applicable, the “**Non-Defaulting Owner**”) may demand by written notice (the “**Default Notice**”) that the violation be cured; provided, however, that in the event such default shall constitute an emergency situation, the Non-Defaulting Owner acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances, or if necessary, without advance notice, so long as notice is given as soon as possible thereafter. If the Defaulting Owner does not cure the violation of a monetary obligation within ten (10) days after receipt of the Default Notice, or cure a violation of a nonmonetary obligation within thirty (30) days after receipt of the Default Notice, or if such nonmonetary default is of a kind which cannot reasonably be cured within thirty (30) days, and the Defaulting Owner does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then Non-Defaulting Owner (and its agents and employees) shall have the right to (i) pay any sum owed by the Defaulting Owner to the Person entitled thereto, (ii) enter upon the Parcel of the Defaulting Owner and summarily abate, remove or otherwise remedy any Improvement, thing or condition which violates the terms of this Declaration, and (iii) enter upon the Parcel of the Defaulting Owner and perform any obligation of the Defaulting Owner to be performed thereon. The Defaulting Owner shall, within ten (10) days of written demand by any other Owner, accompanied by appropriate supporting documentation, reimburse the Non-Defaulting Owner for all reasonable costs, expenses and attorneys’ fees incurred by the Non-Defaulting Owner in undertaking any of the actions permitted by clauses (i) through (iii) in the preceding sentence, including, without limitation, wages, benefits and overhead allocable to the time expended by any employee of the Non-Defaulting Owner in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the Non-Defaulting



Owner. The right to cure the default of another Owner shall not be deemed to: (a) impose any obligation on a Non-Defaulting Owner to do so; (b) render the Non-Defaulting Owner liable to the Defaulting Owner or any third party for an election not to do so; (c) relieve the Defaulting Owner from any performance obligation hereunder, or (d) relieve the Defaulting Owner from any indemnity obligation as provided in this Declaration.

**10.4 Certain Limitations on Remedies.** The Declarant (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall not be personally liable for any judgment obtained against the Declarant. Each Owner agrees to look solely to the Declarant's interest in Project for recovery of damages for any breach of this Declaration.

**10.5 Lien.** Any Non-Defaulting Owner or the Operator ("**Creditor Owner**") shall be entitled to a lien against the Parcel of the Defaulting Owner, which lien shall be created and foreclosed in accordance with this Section.

**10.5.1 Creation.** A lien authorized by this Article shall be created by recording a written instrument (the "**Claim of Lien**") in the real property records of the County in which Project is located, which (i) references this Declaration by recording number, (ii) alleges a specific breach of this Declaration, (iii) states the amount owed by the Defaulting Owner through the recording date of the Claim of Lien (including any Delinquency Charges), (iv) contains a legal description of the Parcel of the Defaulting Owner, and (v) is executed and acknowledged by the Creditor Owner.

**10.5.2 Amount.** A lien created pursuant to this Article shall include (i) the amount stated in the Claim of Lien, (ii) all reasonable costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Declaration, and (iv) interest on all of the foregoing at the Default Interest Rate.

**10.5.3 Priority.** The priority of a lien created pursuant to this Article shall be established solely by reference to the date the Claim of Lien is recorded; provided, however, that such lien shall, in all instances, be subject and junior to any Mortgage recorded prior to the date such Claim of Lien.

**10.5.4 Extinguishment.** If the Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this Article, the Creditor Owner shall, at the Defaulting Owner's expense, record an instrument sufficient in form and content to clear title to the Parcel of the Defaulting Owner from the Creditor Owner's lien.

**10.5.5 Foreclosure.** A lien created pursuant to this Article shall be foreclosed in any manner provided by law.

**10.6 Obligation.** Each Owner shall be deemed to covenant and agree to be bound by this Declaration. Any sum not paid, or other obligation not performed when due, together with interest payable hereunder, and all costs and attorneys' fees incurred in connection with collection, shall be the personal obligation of the Persons who were the Owners of the Parcel at the time the payment or obligation became due. The obligation shall not be released by any transfer of the Parcel subsequent to the date such payment or obligation became due, but such obligation shall run with the land and shall be binding upon, and be the liability of, any successor Owner. Nothing contained herein shall limit the ability of any new Owner from collecting any sum due by the new Owner from the prior Owner which has become a liability of the new Owner.

**10.7 Remedies Cumulative.** The remedies provided in this Article are in addition to any remedies available elsewhere in this Declaration or under applicable law. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to Declarant may be exercised cumulatively.

**10.8 Attorneys' Fees.** In the event of any action between the Owners hereto for breach of, or to enforce any provision or right hereunder, the non-prevailing Owner in such action shall pay to the prevailing Owner all reasonable costs and expenses expressly including, but not limited to, reasonable attorneys' fees incurred by the prevailing Owner in connection with such action.

## **ARTICLE 11 SUPPLEMENTAL DECLARATIONS**

Declarant may annex additional lands into the Project from time-to-time by recording a supplement to this Declaration declaring such additional lands to be part of the Community and subject to this Declaration (each a "**Supplemental Declaration**"). Such Supplemental Declaration may add or delete covenants, conditions, restrictions, and easements applicable to the annexed lands as Declarant may deem appropriate. Upon annexation, Owners within the annexed lands will become Owners within the Project on equal footing with the then current Owners within the Project, and will have the same rights, privileges and obligations (except as may otherwise be set forth in the annexing Supplemental Declaration). Declarant will have the right to de-annex any property owned by Declarant from the Community upon Declarant's recordation of a Supplemental Declaration identifying the de-annexed lands and declaring that such lands will no longer be subject to this Declaration. In order to be valid, all Supplemental Declarations must refer to this Declaration and be recorded in the real property records of Valley County, Idaho.

## **ARTICLE 12 MISCELLANEOUS**

**12.1 Amendments.** This Declaration may be amended only by the Declarant at any time on or before the Declarant Termination Date. After the Declarant Termination Date, the Declaration may only be amended by mutual agreement of the Owners of the Parcels constituting at least sixty percent (60%) of the land area of all Parcels then existing within Project. All amendments shall be effective only when recorded in records of Valley County, Idaho.

**12.2 Consent by Approving Owners.** When Declarant no longer meets the definition of Approving Owners in Section 1.3 above, the "approval" or "consent" of the Approving Owners shall mean mutual agreement of the Owners of the Parcels containing at least sixty percent (60%) of all the Floor Area then existing within the Project.

**12.3 Consent by Owners.** In any instance in which any Owner (except the Approving Owners) shall be requested to consent to or approve any matter with respect to which such Owner's consent or approval is required by any of the provisions of this Declaration, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, delayed or conditioned. To the extent that the consent of any of the Owners is required under this Declaration, the Owners shall have fifteen (15) days to provide notice of approval or disapproval of the item for which consent is required. The failure of an Owner to deliver notice of disapproval within such fifteen (15) day period shall be deemed approval thereof. If an Owner delivers a notice of disapproval, such notice shall state with reasonable specificity, the basis for disapproval.

**12.4 Notices.** All notices, approvals, consents, requests, elections and other communications required or permitted to be given under this Declaration (each a "**notice**") shall be in writing and shall be

given by: (a) hand delivery, in which event such notice shall be deemed duly given and received upon the earlier of delivery or refusal to accept delivery thereof; (b) U.S. Certified Mail, return receipt requested, with postage prepaid, in which event such notice shall be deemed duly given on the date of mailing and shall be deemed received upon the earlier of the date of actual receipt, the date of delivery as shown on the return receipt, or the third day after deposit in the mail; or (c) a nationally-recognized overnight delivery service (e.g., FedEx), in which event such notice shall be deemed duly given on the date deposited with such service and deemed received upon the earlier of the actual date of receipt or the day after deposit with the nationally-recognized overnight delivery service. Notwithstanding the foregoing, actual receipt of a notice, however given and from whomever received shall always be effective, and any notice given by a the attorney for Declarant, the Operator, or an Owner, shall, for all purposes, be deemed to have been given by such Declarant, the Operator, or such Owner, as applicable. Any notice to Declarant shall be addressed to the address set forth below, or at such other address as Declarant may specify from time to time by notice to the Owners, and notice to the other Owners shall be at the physical address of the Owner's Parcel, or at such other address as such Owner may specify from time to time by notice to the other Owners.

**Declarant's Address:**

Lake Fork 55 LLC  
Attn: Ryan Montoya  
4688 N. Arrow Villa Way  
Boise, Idaho 83702

Commented [RM23]: Change to GP?

**12.5 Termination of Declarant Rights.** If there is no Declarant under this Declaration, any actions, consents or approvals granted or taken by Declarant prior to the termination of its rights under this Declaration shall remain in effect for so long as such rights were granted by Declarant and if no time period is specified for so long as this Declaration remains in effect.

**12.6 Binding Effect.** All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to, be appurtenant to and run with the Parcels, and shall benefit or be binding upon the successors and assigns of the respective Owners. This Declaration and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof. Every person who now or in the future owns or acquires any right, title or interest in or to any Parcel or portion thereof shall be conclusively deemed to have consented to and agreed to every covenant, restriction, provision, condition and right contained in this Declaration, whether or not the instrument conveying such interest refers to this Declaration.

**12.7 Waiver of Default.** No waiver of any default by any Owner to this Declaration shall be implied from any omission by any other Owner to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any such Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.



**12.8 Breach – Effect on Mortgagee and Right to Cure.** Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any Owner of any Parcel, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale. Notwithstanding any other provision in this Declaration for notices of default, the Mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration; provided, however, that said Mortgagee shall have, prior to the time of the default, notified the Owner hereto giving said notice of default of the Mortgagee's mailing address. In the event that any notice shall be given of the default of an Owner and such Defaulting Owner has failed to cure or commence to cure such default as provided in this Declaration then and in that event the Owner giving such notice of default covenants to give such Mortgagee (which has previously given the above stated notice to such Owner) under any Mortgage affecting the Parcel of the Defaulting Owner an additional notice given in the manner provided above, that such Defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, diligently to commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Owner so declaring a default other than to require that notice to the Mortgagee be given as provided herein.

**12.9 No Partnership.** Neither this Declaration nor any acts of the Owners shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, except as expressly provided herein or by separate written instrument signed by such Owner(s).

**12.10 Severability.** In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

**12.11 Governing Law.** This Declaration and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws of the state in which Project is located, without regard to conflict of law rules.

**12.12 Terminology.** All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Whenever required by the context of this Declaration, the use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

**12.13 Captions.** Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions hereof.

**12.14 Estoppel Certificate.** Each Owner shall upon not less than thirty (30) days from receipt of written notice from the other Owner (which shall not be more frequent than three (3) times per any calendar year) execute and deliver to such other Owner, a certificate stating: (i) either this Declaration is unmodified

and in full force and effect or is modified (and stating the modification); and (ii) whether or not the issuing Owner has received or provided a written notice of default to or from the requesting Owner in any respect to any default under this Declaration and if so specifying such default.

Such estoppel certificate shall act to estop the issuing Owner from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary.

In addition, the Operator shall upon not less than thirty (30) days from receipt of written notice from an Owner (which shall not be more frequent than three (3) times per any calendar year) execute and deliver to such other Owner, a certificate stating: (i) the amount of such Owner's Parcel Maintenance Expenses; (ii) the date such Parcel Maintenance Expenses have been paid to; (iii) the Owner's Proportionate Share of Common Area Expenses; and (iv) the date such Common Area Expenses have been paid to.

**12.15 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Project to the general public or for the general public or for any public purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

**12.16 Time.** All time periods in this Declaration shall be deemed to refer to calendar days. If the last date on which to perform any act, give any notice, or be deemed to have received any notice under this Declaration shall fall on a Saturday, Sunday, or holiday observed by the state courts sitting in Valley County, Idaho, such act or notice shall be deemed timely if performed or given, or such notice shall be deemed received, on the next succeeding day that is not a Saturday, Sunday, or holiday observed by the state courts sitting in Valley County, Idaho, and any successive time periods shall be deemed extended accordingly. Time is of the essence with respect to each and every covenant and obligation under this Declaration.

**12.17 Entire Declaration.** This Declaration and the exhibits hereto contain the entire agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

**12.18 Excuse for Non-Performance.** Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws or orders of governmental authorities or civil or military authorities; breach or default of the other Owners of any of its obligations hereunder; failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by an Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable.

**12.19 Mechanics' Liens.** In the event any mechanics' liens are filed against the Parcel of any Owner, the Owner permitting or causing such lien to be filed hereby covenants either to pay the same and have it immediately discharged of record or to post a bond for the lien in the manner provided by law.

**12.20 Duration.** This Declaration and each term, easement, covenant, restriction and undertaking of this Declaration will remain in effect for a term of sixty-five (65) years from the recordation date hereto and will automatically be renewed for successive ten (10) year periods, in each event unless earlier amended or terminated in accordance with Section 12.1. The easements created in Article 2 which are permanent in nature shall survive the termination of this Declaration and shall exist in perpetuity subject only to extinguishment by the holders of such easements as provided by law.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of the Effective Date.

**DECLARANT:**

Lake Fork 55 LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of \_\_\_\_\_)

This record was acknowledged before me on \_\_\_\_\_, 2023, by \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_ of Lake Fork 55 LLC.

\_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**EXHIBIT A**

**Legal Description of the Project**

**EXHIBIT B**

**Site Plan**

[Will show Building Area, Project Signs, Service Facilities,  
Max Building Heights, and Max Floor Areas]



**EXHIBIT C**

**Common Area Exhibit**

[Will show location of Common Area.]

**EXHIBIT D**

**Parcel Maintenance Area Exhibit**

## **EXHIBIT E**

### **Signage Criteria**

#### **SPECIFIC SIGN REQUIREMENTS:**

##### **Parcel Signs**

Subject to Governmental Requirements, each Parcel is permitted one (1) freestanding Parcel Sign. The Parcel Sign shall only display the designation of the Occupant(s) of such Parcel, unless otherwise approved by the Approving Owners and necessary governmental agencies.

##### **Exterior Building Signs**

The Owner of a Parcel may install exterior building signage to display the designation of the Occupant(s) or such Parcel with prior written approval of the Approving Owners.

##### **Common Area and Parcel Common Area Signs**

No sign shall be placed in the Common Area or Parcel Maintenance Area without prior approval from the Approving Owners, unless placed in the Common Area by Declarant as set forth below.

##### **Project Signs**

In its sole discretion, Declarant may elect to construct a Project Sign or Project Signs as provided in Section 1.34 and any related sections of this Declaration.

#### **GENERAL REQUIREMENTS:**

1. All signs (excluding Project Signs) are at the Parcel Owner's sole cost and expense.
2. Prior to constructing, altering or replacing any sign, the Owner of a Parcel shall submit a signage plan showing the location, height, dimensions, design and other information deemed necessary by the Approving Owners to review. In its sole discretion, the Approving Owners can approve, conditionally approve, or deny the signage plan as submitted in accordance with Article 3 and any related sections of this Declaration.
3. The construction and installation of all signs is subject to this Signage Criteria, Governmental Requirements and necessary governmental approvals to be obtained by the Owner. The Owner shall obtain all necessary sign permits and submit a copy to the Approving Owners prior to installing any sign.
4. All signs and their installation must comply with all local building codes and bear a U.L. label.
5. Each Owner shall, at its sole cost and expense, operate, maintain and repair, in a clean, attractive and safe condition its Parcel Sign, building exterior signs and all other signs, including components thereof.
6. All penetrations of Building structures required for sign installation shall be sealed in watertight condition and shall be patched upon removal. Any patching must match the existing wall. If



necessary, the Owner will be required to patch and paint the entire facade to properly match the wall. Any vacated sign panels shall be replaced with an appropriate blank panel.