

1928462

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
STRAWBERRY FIELDS  
HAYDEN, IDAHO

STATE OF IDAHO  
COUNTY OF KOOTENAI  
~~First American Title Company~~

2005 FEB -7 P 2:01

DANIEL J. ENGLISH  
47  
DEPUTY  
Fees 141.00

The undersigned, HAYDEN, LLC, an Idaho limited liability company, (hereinafter referred to as "Declarant") is the current Owner, in fee or as purchaser under contract of sale, of the real property located in Kootenai County, Idaho, more particularly described on Exhibit "A" attached hereto and by this reference is incorporated herein (hereinafter referred to as "the Property"). Declarant hereby adopts the following Covenants, Conditions and Restrictions for STRAWBERRY FIELDS and its Additions (hereinafter referred to as "the Project" located at the Property), and declares that the following shall apply to each and every subdivision of the Property or additions annexed hereunder and to any interest in the Property. These Covenants, Conditions and Restrictions ("Declaration") shall run with the land and shall bind the successors-in-interest, purchasers, assigns, heirs and any party having acquired any right, title or interest in or to any part of the Property from Declarant until the Declaration is terminated.

This Declaration is intended to regulate the development and use of the Project for the mutual benefit of future owners and occupants. The project will be a planned residential community. The Declarant has attempted to draft this Declaration consistent with the ordinances of the City of Hayden, Idaho. Where inconsistent, the most restrictive regulations in this Declaration or the Hayden Ordinances shall apply. THIS DOCUMENT DOES NOT AND CANNOT ALTER THE LAW OF THE CITY OF HAYDEN.

ARTICLE I  
DEFINITIONS

Section 1.1. Words Defined. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply:

Section 1.1.1. "**Articles**" shall mean the Articles of Incorporation and any amendment of Articles of the Association defined below, a copy of which is attached as Exhibit "B" and by this reference is incorporated herein.

Section 1.1.2. "**Association**" shall mean the Idaho nonprofit corporation whose members are the Owners as described in this Declaration.

Section 1.1.3. "**Board**" shall mean the Board of Directors of the Association.

Section 1.1.4. "**Bylaws**" shall mean the Bylaws of the Association, a copy of which is attached as Exhibit "C".

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Section 1.1.5. **"Common Area"** shall mean a parcel of the Property which, according to the plat or Ownership, is established for shared use of the Owners. Common area is maintained by and at the expense of the Association.

Section 1.1.6. **"Declarant"** shall mean HAYDEN, LLC, and its representatives, successors, and assigns.

Section 1.1.7 **"Declarant's Control Period"** shall mean that period of time wherein Declarant maintains Class "B" Membership and thereby controls all votes of the Association.

1.1.8 **"Designated Successor"** shall be that person(s) specifically designated through written agreement with Declarant to assume all rights, responsibilities and obligations of the Declarant set forth in the CC&Rs except the right to vote during the Declarant's Control Period.

Section 1.1.9. **"Declaration"** shall mean this Declaration of Covenants, Conditions, and Restrictions as it may from time to time be amended.

Section 1.1.10. **"Development Documents"** shall mean the Declaration, Articles, Bylaws, and Rules and Regulations as lawfully amended from time to time.

Section 1.1.11. **"First Mortgage"** shall mean a recorded mortgage on a Lot that has legal priority over all other mortgages thereon.

Section 1.1.12. **"First Mortgagee"** shall mean the holder of a First Mortgage.

Section 1.1.13. **"Improvement"** shall mean the buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.1.14. **"Lot"** shall mean a platted and subdivided parcel of real property located in the Project, excepting any Lot owned by the Association.

Section 1.1.15. **"Limited Common Areas"** shall mean those common areas and facilities, which may be designated in future plats or annexations to this Declaration for use of a certain owner or owners to the exclusion, limitation or restriction of others.

Section 1.1.16. **"Mortgage"** shall mean a recorded mortgage, deed of trust or other security instrument by which a Lot in the Project is encumbered.

Section 1.1.17. **"Mortgagee"** shall mean the beneficial Owner, or the designee of the beneficial Owner, of an encumbrance on a Lot in the Project created by a mortgage, deed of trust or other security instrument.

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Section 1.1.18. **"Owner"** shall mean the legal Owner of a Lot in the Project. Where a real estate contract for the sale of a Lot has been executed, the contract purchaser, and not the contract seller, shall be deemed to be the Owner for the purposes of this Declaration.

Section 1.1.19. **"Person"** shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

Section 1.1.20. **"Plat"** shall mean the plat of survey of the property and of all lots included within the property, which has been recorded with the county recorder of Kootenai County, and all amendments thereto, together with any plats of real property subsequently annexed pursuant to this declaration.

Section 1.1.21. **"Project"** shall mean the real estate and improvements covered by this Declaration.

Section 1.1.22. **"Property"** shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described in Exhibit "A" attached hereto, along with any real estate annexed hereunder in accordance with the terms of this Declaration.

Section 1.1.23. **"Rules and Regulations"** shall mean those operating procedures and use controls adopted by the Board consistent with this Declaration. The initially adopted Rules and Regulations are attached hereto as Exhibit "D".

Section 1.1.24. **"Survey Map and Plans"** shall mean the survey map or plat and the plans recorded with respect to the Property and any amendments, corrections and addenda thereto subsequently recorded.

Section 1.1.25. **"Visible from Neighboring Lots"** shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 1.2. Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably. The above definitions shall apply to words in text whether capitalized or uncapitalized, unless the context of their use makes the definitions clearly not applicable. All other words shall be given their common and simple meaning consistent with the context of their use.

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ARTICLE II  
DESCRIPTION OF LAND

The land restricted and protected by this Declaration shall be all real estate and improvements located on the Property described in Exhibit "A" attached hereto and any land properly annexed hereunder.

ARTICLE III  
DESCRIPTION OF BUILDINGS

This development is residential in nature and the buildings may be set on the Lot as the Owner may deem appropriate but in accordance with the requirements of the Ordinances of Coeur d'Alene, the Architectural Control Rules and Regulations, and this Declaration.

ARTICLE IV  
ARCHITECTURAL CONTROL

Section 4.1. Board as the Architectural Control Committee. The Board is hereby authorized to act as an Architectural Control Committee and to adopt, amend and enforce certain Rules and Regulations to be known as the Architectural Control Rules and Regulations (hereafter "Rules and Regulations").

Section 4.2. Architectural Control Committee or Administrator. The Board, at its option, may appoint a standing committee to be known as the Architectural Control Committee or an Architectural Administrator (hereafter collectively referred to as "Committee" for ease of drafting). The Committee, when duly appointed, shall assume the authority to enforce the Rules and Regulations. The Committee shall consist of no more than five (5) persons selected by the Board to serve indefinite terms. The Administrator shall be an architect, engineer, planner or designer that is qualified for the duties required by this declaration.

Section 4.3. Rules and Regulations. The Board shall adopt, by resolution, the Rules and Regulations which shall include, but not be limited to, the regulation of exterior appearance of improvements, buildings, signage, parking, fencing, drainage and permitted uses and activities within the Project. The Board, by resolution approved by a majority, may amend the Rules and Regulations from time to time. Upon proper adoption and notice to owners (actual or constructive), the Rules and Regulations shall be as enforceable and binding as any other requirements of this Declaration.

Section 4.4. Fees. The Board, by resolution, shall set a fee for plan review pursuant to the Rules and Regulations. The Board may, by majority vote, waive or adjust fees for low cost improvements.

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**ARTICLE V**  
**SERVICE OF PROCESS**

The registered agent of the Association is designated to receive service of process. The Board shall designate the agent in the Articles and the Board may specify a different agent for such purpose by filing an amendment to the Articles.

**ARTICLE VI**  
**ASSOCIATION OF OWNERS**

Section 6.1. Form of Association. The Association shall be a nonprofit corporation formed under the laws of the State of Idaho.

Section 6.2. Articles and Bylaws. The Articles and Bylaws of the Association shall bind all Owners and are by this reference an integral part of this Declaration. A copy of the Associations' Articles of Incorporation is attached hereto as Exhibit "B" and a copy of its Bylaws is attached as Exhibit "C" and is available through the Board. The Articles and Bylaws may be amended in accordance with the terms of each and the laws of Idaho.

Section 6.3. Qualification for Membership Voting Right. Each fee Owner of a Lot (including Declarant) shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership in the Association. The voting rights of the membership are specified in the Bylaws of the Association.

Section 6.4. Pledged Votes. If an Owner is in default under a first mortgage on a Lot for ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that said Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge by a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

Section 6.5. Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Development which the Association may be required to maintain and repair, each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's Lot and all improvements thereon in order to maintain value of Lots in the Project.

Section 6.6. Association Obligation to Maintain and Repair Common Areas. The Association has the responsibility to maintain and repair all of the common areas. The Declarant has entered into an Annexation Agreement with the City. The Annexation Agreement is on file with the City Clerk. All of the obligations in the Annexation Agreement and all obligations owed the City in regard to subdivision improvements and duties are hereby assigned to the Association. The duties shall include but not be limited to the duty to care for and maintain landscaped common area, perimeter fencing and snowplowing until the City takes over the snowplowing.

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ARTICLE VII  
NOTICES

Section 7.1. Form and Delivery of Notice. All notices to members given under the provisions of this Declaration or the Bylaws or Rules and Regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of delivery of regular mail after it has been deposited in the United States mail, first class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to Declarant until the transition date and thereafter shall be given to the President or Secretary of the Association.

ARTICLE VIII  
BUDGET AND ASSESSMENT

Section 8.1. Assessments. Assessments may be assessed and will become a lien against Lots in accordance with the Bylaws. The sums required by the Association for common expenses as reflected by the annual budget and any supplemental budgets shall be paid annually as specified in the Bylaws.

Section 8.2. Proceeds Belong to Association. All assessments and other receipts received by the Association pursuant to the provisions hereof shall belong to the Association.

Section 8.3. Goods and Services. The Board shall acquire and pay for, as common expenses of the Association, all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Association. The goods and services shall include, but not be limited to, utility services for the common areas and facilities; policies of insurance and fidelity bonds; legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the common areas and facilities (except where the Owners have such responsibility under the provisions hereof); and all supplies, materials, fixtures, and equipment that are in the Board's judgment necessary or desirable for the operation of the Association and enjoyment of it by the Owners. The Board may hire such full-time or part-time employees as it considers necessary.

ARTICLE IX  
COLLECTION OF ASSESSMENTS

Section 9.1. Assessments are Personal Obligations and Lien on Assessed Lots. All sums assessed by the Association chargeable to any Lot or Owner (together with interest, late charges, costs and attorney's fees in the event of delinquency) shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when assessed. All remedies for payment shall be maintainable without foreclosing or waiving the liens securing payment.

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Section 9.2. Late Charges and Interest on Delinquent Assessments. The Board, in accordance with the Bylaws, may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become delinquent.

Section 9.3. Elimination of Service For Nonpayment: In case of nonpayment or delinquency in the payment of assessments or other fees imposed by the Board, the Board may, upon ten (10) days' notice to the Owner, occupant or person in charge of the Lot, eliminate any service of the Association related to that Lot. No recommencement of services shall occur until such delinquent assessments, fees and a recommencement fee as may be established by resolution of the Board, have been paid to the Board. Elimination of service shall in no way preempt or prohibit any other enforcement rights of the Board.

Section 9.4. Failure to Assess. Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any year for the ensuing year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the monthly assessment amount established for the preceding year shall continue until a new assessment is established.

Section 9.5. Remedies Cumulative. The remedies provided herein are cumulative, and the Board may pursue them and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

**ARTICLE X**  
**FAILURE TO INSIST ON STRICT PERFORMANCE; NO WAIVER**

Section 10.1 No Waiver. The failure of any interested party in any instance to insist upon the strict compliance with this Declaration or the Bylaws or Rules and Regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition or restriction. The receipt by the Board of payment of an assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver of any requirement shall be effective unless expressed in writing and signed by the party waiving such requirement.

**ARTICLE XI**  
**LIMITATION OF LIABILITY**

Section 11.1 General Limitation. So long as a Board Member, or Association Committee Member, or Association Officer, or Declarant, or the Managing Agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided,

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however, that this section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board.

**Section 11.3 Specific Limitation Related to Personal Liability of Certain Persons.** Each Owner, in addition to the other limitations contained herein and not to the exclusion of any other limitation, agree that no member of the Board or any committee of the Association, or any officer, agent or employee of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or any representative or employee of the Association, or the Architectural Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

## **ARTICLE XII MORTGAGEE PROTECTIONS**

**Section 12.1. Mortgagee Protection: General Requirements.** A breach of any covenant, condition or restriction herein contained, or any enforcement thereof, shall not defeat or render invalid any mortgage now or hereafter executed upon the Property or a portion thereof; provided, however, that if any portion of the Property is sold under a foreclosure of any mortgage, any purchaser at such sale and its successors and assigns shall hold any and all Property purchased subject to all the provisions of this Declaration.

**Section 12.2. Mortgagee's Obligations as to Assessments.** Each holder of a first mortgage (including any purchaser from such holder) on a Lot who comes into possession of a title to said Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the unit free of and shall not be liable for any unpaid claims or assessments and charges against the Lot which accrue prior to the time of such possession or acquisition of title, whichever is earlier.

**Section 12.3. Mortgagee's Right to Pay Charges.** First Mortgagees may pay charges which are in default and which may or have become a charge against any common area property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common area property. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 12.4. Mortgagee's Lien Superior to Association's.** Any lien which the Association may have on any unit for the payment of assessments attributable to such unit will be subordinate to the lien or equivalent security interest of any mortgage on the unit recorded prior to the date notice of such assessment lien is duly recorded.

**Section 12.5 Notices to Mortgagees.** Any Mortgagee may file with the Secretary of the Board a written request that it be given copies of notices. Until such request is withdrawn or the mortgage is satisfied, the Board shall endeavor to send to the requesting Mortgagee a



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copy of all documents sent to Owner of the mortgaged Property. Holders of First Mortgages who have requested notices shall be entitled to prompt notice of any default in an Owner's obligations under this Declaration, the Bylaws, or the Rules and Regulations of the project, that is not cured within thirty (30) days of the date of default. The provisions of this section shall prevail over any inconsistent or contrary provisions in this Declaration or in the Articles or Bylaws.

Specifically, the Board will strive to send the following notices, in writing, to any Mortgagee if requested in writing:

12.5.1. Mortgagee's Notice of Change. Notice of any proposed change in the Development Documents, which notice shall be given thirty (30) days prior to the effective date of such change;

12.5.2. Mortgagee's Notice of Default. Notice of any default in Owner's obligations under the Development Documents, which default is not cured within thirty (30) days;

Section 12.6. Mortgagee's Right to Inspect Records. Notwithstanding any language contained in this Declaration or the other related documents to the contrary, Mortgagees shall have the right to examine the books and records of the Association.

#### **ARTICLE XIII SEVERABILITY**

The provisions of the Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision.

#### **ARTICLE XIV EFFECTIVE DATE**

This Declaration shall take effect upon recording.

#### **ARTICLE XV ASSIGNMENT BY DECLARANT**

Section 15.1. Declarant's Right to Assign. Declarant reserves the right to assign, transfer, sell, lease or rent all or a portion of the Property then owned by it and reserves the right to assign all or any of its rights, duties and obligations created under this Declaration.

Section 15.2. Effect of Declarant's Assignment. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned to any person, corporation, partnership or association which will assume the duties of Declarant pertaining to the particular

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rights, power and reservations assigned, and upon any such person, corporation, partnership, or association evidencing its intent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and duties as are given to and assumed by Declarant herein. In the event of assignment, Declarant shall be released from any liability from the date of assignment forward.

**Section 15.3. Termination of Responsibility.** In the event Declarant shall convey all of its right, title and interest in and to the Development to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations hereunder.

## **ARTICLE XVI ENFORCEMENT**

**Section 16.1. General Requirements.** Broad enforcement is intended in order to protect the value of the Lots and the Property and to allow efficient assurance of compliance.

**Section 16.2. Right of Entry.** During reasonable hours and upon reasonable notice and subject to reasonable security requirements, the Declarant or Association, or their agents, shall have the right to enter upon and inspect any Lot covered by this Declaration for the purpose of ascertaining compliance with this Declaration. Such right of entry shall not include entrance inside any structure. Entry upon any Lot shall not be a trespass or other wrongful act.

**Section 16.3. Enforcing Methods and Parties.** The following options specify the manner in which the Declaration may be enforced:

**16.3.1. Manner of Enforcement:** The Declarant and the Association shall have the right to enforce by any proceeding in law or equity, all covenants, conditions and restrictions contained in this document. Enforcement shall be consistent with notice provisions contained herein. No one shall be liable for failure to enforce the requirements of the Declaration, since all Owners may also protect their respective rights.

**16.3.2. Correction Lien:** The Association may correct any violation and lien the violating Property for sums owed for correction, (sums shall include attorney's fees and interest at the highest rate allowed by law) if the violating Owner fails, within sixty (60) days after mailing of the notice, to correct the violation or violations or fails to give adequate security to assure compliance within one (1) year from mailing the notice of violation. The sums owed shall constitute a lien upon said Lot as follows:

**16.3.2.1.** The work performed to correct said violation shall be deemed to be at the instance of the Owner or Owners of the violating Lot upon which such work is performed, as evidence by the acceptance of these covenants through

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the purchase of Property in the development, or in the alternative, shall be a correction assessment as allowed under the Articles of Incorporation of Owners' Association and Idaho Code;

16.3.2.2. A claim of lien must be filed with the Kootenai County Recorder within ninety (90) days after completion of said corrective work as provided in Idaho Code Section 45-507, or successor statute;

16.3.2.3. The duration of the lien shall be as provided in Idaho Code Section 45-510 or successor statutes; and

16.3.2.4. A lien shall be foreclosed as provided in the Idaho Code.

16.3.3. **Reservation of Other Remedies:** In addition to the remedies set forth above, Owners' Association and Declarant reserve the right to enforce any covenants, conditions or restrictions contained herein by any other appropriate action at their option.

Section 16.4. Additional Enforcement of Attorney's Fees. The failure of any Owner to comply with the provisions of the Development documents shall give rise to a cause of action in favor of the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both. The Board shall have the power to enforce the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, as the same may be lawfully amended from time to time, for the benefit of the Association. If legal action is brought to interpret or enforce compliance with the provisions of this Declaration, the Articles, the Bylaws, or the Rules and Regulations of the Association, then the Declarant or Association, as the case may be, shall be entitled to judgment against the other party for its reasonable expenses, court costs and attorney's fees in the amount awarded by the court.

Section 16.5. Notice Requirements. Prior to taking any action of enforcement against any violating Owner, the Association shall deliver to the violating Owner written notice of the nature of the violation, a suggested remedy, and reference to particular relevant portions of this Declaration or the Rules and Regulations. The violating Property Owner shall be allowed thirty (30) days to correct the violation. If at the end of the thirty (30) days the violation remains, enforcement may be commenced.

Section 16.6. Failure to Enforce is No Waiver. The failure to enforce any requirements contained in this Declaration shall in no event be deemed to be a waiver of the right to enforce that requirement or any other provision thereafter.

## ARTICLE XVII DURATION, MODIFICATION AND REPEAL

Section 17.1. Duration of Protective Covenants. This Declaration shall continue and remain in full force and effect at all times with respect to the development and each part

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thereof for a period of thirty (30) years, commencing on the date of recordation of this Declaration in the real property records of the county in which the Property is located. Unless terminated, this Declaration shall continue automatically for an additional period of ten (10) years and thereafter for successive ten (10) year periods until so terminated. Owner, by purchase of a parcel, acknowledges his desire to protect the Property through the continuation of these Declarations.

**Section 17.2. Association Modification or Termination.** This Declaration may be terminated or modified at any time by a written instrument executed by two-thirds (2/3) of the Board but shall not be effective until ratified in writing by a majority of the members of each class of the membership or the sole class if only one class exists at that date.

**ARTICLE XVIII**  
**DECLARANT'S SPECIAL PROVISIONS**

**Section 18.1. Limitation of Restriction.** Declarant is undertaking the work of developing the Project. The completion of the work and the sale, rental, and other disposal of said Lots is essential to the establishment and welfare of the Project as a thriving planned unit development. In order that said work may be completed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

18.1.1. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of the Project; or

18.1.2. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a community and disposing of the same parcels by sale, lease or otherwise; or

18.1.3. Prevent Declarant from conducting on any part of the Project its business of completing the work and establishing a plan of Ownership and of disposing of said Lots by sale, lease or otherwise; or

18.1.4. Prevent Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or disposition thereof.

So long as Declarant owns one or more of the Lots established and described in this Declaration and except as otherwise specifically provided herein, Declarant shall be subject to the provisions of this Declaration. However, nothing in this Declaration shall be construed to require Declarant to fulfill all the requirements of this Declaration on its Lot or Lots, where said Lot or Lots are without buildings and are being held for sale or lease. If the Declarant shall develop and construct a building for its own use rather than for lease or sale, then the Lot will be subject to all restrictions.

**Section 18.2 Non-Warranty of Compliance and Enforcement.** The Declarant does not, by the execution of this document or the continuing participation directly or indirectly in or on the Board, warranty or guaranty enforcement and/or binding effect of these Declarations nor does the Declarant warrant that all Owners' use of the Property are in compliance with this Declaration. Each purchaser of Property does hereby agree to accept all responsibility for enforcement of these Declarations individually and to release the Declarant from any lack of enforcement or nonconformity of any structure or use of Property.

**Section 18.3. Release and Indemnification of Declarant.** The Declarant has created common areas for the use of Owners and to be managed by the Association consistent with the Declarant's transfer of Declarant's interest in the common area. The Association agrees to hold the Declarant harmless from any liability related to the common area. Furthermore, the Association agrees to indemnify Declarant from any and all loss and cost related to the common area.

**ARTICLE XIX  
ADDITIONS TO DECLARATION**

**Section 19.1. Annexation of Phases of Project.** Phases may be annexed to the Project and become subject to this Declaration by either of the following methods:

**19.1.1. Unilateral Annexation.** Declarant may annex any real estate adjoining the Property described. Such annexed Property shall become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Owners Association, without the assent of the Owners' Association or its Members, on condition that:

**19.1.1.1.** Any annexation pursuant to this Subparagraph shall be made within thirty (30) years from the date of recordation of this Declaration; and

**19.1.1.2.** A Declaration of Annexation shall be recorded prior to any sales to a member of the general public of any Lot in the area to be annexed. The Declaration of Annexation shall include the legal description of Property to be annexed, shall incorporate this Declaration by reference and may contain such additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the added Property.

**19.1.2. Annexation By Approval.** Upon the approving vote or written assent of Declarant (while Declarant owns any Lot in Development) and two-thirds (2/3) of the Members other than Declarant, the owner of the property outside of the Project who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of this Owners' Association, may record a Declaration of Annexation in the manner described in the preceding subparagraph and thereby subject said property to this Declaration.

ARTICLE XX  
EASEMENTS

Section 20.1. Easement Specifically Reserved by Declarant. Declarant reserves an access easement over, across, and through the common areas and facilities of the Project for the purpose of completing any unfinished units or other improvements and exhibiting and preparing units for sale and for the purposes of developing any contiguous land owned by Declarant.

Section 20.2. Easement Granted to Utility Providers. Declarant hereby grants to the utility providers and its successors and assigns ("grantee") an easement for the existing transmission lines and pipes passing through the Property and for ingress and egress for the purpose of maintaining, replacing (including the right to install lines of larger capacity), and connecting to said lines, all at the sole cost and expense of said grantee. Any damage caused by grantee in exercising the rights granted hereunder shall be repaired by said grantee at grantee's sole cost and expense.

Section 20.3. Power of Association to Grant Easements. The Association shall have the right to grant easements for utility purposes over, upon, across, under or through any portion of the common area, and each Owner hereby irrevocably appoints the Association as attorney-in-fact for such purpose.

ARTICLE XXI  
MISCELLANEOUS PROVISIONS

Section 21.1. Constructive Notice and Acceptance. Upon recording of the Declaration, every person or entity who now or hereafter owns, occupies or acquires any right, title or interest in or to any portion of the Property has conclusively consented and agreed to every covenant, condition and restriction of this Declaration. This conclusive acceptance shall occur regardless of whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

Section 21.2. Agreement or Conveyances in Violation of Declaration. Any deed, lease, conveyance, contract or other instrument or action in violation of this Declaration shall be void and may be set aside by Declarant or Association.

Section 21.3. Captions. The captions of this Declaration are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe its scope and intent.

Section 21.4. Entire Covenant. The Declaration is the entirety of the covenant, conditions and restrictions. There are no other verbal or other agreements or matters, which vary the terms of the Declaration. This Declaration, its appendix, and exhibits are the entirety

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THIS INSTRUMENT FILED FOR RECORD BY FIRST AMERICAN TITLE COMPANY AS AN ACCOMMODATION. IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION OR AS TO ITS EFFECT UPON THE TITLE

of the covenants, conditions and restrictions, and shall not be altered except as specified in the documents and in accordance with Idaho law.

Section 21.5. Interpretation. This Declaration shall be interpreted in accordance with Idaho law and shall be strictly interpreted to enforce the purpose of the Declaration, but all ambiguities shall be interpreted in favor of Declarant and the Association. Definitions of this document shall guide all interpretations. The Board's interpretations shall also be considered in order to encourage consistency.

Section 21.6. Conflict of Development Documents. If there is any conflict among or between the documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to any recorded Declaration of Annexation, Articles of Incorporation, Bylaws, and Rules and Regulations of Association.

Section 21.7. Consistency with Federal Housing Authority and Secondary Market Restrictions. This Declaration is intended to be consistent with Federal and State laws and regulations as required for lending of money for homes and for sale of mortgages of such homes in the secondary market. In the event of any conflict between the Declarations, Bylaws, and Federal and State regulations or guidelines, then Declarant may unilaterally, at Declarant's sole option, amend the conflicting provision in order to eliminate the conflict.

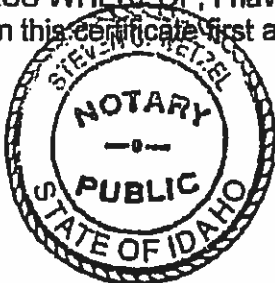
HAYDEN, L.L.C.

BY: *Timothy A. Mueller*  
TIMOTHY A. MUELLER,  
MANAGING MEMBER

STATE OF IDAHO )  
                          ) ss.  
County of Kootenai )

On this 3rd day of February, 2004, before me, the undersigned, a Notary Public for the State of Idaho, personally appeared TIMOTHY A. MUELLER, known or identified to me to be a Managing Member of the HAYDEN LIMITED LIABILITY COMPANY, the company that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



*Steven M. Metzger*  
Notary Public for the State of Idaho  
Commission Expires: 4-28-05

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**STRAWBERRY FIELDS  
C, C & R LEGAL DESCRIPTION**

Tracts of land located in Section 22, Township 51 North, Range 4 West, City of Hayden, Kootenai County, Idaho, being more particularly described as follows:

- Lots 1 through 20, Block 1
- Lots 1 through 30, Block 2
- Lots 1 through 19, Block-3
- Lots 1 through 16, Block 4
- Lots 1 through 14, Block 5
- Lots 1 through 8 & 16 through 22, Block 6

Strawberry Fields is a lawful subdivision of Kootenai County more particularly described on the Plat recorded in the records of Kootenai County at Book \_\_ at Page \_\_ as Instrument Number \_\_\_\_\_ (hereinafter referred to as the "the Subdivision").

