

REVISED COVENANTS, RESTRICTIONS AND LIMITATIONS

FOR

VISTA POINT SUBDIVISION

VALLEY COUNTY, IDAHO

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ARTICLE 1

RECITALS

WHEREAS, the owners of more than fifty percent of the lots (hereinafter referred to as the "Owners") of certain land in Valley County, Idaho (hereinafter referred to as the "Property") have voted affirmatively for adoption and have executed an Agreement adopting these Revised Covenants, Restrictions and Limitations for Vista Point Subdivision, Valley County, Idaho (hereinafter referred to as "Revised Covenants"); and

WHEREAS, the real property located in Valley County, Idaho which is owned by the Owners and which is to be subject to these Revised Covenants, is more particularly described as follows:

A portion of the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 11, T. 14 N., R. 3 E., B.M., Valley County, Idaho, more particularly described as follows:

Beginning at the south one-quarter corner of Section 11, T. 14 N., R. 3 E., B.M., Valley County, Idaho, thence N. 88°42'42" W. along the south section line of said Section 11, 1097.68 feet to a point in the westerly right-of-way line of the Oregon Short Line Railroad, the real point of beginning; thence along said right-of-way line on a spiral to the right whose long chord bears N. 7°10' E., 24.23 feet to a point which is 50 feet left of Engineer's Station 5592+61.8 P.T.; thence N. 7°28'05" E. along said right-of-way line, 185.70 feet to a point which is 50 feet left of Engineer's Station 5594+47.5 P.S.; thence along said right-of-way line on a spiral to the left whose long chord bears N. 6°28'37" E., 147.36 feet to a point which is 50 feet left of Engineer's Station 5595+97.5 P.C.C.; thence along said right-of-way line on a curve to the left with a radius of 1382.69 feet, a central angle of 26°44' and whose long chord bears N. 8°53'23" W., 639.31 feet to a point which is 50 feet left of Engineer's Station 5602+65.8 P.C.C.; thence along said right-of-way line on a spiral to the left whose long chord bears N. 24°16'26" W., 147.36 feet to a point which is 50 feet left of Engineer's Station 5604+15.8 P.T.;

thence N. 25°15'55" W. along said right-of-way line, 211.54 feet to a point on the north boundary line of the S½SW¼ of said Section 11; thence N. 88°42'01" W. along said boundary, 1033.59 feet to a point; thence S. 0°51'58" E., 1307.99 feet to a point; thence S. 88°42'42" E. along said south section line, 1219.83 feet to the real point of beginning. Said tract contains 36.41 acres more or less, subject to easements of record or in use.

AND A triangular tract of land in the NE¼SW¼ of Section 11, T. 14 N., R. 3 E., B.M., Valley County, Idaho, more particularly described as follows:

Commencing at the south ¼ section corner of Section 11, T. 14 N., R. 3 E., B.M., thence N. 88°42'42" W. along the section line, 1324.29 feet to the southeast corner of the SW¼SW¼ of said Section 11; thence N. 0°55'44" W. along the easterly boundary line of said SW¼SW¼, 1307.85 feet to the SW corner of the NE¼SW¼ of said Section 11, the real point of beginning; thence S. 88°42'01" E. along the north boundary line of the S½SW¼ of said Section 11, 41.79 feet to a point on the westerly right-of-way line of the Oregon Short Line Railroad; thence N. 25°15'55" W. along said right-of-way line 101.34 feet to a point, thence S. 0°55'44" E. along the west boundary line of said NE¼SW¼, 90.71 feet to the real point of beginning. Said tract contains 0.04 acres more or less, subject to easements of record or in use.

with appurtenances but subject to the following reservations:

1. The reservation of the covenant or burden running with the above described land of the subordination of all claims for damages against the United States sustained by such land or structures thereon by reason of the operation and maintenance of the Cascade Dam and Reservoir as presently constructed.
2. The reservation of a right-of-way for ditches or canals constructed or to be

constructed by the authority of the United States, this reservation being of the same character and scope as that created with respect to certain public lands by the Act of August 30, 1890, (26 Stat. 371, 391), as it has been or may hereafter be amended.

3. Reservation of existing rights of way for canals, ditches, flumes, pipelines, railroads, highways, roads, telephone and power transmission lines.

4. Power line easements and road rights of way of record, in the office of the Recorder of Valley County, Idaho.

WHEREAS, the Owners desire to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Owners and all other persons or entities who may subsequently acquire an interest in the Property and (iii) create a residential development of the highest quality; and

WHEREAS, the Owners have authorized the President and the Secretary of the Vista Point Homeowners Association, Inc. (hereinafter referred to as the "Association") to execute and adopt these Revised Covenants, on behalf of the Owners and the Association.

## ARTICLE 2

### DECLARATION

The Owners hereby declare that the Property and each lot, tract or parcel thereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the

Property or any Lot therein; shall inure to the benefit of every Lot in Vista Point and any interest therein; and shall inure to the benefit of and be binding upon each Owner, and each successor in interest of each, and may be enforced by any Owner, or by the Association, as hereafter provided.

Notwithstanding the foregoing, no provision of these Revised Covenants shall be construed or enforced to prevent or limit the complete development of the Property by the original developer, Bitterroot Development Company, Inc., nor prevent normal construction activities during the construction of Improvements upon any Lot in Vista Point. No development or construction activities shall be deemed to constitute a nuisance or violation of these Revised Covenants by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of these Revised Covenants may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of these Revised Covenants.

### ARTICLE 3

#### DEFINITIONS

As used in these Revised Covenants, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for Vista Point.

ACC Rules/ACC Standards: Such rules or standards promulgated by the ACC as authorized herein.

Assessment: A payment required of Association members, including Regular, Special or Limited Assessments as provided in these Revised Covenants.

Association: Vista Point Homeowners Association, Inc., an Idaho non-profit corporation.

Board: The duly elected and qualified Board of Directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary;

shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

Improvements: All structures and appurtenances thereto of all kinds and types, including, but not limited to, Buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent improvements on a Lot which are intended for residential occupancy.

Limited Assessment: An Assessment levied by the Association upon one or more Lots, but not upon all Lots in Vista Point, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within Vista Point or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Member: Any person(s) who is an Owner of a Lot within Vista Point.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in Vista Point to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in these Revised Covenants shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot in Vista Point.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities holding fee simple title to a Lot in Vista Point, including contract sellers, but excluding those having such interest merely as security for the performance of an



obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Road: The roadway surface, curbs, gutters or walkways located in Vista Point for the use of the Owners, occupants or their guests, and which is owned or controlled by the Association.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Revised Covenants: This instrument and the covenants and restrictions contained therein as they may be amended from time to time.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Vista Point: The whole of the land described in the Recitals of these Revised Covenants (also sometimes referred to herein as the "Property").

Vista Point Homeowners Association, Inc.: The Idaho non-profit corporation comprised of Members and existing for the purpose of providing self-government for the Property.

#### ARTICLE 4

##### PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in these Revised Covenants all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- a. Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- b. The prevention of the erection in Vista Point of Improvements of improper design or construction with

improper or unsuitable materials or with improper quality and method of construction.

- c. Encouraging and insuring the erection of high quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- d. Securing and maintaining proper set-backs from streets and waterways in Vista Point and adequate free spaces between Improvements.
- e. The integration of development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- f. Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

## ARTICLE 5

### PERMITTED USES AND PERFORMANCE STANDARDS

SECTION 5.1 Use. Lots shall be used only for residential purposes and such uses as are customarily incidental thereto.

SECTION 5.2 Buildings. Lots less than one acre shall be improved with one (1) residential dwelling and attached or separate garage or storage building. Lots that are more than one acre may be improved with one (1) additional residential dwelling and attached or separate garage or storage building, providing that any additional structures and systems shall first be approved by Valley County Building Department and the Central Health Department.

SECTION 5.3 Approval of Use and Plans. No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article 10, below.

SECTION 5.4 Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack, garage, accessory building or out building shall be used as a permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes,

odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

SECTION 5.5 Temporary Use of Building/Trailer. For a period of no more than 24 months, the ACC may approve, in writing, the use of a trailer, garage or accessory building as a temporary residence while construction is underway on a residential dwelling.

SECTION 5.6 Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

SECTION 5.7 Easements. There is hereby reserved for the use and benefit of each Owner and Occupant and granted for the use and benefit of each Lot, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:

- a. For the installation and maintenance of public utility facilities of all kinds, including radio and television cables.
- b. The easements which are designated on the recorded plat(s) for Vista Point for the benefit of all Lot Owners, to wit: road access to the community dock area and Cascade Lake access easements reflected on the plat(s).
- c. For the purpose of permitting the Association or the County of Valley, its agents and designees, access to the Property by emergency vehicles of all types.
- d. Any additional easements, if any, as shown and designated on the recorded subdivision Plat for Vista Point.

The easement areas (excluding any equipment or appurtenances owned by the Owners, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

SECTION 5.8 Lighting. Exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot(s) and shall be in accordance with the ACC Rules/ACC Standards.

SECTION 5.9 Animals. Except for horses, no animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that domesticated dogs, cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot. Horses may be kept on a Lot for a period not to exceed seventy-two (72) hours.

SECTION 5.10 Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- a. Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, shrubbery trimmed, rubbish and debris removed, weeds cut or otherwise maintain the same in a neat and aesthetically pleasing condition.
- b. All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- c. A Building which is vacant for over seventy-two (72) hours shall be kept locked in order to prevent entrance by vandals.
- d. All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from view.
- e. No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot or otherwise kept in the open or exposed to view.
- f. Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the

Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in these Revised Covenants.

- g. In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon forty-five (45) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's 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. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in Article 9 of these Revised Covenants.

SECTION 5.11 Boats, Campers and Other Vehicles. Trailers, motor homes, travel trailers, trucks, boats, campers, maintenance or recreational equipment, when not in actual use, shall be stored in an orderly manner on the Owner's Lot and if practicable screened from public view. For periods not to exceed seventy-two hours, Owners may park vehicles on the public right-of-way for special occasions or when weather conditions prohibit direct access to the residence.

SECTION 5.12 Exterior Materials and Colors. After completion of the Initial Construction and in the event of the reconstruction, remodeling, repainting or refinishing of a Building within Vista Point, in whole or in part, exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot to the end that all such Buildings will present a unified and coordinated appearance.

SECTION 5.13 Vehicles. The use of all vehicles, including, but not limited to, automobiles, trucks, bicycles and motorcycles, shall be subject to ACC rules, which may prohibit or

limit the use thereof within Vista Point, provide parking regulations and other rules regulating the same.

SECTION 5.14 Exterior Energy Devices. No energy production device, including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

SECTION 5.15 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in Vista Point shall be permitted, provided the same is approved by the ACC prior to installation.

SECTION 5.16 Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.17 Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation.

All fences and walls shall be subject to the following restrictions:

- a. No fence or wall shall be permitted to be constructed or installed on any portion of a berm constructed by any Owner in Vista Point.

- b. All fences and walls on a Lot shall not exceed six (6) feet in height (unless a lower height is required by the ACC).
- c. All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- d. No fence or wall shall interfere with the use and enjoyment of any easement reserved in these Revised Covenants or shown on the recorded subdivision Plat of the Property.

SECTION 5.18 Adoption of ACC Rules/ACC Standards. The ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the Owner, or the ACC, as the case may be, to carry out the purposes of these Revised Covenants. All ACC Rules/ACC Standards shall be consistent with the provision of these Revised Covenants. The ACC may present such ACC Rules/ACC Standards or amendments or modifications thereto to the Association's members for comment or approval, but such approval or comment is not required.

## ARTICLE 6

### THE VISTA POINT HOMEOWNERS ASSOCIATION, INC.

SECTION 6.1 Duties of Association. The Vista Point Homeowners Association, Inc. shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws, and these Revised Covenants.

SECTION 6.2 Members. Each Owner of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the association and no Owner shall have more than one membership in the Association and shall have such voting rights as set forth in the Association's Articles and By-Laws. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and the membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership 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 transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 6.3 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time.

SECTION 6.4 Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed to each Member at the annual meeting of the Association's members.

## ARTICLE 7

### MAINTENANCE OF ROAD AND SECURITY FACILITIES

SECTION 7.1 Duty to Maintain Road. The Association shall be responsible for maintaining the Road which shall serve the other Lots therein. Such maintenance shall include, but not be limited to, the following: the grading, repairing, patching, sealing, replacing and caring for the Road, including the cleaning thereof, when required.

SECTION 7.2 Duty to Maintain Security Gate. The Association shall be responsible for maintaining all security gates, devices or equipment located within Vista Point, except those which are installed by an Owner on a Lot and designed for the protection of the Building and/or Occupants thereof. Such maintenance shall include, but not be limited to, the following: the general maintenance and upkeep, repairing, replacing, restoration and rebuilding of all and any such security facilities as the same may be constructed and installed within Vista Point by the Owners or the Association, including any appurtenances or related property used or necessary in connection therewith. In addition, if the operation of said security facilities requires the payment of ongoing expenses to operate the same, such as utility expenses, the Association shall be responsible for the payment of all such ongoing expenses. As used herein, "security facilities" shall include all equipment, property and systems installed to serve exclusively the Lots and the Owners within Vista Point, on a common basis, but shall not include any such equipment, property or systems installed to serve less than all of such Lots and/or Owners.

SECTION 7.3 Liability for Damage. In the event that any maintenance, repair or replacement of all or any portion of the Road or the security facilities is performed by the Association



as a result of the willful or negligent act of an Owner, an Owner's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in these Revised Covenants.

SECTION 7.4 Cost of Maintenance, Repairs and Replacement. The cost of the maintenance, repairs and replacements of the Road and the security facilities within Vista Point and the continuing operational expenses, if any, including taxes, shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within Vista Point. Such costs and expenses (hereafter "cost and expenses") shall be apportioned among the Lots within Vista Point on an equal basis. In the event the Association does not have adequate funds to pay the cost and expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, on an equal basis, as a Special Assessment.

The decision as to what costs and expenses are required with respect to the Road or the security facilities and the timing of the payment thereof shall rest solely with the Board.

SECTION 7.5 Reserve for Maintenance, Repair and Replacement. The Association shall have the right to establish a reserve account for the payment of the costs and expenses as set forth herein with regard to the maintenance, repair and replacement of the Road and the security facilities and for the purpose of funding the same, the Board shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment so determined for the purpose of funding the maintenance, repair and replacement reserve account shall be determined by the Board. The Board shall have the right to place all funds collected for the maintenance, repair and replacement reserve account in an interest-bearing account in an appropriate financial institution.

## ARTICLE 8

### ASSESSMENTS

SECTION 8.1 Covenant to Pay Assessments. Each Owner of Lots in Vista Point, by approving and adopting these Revised Covenants, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting

the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

SECTION 8.2 Regular Assessments. Regular Assessments shall be made by the Association at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Areas and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

Regular Assessments shall be made on or before December 20 preceding the year for which the assessments are made. The Regular Assessments shall be due by the first day of January for the year for which the assessments are made.

SECTION 8.3 Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- a. To defray, in whole or in part, the cost of any construction or reconstruction of Improvements, unexpected repair or replacement of any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in these Revised Covenants.
- b. To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

SECTION 8.4 Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- a. Maintenance and Repair. The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect any portion of the Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.
- b. Correction of Violations. In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of these Revised Covenants or the ACC Rules/ ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Article 9 of these Revised Covenants.
- c. Limited Purpose. The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 8.5 Uniform Rate of Assessment. Except as expressly provided to the contrary in these Revised Covenants, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

SECTION 8.6 Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be

set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge, the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

## ARTICLE 9

### ENFORCEMENT OF ASSESSMENTS

SECTION 9.1 Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of these Revised Covenants, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

SECTION 9.2 Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in Vista Point pursuant to these Revised Covenants, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of these Revised Covenants except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or Deed of Trust, duly recorded in Valley County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior by reason of applicable law. All other lienholders acquiring liens on any Lot after recordation of these Revised Covenants shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

SECTION 9.3 Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

SECTION 9.4 Notice Required. Notwithstanding anything to the contrary contained in these Revised Covenants, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 9.5 Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in these Revised Covenants shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

## ARTICLE 10

### ARCHITECTURAL CONTROL COMMITTEE

SECTION 10.1 Members of the Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be elected as herein provided. A member of the ACC shall hold office until he has resigned, has been removed or his term has ended, but in any event, until said member's successor has been elected or appointed. The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of the members of the ACC shall constitute an act of the ACC.

SECTION 10.2 Election. All members of the ACC shall be elected by majority vote of the Association's members; provided, however, that at any one time, the ACC shall not have more than one representative per lot. Should there be a vacancy on the ACC by reason of resignation or removal, the Board shall appoint a successor to complete the term of such ACC member.

SECTION 10.3 Term of Office. The ACC's members shall each hold office for a period of three (3) years; provided, however, that such terms shall be staggered so that only one vacancy on the ACC shall occur per year due to expiration of the term.

SECTION 10.4 Removal. Members of the ACC may be removed by majority vote of the members of the Association during the regular annual meeting or a special meeting called for such purpose.

SECTION 10.5 Non-Liability. Neither the ACC, nor any member thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof.

SECTION 10.6 Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Property without the prior express written approval of the ACC.

SECTION 10.7 Basis of Approval. Approval by the ACC shall be based, among other things, on the ACC Rules/ACC Standards, the adequacy of the Lot dimensions; conformity and harmony of external design with neighboring Improvements, the effect of location and use of Improvements on neighboring Lots, operations and uses; relations to topography, grade, finished ground elevation and landscaping of the Lot being improved to that of neighboring Lots; proper facing of the main elevation with respect to nearby streets; and the conformity of the plans and specifications to the purpose and general plan and intent of these Revised Covenants.

SECTION 10.8 Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in these Revised Covenants, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by a majority of the members of the ACC.

If a variance is granted as provided herein, no violation of these Revised Covenants, ACC Rules/ACC Standards or prior approval 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 these Revised Covenants or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

SECTION 10.9 Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a manner required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- a. Site Plan. A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, driveways, parking areas and other pertinent information relating to the Improvements.
- b. Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

The ACC shall have the right to require an Owner submitting an application for approval of plans and specifications to pay a fee at the time the application is submitted, the amount of such fee to be based upon the reasonable and actual expenses of the ACC in reviewing and processing the application. The ACC shall not be obligated to commence the review and processing of an application until such fee, if required, is paid.

SECTION 10.10 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain Vista Point as a first class recreational and residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty-five (45) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial. A decision by the ACC denying an application can be appealed to the Board pursuant to Section 10.10 below. Such appeal shall be made by the Owner within five (5) days of receipt of the ACC's decision by submitting a notice of appeal to the Secretary of the Association.

SECTION 10.11 Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating these



Revised Covenants or the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of these Revised Covenants or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- a. The Owner shall immediately cease the activity which constitutes a deviation or violation.
- b. The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant. The matter can be appealed by either party to the Board pursuant to Section 10.10 below within five (5) days of the decision of the ACC by submitting written notice of appeal to the Secretary of the Association.

#### SECTION 10.12 Board Appeal of ACC Decision.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

At the hearing the Owner, Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be

represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 10.13, below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

SECTION 10.13 Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of these Revised Covenants, the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses

incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the board, in its sole discretion. The failure of the Owner to pay said assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article 9, above.

SECTION 10.14 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same provided in Article 9, above.

SECTION 10.15 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 10.10 and 10.11, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 10.16 Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

## ARTICLE 11

### MISCELLANEOUS

SECTION 11.1 Effective Date. Upon receiving the approval of more than fifty percent of the Lots entitled to vote thereon, these Revised Covenants shall be executed by the Association and shall be immediately effective upon execution.

SECTION 11.2 Term. These Revised Covenants and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2018, unless amended as hereafter provided. After December 31, 2018, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4) of the lots covered by this and such written instrument is recorded with the Valley County Recorder.

SECTION 11.3 Amendment. These Revised Covenants may be amended by the then Owners of over one-half of the Lots in the Property by a writing which they execute and cause to be recorded in the office of the County Recorder of Valley County, Idaho.

SECTION 11.4 Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 11.5 Non-Waiver. The failure of the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of these Revised Covenants or to exercise any right or option contained herein, or to serve any relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 11.6 Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, a contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provision set forth in these Revised Covenants and agrees to be bound by the same.

SECTION 11.7 Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the initial period of operation of the Association or prior thereto during the period the Grantor is exercising the powers of the Association.

SECTION 11.8 Notices. Any notice permitted or required to be delivered as provided in these Revised Covenants shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 11.9 Interpretation. The provisions of these Revised Covenants shall be liberally construed to effectuate the purposes set forth above, and shall be construed and governed by the laws of the State of Idaho.

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter.

All captions and titles used in these Revised Covenants are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

SECTION 11.10 Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

DATED this 16<sup>th</sup> day of December, 1993.

VISTA POINT HOMEOWNERS  
ASSOCIATION, INC.

By Robert K. Boron  
Its: President

By Virginia Johannsen  
Its: Secretary

201076

REQUESTED BY: Holland  
RECORDED BY: Beuf

Dec 23 12 33 PM '93

TYPE: Dr 2 misc

VALLEY LEVY

BY: A. Hartman

FEE: 93.00

STATE OF IDAHO )  
 ) ss:  
County of Canyon )

On this 16<sup>th</sup> day of December, in the year 1993, before me, Cynthia K. Barron, notary public, personally appeared Robert K. Barron, known or identified to me to be the President, of the corporation 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.

Cynthia K Barron  
Notary Public for Idaho  
Residing at 2905 Woody Drive, Boise  
My Commission Expires 5-4-94

STATE OF IDAHO )  
 ) ss:  
County of ADA )

On this 13<sup>th</sup> day of December, in the year 1993, before me, Lani Rose Smith, notary public, personally appeared Virginia Johnson, known or identified to me to be the Secretary, of the corporation 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.

Lani Rose Smith  
Notary Public for Idaho  
Residing at Medical Tower  
My Commission Expires 5/1/99