

Kokopelli Endeavors

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Deed Restrictions

For

Moose Creek Estates

(See Exhibit 1 for Legal Description)

Revised 1-9-2003

Amendment to Revision 10-13-2002 Article 2.22

Instrument Number 252637

Dated December 2, 2002

Revised 11-29-2004

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THIS DECLARATION is made this ____ day of _____, 2009, by Bob Wilson representing Kokopelli Endeavors, a limited partnership, hereinafter referred to as “Declarant.

WHEREAS, Declarant is the Owner of certain real property located in the County of Lemhi, State of Idaho, more particularly described as the Moose Creek Estates on Exhibit 1, attached hereto and incorporated herein as set forth in full and recorded in the County of Lemhi.

AND WHEREAS, Declarant wishes to establish Deed Restrictions for Moose Creek Estates (MCE), which is referred to herein as “The Property”.

NOW, THEREFORE, Grantor hereby declares that The Property and each lot, parcel or portion thereof, as described on Exhibit 1, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale of The Property, and to enhance the value, desirability and attractiveness of The Property. The terms, conditions, reservations, easements and Deed Restrictions set forth herein shall run with the land constituting The Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in The Property or any lot, parcel or portion thereof; including their Invitees; shall inure to the benefit of every Lot, parcel or portion of The Property and interest therein; and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each Grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest and by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor’s right to complete development of The Property and to construct improvements thereon, nor Grantor’s right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of The Property, nor Grantor’s right to post signs incidental to construction, sales or leasing.

ARTICLE I - Definitions

1 DEFINITIONS

- 1.1 “**Articles**” shall mean the Articles of Incorporation of the Association.
- 1.2 “**Assessments**” shall mean those payments required of Owners and Association Members including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.
- 1.3 “**Association**” shall mean and refer to the MCE Home Owners’ Association, Inc., an Idaho non-profit corporation, its successors and assigns.
- 1.4 “**Association Rules**” shall mean those rules and regulations promulgated by the Association governing conduct upon the use of The Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association rules and regulations, and procedural matters for use in the conduct of business of the Association.
- 1.5 “**Beneficiary**” shall mean a mortgagee under a Mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such Mortgagee, beneficiary or holder, which Mortgage or deed of trust encumbers parcels of real property on The Property.
- 1.6 “**President**” shall mean the HOA President.
- 1.7 “**Building Lot**” shall mean and refer to any plot of land showing upon any recorded Plat of The Property with the exception of Common Area.
- 1.8 “**Bylaws**” shall mean the bylaws of the Association.
- 1.9 “**Committee**” shall mean the **Architectural & Environmental Control Committee** (AECC) described in Article VI.
- 1.10 “**Common Area**” shall mean all real property owned by the Association for the common use and enjoyment of the Owners of all Lots and their Invitees. Common areas are located as shown on the MCE Subdivision Plat, recorded in Lemhi County. The “Common Area” shall also include such parcels that are from time to time designated as private driveways, common open space, or common landscaped areas.
- 1.11 “**Declaration**” or “**These Deed Restrictions**” shall refer to this Declaration, as hereafter amended and supplemented from time to time by the Association.

- 1.12** “**Declarant**” shall mean and refer to Kokopelli Endeavors, and its successors and assigns, if such successors and assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development and as part of such conveyance, the Declarant assigns and transfers to such transferee the Declarant’s rights with respect to such Lots.
- 1.13** “**Environmental Advisory Board**” shall mean and refer to a group of independent professionals with experience in the fields of forestry, fish and wildlife biology, and/or water quality.
- 1.14** “**Grantor**” shall mean and refer to the Declarant.
- 1.15** “**Improvement**” shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property; including, but not limited to buildings, fences, driveways, landscaping, signs, lights, electrical lines, pipes, pumps, and other recreational facilities of any kind whatsoever.
- 1.16** “**Invitees**” includes: members of an Owner’s family, guests, licensees, contract purchasers, tenants and lessees.
- 1.17** “**Lot**” shall mean and refer to a Building Lot on Moose Creek Estates.
- 1.18** “**M.C.E**” or MCE shall mean and refer to Moose Creek Estates.
- 1.19** “**Member**” shall mean each person or entity holding a membership in the Association.
- 1.20** “**Mortgage**” shall mean and refer to any mortgage or deed of trust and “**Mortgagee**” shall refer to the mortgagee, or beneficiary under a deed of trust, and “**Mortgagor**” shall refer to the mortgagor, or grantor of a deed of trust.
- 1.21** “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.22** “**Plat**” shall mean the recorded Plat of Moose Creek Estates recorded in Lemhi County, Idaho as Instrument Number **, and any recorded amendments thereto.
- 1.23** “**Property**” shall mean and refer to the real property herein before described and such additions thereto as may hereafter be annexed and brought within the coverage of this Declaration as more particularly provided for herein.
- 1.24** “**Unit**” shall mean one primary, single-family dwelling.

1.25 “**Scenic Pedestrian Easement**” shall mean and refer to the area indicated on the MCE Plat map as such and shall be of common use and enjoyment to the residents and their Invitees, and shall remain protected in perpetuity.

ARTICLE II – General Conditions and Deed Restrictions

2 GENERAL CONDITIONS AND DEED RESTRICTIONS

- 2.1 Water Resource Protection:** No one shall be allowed to conduct any activity that leads to polluting, damming, diverting (by surface diversion, or by pump, or by any other means), or otherwise altering, or in any way affecting the natural flow of, or the natural biology of (i.e. riparian habitat, including, but not limited to fish, amphibian, mammal, bird or marine life, food sources, cover, etc.) the North Fork of the Salmon River, its West Fork, Moose Creek, Pierce Creek and/or any other tributaries, springs, wetlands or drainages on the said property. This clause is not intended to prevent or preclude fish or animal habitat improvement projects done in conjunction with the appropriate local, state, or Federal agency.
- 2.2 Preserving Natural Flora:** Trees and natural vegetation will be left to remain in their natural state as long as they are in compliance with the fire management plan. The Owner shall enhance the natural vegetation in accordance with the Environmental Enhancement Plan.
- 2.3 Land Use and Building Type:** No lot shall be used except for recreational/residential purposes in accordance with the Plat, and no lot, Common Area, or Scenic Pedestrian Easement shall be used for the conduct of any trade or business or professional activity (with exception of the Grantor). Notwithstanding the foregoing, the Board may permit “home businesses/occupations,” as provided in the Association’s Rules and in compliance with the Lemhi Development Code.
- 2.3.1** No structure shall be erected, placed, or permitted to remain on any portion of these lands other than a single family dwelling (the primary living Unit), guest home, private garage, and other such out buildings as may be incidental to the residential/recreational use of the land. All structures will be built upon designated building sites on the individual Plat map for each lot. All construction plans and materials used must be approved by the AECC.
- 2.3.2** No lot shall be further subdivided at any time. No mobile or modular homes will be allowed.
- 2.4 Building and Septic Sites:** All structures and septic fields will be constructed within broadly designated building sites as specified in each individual Plat map. All on-site septic and sewage systems shall be designed and constructed in compliance with Idaho State standards and the Department of Environmental Quality. All necessary permits must be obtained from District 7 Health Department before any construction begins and if a septic location is moved. A well driller licensed by the state of Idaho must drill all water wells.

- 2.5 **Driveways and Sidewalks:** The design, construction materials, and location of all driveways, and culverts incorporated into driveways for ditch or drainage crossings shall be approved by the AECC, prior to commencement of any excavation or construction activity. No asphalt, cement, or concrete driveways shall be permitted except the garage floor, parking pad, and small patio. Sidewalks are permitted around the perimeter, and immediately adjacent to the main dwelling (and guest house), and may be constructed of concrete. Walks and trails across and around the remainder of the property can be surfaced with natural materials.
- 2.6 **Roofing Material:** The roof of each Unit shall be constructed of fireproof materials including asphalt shingles, (30 year minimum dimension composition), non-reflective metal, or tile. Color and composition of all roofing materials shall be earth tones only and expressly approved by the AECC, prior to commencement of any construction activity.
- 2.7 **Exteriors:** All exterior design, color and materials shall be as approved by the AECC, prior to commencement of their installation. Construction will be of log, natural wood, native stone, cultured stone or any combination of the above mentioned. No metal, vinyl or aluminum siding. All structures shall have exterior construction of the same materials (log, natural wood, or stone) as the primary residence. For example, if the primary residence is of log construction, the outbuildings shall also be of log construction. All stains, oils, and/or preservatives used on the exterior of a structure shall maintain the appearance of natural wood tones. Sketches of all structures shall be submitted to the AECC for approval, prior to commencement of construction and shall include elevation drawings overlaid on the contour of the land. **All exterior construction, on any structure, shall be completed within eighteen (18) months from the start date of construction.**
- 2.8 **Fireplaces and Chimneys:** All fireplaces and chimneys shall be installed in accordance with the manufacturer's specifications. Natural rock or cultured stone shall be used for the exterior construction of chimneys and fireplaces. Open fireplaces should be equipped with spark screens and all chimneys must be equipped with approved spark arrestors.
- 2.9 **Fences:** No fences, of any nature, shall be constructed without prior approval by the AECC. All wooden fences may be painted or stained to maintain the appearance of natural wood tones only and shall not exceed 8 (eight) feet in height (see Lemhi County Development Code). **No fencing will be permitted around the perimeter of any lot.** The objective is for deer, elk, moose, etc. to have free range within Moose Creek Estates. No metal or wire fencing will be permitted except for temporary use to protect newly planted or immature trees from wildlife refer to the "Environmental Enhancement Plan". **No barbed wire will be used.**

- 2.10 Size Limitations:** Primary residence/dwelling shall have not less than 2500 square feet of interior floor area, exclusive of porches and garages.
- 2.11 Garages:** Each home shall include at least a two (2) car, enclosed garage.
- 2.12 Landscaping:** The front, back and side yards of the Building Lot shall be replanted with vegetation, trees, shrubs and/or grass, weather permitting, within 90 days after construction is completed. All seed and mulches used must be certified, “weed free”. The resident, or a contractor, under his/her direction, may perform landscaping of yards. Landscaping shall be completed within one year from the date the primary residence/Unit home is completed. All communication and utility lines shall be buried underground and covered with vegetation. Prior to commencing any landscaping, Owner shall submit a detailed landscaping plan to AECC for approval. The following general landscaping standards are provided to assist Resident in their preliminary planning:
- 2.12.1** Only live plants shall be used for landscaping. It is strongly recommended that plants, grasses, and trees used for landscaping are indigenous species. In no case shall federally recognized invasive species be allowed.
- 2.12.2** Underground sprinklers for irrigation are permitted and are the complete responsibility of the Resident. Sprinkler equipment and water dispensed must stay within the Resident’s home site. Irrigation water to each lot shall be provided from the individual well on that lot. **Creek and river water is not available for consumption, irrigation, or any other use (fire suppression excluded).**
- 2.12.3** To avoid damage to underground utilities, Owner must have consent of AECC and local utility companies before digging or driving rods or stakes into the ground in Common Areas. Owner shall bear the cost of repairs to any underground utilities damaged by Owner or representative.
- 2.12.4** No desert landscaping, colored rock, soil aid, bark or gravel permitted in place of natural vegetation or lawn.
- 2.12.5** Greenhouse design, construction and location need to be approved by the AECC.
- 2.12.6** Artificial, yet decorative products such as windmills, statues, animal or bird forms, totem poles etc., are permissible pending approval by the AECC.
- 2.12.7** All landscaping, including but not limited to shrubs, vines, bushes, flowers and yards, shall be well maintained.

2.12.8 Weeds will be eliminated/controlled according to the “Environmental Enhancement Plan”. Home site/lots shall be kept free of weeds and debris at all times. The H.O.A. has the right to spray noxious weeds and/or remove debris, if not eliminated by the lot Owner. This will be done at the Owner’s expense.

2.13 Architectural & Environmental Control: No Improvements which will be visible above the ground or which will ultimately affect the visibility of any existing above ground Improvement shall be built, erected, placed or materially altered, including without limitation, change of exterior colors or materials, on the property, unless and until the building plans, specifications, and plot plan have been reviewed and approved, in advance, by the AECC. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, exterior color and materials, physical or artistic conformity to the terrain, compatibility with the native ecology and biological habitat, and the other Improvements on the property, which the AECC, in its reasonable discretion, deems as relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the AECC to control the interior layout of design of buildings, except, to the extent incidentally necessitated by use and size requirements.

2.14 Maintenance - Owner’s Obligations: Each Owner shall be responsible for both exterior and interior maintenance of the Improvements on each lot, and shall keep the Improvements in good condition and repair, including but not limited to: stain/varnish, repair, replacement and care of roofs, gutters, downspouts, fences, exterior and interior building surfaces, landscaping and runoff control/channeling, and/or glass surfaces. No Improvements shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair.

2.14.1 In the event that any Owner shall permit any lot or Improvement, thereon, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damage to property, facilities, or the environment on or adjoining their lot which would otherwise be the Association’s responsibility to maintain, the Board, upon fifteen (15) days prior written notice to the Owner of said lot, shall have the right to correct such condition, and to enter upon such Owner’s lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost, if not reimbursed by the Owner within thirty (30) days of when incurred, shall be a Limited Assessment and shall create a lien enforceable in the same manner as other assessments set forth herein. The Owner of the offending lot shall be personally liable, and his lot may be subject to a mechanic’s lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due.

- 2.14.2** Each Owner shall have the remedial rights set forth herein if the Association fails to exercise its rights within sixty (60) days following written notice.
- 2.14.3** In the event the Improvements on any lot shall suffer damage or destruction from any cause, the Owner thereof shall undertake the repair, restoration or reconstruction thereof within ninety (90) days of such damage or destruction. If after ninety (90) days the repair, restoration or reconstruction of such damaged or destroyed Improvements has not taken place, the Association, upon fifteen (15) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon Owner's lot for the purpose of doing so. Such Owner shall bear all costs incurred by the Association and a lien shall be applied to the lot, as described above.
- 2.15** **Improvements Location:** No Improvements shall be constructed in violation of setback requirements, established by state or county law, or by this Declaration, or as set forth on the recorded Moose Creek Estates Plat.
- 2.16** **Nuisances:** No noxious or offensive activity, including without limitation, those creating an offensive odor or excessive level of noise or commotion, shall be carried on upon any lot, in the Common Area or the Scenic Pedestrian Easement nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- 2.16.1** No pet or animal will be kept on any lot/tract if they become a nuisance, threat, or harassment to wildlife or to other residents within Moose Creek Estates.
- 2.16.2** Hanging game animals outside the home will constitute a nuisance and may attract wolves and/or bears and therefore should be hung in an enclosed area and processed as soon as possible.
- 2.16.3** The Board shall have full authority to determine when an activity or animal is a nuisance.
- 2.17** **Illegal Activity:** No illegal activity will be permitted on The Property. "Illegal activity" includes those acts prohibited by Federal, State, County, or City law, statutes, ordinances, regulations and/or rules.
- 2.18** **Temporary Structures:** No Improvements of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time as a permanent residence. This does not preclude having a tent, tee-pee, or RV / motor home, etc for occasional outdoor family use.

- 2.19 Signs:** No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than four (4) feet in height and eight (8) feet in width advertising The Property for sale during construction and sales period. Signs used by a builder shall not exceed six (6) square feet.
- 2.20 Oil and Mining Operations:** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon The Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon The Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon The Property. Any oil or propane tanks must be buried underground or hidden from public view with landscaping or vegetation.
- 2.21 Wildlife:** Wildlife species are encouraged to range throughout Moose Creek Estates. No one shall use traps, poisons, or other methods of killing the natural inhabitants. The natural inhabitants shall not be harassed, injured or molested in any way. No recreational feeding of big game animals or other native wildlife with exception of songbirds and squirrels.
- 2.22 Livestock and Poultry:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that four (4) horses, two (2) dogs, two (2) cats or other household pets may be kept. Exceptions to this clause require written approval of the Architectural and Environmental Control Committee (AECC).

2.22.1

Dogs outside must be absolutely under their owner's control at all times. It is the intention of the Home Owners Association to ensure that wild game (deer, elk, moose, etc.) are not chased or harassed.

2.22.2 No pets of any vicious nature shall be allowed within Moose Creek Estates. The Board shall have full authority to determine whether a dog or other pet is vicious in nature.

2.22.3 Horse corrals, pet runs or kennels shall only be permitted to be placed and maintained in a location or manner so as to not to be visible from the common road. All drainage must be confined within the lot boundaries and away from water resources or wetlands. Pets will be watered from water containers placed within corrals/kennels and bit from springs, creeks, the river, etc.

2.22.4 Hay for horses will to be kept in a neat and orderly stack. All coverings (i.e. tarps and/or canvas) shall be of earth tone colors. Netting and/or Idaho Fish and Game approved fencing are recommended on haystacks to prevent the wildlife from eating the hay.

- 2.22.5 Corrals, kennels, and dog runs shall be maintained on the individual lot and kept in good repair by the Owner of the lot. Said corrals, kennels, and pet runs shall be constructed of natural materials. Kennels shall be constructed of chain link fencing with a cement foundation to inhibit pets from digging their way out. These structures shall be maintained in a safe condition at all times.
- 2.22.6 The location and maintenance, of all solid animal waste removed from pet runs and/or kennels, and horse corrals, will be determined by the AECC.
- 2.23 **Parking:** The Association may promulgate parking regulations and requirements from time to time, which shall be binding on all Owners and which all Owners shall enforce as to their Invitees and other persons reasonably within the control or influence of such Owner.
- 2.23.1 No recreational vehicles or similar equipment, non-automotive equipment, boats, motorcycles, snowmobiles, trailers or trucks (working or non-working) greater than one (1) ton in capacity shall regularly or as a matter of practice be parked or stored on any lot or other portion of the property (including the main road and driveways) except as expressly provided herein or by the AECC. Vehicles owned by the HOA or developer for maintenance of roads and grounds are exempt from this clause.
- 2.23.2 Any boat, camper trailer, or recreational vehicle which is in good repair and working order may be stored on the side yard if fully screened by landscaping or fence. However, such screened storage shall not be located adjacent to the street on a corner lot. All such fences must be approved by the AECC prior to their installation.
- 2.23.3 The Association shall be entitled to enforce all parking and storage restrictions by removing any improperly parked, stored or screened vehicle or equipment upon prior notice in accordance with the rules of the Association. The Association may impose a limited assessment against any property Owner for all costs associated with the enforcement of its parking restrictions necessitated by such Owner's failure to ensure compliance with such restrictions.
- 2.24 **Bathrooms:** All bathrooms, sink and toilet facilities shall be inside residence buildings and shall be connected by underground pipes directly with the sewer / septic system.
- 2.25 **Antennae:** No television antennae, satellite receivers, or radio aerials shall exceed thirty-six (36) inches in diameter. Antennae and their placement will be reviewed by the AECC.

- 2.26 Hazardous Activities:** No activity shall be conducted on or in any Unit, lot, Common Area or in the Scenic Pedestrian Easement, which is or might be unsafe or hazardous to any person or property or as deemed unsafe or hazardous by the AECC. Without limiting the generality of the foregoing, no firearms shall be discharged upon said property; no open fires shall be lighted or permitted on any Property except in a self-contained barbecue unit, while attended and in use for cooking purposes, or in a safe and well-designed outdoor fire pit with appropriate spark arrestor and / or interior fireplaces. No toxic or hazardous substances shall be stored or kept on The Property. **Absolutely No Fireworks will be discharged within the confines of Moose Creek Estates.**
- 2.27 Unightly Articles:** No unsightly articles (including disabled vehicles), as determined by the provisions of the Declaration or by the Association, shall be permitted to remain on any lot, Common Area or the Scenic Pedestrian Easement as to be visible from any other portion of The Property.
- 2.28 Trash:** Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view and removed to a county dumpsite regularly by the land Owner or trash removal service. Prompt removal is encouraged to avoid possible and likely attraction of bears and/or wolves.
- 2.28.1** No lumber, grass, shrub or tree clippings or plant waste, compost piles, metals, building or other materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the property except within an enclosed structure or appropriately screened from view as approved, in writing, by the AECC. “Screened”, as used in this Declaration, shall mean being concealed or made non-visible from eye level, at grade, when viewed from all points on other lots and / or any Common Area.
- 2.29 Burning:** Any and all burning shall comply with all provisions of the “Fire Management Plan” (made available from the developer), Lemhi County Development code, local fire department regulations, and the United States Forest Service. In the event conflicts between the fire management provisions exist, the most restrictive measure will be deemed applicable. A common burning site will be established for the burning of tree clippings, lumber scraps, brush, etc. and such burning will be implemented by the HOA or its designee.
- 2.29.1** No incinerators or large burning pits are permitted. Allowed exceptions are barbeque pits, fire rings / pits for cooking, recreation and bonfires for periodic burning of branches and other organic material when approved by the AECC. Outdoor barbeque pits, or fire rings shall be constructed of concrete, brick, or stone, must have a steel liner and can be no larger than five (5) feet in diameter and will be fitted with a screen or other type of spark arrestor. Fire pit location, design and materials used shall be

approved by the AECC prior to their installation. It is the responsibility of the Owner to ensure that any burning complies with all provisions of the “Fire Management Plan”, Lemhi County Development code, local fire department regulations and the United States Forest Service as applicable.

2.29.2 Each home Owner will ensure that his/her home and lot is protected by appropriate defensible space and barriers to prevent fire from spreading to/from their lot per the “Fire Management Plan”, Lemhi County Development code, local fire department regulations, and the United States Forest Service as applicable.

2.30 **Light, Sound, Odor - General:** No light shall be emitted from any lot or from Common Area which is unreasonably bright or causes unreasonable glare. All driveway lights must be hooded and placed on the Property so as not to cause annoyance to the other residents and shall not use more than 100-watt bulb. Design and plans for the layout of exterior lights shall be approved by the A.E.C.C. prior to their installation. No sound shall be emitted from any lot or Common Area that is unreasonably loud or annoying, and no odors shall be emitted on any Property that is noxious or offensive to others. The AECC shall have full authority to determine whether this clause is violated.

2.31 **Tenants:** No Owner shall permit unruly tenants to reside on any lot. “unruly tenants” shall be defined to include those who do not abide by these conditions and Deed Restrictions, and / or the Association Rules, who are disruptive and/or noisy, and / or who intentionally or recklessly cause damage to the property. Owners shall ensure that their tenants are made aware of and agree to comply with the terms of these conditions and Deed Restrictions and the Association Rules. The Board shall have full power and authority to determine conduct is in violation of this Covenant.

2.31.1 The Board will have the right to require Owners to evict unruly tenants, and/or take other appropriate legal action to ensure their compliance with these Deed Restrictions and the rules of the Association. If an Owner does not take, or commence to take, such action within fifteen (15) days from receipt of written notification from the Board, the Board will have the power to levy a “Limited Assessment” to be assessed on date of the first written notice against the Owner, not to exceed \$100.00 per day for each noncompliance, and commence to take appropriate legal action. Any such unpaid assessment will constitute a lien against the Owner’s lot, as provided for herein. Proceeds from the assessment will be applied to the Association treasury and be used as determined appropriate by the Association.

2.31.2 The Board shall have full power and authority to determine whether a violation of this Declaration has occurred. The Board shall have the discretion, to exercise this authority. The Board shall make such

determination only after prior notice to the person or persons alleged to be in violation, and a time table to make correction of violation, which notice shall be given in accordance with the rules of the Association. Review or appeal may be requested by submitting a letter of request for appeal to the President of Association. The Association must reply to the request for appeal in writing within sixty (60) days. Such response may grant the requested appeal, deny the appeal, or approve a compromise

ARTICLE III – Property Rights

3 PROPERTY RIGHTS

3.1 Owner's Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area and the Scenic Pedestrian Easement, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

3.1.1 The Association has the right to suspend the voting rights of an Owner for any period during which any assessment against his lot remains unpaid after its due date.

3.1.2 The Association has the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the Members. Such dedication or transfer shall be effective upon the recording of an appropriate instrument executed by the President and Secretary of the Association and upon which said Officers affirm that the transfer or dedication was approved by the Owners of at least two-thirds (2/3) of the lots.

3.1.3 Access easements are as shown on the recorded Plat and as described herein. No fences, structures or other obstructions may be constructed within the limits of said easements. If the ingress or egress to any residence is through the Common Area or Scenic Pedestrian Easement, or if the ingress or egress to any Common Area or Scenic Pedestrian Easement is through a lot, any conveyance or encumbrance of the ingress/egress area is subject to the lot Owner's, or lot Owners', easement. Declarant herein expressly reserves, for the benefit of all the property, reciprocal easements of access, ingress and egress, for all Owners to and from their respective lots for installation and repair of utility service, for drainage of water over, across and upon adjacent lots, Common Areas, the Scenic Pedestrian Easement and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, trees and landscaping. Such easements may be used by Declarant and by all Owners, and their Invitees residing on or temporarily visiting Moose Creek Estates, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a lot, Common Area or the Scenic Pedestrian Easement.

3.2 Delegation of Use: Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities and the Scenic Pedestrian Easement to his Invitees residing on or visiting Moose Creek Estates.

- 3.3 Damages:** Each Owner shall be liable for any damage to such Common Areas, the Scenic Pedestrian Easement or other property owned or maintained by the Association which is caused by the negligence or willful misconduct of said Owner or of his Invitees, both minor and adult. In the case of joint ownership of a lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be charged as a Limited Assessment against the Owner and his lot and may be collected as provided herein for the collection of assessments.
- 3.4 Conveyance of Common Area:** The Common Area shall be conveyed to the Association free and clear of any and all encumbrances of any nature (save and except utilities, easements and the like). The Common Area shall not be mortgaged or conveyed without the consent of two-thirds of the lot Owners, excluding Declarant. The Declarant may convey additional Common Area, scenic easement / property, or green belt to the HOA. The HOA will assume all fees, taxes, and maintenance responsibility.
- 3.5 Notice of Violations:** Owners will be entitled to fifteen (15) day written notice of violations of this Declaration, Association Rules, the Articles, and/or the Bylaws, unless otherwise provided herein, prior to the Association's corrective action, except in the case of any emergency, as determined by the Board.

ARTICLE IV – Home owner’s Association

4 Moose Creek Estates HOME OWNERS’ ASSOCIATION

- 4.1 Organization of Association:** The Moose Creek Estates Home Owners’ Association (“Association”) is an Idaho Corporation formed under the provisions of the Idaho Non-Profit Corporations Act and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 4.2 Membership:** Each Owner of a lot subject to this Declaration (including the Declarant) by virtue of being such an Owner and for so long as such ownership is maintained, shall be a Member of the Association. No Owner shall have more than one membership in the Association, except as hereinafter set forth with respect to voting. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the lot owned by such Owner. The memberships in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said lot and then only to the transferee of title to said lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.
- 4.3 Voting:** The Association will have two (2) classes of voting memberships.
- 4.3.1 Class A:** Class A members shall be the Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the absence of such a determination by the co-Owners, no vote will be cast.
- 4.3.2 Class B:** The Class B member shall be the Declarant. Upon the recording hereof, Declarant shall be entitled to five (5) votes for each lot of which Declarant is the Owner.
- 4.3.3 Proxy:** Votes may be cast in person or by written proxy.
- 4.4 Officers:** The affairs of the HOA shall be conducted by President and any officers the HOA may elect or appoint.
- 4.5 Powers and Duties of the Association:**

- 4.5.1 Powers:** The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and the performance of the other responsibilities herein assigned, including without limitation those listed below.
- 4.5.2 Assessments:** The power to levy assessments (Annual, Special and Limited) on the Owners of lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.
- 4.5.3 Right of Enforcement:** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent hereto, to take any and all actions authorized by this Declaration and to commence and maintain any and all actions, including suits, to restrain and enjoin any breach or threatened breach of this Declaration, the Articles, the Bylaws, or the Association Rules (adopted pursuant to this Declaration), and to enforce by mandatory injunction or otherwise, all provisions thereof.
- 4.5.4 Delegation of Powers:** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager. Neither the Association, nor the members of its Board, shall be liable for any omission or improper exercise by the manager of any such duty or power to delegate.
- 4.5.5 Association Manager:** The Association may retain, and pay, an Association Manager to collect assessments, manage the Common Area and the Scenic Pedestrian Easement, and determine charges and otherwise act on behalf of the Association, subject to the compensation and definition of duties set forth by the Association. The costs of such Association Manager shall be assessed to the Owners. An existing Association Manager may be discharged only by the Board or by the approval of 75% of the Association votes. The Association Manager will have the right to resolve all tenant issues, (including those involving unruly tenants), as allowed by law. The Association Manager will receive direction from and report to the Board.
- 4.5.6 Association Rules:** The power to adopt, amend and repeal by majority vote of the Board such rules, and regulations as the Association deems reasonable and which are consistent with this Declaration (the "Association Rules"). These rules are intended to establish the minimum standards of behavior to protect the use and enjoyment of all occupants.

Such rules shall be incorporated into any rental agreement and made binding on all tenants residing on The Property. The Association Rules shall govern the use of the property by the Owners, their tenants and Invitees; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and shall be given by each Owner to its tenants and Invitees. Upon such mailing or delivery and posting, said Association Rules shall have the same force and effect as if they were set forth in and a part of this Declaration. In the event of any conflict between such Association Rules, the Association Rules shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of any such inconsistency.

4.5.7 Emergency Powers: The Association, or any person authorized by the Association, may enter upon any lot in the event of an emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with, as little inconvenience to the Owners as practicable and the Association shall repair any damage caused thereby.

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

4.5.8.1 Underground lines, cables, wires, conduits, and other devices for the transmission of electricity for lighting, heating, power, telephone, and other purposes;

4.5.8.2 Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

4.5.8.3 Any similar public or quasi-public Improvements or facilities.

4.5.8.4 Ensuring the integrity of the environment and/or safety of the Common Area and the Scenic Pedestrian Easement.

4.5.8.5 The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at

any time on behalf of the Declarant, and their issue who are in being as of the date hereof.

4.5.9 Duties of the Association: In addition to the power delegated to it by the Articles, without limiting the generality thereof, the Association or its agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

4.5.9.1 Landscaping: The Association will maintain all landscaping of the Common Areas and the Scenic Pedestrian Easement.

4.5.9.2 Operation and Maintenance of Common Area: Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area and Scenic Pedestrian Easement, including the repair and replacement of property damaged or destroyed by casualty loss and other property acquired by the Association.

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

4.5.9.4 Water and Other Utilities: Acquire, provide and/or pay for necessary services for the Common Area, Scenic Pedestrian Easement and the Property owned or managed by it.

4.5.9.5 Insurance: The Association may elect to obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance.

4.5.9.5.1 Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area, the Scenic Pedestrian

Easement or The Property owned or managed by it. Limits of liability of such coverage shall be as follows: not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and property damage.

4.5.9.5.2 Full coverage President and officers liability insurance with a limit of Two Hundred Fifty Thousand Dollars (\$250,000), if the HOA so elects.

4.5.9.5.3 Such other insurance including Workmen's Compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the HOA shall deem necessary or required to carry out the HOA functions, or to insure the HOA against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any HOA funds or other property.

4.5.9.5.4 The HOA Officers shall be deemed trustee of the interests of all Members of the HOA in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.

4.5.9.5.5 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the HOA.

4.5.9.5.6 Notwithstanding any other provision herein, the HOA shall continuously maintain in effect such other additional casualty, flood and liability insurance as the Board deems necessary or appropriate.

4.5.9.6 Rule Making: Make, establish, promulgate, amend and repeal the HOA Rules.

4.5.9.7 Architectural and Environmental Control Committee (AECC): Appoint and remove members of the Committee, all subject to the provisions of this Declaration.

4.5.9.8 Drainage Systems: Operate, maintain, repair and replace, all drainage systems located within the Moose Creek Estates, as shown on the Plat, which are not maintained by public authorities.

4.5.9.9 Moose Creek Estates Approval Responsibilities: Perform all continuing duties and responsibilities imposed upon the Grantor pursuant to any governmental approvals relating to The Property including, without limitation, those set forth in the City's approval of the Plat for the Moose Creek Estates.

4.5.9.10 Written Record: The HOA will keep a written record of all actions taken, or duties delegated, and will maintain true and correct financial records of the HOA's business.

4.5.9.11 Annual Meeting: An annual meeting will be held every year at which meeting the budget will be presented and approved and HOA officers will be elected. All Owners will be given sixty (60) days written notice of this meeting. The presence of Members or of proxies entitled to cast twenty-five (25%) percent of all the votes of such Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The Members present at a duly organized and convened meeting where a quorum has been present can continue to do business as a quorum until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. The budget shall be approved and Board Members elected by a majority of notes cast, in person or by proxy, at the annual meeting.

4.5.10 Personal Liability: No member of the HOA, or committee, or committee member, or Officer of the HOA, or the AECC, or the Declarant, or the Association Manager, if any, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the groups, or individuals included in the groups listed above, or any other representative or employee of the groups listed above, 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 V – Covenant for Maintenance and Assessments

5 COVENANT FOR MAINTENANCE AND ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments: Each Owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the HOA the following Assessments approved by the Association, as hereinafter provided:

5.1.1 All Annual Regular Assessments or charges;

5.1.2 All Special Assessments for capital improvements, and

5.1.3 All Limited Assessments.

5.1.4 The Regular, Special and Limited Assessments, together with interest, costs and reasonable attorneys' fees incurred by the Association in order to collect such amounts owed to the Association, shall be a charge on the land and shall be a continuing lien upon the lots against which each such assessment is made. Such lien shall be binding upon the Owner of the lot and his successors in interest and title. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment becomes due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of Assessments:

5.2.1 Regular Assessments: The regular Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, and for the improvement and maintenance of the Common Area and Scenic Pedestrian Easement, to pay property taxes and other Assessments, and to pay such other reasonable costs and expenses which are incurred by the Association in carrying out the duties, and business of the Association. Additionally, certain expenses are set forth on Exhibit A hereto which are to be paid by assessment, which said Exhibit is attached hereto and incorporated herein as if set forth in full. Such Exhibit shall be deemed to be illustrative with all expenses of a similar or like nature to also be allowable expenses for assessment. Regular Assessments will be based on the budget presented and approved at the Annual Meeting. The budget must be approved by a majority of the votes cast at the Annual Meeting at which a quorum is present.

5.2.2 Special Assessments for Capital Improvement: In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements; PROVIDED THAT any such Special Assessment shall be approved by a majority of the votes cast at a meeting of the Association Members at which a quorum is present. AND PROVIDED FURTHER, that such capital improvements may not be subject to payment through or by Special Assessments or by Regular Assessments during the development period. Additionally, upon the sale of each lot by Grantor or other owner, the purchaser shall pay a one-time Special Assessment of Four Thousand Dollars (\$4000.00) per lot, or as otherwise set by the Board. Such Special Assessment shall be paid on or before the date of recordation of the deed from Grantor to the purchaser. Grantor or other seller, as agent for the Association, shall be entitled to collect this one-time Special Assessment at the closing of the lot sale. This one-time Special Assessment shall be used to defray organizational cost for the Association and general costs of operation.

5.2.2.1 Notice and Quorum for any Action Authorized Under Section 5.2.1 (Regular Assessments) and 5.2.2 (Special Assessments for Capital Improvements): Written notice of any meeting called for the purpose of taking any action authorized under Section 5.2.1 or 5.2.2, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five (25%) percent of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Regular and Special Assessments shall be levied by written notice to the Owners and shall be due when levied.

5.2.3 Limited Assessments: Limited Assessments may be levied, as decided by the Board, against any Owner in an amount equal to the costs and expenses incurred by the Association resulting from the Owner's failure to comply, or failure to insure compliance by his Invitees, with this Declaration, the Association Rules, Bylaws and/or Articles. Limited Assessments may be made for, among other things: legal fees for corrective action costs and expenses incurred by the Association and resulting from the Owner's noncompliance with this Declaration, the Association Rules, Bylaws and/or Articles; for the repair and replacement

of the Common Area, the Scenic Pedestrian Easement or other Property owned or maintained by the Association damaged by negligent or willful acts of any Owner or his Invitees; for failure to comply, or insure compliance by his Invitees, with parking restrictions; for failure to take appropriate action against unruly tenants; for failure to comply with the environmental and biological requirements within M.C.E. and for failure to repair, restore, or reconstruct damaged Improvements. The Association is required to give any such Owner at least fifteen (15) days written notice of any violation prior to taking corrective action. Limited Assessments shall be levied by written notice to the Owner and shall be due when levied. Costs resulting from such corrective action, if not reimbursed by the Owner within ten (10) days of when incurred, shall be a Limited Assessment.

5.2.4 Rate of Assessment: Both Regular and Special Assessments shall be fixed at the uniform rate (not based on lot size) for each lot. All Assessments shall be collected monthly unless otherwise expressly directed by the Board.

5.2.5 Date of Commencement of Annual Assessments - Due Dates: The annual Regular Assessments or any Special Assessments then in effect, as provided for herein, shall commence as to a lot or lots on the first day following conveyance of the lot or lots from Declarant to an Owner or Owners. Assessments shall be prorated for Owners who purchase their lot at any point subsequent to the date on which annual Assessments are assessed. The Home Owners Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a lot is binding upon the Association as of the date of its issuance.

5.2.6 Effect of Non-Payment of Assessments - Remedies of the Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date on a rate of twenty-one percent (21 %) per annum, or at the highest rate allowed by law if such rate is less than 21%. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure the lien against The Property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his lot. Mortgagees are not required to collect Assessments.

5.2.7 Subordination of the Lien to Mortgages: The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payment, which became due prior to such sale or transfer, but shall not extinguish personal liability. No sale or transfer shall relieve such lot from liability for any Assessments thereafter becoming due or from the lien thereof. Failure to pay Assessments does not constitute a default under an insured mortgage.

ARTICLE VI – Architectural and Environmental Control Committee

6 ARCHITECTURAL and ENVIRONMENTAL CONTROL COMMITTEE

- 6.1 Members of the Committee:** The Architectural and Environmental Control Committee for The Property, sometimes referred to as the “Committee”, shall consist of three (3) members. Decisions required by the Architectural and Environmental Control Committee may be made by concurrence of any two (2) members of the Committee. Each of said persons shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.
- 6.2 Right of Appointment and Removal:** At any time Grantor is the Owner of at least one (1) of the lots, Grantor shall have the right to appoint and remove all members of the Committee. The Grantor reserves the right to serve as a member of the AECC as long as he is the Owner of at least one lot.
- 6.3 Review of Proposed Construction:** The Committee shall consider and act upon any and all proposals of plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Association, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or their written designation consistent with this Declaration, which types of Improvements shall be submitted to the Committee for review and approval as well as the amount or lead time required for review. The Committee shall approve proposals, plans and specifications submitted for its approval only as it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby, will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.
- 6.4 Conditions on Approval:** The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same (“Applicant”) to grant appropriate easements to the Association for the maintenance thereof, or upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, or upon all three, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.
- 6.5 Committee Rules and Fees:** The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of

the applications and plans submitted for approval. A fee of one hundred dollars (\$100.00) will be required to accompany each application for approval. The Committee shall have the right to modify the fee amount, uniformly for all applications, as allowed by the Board. Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

6.5.1 Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

6.6 **Detailed Plans:** The Committee shall require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

6.7 **Committee Decisions:** Decisions of the Committee and the reasons therefore shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within fifteen (15) days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Committee shall have been mailed to the Applicant within fifteen (15) days after the date of the filing of said materials with the Committee. The said fifteen (15) day period shall only commence to run when an authorized representative of the Committee has executed an application form acknowledging acceptance of such application and acknowledging that such application is complete.

6.8 **Meetings of the Committee:** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but not need be, one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to section 6.9. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.

6.9 **No Waiver of Future Approvals:** The approval of the committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications,

drawings or matter subsequently, or additionally, submitted for approval or consent.

6.10 Compensation of Members: The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder, and except as otherwise agreed by the Board.

6.11 Inspection of Work: Inspection of work and correction of defects therein shall proceed as follows:

6.11.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Committee.

6.11.2 Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such Improvements. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance with such sixty (60) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same within a reasonable time as determined by the Committee.

6.11.3 If for any reason the Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the written notice of compliance from the Owner, the Improvement shall be deemed to be in accordance with the approved plans.

6.12 Non Liability of Committee Members: Neither the Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. The Committee shall review and approve, or disapprove, all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic and environmental considerations and the overall benefit or detriment that would result in the immediate vicinity and to The Property generally. The Committee shall take into consideration the aesthetic and environmental aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing any plan or design for structural safety or conformance with building or other codes.

6.13 Variations: The Committee may authorize variations from compliance with any of the architectural provisions of this Declaration or any Supplemental

Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations so require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Committee, and shall become effective upon recordation in the Office of the County Recorder of Lemhi County. If such variances are granted, no violation of the Deed Restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular Property and particular provision hereof, covered by the variance granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular Property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental, environmental, or municipal authority.

- 6.14** The AECC will monitor usage of the Scenic Easement to ensure that no harm or damage occurs to the easement, water courses, wetlands, vegetation, or wildlife pursuant to the Environmental Enhancement Plan. Additionally, the AECC will enforce conditions of the Environmental Enhancement Plan.

ARTICLE VII - Easements

7 EASEMENTS

- 7.1 Maintenance and Use Easement Between Property Lines:** The Association or Owner of any lot shall hereby be granted an easement of 5 feet in width on the adjoining properties for the purpose of maintenance of fence/firebreak and/or landscaping so long as such use does not cause damage to any structure, fence or landscaping on such adjoining properties.
- 7.2 Other Maintenance Easements:** Easements for installations and maintenance of utilities and drainage facilities for Moose Creek Estates are reserved as shown on that Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, unless otherwise allowed in the recorded Plat. The easement area of each lot and all Improvements in it shall be maintained continuously by the Owner of the lot, except for those Improvements for which a public authority or utility company is responsible. Further easements are hereby reserved in favor of the Association for access to, and maintenance of, any facilities serving the Common Area.

ARTICLE VIII - Encroachments

8 ENCROACHMENTS INTO COMMON AREA OR THE SCENIC PEDESTRIAN EASEMENT

If any portion of a building or structure now existing, or hereafter constructed, encroaches on, over, under, or across any part of the Common Area or the Scenic Pedestrian Easement, such encroachment shall be promptly removed by the Owner, or Owners, having caused or causing such encroachment, and the Common Area, Scenic Pedestrian Easement restored, within thirty (30) days after the delivery or written notice by the Association to the Owner, or Owners, of such encroachment in writing.

ARTICLE IX - Miscellaneous

9 MISCELLANEOUS

9.1 Enforcement and Non-Waiver: The Homeowners' Association shall have the right to enforce, by any proceeding at law or in equity, any violation or threatened violation of a provision of this Declaration. When the H.O.A. successfully enforces and prosecutes any violation or threat of violation in court it shall be awarded attorney's fees and costs against and from the violator. Those attorney's fees shall become a lien against the violator's Property in Moose Creek Estates and said lien may be foreclosed as provided by Idaho Law. The failure of the H.O.A. to enforce any covenant or restriction herein contained shall not be deemed a waiver of the rights granted herein. Waiver of one breach does not constitute waiver of any other.

9.2 Severability: Invalidation of any one of these conditions or Deed Restrictions by Judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

9.3 Duration, Applicability to Successors, and Term and Amendment: The Deed Restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by seventy-five percent (75%) of the then Owners of the lots has been recorded, agreeing to change said Declaration. This Declaration may be amended, restated, replaced, terminated or superseded by an instrument signed by the President and Secretary of the Association and by two-thirds (2/3) of the Owners of the lots covered by this Declaration, or by an instrument signed by two-thirds (2/3) of the lot Owners; provided, however, that if Grantor is still the Owner of any lots the provisions of Article VI may not be amended without the written consent and vote of the Grantor.

9.4 Attorney Fees and Costs: In the event that a lot Owner or the Association brings suit to enforce the provisions of this Declaration and prevails, he, or the Association if it brings suit, shall be entitled to recover reasonable attorney fees in addition to allowable costs.

9.5 Notices to Owners: Any notice to an Owner shall be deemed effective upon deposit in the United States mail, postage prepaid, addressed to the Owner at the address for the lot owned, or at such other address as the Owner may provide in writing to the Association. All notices shall be mailed "certified". If there is more than one Owner for a lot, notice to one of the Owners shall be deemed effective for all such Owners. It shall be the responsibility of each Owner of a lot to disseminate any notice received to all other Owners.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of _____, 2003.

Robert J. Wilson (signature) _____
Robert J. Wilson
Kokopelli Endeavors

State of Texas
County of _____

On this _____ day of _____, 200__, before me, the undersigned a Notary Public in and for the State personally appeared Robert J. Wilson Known to me to be the person who executed the within instrument and acknowledged to me the same.

Notary Public for the State of

Comm. Expires: _____

EXHIBIT A - Assessment of Expense

Expenses subject to assessment shall include, but not be limited to:

- Main road upkeep, repair and improvement
- Common Area and Scenic Pedestrian Easement upkeep, repair and improvement
- General signage for the Property
- Legal fees and costs
- Technical and accounting fees and costs
- Supplies for the Association
- Enforcement costs
- Compliance costs
- Insurance costs
- Taxes and Assessments by government entities
- Assessments made but not discharged or extinguished
- Landscape upkeep for the Common Area and the Scenic Pedestrian Easement
- Association management / administration

Exhibit 1 – Legal Description of Moose Creek Estates