

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

2000 FEB 22 PM 4:37

RECORDED - REQUEST OF

FEE 63.00 DEPUTY McKarron

100013379

PIONEER TITLE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKWOOD PLANNED UNIT DEVELOPMENT**

THIS DECLARATION is made on the date hereunder set forth by ARIES DEVELOPMENT, L.L.C., an Idaho limited liability company, by and through its managing member, MICHAEL HORMAECHEA, hereinafter referred to as "Declarant".

RECITALS:

This Declaration is made in contemplation and furtherance of the following:

A. Declarant is the owner of approximately 219 acres of undeveloped real property situated within the City of Eagle, Ada County, State of Idaho, more particularly described on Exhibit "A" hereto, which property is hereinafter sometimes referred to as the "Property".

B. The Declarant has received approval from the City of Eagle of a planned unit development for the Property, known, and sometimes hereinafter referred to, as the "Brookwood PUD".

C. A portion of the Property, as the first phase of the Brookwood PUD, has been officially subdivided as Brookwood Subdivision No. 1, a residential subdivision, according to the official plat thereof recorded as Instrument No. 99123455, records of Ada County, Idaho (hereinafter sometimes referred to as "Brookwood").

D. Brookwood, and all improvements and structures to be erected and maintained thereon, is a residential subdivision, developed pursuant to applicable zoning, subdivision and land use ordinances of the City of Eagle, Idaho.

E. It is the intent of the Declarant that Brookwood, and all subsequent phases of the Brookwood PUD, become a quality residential community in harmony with the surrounding environment for the enjoyment and convenience of persons living therein, and to secure said objectives through the covenants, conditions and restrictions hereinafter set forth.

F. It is the intent, but not the obligation, of the Declarant to adopt this Declaration by reference in an instrument making the same applicable to any future residential phases of the Brookwood PUD, or other subdivisions within the boundaries of the Property, thereby annexing and including said subdivisions under and within the purview of this Declaration, and imposing on, and extending to, all lots, common areas and property situated therein, and the Owners thereof, the obligations and benefits contained in this Declaration.

DECLARATION:

Declarant hereby declares that Brookwood Subdivision No. 1, and all real property, lots and common area now or hereafter situated therein, and all future phases of the Brookwood PUD or other subdivisions of the Property hereafter annexed and made subject to this Declaration, shall be held, conveyed, encumbered, leased and used subject to the covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, which shall run with said land and be binding upon, and benefit, all parties presently owning, or hereafter acquiring, any right, title or interest therein, or to any part thereof.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meaning:

Section 1.1 "Annexation" shall mean and refer to the act of the Declarant, or its successor, placing future phases of the Brookwood PUD, or other subdivisions of the Property under or within the purview of this Declaration of Covenants, Conditions and Restrictions, in the manner herein provided for in Article IX hereof.

Section 1.2 "Architectural Design Guidelines" shall mean and refer to that certain set of aesthetic concerns and criteria, to be adopted, and, as deemed necessary, amended by the Architectural Design Committee and the Board of Directors of the Association, which shall guide and control the Architectural Design Committee's approval or denial of plans presented to it pursuant to Article VIII hereof, for structures, improvements, alterations and landscaping.

Section 1.3 "Architectural Design Committee" shall mean the committee created pursuant to Article VIII hereof, and may be hereinafter referred to as the "ADC".

Section 1.4 "Articles" shall mean the Articles of Incorporation of the Brookwood Homeowners Association, Inc.

Section 1.5 "Assessments" shall mean assessments described in Article VII.

Section 1.6 "Association" shall mean and refer to Brookwood Homeowners Association, Inc., a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 1.7 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.8 "Common Area" shall mean all real property now or hereafter owned or leased by the Association or in which the Association has a license or an easement, including, without limitation the Riparian Easement described in Section 3.20 herein below and all property indicated as Common Area on the official plat of Brookwood and on the official plat of any future phases of Brookwood PUD or other subdivisions of the Property hereafter annexed and placed under or within the purview of this Declaration in the manner set forth in Article IX hereinafter.

Section 1.9 "Lot" shall mean and refer to any platted Lot shown on the official plat of Brookwood, or on the official plat of any future phases of the Brookwood PUD or other subdivisions of the Property which are hereafter annexed and placed under or within the purview of this Declaration in the manner set forth in Article IX hereinafter, excepting any platted lot which is a part of the Common Area, or is otherwise not platted for use as a residential Lot. The term shall include all single family residential lots, townhouse lots or sublots and condominium lots or units.

Section 1.10 "Member" shall mean a member of the Association, who shall be an Owner and shall qualify for membership in the Association in the manner hereinafter set forth.

Section 1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot in Brookwood, or in any future phases of the Brookwood PUD or other subdivisions of the Property which are hereafter Annexed and placed under or within the purview of this Declaration; provided, however, that the term "Owner" shall not include those having only a security interest in any Lot through a lien, encumbrance, deed of trust or mortgage, or other similar security instrument.

Section 1.12 "Subdivision" shall mean and refer to, collectively, Brookwood, and any future phases of the Brookwood PUD or other subdivisions of the Property which are Annexed and placed under or within the purview of this Declaration in the manner set forth in Article IX hereinafter.

ARTICLE II

PROJECT DEVELOPMENT

Section 2.1 Development of Lots. The covenants, conditions and restrictions contained herein shall not be construed to unreasonably interfere with or prevent normal construction activities during the construction of improvements by any Owner, including Declarant, upon any Common Area Lot, provided that when completed, such improvements shall in all ways conform to said covenants, conditions and restrictions. Specifically, no such construction activity shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary construction structures, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, and conforms to usual construction practices in the area. To facilitate any such construction activities, a temporary waiver of any applicable provision of this Declaration may be granted by the Board of Directors, provided that such waiver shall be only for the reasonable period of such construction.

Further, this Declaration shall not be construed to prevent or limit right of the Declarant, its agents or successors to continue agricultural activities on the remainder of the Property, or the development thereon of subsequent residential projects or Subdivisions, or Common Area improvements, nor shall the covenants, conditions or restrictions herein contained be construed to prevent or limit the Declarant's right to maintain construction, sales or leasing offices, or similar facilities on Lots within Brookwood or elsewhere on the Property, or on any Subdivision thereof owned by the Declarant, nor to prevent or limit the Declarant's right to post signs incidental to construction, sales or leasing on property or Lots owned by Declarant.

Section 2.2 Common Area. Any Common Area shown on the plat for any Subdivision which is subject to this Declaration shall be deeded by the Declarant to the Association, to be held, improved, maintained, managed and used by the Association exclusively for the common benefit, use and enjoyment of the Owners and their respective family members, guests and invitees. Prior to being deeded to the Association, the Declarant shall improve or make appropriate provisions for the improvement of the Common Area in a manner consistent with the official plat for the Subdivision in which it is located, and all development plans and specifications approved by the City of Eagle, Idaho.

Section 2.3 Subsequent Development Phases. It is the intent, but not the obligation, of the Declarant, or its successor, to hereafter develop additional phases of the Brookwood PUD, or other residential Subdivisions within the Property, and to Annex any or all of said Subdivisions in the manner specified in Article IX hereof, thereby placing them under and within the purview of this Declaration, and nothing contained herein shall be construed or applied in any manner contrary to said intent.

ARTICLE III

GENERAL RESTRICTIONS

Section 3.1 Residential Purposes. Lots shall be restricted exclusively to residential use. No modular home, manufactured home, trailer, mobile home, camper motorhome, recreational vehicle, tent, shack, carport, garage or other similar vehicle, structure or improvement shall be used as a residence, either temporarily or permanently, on any Lot. On Lots containing 20,000 square feet of area or less, the enclosed living space of the ground floor of the primary residential structure (excluding decks, patios, covered walkways, garages) shall not be less than 1,400 square feet, and said living space on primary residential structures on Lots containing more than 20,000 square feet of area shall not be less than 1,800 square feet. Residences shall include garaged parking for not less than two automobiles together with uncovered off-street parking for not less than two automobiles.

Section 3.2 ADC Approval. All Buildings, structures, landscaping, fences, signs, mailboxes and other exterior improvements proposed for any Lot, and all subsequent extensions and expansions thereof, and all exterior alterations, attachments, accessories and appurtenances

thereto, shall be consistent with the provisions of this Declaration and the Architectural Design Guidelines for Brookwood Subdivision, and shall not be undertaken, commenced, constructed or installed without the prior official approval of the ADC, unless expressly exempted from such approval by the terms of this Declaration.

Section 3.3 Exterior Changes and Alterations. Approval of the ADC shall not be required for any remodeling or renovation involving the interior of any Building or structure, nor the repainting, in the same color, of the exterior of any Building, structure or improvement, the replacement or repair of broken, deteriorated or damaged exterior windows, siding, trim, decking, sidewalks, driveways, fences, exposed structural members or foundations, provided such work does not alter the size of the structure, the configuration or architectural features of its exterior, (including the size and shape of windows), the pitch or configuration of roof lines, eaves and exposed gables, or the height or material of fences, and is consistent with Architectural Design Guidelines for Brookwood Subdivision and the provisions of this Declaration.

Section 3.4 Landscaping and Landscape Maintenance. Plans for initial landscaping of each Lot (including an automated sprinkler system for irrigating it) shall be subject to approval of an initial landscape plan by the Architectural Design Committee prior to installation. Thereafter, without further approval from the Architectural Design Committee, plantings, landscape elements and the sprinkler system may be repaired, maintained, augmented or replaced, provided it is consistent with said Architectural Design Guidelines and the provisions of this Declaration. All plantings, lawn and landscaping shall at all times be properly irrigated and maintained, and shall conform to the specifications and requirements set forth in the architectural design guidelines.

Section 3.5 Construction and Sale. Anything contained herein to the contrary notwithstanding, it shall be permissible for the Owner of a Lot, including the Declarant, during any period of construction of a residence thereon, to maintain upon the Lot, such facilities as may be reasonably required, convenient or incidental to such construction or sales activities, including, without limitation, materials, storage area, construction yard, temporary construction shed or trailer, model units and sales offices.

Section 3.6 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept by Owners, provided they are not kept, bred or maintained for any commercial purpose, do not endanger the health of other residents, are not allowed off the Lot of the pet's owner except when leashed or otherwise under someone's direct control, and, in the sole discretion of the Board of Directors, do not unreasonably disturb the occupants of any other Lot or constitute a nuisance.

Section 3.7 Signs and Business Activities. No advertising signs, billboards, commercial equipment, materials or supplies shall be erected, placed or permitted to remain on any Lot or Common Area nor shall any Lot or Common Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner or occupant of any other Lot; provided, however, that this provision shall not prohibit an Owner from erecting and maintaining temporary "for sale" signs of the type and size specified in the Architectural Design Guidelines.

Section 3.8 Service Facilities. No outside clotheslines shall be permitted, and all garbage cans, maintenance tools, and similar items shall be kept screened or enclosed to conceal them from the view of neighboring Lots.

Section 3.9 Exterior Antennas. No exterior television or radio antennas, satellite dishes, or similar communication installations shall be placed on any Lot without prior written approval from the Architectural Design Committee, and the same shall, to the extent possible, be shielded from view from neighboring Lots and streets.

Section 3.10 Nuisances. No rubbish, waste or debris of any kind shall be placed or permitted to accumulate upon any Lot, and no odor shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot. No noise, including but not limited to, noise created by people, animals, equipment and/or machinery, shall be permitted to exist or operate upon any Lot or Common Area so as to be offensive or detrimental to any other Lot, or its occupants.

Section 3.11 Hazardous Activities. No activities shall be conducted, and no improvements shall be constructed on any Lot or Common Area which are or might be unsafe or hazardous to any person or property. Without limiting the foregoing, no firearms shall be discharged upon any Lot or Common Area and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well designed interior fireplace or stove.

Section 3.12 Vehicle and Equipment Parking & Storage. Unless contained within a permitted garage or structure, no unsightly articles shall be stored, parked or otherwise permitted to remain on any Lot for any period exceeding 48 hours, including, without limitation, trailers, campers, motorhomes, boats, jet skis, tractors, buses, inoperable vehicles, snowmobiles and equipment.

Section 3.13 Utilities. All utility connections and service lines shall be underground, and shall conform to all applicable code requirements. Approval of the ADC prior to installation shall not be required.

Section 3.14 Fencing. All fencing shall be subject to prior ADC approval, and shall conform to the specifications set forth in the Architectural Design Guidelines for Brookwood Subdivision.

Section 3.15 Mailboxes. All mailboxes shall conform to the specifications set forth in the Architectural Design Guidelines for Brookwood Subdivision. Approval of the ADC prior to installation shall not be required.

Section 3.16 Subdivision. Lots shall not be further subdivided, and no portion of any Lot may be sold separately from the rest of that Lot. Two or more Lots may be combined to create one (1) Lot for use as a single residential parcel; provided, however, that upon such combining, each original Lot in the enlarged parcel shall continue to be considered a separate Lot for all purposes of

this Declaration, including, without limitation, assessments, membership and voting rights in the Association.

Section 3.17 Drainage. There shall be no interference with the established drainage pattern over any Lot unless adequate provision is made for alternative drainage and is approved by the Architectural Design Committee. No structure, fence, planting, fill or other materials shall be placed or permitted to remain which may obstruct or retard the flow of water through established drainage channels.

Section 3.18 Floodway and Floodplain. Some Lots are or may be situated, in whole or in part, within the area subject to the Intermediate Regional Flood (IRF), as depicted on the official map thereof prepared by the Federal Emergency Management Agency of the United States (FEMA) and adopted by the City of Eagle. Lots, or portions thereof, which are so situated are, according to FEMA, prone to flooding in flood conditions which, in any given year, have a one percent chance of occurring (these conditions are often referred to as the 100 year flood), and certain special restrictions and conditions may apply to the development of such Lots pursuant to applicable state and federal statutes, ordinances of the City of Eagle, and conditions of approval for the Brookwood PUD, including, but not necessarily limited to, specified minimum finished floor elevations for buildings, additional building setbacks from the floodway, restrictions on excavation and fill within the identified 100 year floodplain, and restrictions on buildings, structures, fences and landscaping within the floodway. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER, PRIOR TO CONSTRUCTING UPON, IMPROVING, LANDSCAPING OR ALTERING ANY LOT, TO ASCERTAIN AND ABIDE BY ALL APPLICABLE LAWS, RULES, REGULATIONS AND THE APPROVED MASTER PLAN AND CONDITIONS OF APPROVAL FOR THE BROOKWOOD PUD (ON FILE WITH THE CITY OF EAGLE), IN ADDITION TO ALL COVENANTS, CONDITIONS AND RESTRICTIONS OF THIS DECLARATION AND THE ARCHITECTURAL DESIGN GUIDELINES FOR BROOKWOOD SUBDIVISION

Section 3.19 Plat. All development proposed for a Lot shall be in compliance with the provisions and plat notes shown or set forth on the official, recorded plat for the Subdivision in which said Lot is situated, including, without limitation, easements and setbacks.

Section 3.20 Riparian Easement. There is hereby granted to, and created in, the Association a Riparian Easement over, under and across that portion of any Lot which is within the Floodway of Dry Creek, as shown on the official FEMA map duly adopted by the City of Eagle and in effect at the time of the recordation of the final plat creating said Lot. Within this Riparian Easement, the Association shall have the exclusive right and obligation at its sole cost and expense, to plant, install, and thereafter maintain, ground cover, landscaping and an irrigation system in a manner which it, in its sole discretion, deems appropriate. The Owners of any such Lot shall not be entitled to place any improvements or structures, including fences, or any landscaping or plantings of any type within the Riparian Easement.

ARTICLE IV

COMMON AREA

Section 4.1 Conveyance to the Association. Prior to the sale of the first Lot in each Subdivision made subject to this Declaration which contains areas designated for Common Area, the Declarant at its sole cost and expense shall improve or make appropriate provision for the improvement of said Common Area in a manner consistent with the plat and development plans approved for said Subdivision by the City of Eagle, and shall then deed the same to the Association, which the Association shall accept, at no cost to it, free and clear of all liens and encumbrances other than this Declaration and easements of record.

Section 4.2 Enjoyment of Common Area. Subject to the following provisions and limitations, each Owner shall have a non-exclusive right and easement of enjoyment, in common with all other Owners, in and to any Common Area, and such right and easement shall be appurtenant to and pass with the title to each Lot:

- A. The right of Association to charge or assess reasonable fees for the use and maintenance of any Common Area or other property owned by the Association.
- B. The right of the Association to suspend the use of the Common Area by an Owner for any period during which said Owner remains delinquent in the payment of any assessment duly levied against any Lot owned by said Owner.
- C. The right of the Association to promulgate reasonable rules and regulations governing the use and enjoyment of Common Area by Owners, their family members, and guests.
- D. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of further improving Common Area and related facilities; and in aid thereof to place a mortgage, deed of trust or other security instrument upon the Common Area.
- E. The right of the Association to dedicate or transfer all or any part of the Common Area, or any interest therein, to any person, entity, public agency, authority or utility for such purposes and subject to such conditions as the Board of Directors of the Association may deem appropriate, consistent with the requirement that the Association hold, manage, use, convey and hypothecate the Common Area for the benefit of the Owners. Notwithstanding the foregoing, no conveyance of any portion of the Common Area in excess of 10,000 square feet shall be authorized or completed by the Association without the prior written consent of two-thirds of its Members, nor shall the Association be entitled to re-subdivide any portion of the Common Area for the purpose of establishing any additional Lots or development parcels without the prior written consent of all Members.

F. Notwithstanding the foregoing, the Owners shall not, in common or otherwise, have the right to enter upon, possess or occupy Riparian Easement for any purpose or use, with the sole exception of the Owner of the Lot encumbered by said Riparian Easement. This provision shall not however, preclude the Association, or its designated employees, contractors or agents, from entering onto Riparian Easements for the purpose of planting, installing or maintaining landscaping and irrigation systems.

Section 4.3 Improvement of Common Area. The Association may, from time-to-time, further modify, improve or equip the Common Area for the benefit of the Owners, and make such Assessments or borrow such funds therefor as may be reasonably necessary, subject to the provisions and limitations set forth herein.

Section 4.4 Storm Water Retention Basins. Lot 10 of Block 1, lot 38 of Block 1, lot 10 of Block 2, and lot 5 of Block 3, as shown on the official plat of Brookwood Subdivision No. 1, constitute a portion of the Common Area for said subdivision, and are intended primarily to provide stormwater retention for said subdivision, and certain lots within the Common Area of future Subdivisions subject to this Declaration may similarly be designated on the official plat thereof for stormwater retention for said Subdivisions. All such lots shall be subject to the following terms and conditions:

A. Said lots, hereinafter referred to collectively as "Stormwater Basin Lots", shall be held and managed by the Association primarily for the purpose of detention and retention of stormwater from the Subdivision in which it is situated, and no structures, improvements, or equipment shall be constructed or maintain thereon which would limit, hinder or in any way be inconsistent with the primary use of said lots for stormwater retention.

B. The Declarant, prior to conveying the Stormwater Basin Lots to the Association, shall appropriately excavate and shape said lots to provide adequate stormwater detention and retention, and install any piping or ancillary equipment as may be reasonably necessary to comply with all applicable federal, state and local laws and regulations governing the retention of stormwater.

C. There is hereby granted by the Declarant an easement to the Ada County Highway District ("ACHD") over, under and across all Stormwater Basin Lots for the purpose of allowing ACHD to access inspect, repair and maintain stormwater retention and detention basins situated thereon, and all related equipment. Without limitation, said easement shall entitle ACHD to enter upon said Stormwater Basin Lots with vehicles and equipment and to undertake repair and maintenance activities on said facilities, including bank stabilization, sediment removal, repair or replacement of piping and related facilities, and removal of trash, improvements, structures, personal property, equipment, landscape elements or debris which ACHD determines, in its sole discretion, unreasonably interferes with the capacity of any Stormwater Basin Lot to adequately provide stormwater retention for the Subdivision in which it is located.

D. Notwithstanding the easement hereinabove granted to ACHD, it shall be the responsibility of the Association to take all necessary actions to ensure that the Stormwater Basin Lots, and all facilities situated therein, are adequately maintained in accordance with all applicable laws and regulations of the federal, state and local governmental entities having jurisdiction over the same, including, without limitation, all maintenance referred to as "light maintenance" defined in more detail in the "Manual for Light Maintenance" promulgated by ACHD, and those items defined as "heavy maintenance" by ACHD, including periodic inspection of the basins, necessary cleaning and maintenance of all piping used in connection with the basins, and the removal, to the extent necessary, of sediment within the basins. Notwithstanding the foregoing, until the Association is notified otherwise by ACHD, ACHD shall complete all "heavy maintenance" on the basins.

E. Should the Association, in the sole discretion of ACHD, fail or refuse to properly maintain or repair any Stormwater Basin Lot, or any basins or related equipment or piping thereon, ACHD may, but shall not be obligated to, undertake such maintenance subject to the following:

1. Prior to undertaking any such maintenance or repair, ACHD shall notify the Association of its intent to do so, giving the Association thirty (30) days after said notice to complete the repairs or correct the maintenance deficiencies identified by ACHD. In the event the Association fails to remedy said deficiencies within said thirty-day period, or any extension thereof which may, in writing, be granted by ACHD, ACHD may undertake said repairs or maintenance, without any interference from the Association or any Lot Owner within said subdivision. All costs incurred by ACHD for such repair maintenance shall be billed to the Association, and if not paid within sixty (60) days after such billing, ACHD shall be entitled to file a lien, on all or any of the Lots within any Subdivision to secure payment of said costs, together with interest thereon accruing from the date incurred at the maximum rate accruing on judgments of the State of Idaho, together with all costs of collection which may be incurred by ACHD.
2. The provisions of this Section 4.4, may not be amended or deleted without the prior written consent of ACHD, and all Lot Owners, by accepting title to a Lot, shall be deemed to agree with all of the provisions of this section.

ARTICLE V

IRRIGATION WATER SYSTEM

Section 5.1 Potable Water. Potable water for Brookwood Subdivision No. 1, and future Subdivisions of the remainder of the Property, shall be provided by the municipal water system of the City of Eagle. All costs of connecting to said system and charges thereafter assessed by the City of Eagle for water service shall be borne by the Owners of Lots receiving such potable water. In

addition, said municipal water system may provide limited irrigation water for lawns and landscaping, subject to the approval of the City of Eagle, and upon such terms and conditions as the City of Eagle may establish.

Section 5.2 Irrigation Water. Declarant is the owner of certain irrigation water rights which are appurtenant to the entire Property, which rights are evidenced by eleven (11) shares of stock in the Farmers Union Ditch Company, and the water from which is referred to herein as the "Irrigation Water". Said Irrigation Water, to the extent it is available for delivery from the Farmers Union Ditch Company during each irrigation season, shall be owned, managed and delivered, and used on all portions of the Property, including Lots and Common Area in Brookwood Subdivision No. 1 and all future phased Subdivisions of the Brookwood PUD and other Subdivisions of the Property, as follows:

A. For each Subdivision annexed and placed under or within the purview of this Declaration, including Brookwood Subdivision No. 1, the Declarant, prior to conveying the first Lot therein, shall construct, install and convey to the Association, a water delivery system capable of delivering that portion of the Irrigation Water which is appurtenant to that Subdivision, and the Lots and Common Area therein, including all necessary diversions, ditches, pumps, flumes, pipes and related equipment. (Said delivery systems shall be collectively referred to herein as the "Irrigation System").

B. Upon conveyance of the Irrigation System to the Association, the Association shall have the duty of owning, managing and operating the Irrigation System, which duties and responsibilities shall include, but not be limited to, the following:

1. To maintain said Irrigation System in good condition and repair.
2. To pay any real or personal property taxes, assessments and charges (including assessments of Farmers Union Ditch Company) on the Irrigation System, or appurtenant water rights owned by the Association, when due, and not permit the same to become delinquent.
3. To operate, regulate and maintain the Irrigation System in a manner calculated to maximize the availability of appurtenant Irrigation Water to the Lots and Common Area.
4. To maintain a comprehensive policy of public liability insurance covering the operation of the Irrigation System with policy limits to be established by the Association. Any such insurance shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying a claim of a Lot Owner for negligent acts of the Association. Said insurance policy shall name as a separately protected insured, the Association and its officers, directors, employees and agents.
5. To levy assessments, as more specifically set forth in Article VII hereinbelow, to defray the costs incurred with respect to the operation, maintenance, repair and ownership of said Irrigation System.
6. The Association, through its Board of Directors, shall determine how the Irrigation System will be operated to provide irrigation water to the Lots,

including the right of the Association to make irrigation water available to Lots within different "zones" or areas within Subdivisions served on a specified schedule.

C. The above-referenced eleven (11) shares of stock in the Farmers Union Ditch Company, and the water rights said shares represent, shall initially remain in the ownership of the Declarant, who shall hold, divert and use them in trust, exclusively for the benefit of the Property and subject to the provisions of this Article V. As soon as practicable after filing of the final plat for Brookwood Subdivision No. 1 and for each subsequent phase of the Brookwood PUD or other Subdivision, the Declarant shall convey to the Association so many shares and/or fractions of shares as may represent the amount of Irrigation Water appurtenant to that Subdivision. The exact number of such shares conveyed shall be determined by multiplying eleven (11) by a fraction, the denominator of which shall be 219 and the numerator of which shall be the total number of acres in the Subdivision. The Association shall thereafter hold said shares, and the water represented thereby in trust for its members and their respective Lots and the Common Area, subject to the provisions of this Article V.

D. Notwithstanding anything to the contrary herein contained, until the entire eleven (11) shares of stock in Farmers Union Ditch Company referred to hereinabove have been transferred to the Association, the diversion and conveyance of the Irrigation Water shall be through a system owned by the Declarant and used to deliver said water to the Irrigation System owned by the Association, and to other portions of the Property not included within a Subdivision. Declarant shall maintain said system for the common benefit of the entire Property, and the Irrigation Water diverted and conveyed through it shall be made available under the following priorities:

1. First, to the extent reasonably necessary, for the irrigation of any portions of the Property which continues to be dedicated to commercial agriculture.
2. Second, to the Irrigation System of the Association, for irrigation and aesthetic water features and amenities within the Common Areas, and for the irrigation of the Lots.

E. All repair, maintenance and capital improvement expenses with respect to the Irrigation System, including, but not limited to, pumps, pumphousing, waterlines, ditches, recharging ponds, piping and other appurtenant equipment, and all costs incurred with respect to the water rights and shares of stock in Farmers Union Ditch Company owned by the Association, and the delivery of said water, shall be shared on an equal basis by Lots utilizing said Irrigation System, from and after the date utilization is commenced, through assessments levied by the Association in the manner provided for in Article VII hereinabove. The amount of said assessments for this purpose shall be set annually by the directors of the Association, who shall estimate the amount required during the ensuing year for all repairs, maintenance and required capital improvements, including a reasonable amount for a reserve fund to be created for the purpose of providing for major repairs,

component replacements, system improvements or expansions which may be anticipated in future years.

Section 5.3 Disclaimer. Neither the Declarant nor the Association warrants or represents the exact extent of Irrigation Water which may be available from the water rights appurtenant to the Lots and Common Area within any Subdivision. The amount of water available to fill said water rights may vary depending upon water conditions in the Boise River drainage, and it may not be available in adequate quantities for given irrigation seasons, or parts thereof, and Lot Owners may consequently desire to obtain supplemental irrigation water from the Eagle Municipal Water System.

ARTICLE VI

THE ASSOCIATION

Section 6.1 Establishment. It is hereby created a homeowners association, which shall be incorporated under the laws of the State of Idaho as a non-profit membership corporation, and the name of which shall be the Brookwood Homeowners Association, Inc. All references herein to the Association shall be to said corporation.

Section 6.2 Articles and By-Laws. Declarant shall adopt Articles of Incorporation and will propose to the initial Board of Directors of the Association the adoption of By-Laws to supplement this Declaration, and to provide for the administration and governance of the Association, and for other purposes not inconsistent with this Declaration. In the event of conflict between this Declaration and the Articles and/or By-Laws of the Association, the provisions of this Declaration shall prevail.

Section 6.3 Board of Directors. The Association shall be managed by a Board of Directors, all of whom shall be Members of the Association. Their number, and the manner by which they are to be elected and function, shall be set forth in the Articles and/or By-Laws of the Association.

Section 6.4 Membership. Every Owner shall be entitled and required to be a Member of the Association. If title to a Lot is held by more than one person or entity, the membership related to that Lot shall be shared by all such persons or entities in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by that Owner. No person or entity other than an Owner may be a member of the Association.

Section 6.5 Membership Fees. At the closing of the initial sale of each Lot by the Declarant, there shall be paid to the Association by or on behalf of the acquiring Owner, Association Membership Fee of \$200.00, and at the time of closing of each subsequent sale of said Lot, an Association Membership Transfer Fee of \$50.00 shall be paid to the Association by, or on behalf of, the new buyer. The amount of said Association Membership Fee and Association

Membership Transfer Fee may, from time to time, be amended by resolution of the Board of Directors of the Association.

Section 6.6 Voting Rights. The Association shall have two (2) classes of membership, as follows:

A. Class A Members shall be all Owners except the Declarant, and each Class A Member 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, but the vote appurtenant to the Lot owned by them shall be exercised as the joint Owners may decide among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

B. Class B Members shall be limited to the Declarant, who shall be entitled to three (3) votes for each Lot owned by it. Class B memberships shall cease and be converted to Class A memberships at such time as the total votes to which Class A Members are entitled equal or exceed the total votes to which Class B Members are entitled.

C. Unless otherwise provided herein with respect to particular matters, decisions to be made by a vote of the Members shall be determined by a simple majority of the votes cast by Members voting, in person or by proxy, at a duly constituted meeting of the Members.

Section 6.7 Cumulative Voting. In any election of the members of the Board of Directors, each Member entitled to vote at such election shall have the right to cumulative voting for each director to be elected, and to thereby give one candidate or divide among any number of the candidates a number of votes equal to the total number of votes to which that Member is entitled to vote for all Directors to be elected. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected.

Section 6.8 Governance. The Association shall be governed by a Board of Directors and officers in accordance with its Articles of Incorporation and Bylaws.

Section 6.9 Management of the Common Area. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for exclusive management and control of all Common Area. All water diversion facilities, waterways, pumps, ponds, structures, landscaping and other improvements and equipment situated on or included in Common Area, shall be kept in good condition and repair, reasonably free of debris and obstructions, by the Association. The Association shall keep the Common Area and its improvements fully insured against reasonable risks of fire and other casualties and shall maintain such public liability insurance coverage on the Common Area as its Board of Directors deems appropriate.

Section 6.10 Management of Irrigation System. The Association shall be responsible for exclusive management, control and maintenance of the Irrigation System described in Article V hereinabove, and for the necessary maintenance, repair and replacement of all improvements,

equipment, facilities and components of said Irrigation System. The Association shall keep the Irrigation System and its improvements, equipment, facilities and components fully insured against all reasonable casualty risks, and shall maintain a public liability insurance coverage as the Board of Directors deems appropriate covering the Irrigation System, and all aspects of its use and operation. In managing the Irrigation System, the Association may establish all rules and regulations concerning the use thereof as may be deemed appropriate by the Board of Directors, consistent with the provisions of Article V hereinabove.

Section 6.11 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage the Association's affairs, or any part thereof, to the extent the Association deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of its purposes and obligations, whether such personnel are furnished or employed directly by the Association or any person or entity with whom the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, or the enforcement of this Declaration. The Association may arrange with others to furnish insurance, electricity, water, sewer, snow removal, trash collection, landscaping, or other services for the Common Area or other property owned or managed by the Association pursuant to this Declaration.

Section 6.12 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation, govern the use of all roads and streets owned or controlled by the Association for the benefit of the Owners. The Association may also take judicial action against any Owner to enforce compliance with any of its rules or regulations, or the other terms or provisions of this Declaration.

Section 6.13 Implied Rights. The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

Section 6.14 Transfer of Membership. The membership in the Association of each Owner, including Declarant, shall be appurtenant to the Lot giving rise to such membership, and shall not be transferred any way except upon the transfer of title to the Lot, and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void and any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner thereof.

Section 6.15 Books and Records. The Board shall cause to be kept complete, detailed and accurate books and records of the receipts and expenditures of the Association, in a form which complies with generally accepted accounting principles. The Board or a majority of the Owners may at any time require an audit prepared by an independent, certified public accountant, which shall be paid for by the Association.

Section 6.16 Inspection of Association Documents, Books and Records. The Association shall make available to the Owners, mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, By-Laws, and other rules, books, records and financial statements of the Association, including the most recent annual audited financial statement, if one has been prepared. The term "available", as used herein, shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances to be determined by the Board of Directors. The Association may require the requesting party to pay a reasonable charge for the reproduction of any documents, books or records desired.

ARTICLE VII

ASSESSMENTS

Section 7.1 Agreement to Pay Assessments. Declarant, for each Lot owned by the Declarant, hereby covenants, and each subsequent Owner of any Lot, by the acceptance of a deed therefor, whether or not it be so expressed in said deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association the assessments provided for in this Declaration. In the case of joint or co-ownerships, this liability shall be joint and several. Such assessments shall be levied against Lots and collected from time-to-time in the manner provided in this Article VII.

Section 7.2 Annual Assessments. Annual assessments against all Lots are hereby authorized which shall be based upon advance annual estimates of cash requirements by the Association to provide for the payment of all estimated expenses to be incurred in the ensuing twelve-month period in the conduct of the Association's affairs, including the maintenance and operation of the Common Area, the Irrigation System and, to the extent herein required, the Lots. Such expenses may include, among other things, those incurred for irrigation water, taxes, insurance, legal and accounting services, landscaping installation and maintenance, Common Area utilities, the repair, maintenance and replacement of Common Area and Irrigation System improvements and equipment, and the creation of a reasonable contingency reserve, surplus and/or sinking fund for capital improvements, replacements and repair for the Common Area and Irrigation System. Without the approval of a majority of the votes entitled to be cast by all Members of the Brookwood Homeowners Association, Inc., annual assessments cannot be increased for any year by more than Ten Percent (10%) of the annual assessment for the immediately preceding year.

Section 7.3 Special Assessments. In addition to the annual assessments authorized hereinabove, the Association may levy at anytime a special assessment payable over such a period as the Association may determine for the purpose of defraying in whole or in part the unanticipated cost of any construction, reconstruction, repair or replacement of Common Area improvements, or any other similarly unanticipated or emergency expenses duly incurred or to be incurred by the Association for purposes provided in this Declaration, which cannot be adequately provided for by the annual assessment.

Section 7.4 Apportionment of Assessments. Annual and special assessments shall be apportioned among the Owners and their respective Lots according to the total number of Lots, each Owner being assessed for each of his Lots a fraction of the total assessments, the numerator of which fraction shall be one, and the denominator of which shall be the total number of Lots; provided, however, that assessments for non-potable Irrigation Water provided to Lots within any Subdivision by the Association shall be levied and assessed only on those Lots which receive and use said Irrigation Water, and may, at the discretion of the Board of Directors, be levied and assessed against said Lots on the basis of their comparative size categories (such as Lots containing 20,000 square feet or less and those containing more).

Section 7.5 Notice of Periodic Assessments and Time for Payment Thereof. The Association shall establish an annual assessment each year, the exact date to be determined by its Board of Directors, and shall further establish a special assessment whenever circumstances in the opinion of the Board of Directors require it. Such assessments shall be payable in the manner and on the dates determined by the Association from time-to-time. The Association shall provide each Owner with notice specifying the amount of the assessment and the date or dates of payment of the same. No payment shall be due and payable less than 30 days after said written notice has been given and each assessment shall bear interest at the rate of 18% per annum from and after the date it becomes due and payable if not paid by such date. Failure of the Association to give notice of the assessment shall not affect the liability of the Owner for such assessment, but the date when payment shall become due and payable in such a case shall be deferred to a date 30 days after such notice has been given.

Section 7.6 Lien of Assessment. All sums assessed against any Lot shall be secured by a lien on said Lot in favor of the Association upon recordation of a notice of assessment as herein provided. Such lien shall be superior to all other liens and encumbrances on said Lot, with exception of: (a) valid tax and assessment liens imposed by governmental entities; (b) the lien of prior mortgages, deeds of trust or other security instruments perfected and recorded in Ada County, Idaho; and (c) valid prior labor and materialman's liens duly perfected and recorded in Ada County, Idaho.

To create a lien for sums assessed pursuant to this Declaration, the Association may prepare a written notice of said assessments, setting forth the amount thereof, the date due, the unpaid balance, the name of the record Owner of the Lot the legal description of said Lot. Such notice shall be signed by an officer of the Association and may be recorded in the office of the County Recorder of Ada County, Idaho. No such notice of assessment shall be recorded until there is a delinquency in the payment of the assessment to which it relates. The priority date of the lien shall be the date of its recordation, and it may be foreclosed and enforced in the manner permitted for consensual liens by the laws of the State of Idaho. In addition to all other sums which may be due and owing for which a lien is recorded, the Owner shall be obligated to pay all costs and expenses incurred by the Association in preparing, filing, foreclosing said lien, or otherwise collecting the assessment to which it is related, including all attorney's fees. All such costs and expenses shall be deemed to be secured by the lien being foreclosed.

Unless sooner satisfied and released, or the enforcement initiated as provided earlier in this section, any lien created pursuant to this section shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, said one year period may be extended by the Association for an additional period not to exceed one year by a written extension signed by an officer of the Association and recorded in the office of County Recorder of Ada County, Idaho, prior to the expiration of the initial one year period.

Section 7.7 Personal Obligation of Owner. The amount of any assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. A suit to recover a money judgment for such obligation can be maintained by the Association without foreclosure or waiver of the lien securing the same, and no owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the common area, or by the sale or abandonment of the Lot. In such a suit, the Association shall be entitled to recover its reasonable costs and attorney fees incurred in prosecuting the same, in addition to all delinquent assessments and accrued interest thereon.

Section 7.8 Personal Liability of Purchasers. Subject to the provisions of Section 7.7 immediately hereinabove, the purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments appurtenant thereto including any such assessments due and owing prior to said purchaser's acquisition of said Lot, together with accrued interest thereon and, should legal action be instituted by the Association to collect the same, all costs, including attorney fees reasonably incurred in the prosecution of said action.

ARTICLE VIII

ARCHITECTURAL DESIGN COMMITTEE

Section 8.1 Architectural Review and Approval. No initial landscaping on any Lot, nor any improvement, alteration or change to the exterior of any building or structure, or any appurtenant exterior appurtenance, including, but not limited to, decks, fences, porches, patios exterior antennas, solar panels, sky lights, satellite dishes or signs shall be constructed, installed or completed until the plans and specifications therefor have been submitted to, and approved in writing by, the Architectural Design Committee (hereinafter "ADC"). All plans and specifications shall be evaluated as to (1) compliance with this Declaration and the guidelines contained in the Brookwood Subdivision Architectural Design Committee manual; (2) for harmony and compatibility with the external design of other buildings or structures in close proximity; and (3) the location of proposed improvements in relation to surrounding structures, topography, neighborhood design characteristics and existing drainage patterns. Approval by the ADC does not obviate the necessity of receiving all applicable permits and approvals from the City of Eagle for any proposed construction, excavation, improvements, alterations or repairs.

Section 8.2 Architectural Design Committee. The Architectural Design Committee shall consist of five (5) members, at least one of whom shall be the Owner of a Lot. Appointments to the ADC shall be made by the Board of Directors of the Association, and members shall serve at the pleasure of said Board of Directors. Members may, but need not, be Owners. A majority of the

ADC shall constitute a quorum for the transaction of business at any duly called meeting thereof, and the action of a majority present at any such meeting at which a quorum is present shall constitute the action of the ADC.

Section 8.3 Powers and Duties of the ADC. The ADC shall have the following powers and duties:

A. To require submission to the ADC of complete sets of plans and specifications for any proposed building or structure, or any exterior improvement, alteration or change for any Lot. The ADC may also require submission of samples of materials proposed for any such project and may require such additional information as is reasonably necessary to evaluate the proposed work.

B. To approve or disapprove plans for any proposed building, structure, or any exterior improvement, alteration or change for any Lot. All decisions of the ADC shall be submitted in writing to the applicant, and signed by all members of the ADC participating in such decision. In the event that the ADC fails to approve or disapprove any plans or specifications requested within thirty (30) days after receiving an application therefor, together with all additional information, plans or specifications requested by the ADC, approval of the ADC shall conclusively be deemed to have been given.

C. To require a fee to be set and, as necessary from time-to-time amended, by the ADC, in an amount reasonably calculated to defray the costs incurred in reviewing proposed development plans, including the costs incurred for the services of any architects, engineers or other professional consultants retained by the ADC to assist it in the review process.

D. To obtain, and pay for, the services of architects, engineers or other professional consultants which the ADC deems necessary or appropriate to assist in the review process.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTY

Section 9.1 Annexation. At any time hereafter, upon the execution and recordation of an effective Declaration of Covenants, Conditions and Restrictions, Declarant may place any future Subdivisions of the Property under and within the purview of this Declaration, thereby subjecting said Subdivision to all covenants, conditions and restrictions herein contained. Upon the recordation of such a Declaration, all Common Area and Lots in said Subdivision shall be deemed to be Common Area and Lots hereunder, and the Owners of such Lots shall thereafter be Owners and Members of the Association for all purposes hereunder, in the same manner, and subject to the same benefits and obligations, as though said Lots were included in Brookwood Subdivision No. 1.

Section 9.2 Common Area. Upon annexation of any additional Subdivision pursuant to this Article VIII, Declarant shall deed and convey all Common Area within said Subdivision to the Association in the manner provided for in Article IV hereinabove.

Section 9.3 Notice. In the event the Declarant shall intend to annex property as provided in Section 9.1 above, written notice of such intent shall be given to the Association at least thirty (30) days prior to the recordation of the Declaration purporting to effectuate the annexation.

ARTICLE X

REVOCATION OR AMENDMENT

Section 10.1 Method of Revocation or Amendment. This Declaration may be amended or revoked, in part in whole, by an instrument duly adopted and executed by the record Owners entitled to vote not less than 75% of the total votes entitled to be cast by all Members of the Association on the effective date of the amendment or revocation, and recorded in the official records of Ada County, Idaho. Any such revocation or amendment duly adopted and executed shall be binding upon every Owner and Lot, whether the burdens thereon are increased or decreased by any such amendment or revocation, and whether or not the Owner consents thereto.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Compliance. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and all rules and regulations duly enacted by the Association. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association or any Owner.

Section 11.2 Mailing Address. Each Owner shall provide the Association with such Owner's mailing address, which address shall be used for the mailing or other service of any and all notices, assessments or communications from the Association. Any notice referred to in this section shall be deemed given by the Association when it has been deposited in the United States mail, postage prepaid, addressed to the Owner at the given address.

Section 11.3 Transfer of Rights. Any right or interest reserved hereby to the Declarant may be transferred or assigned by the Declarant to any person or entity.

Section 11.4 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

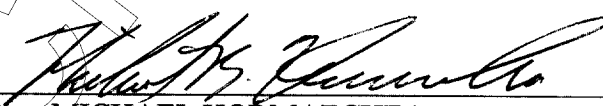
Section 11.5 Severability. If any of the provisions of this Declaration, or any clause, paragraph, sentence, phrase or word or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

Section 11.6 Construction by Declarant. Nothing in this Declaration or any action taken by the Association shall limit the right of the Declarant, or its successor, to complete construction of residences on any Lot in Brookwood or on the remainder of the Property, or to install or construct improvements to the Common Area provided they are completed in a manner consistent with the official plat for the Subdivision in which the same are located and all-related development plans and specifications approved by the City of Eagle.

Section 11.7 Prevailing Law. The provisions of this Declaration shall be construed and enforced pursuant to the laws of the State of Idaho, and all applicable statutes of the City of Eagle, Idaho.

This Declaration is executed this 22nd day of February, 2000.

"DECLARANT"
ARIES DEVELOPMENT, L.L.C.,
an Idaho limited liability company

By: 

MICHAEL HORMAECHEA
Managing Member

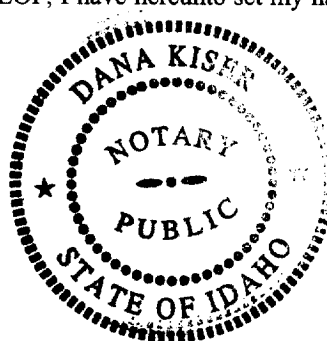
STATE OF IDAHO

)
ss.

County of Ada

On this 22nd day of February, 2000, before me, a Notary Public, in and for said County and State, personally appeared MICHAEL HORMAECHEA, known or identified to me to be the managing member of ARIES DEVELOPMENT, L.L.C., an Idaho limited liability company, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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




NOTARY PUBLIC FOR IDAHO
Residing at: Bowling Id
My commission expires: 1/2/04

rlw\realest\CCR Brookwood