

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

KNEELAND, KORB, COLLIER & LEGG  
Post Office Box 249  
Ketchum, ID 83340  
KKL&C File No. 6862-B

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BLAINE CO. REQUEST  
OF SUN VALLEY T

(Space above line for Recorder's Use) '98 OCT 21 PM 3 26

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS AND PARTY WALL AGREEMENT FOR FEES \$123.00  
CLERK

VALLEY RUN TOWNHOMES

THIS DECLARATION is made on the 17th day of July, 1998,  
by Ketchum West, L.L.C., an Idaho limited liability company,  
("Declarant").

RECITALS

A. Declarant is the owner of certain real property in Blaine County, Idaho, more particularly described in Exhibit A attached hereto and by this reference made a part hereof. Declarant has, or intends to, improve the real property by constructing townhome family dwellings in phases on the real property.

B. Declarant intends that all subplot owners of Valley Run Townhomes shall be subject to this Declaration and shall be members of the Association created hereby.

C. By this Declaration, Declarant intends to establish a plan of townhome ownership and to provide for the addition of future phases to the project.

NOW, THEREFORE, Declarant hereby declares that:

1. Declaration. This Declaration is hereby established upon Valley Run Townhomes in furtherance of a general plan for improvement and sale of townhome sublots within the property for the purpose of enhancing and perfecting the value of each townhome subplot therein, and for the benefit of each owner of a townhome subplot in Valley Run Townhomes.

(a) Townhome sublots within Valley Run Townhomes shall be held, conveyed, encumbered, leased, occupied or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any supplemental declaration.



(b) This Declaration and any supplemental declaration shall run with the real property and all townhome sublots located therein, and shall be binding upon and inure to the benefit of all parties having or hereafter acquiring any right, title or interest in Valley Run Townhomes or any portion thereof.

## 2. Addition of Future Townhome Sublots.

(a) Future Valley Run Townhome Sublots may be added in phases from the real property described in Exhibit A and as reserved on the Valley Run Townhomes Subdivision map and made subject to this Declaration at the time of written election of the Declarant made at any time, and from time to time, within ten (10) years following the recording of the plat for Valley Run Townhomes Subdivision with the Blaine County Recorder. Such election shall be made by the recording of a supplement to this Declaration (the "Supplement"). The Supplement shall describe the Valley Run Townhomes to be added, shall state that it is being effected pursuant to the terms of this Declaration for the purpose of adding the townhome sublots described in the Supplement to the Declaration. Any Supplement recorded in accordance with the terms of this section shall be conclusive in favor of all persons who relied on it in good faith. Upon recording the Supplement in accordance with the provisions of this Declaration, the townhome sublots described in the supplement shall be part of Valley Run Townhomes and subject to the provisions of this Declaration, and to the rights and powers of the Association and the Bylaws, and thereafter all of the owners of townhome sublots shall automatically be members of the Association, with voting rights commencing on the date regular assessments commence. Declarant, in such Supplement, shall expressly reserve for the benefit of all townhome sublots that may from time to time be covered by this Declaration, reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers, and all owners of townhome sublots, their guests, tenants and invitees, for sidewalks, walkways, vehicular access, and such other purposes reasonably necessary to the use and enjoyment of all townhome sublots.

(b) Declarant expressly reserves the development rights to own and construct future townhome sublots in phases on reserved areas as shown on the plat for Valley Run Townhomes.

(c) The respective utilities and landscaping shall be installed with each phase. The radiant heat and driveway shall be installed with Phase Four.

## 3. Definitions.



(a) Articles. The "Articles" means the Association's Articles of Incorporation and their amendments. A copy of the Articles is attached hereto as Exhibit B and made a part hereof.

(b) Association. The "Association" means the Valley Run Townhomes Owners Association, Inc., an Idaho nonprofit corporation.

(c) Association Rules. The "Association Rules" means the rules and regulations regulating the use and enjoyment of the common area adopted by the Board from time to time.

(d) Board. The "Board" means the Board of Directors of the Association.

(e) Bylaws. The "Bylaws" means the Association's Bylaws and their amendments. A copy of the Bylaws is attached hereto as Exhibit C and made a part hereof.

(f) Common Area. The "Common Area" means the entire project except all townhome sublots, as defined in this Declaration or as shown on the plat for Valley Run Townhomes. The common area shall be owned by the Association for the common use and enjoyment of the townhome subplot owners at the time of the conveyance of the first townhome subplot subject to reserved areas for future townhome sublots as shown on the plat for Valley Run Townhomes.

(g) Common Expenses. "Common Expenses" means all expenses incurred for the upkeep, maintenance, repair, replacement, management and operation of the common area and the exterior walls and roofs of the townhome units and landscaping on townhome sublots, including any reserve for maintenance and repairs, reinstatement, rebuilding and replacement of the common area, and the exterior walls and roofs of townhome sublots; the cost of the insurance permitted or required herein to be procured and maintained by the Association together with related expenses; the cost of landscaping, irrigation, janitorial and similar services for the common area; the cost of trash removal, cable TV, and snow removal; the cost of common area parking radiant heat and maintenance; wages; accounting and legal fees; management fees; and any other expenses and liabilities incurred by the Association for the benefit of the owners under or by reason of the Declaration. The Association shall provide exterior maintenance upon each townhome unit as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance or repair of a townhome unit or the improvements thereon is caused by the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the townhome subplot needing such maintenance or repair, the cost of



such exterior maintenance shall be added to and become part of the assessment to which such townhome subplot is subject.

(h) Declarant. The "Declarant" means Ketchum West, L.L.C., an Idaho limited liability company, its successors and assigns.

(i) Limited Common Area. "Limited Common Area" means that common area designated by the Association as provided herein or as shown on the plat for the exclusive use by owners of particular townhome sublots.

(j) Owner. An "Owner" means each person or entity holding a record ownership interest in a townhome subplot, including Declarant, and contract purchasers under recorded contracts.

(k) Party Wall. "Party Wall" shall mean the common wall which is built as part of the original construction of a townhome and placed on the boundary line between the sublots.

(l) Project. The "Project" means the real property as divided, or to be divided, into townhome sublots or reserved areas for future townhome sublots and common area owned by the Association, including all structures and improvements on it, all future structures and improvements, if any, and any additional real property annexed at this Declaration.

(m) Townhome Sublot Number. The "Townhome Sublot Number" shall mean the particular subplot designation on the plat of Valley Run Townhomes, and shall also be part of the sublots legal description and street address. The schedule of townhome subplot numbers is attached hereto as Exhibit D and made a part hereof.

(n) Townhome Sublot. A "Townhome Sublot" means an estate in real property with a fee interest in a townhome subplot shown and described on the plat for Valley Run Townhomes.

(o) Townhome Unit. A "Townhome Unit" means the family dwelling constructed on the Townhome Sublot.

#### 4. Property Rights and Easements.

(a) Ownership. Ownership of each townhome subplot within the project shall include a membership in the Association, and any non-exclusive easement appurtenant to the townhome subplot over the common area as described in this Declaration.

(b) Utility Easements. All townhome subplot owners shall have mutual reciprocal easements for existing water, cable TV, sewage, telephone, natural gas, mechanical room as designated on the plat and electrical lines over, under and across their townhome



sublots for the repair, maintenance and replacement thereof subject to the restoration of the easement premises for any damage resulting from such repair or replacement.

(c) Non-Exclusive Easements. Every townhome subplot owner shall have a non-exclusive easement of use and enjoyment in, to and throughout the common area and for ingress, egress and support over and through the common area. Each such non-exclusive easement shall be appurtenant to and pass with title to every townhome subplot, subject to the following rights and restrictions.

(1) The right of the Association to adopt and enforce Association rules.

(2) The right of Declarant to enter on the project and to make repairs and remedy construction defects.

(3) The right of Declarant and its agents and contractors to enter on the project and to construct future townhome sublots on reserved areas as shown on the plat for Valley Run Townhomes Subdivision.

(d) Access Easement. All townhome subplot owners shall have access over and across townhome sublots as reflected on the subdivision plat for Valley Run Townhomes, City of Ketchum, Blaine County, Idaho.

(e) Encroachments. If any portion of the common area encroaches on any subplot or unit, or if any portion of a subplot or unit encroaches on the common area, or if any portion of a subplot or unit encroaches on any other subplot or unit, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it so long as it remains and all sublots and units and the common area are made subject to such easements.

(f) Easements by Association. The Declarant and the Association shall have the authority and power to grant and convey to any third party easements and rights of way in, on, over or under the common area. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment by any owner of the owner's subplot or unit.

## 5. Use Restrictions.

(a) Residential Use. The townhome sublots are restricted to residential use.

(b) Maintenance. All owners of a townhome subplot shall be responsible for maintaining their subplot in a clean, sanitary, workable and attractive condition.



(c) Offensive Conduct. No noxious or offensive activities shall be conducted within the project. Nothing shall be done on or within the project that may be or may become an annoyance or nuisance to the residents of the project, or that in any way interferes with the quiet enjoyment of the occupants of sublots.

(d) Parking Restrictions. Unless otherwise permitted by the Board, no automobile shall be parked or left within the project other than within a townhome subplot garage or assigned parking space which shall be as near and convenient to said townhome subplot as reasonably possible, together with the right of ingress and egress in and upon said parking area. No boat, trailer, recreation vehicle, or camper shall be parked or left overnight within the project. The Association may require removal of any inoperative vehicle, any unsightly vehicle, or any improperly parked or stored vehicle, and any other item or equipment improperly parked or stored on either the common area or the driveways and parking areas located and situated in Valley Run Townhomes. If the same are not removed after written notice, the Association may cause removal at the cost of the owner thereof.

(e) External Fixtures. No television or radio poles, satellite dishes, antenna, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Board, shall be constructed, erected or maintained on or within the project.

(f) Trash. Trash, garbage or other waste shall be kept only in sanitary containers. No owner shall permit or cause any trash or refuse to be kept on any portion of the project other than receptacles customarily used for it, which shall be located only in places specifically designated for such refuse except on the scheduled day for trash pickup.

(g) Indemnification. Each owner shall be liable to the remaining owners for any damage to the common area, exterior walls and roof that may be sustained by reason of the negligence of that owner, their tenants, guests or invitees, but only to the extent that any such damage is not covered by insurance. Owners, by acceptance of their deeds, agree for themselves and their tenants, guests and invitees, to indemnify each and every other owner, and to hold them harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the subplot of that particular owner, unless the injury or damage occurred by reason of the negligence of any other owner or person temporarily visiting in said subplot or is fully covered by insurance.



(h) Taxes. All owners shall be obligated to pay any taxes or assessments assessed by the county assessor of Blaine County against their townhome subplot and personal property.

(i) Interior. All owners shall keep the interior of their townhome unit in a clean, sanitary and attractive condition and good state of repair.

(j) Enforcement. The failure of any owner to comply with any provision of this Declaration, or the Articles or Bylaws, shall give rise to a cause of action in the Association and any aggrieved owner for the recovery of damages or for injunctive relief, or both.

(k) Pets. Sublot owners may have two (2) disciplined household pets for each townhome subplot, subject to rules and regulations adopted by the Board of Directors of the Association. Such pets shall not be permitted to run at large on the common area, and the subplot owner shall be required to clean up after their pet.

(l) Garages. Garages shall be used for parking vehicles, storage and workshop area only and shall not be converted for living or recreational activities or used for business purposes.

(m) Decks. Decks and balconies shall be kept in a clean, sanitary and attractive condition and shall be subject to Association rules and regulations.

#### 6. Valley Run Townhomes Owners Association.

(a) Every townhome subplot owner shall be entitled and required to be a member of the Association. If title to a subplot is held by more than one (1) person, the membership related to that subplot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which the title to the townhome subplot is held. An owner shall be entitled to one (1) membership for each subplot owned. No person or entity other than an owner may be a member of the Association, and memberships of the Association may not be transferred except in connection with the transfer of a townhome subplot.

(b) Powers. The Association shall have all the powers of a non-profit corporation organized under the general nonprofit corporation law of Idaho, subject only such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration.

(c) Voting Rights. The Association shall have two (2) classes of voting membership: Class A: Class A members are all



owners, with the exception of Declarant; provided, however, that Declarant shall become a Class A member when its Class B membership ceases as provided hereinafter. Each owner of a townhome subplot is a Class A member entitled to cast one (1) vote for each townhome subplot owned in Valley Run Townhomes. Class B: Class B members shall be the Declarant, who shall be entitled to fifty-one percent (51%) of the votes of the Association during its ownership of any townhome subplot and construction of townhome sublots and future townhome sublots on reserved areas as shown on the plat for Valley Run Townhomes.

(d) Common Area Conveyance. Upon recording this Declaration with the Blaine County Recorder, Declarant shall convey the common area as shown on the plat for Valley Run Townhomes by grant deed to the Association subject to Declarants development rights to construct and own future townhome sublots on reserved areas as shown on the plat for Valley Run Townhomes Subdivision. The common area shall be unencumbered except for easements, restriction and reservations as provided in this Declaration and shown on the plat for Valley Run Townhomes.

(e) Control. The Association shall be responsible for the management and control of the common area and all improvements thereon, the landscaping on sublots, the exterior unit walls and roofs, decks and balconies, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall maintain in a proper, first class manner, all landscaping vegetation constituting part of the common area and sublots.

(f) Limited Common Area. The Declarant and the Association shall have the right to designate parts of the common area as limited common area for the exclusive use by Owners of particular townhome sublots subject to rules and conditions adopted by the Association in its discretion. Improvements to the limited common area are subject to the approval of the Association. The Owners shall keep the limited common area designated for use in connection with their townhome subplot in a clean and attractive condition. The owners shall be responsible to maintain and repair the limited common area together with the improvements, landscaping and vegetation thereon. Common area parking spaces as approved by the City of Ketchum are excluded.

(g) Easements. The Declarant and the Association shall have the right to grant easements for utility purposes over, upon and across, under or through any portion of the common area and each subplot owner hereby irrevocably appoints the Declarant and the Association as attorney in fact for such purpose.

(h) Management. The Association may obtain and pay for the services of any person or entity to manage its affairs or any



part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the project.

(i) 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. The Association may suspend any subplot owner's voting rights in the Association during any period or periods during which such owner fails to comply with such rules and regulations or any other obligations of such owner under this Declaration, provided, however, such suspension may not exceed sixty (60) days for any one infraction. The Association may also take judicial action against any owner to enforce compliance with such rules, regulations or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law. In addition, the Association can assess monetary penalties not to exceed \$100 for any one violation against any Owner or any other person entitled to exercise such rights and privileges for any violation of this Declaration or the Articles, Bylaws, Association Rules, or Board Resolutions. Each suspended or fined Owner or other person can appeal such action by filing written notice of their intention to appeal with the Board. The action imposing such fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by the Board at a regular or special meeting at which all Board members are present. The Owner or other person can appear, be represented by counsel and be heard at the meeting.

(j) Implication. The Association may exercise any other right or privilege given to it 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 it herein or reasonably necessary to effectuate any such right or privilege.

(k) Exterior and Roof. The repair and maintenance of the exterior and roof of the townhome units shall be the responsibility and sole obligation of the Association and subject to assessment.

(l) Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, if such person or entity has, on the basis of such information as may be possessed by them, acted in good faith without willful or intentional misconduct.



(m) Common Area Interest. Each townhome subplot owner shall have an interest in the common area for assessment and other purposes herein expressed as a percentage which shall be determined by dividing the number one (1) by the total number of townhome sublots as composed from time to time. The common area interest for townhome subplot owners in Valley Run Townhomes is reflected on Exhibit "D" attached hereto.

7. Architectural Control.

(a) Architectural Committee. The architectural committee shall be the Board of Directors of Valley Run Townhomes, as constituted from time to time. The Board shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the property within Valley Run Townhomes after development and completion by the Declarant, conform and harmonize with the existing structures as to external design, materials, color and topography.

(b) Approval. After completion of the Valley Run Townhomes by the Declarant, no improvements of any kind or any nature shall ever be altered, constructed, erected or permitted, nor shall any excavating, clearing or landscaping be done on any property within the project unless the complete architectural plans and specifications for such alteration, construction or erection and landscaping are approved by the Board prior to the commencement of such work. The Board shall consider the materials to be used on the exterior features of said proposed improvements, including the exterior colors, harmony of external design with existing structures within Valley Run Townhomes. Complete architectural plans and specifications for proposed improvements shall be submitted to the Board. In the event the Board fails to take any action within ninety (90) days after submission of the architectural plans and specifications, then all of such submitted architectural plans and specifications shall be deemed to be approved subject to this Declaration and supplemental declarations. In the event the plans are rejected by the Board, the party submitting such plans may appeal the matter at the next annual or special meeting of the members of the Association, where an affirmative vote of at least three-quarters (3/4) of the members at the meeting shall be required to change the decision of the Board and approve the plans.

8. Assessments.

(a) Owners Covenant to Pay. Each owner of any townhome subplot, by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with other townhome subplot owners in Valley Run Townhomes and with the Association to pay to the Association periodic assessments made by the Association for maintenance of the common area, landscaping



on sublots, exteriors of the townhome sublots and special assessments for capital improvements and other matters. The Declarant shall not be assessed periodic or special assessments on sublots under construction until such sublots are completed and occupied.

(b) Expenses. The total periodic assessment against all townhome sublots shall be based upon advanced estimates of cash requirements by the Association to provide for the payment of all estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the common area, which estimates may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, landscaping and care of grounds including sublots, repairs and maintenance, wages for Association employees, legal and accounting fees, garbage removal, common area parking radiant heat, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus and/or sinking funds, and any other expenses and liabilities which may be incurred by the Association for the benefit of the owners under or by reason of this Declaration.

(c) Payment. The Association shall make periodic assessments, which assessments shall be annually, quarterly, or monthly, as the Association shall from time to time determine. Notice for payment of assessments shall be given to each owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after said written notice has been given. Each periodic assessment shall bear interest at the Idaho judgment rate of interest or such other interest rate as the Board may determine by resolution from time to time, after the assessment becomes due and payable, if not paid within thirty (30) days after such date. Failure of the Association to give notice of the assessment shall not affect the liability of the owner of any subplot for such assessment, but the date when payment shall become due in such case shall be deferred to a date fifteen (15) days after such notice shall have been given.

9. Special Assessments. In addition to the periodic assessments the Association may levy at any time a special assessment payable over such a period as the Association may determine, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the common area or subplot landscaping or any part thereof, or exterior walls or roof of the townhome sublots, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant hereto shall be assessed to owners in the same manner as provided in paragraph 8



(Assessments) hereinabove. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the owners, and no payment shall be due less than fifteen (15) days after such notice shall have been given. A special assessment for capital improvements shall have the assent of three-quarters (3/4) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Both annual and special assessments shall be fixed at a uniform rate for all townhome sublots.

10. Lien for Assessments. All sums assessed to any townhome subplot, together with interest thereon as provided herein, shall automatically create a lien on such subplot in favor of the Association. Such a lien shall be superior to all other liens and encumbrances on such subplot except only for:

(a) Valid tax and special assessment liens on the townhome subplot in favor of any governmental assessing authority;

(b) A lien for all sums unpaid on the first deed of trust or mortgage or on any deed of trust or mortgage to Declarant, duly recorded in Blaine County, Idaho, including all unpaid obligatory advances to be made pursuant to such deed of trust and secured by the lien thereof in accordance with the terms of such instrument; and

(c) Labor and materialmen's liens to the extent required by law.

To foreclose a lien for sums assessed pursuant to this article, the Association may prepare a written notice of assessment, the date due, the amount remaining unpaid, the name of the record owner of the subplot and a description of the subplot. Such a notice shall be signed by the Association or its agent and may be recorded in the office of the county recorder. No notice of assessment shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by the sale of the townhome subplot by the Association after failure of the owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner provided by law in Idaho for the exercise of power of sale in deeds of trust or in any other manner permitted by law. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment and all reasonable attorney's 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 townhome subplot 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, hold,



convey, lease, rent, encumber, use and otherwise deal with the same as the owner thereof.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded with the county recorder upon payment of all sums secured by a lien which has been made subject of the recorded notice of assessment.

Unless sooner satisfied or released or the enforcement thereof initiated as provided in this section, any notice of assessment created pursuant to this section shall expire and be of no further force and effect, one (1) year from the date of recording of said notice of assessment; provided, however that said one (1) year period may be extended by the Association for a period not to exceed one (1) additional year by a written extension signed by the Association or its agent and recorded in the office of the county recorder, prior to the expiration of the said first one (1) year period.

The amount of any periodic or special assessment against any townhome subplot shall be the personal obligation of the owner thereof to the Association. Suit to recover a money judgment for such personal obligation may be maintainable by the Association without foreclosure or waiver of the lien securing the same.

Upon payment of a reasonable fee, as the Board may determine by resolution from time to time, and upon written request of any owner or any deed of trust beneficiary or mortgage holder or prospective purchaser, the Association shall issue a written statement setting forth the amount of unpaid assessments, the assessment amount and the date that such assessment becomes or became due, credit for advance payments or prepaid items, which statement shall be conclusive upon the Association in favor of the persons who relay thereon in good faith.

Subject to the preceding paragraph, a purchaser of a townhome subplot shall be jointly and severally liable with the seller for all unpaid assessments against the townhome subplot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

11. Amendment.

(a) Before Close of First Sale. Before the close of the first sale of a townhome subplot in the project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any mortgagee of record of an instrument amending or revoking the Declaration.



(b) After Close of First Sale. After the close of the first sale of a townhome subplot in the project to a purchaser other than Declarant, this Declaration, the Articles or the Bylaws, may be amended or revoked in any respect by a vote or written consent of the holders of not less than a majority of the voting rights. Also, if the consent or approval of a mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

(c) Reliance. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## 12. Insurance.

(a) Types of Insurance. The Association shall obtain and keep in full force and effect at all times, casualty insurance coverage provided by companies duly authorized to do business in Idaho on all townhome sublots. The provisions of this article shall not be construed to limit the power or authority of townhome subplot owners to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as a townhome subplot owner may deem appropriate from time to time.

(1) Casualty Insurance. The Association shall obtain insurance on all townhome sublots in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire and extended coverage, vandalism, and malicious mischief. No person other than the Association or the owner shall have the right to place hazard or liability insurance for that townhome subplot.

(2) Public Liability and Property Damage Insurance. The Association shall purchase broad form comprehensive liability coverage with respect to the common area in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of project.

(3) Workman's Compensation and Employer's Liability Insurance. The Association shall purchase workman's compensation and employer's liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.



(4) Fidelity Insurance. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(5) Other. The Association may obtain insurance against such other risk, of a similar or dissimilar nature, as it shall deem appropriate with respect to the project, including any personal property of the Association located thereon.

(b) Optional Insurance. The Association may in its discretion obtain casualty and public liability insurance coverage, in amounts it may select, with respect to an owner's activities within each individual townhome subplot and for activities of the owner, not acting by the association, with respect to the common area.

(c) Form. Casualty insurance shall be carried in a form or forms naming the townhome subplot owner as insured, which policy or policies shall specify the interest of each owner, (owner's name, subplot number, the pertinent undivided interest in the common area), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds for the owners as their interest may appear, and for the respective first mortgagees which from time to time shall give notice to the Association of such first mortgagees, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days prior written notice is first given to each owner, to each first mortgagee, and to the Association. The Association shall furnish to each townhome owner, and to the Declarant, a true copy of such policy, together with a certificate identifying the interest of the owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in the respect to the interest of any particular owner guilty of breach of warranty, act, omission, negligence or guilty of non-compliance with any provision of such policy, including payment of the insurance premiums applicable to that owner's interest or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy is to the interest of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance may name the Association, the insured, as trustee for the owners, as their interest shall appear, and shall protect each owner against



liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the project.

(d) Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this article. The Association shall apportion the proceeds to the portions of the project, including townhome owners of sublots which have been damaged and shall determine the amount of the proceeds attributable to damage to the common area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose.

(e) Owner's Own Insurance. Notwithstanding the provisions herein, each owner may obtain insurance at his own expense providing coverage upon their townhome subplot, their personal property, (contents insurance) for their personal liability, and covering such other risks as they may deem appropriate, but each policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under this section. All such insurance of the owner's subplot shall waive the insurance company's right of subrogation against the Association, and other owners, and the servants, agents, guests of any of them, if such insurance can be obtained with a waiver of such rights of subrogation.

13. Party Walls. Valley Run Townhomes are constructed with at least one (1) outside wall separated by a one inch (1") air space, with another outside wall of an adjoining townhome subplot. These walls and roof structures situated on subplot lot lines are hereby declared to be party walls between adjoining townhome sublots, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) Maintenance. The cost of maintaining each party wall shall be borne equally by the owners on either side of said wall.

(b) Damage to Party Wall. In the event of damage or destruction of said party wall from any cause, other than the negligence of either townhome subplot owner or their tenants or guests, then the townhome subplot owners shall, at their joint expense, repair and rebuild said wall, and each party shall have the right to the full use of said wall so repaired or rebuilt. If either party's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay their share or all of such costs in the case of negligence, the other party may have the wall repaired and restored and shall be entitled to have a mechanic's lien on the townhome subplot of the



party so failing to pay for the amount of such defaulting party's share of the repair or replacement costs.

(c) Repair. Either party or the Association shall have the right to break through the party wall for the purpose of repairing or restoring utilities within the wall, subject to the obligation to restore the wall to its previous structural and aesthetic condition, at their own expense and the payment to the adjoining owner of any damages caused thereby.

(d) Easement. Neither party shall alter or change said party walls in any manner, interior decoration excepted, and said party walls shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that party of the premises of the other on which said party wall is located for party wall purposes.

(e) Right to Contribution. The right of any owner to contribution from any other owner under this Paragraph 14 shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) Arbitration. In case of a dispute or disagreement regarding the party wall, that cannot be resolved by the parties, the disputed matter or matters shall be referred to three (3) disinterested parties, one (1) chosen by each side, and those two (2) to choose another. The decision in writing signed by any two (2) shall be final.

14. Term of Declaration. This Declaration shall run with the land and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all covenants, conditions, restrictions and other provisions shall be automatically extended for successive ten (10) year periods, unless this Declaration is revoked by an instrument executed by owners and their respective institutional first mortgagees of not less than seventy-five percent (75%) interest in the common area in the project and recorded in the office of the Blaine County Recorder.

#### 15. Destruction of Improvements.

(a) Destruction; Proceeds Exceed Eighty-five Percent (85%) of Reconstruction Costs. If there is a total or partial destruction of the improvements in the project, and if the available proceeds of the insurance carried are sufficient to cover more than eighty-five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, owners then holding at least fifty-one percent (51%) of the total voting power of each class of owners present and entitled to vote, in person or



by proxy, at the duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the office of the Blaine County Recorder not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the owners to rebuild.

(b) Destruction; proceeds less than Eighty-five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of destruction, owners then holding at least seventy-five percent (75%) of the total voting power of each class of owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the office of the Blaine County Recorder not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention of the owners to rebuild.

(c) Rebuilding Procedures. If the owners determine to rebuild, owners shall be obligated to contribute their proportionate share of the cost of reconstruction or restoration over and above the available insurance proceeds. If any owner fails or refuses to pay their proportionate share, the Board may levy a special assessment against the townhome subplot of such owner which may be enforced under the lien provisions contained in this Declaration. If any owner disputes the amount of their proportionate liability under this section, such owner may contest the amount of their liability by submitting to the Board within ten (10) days after notice to the owner of their share of the liability written objections supported by cost estimates or other information that the owner deems to be material and may request a hearing before the Board at which he may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all owners, including any recommendation that the adjustments be made with respect to the liability of any owners. If such adjustments are recommended, the notice shall schedule a special meeting of owners for the purpose of acting upon the Board's recommendation, including making further adjustments, if deemed by the owners to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of each class of owners. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all owners, including any owner filing objections.



(d) Rebuilding Contract. If the owners determine to rebuild, the Board or its authorized representative shall obtain bids from at least two (2) reputable contractors and shall award the repair and reconstruction work to the lowest responsible bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Association as trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

(e) Rebuilding Not Authorized. If the owners determine not to rebuild, then, subject to the rights of mortgagees set forth in this Declaration, any insurance proceeds then available for such rebuilding shall be distributed to the owners in proportion to their interest in the project. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to execute, acknowledge and record in the office of the Blaine County Recorder, a certificate declaring the intention of the owners not to rebuild.

(f) Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct improvements, without the consent of owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000.00). The Board is expressly empowered to levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable.

#### 16. Condemnation.

(a) Sale by Unanimous Consent. If an action for condemnation of all or a portion of the project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the owners and after written notice to all mortgagees, the project, or a portion of it may be sold by the Board acting as irrevocable attorney in fact of all of the owners for a price deemed fair and equitable by the Board but in no event less than the aggregate unpaid balance of all mortgages encumbering townhome sublots in the project if the project is sold.

(b) Distribution of Proceeds of Sale. On a sale occurring under this Article, the proceeds shall be distributed to the owner and the mortgagees of each townhome subplot as their respective interests appear.



(c) Distribution of Condemnation Award. If the project, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the owners and their respective mortgagees.

(d) Partial Taking. In the event that less than the entire project is taken or condemned, or sold or otherwise disposed in lieu of or in avoidance thereof, the townhome subplot ownership hereunder shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined by the Association.

17. Protection of Mortgagees.

(a) Mortgage Permitted. Owners may encumber their townhome sublots with a mortgage.

(b) Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the project, or any townhome subplot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien. If any townhome subplot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the mortgage. On foreclosure of the mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure purchaser taking title to the installments, that has accrued up to the time of the foreclosure sale. On taking title to the townhome subplot the foreclosure purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure purchaser acquired title to the townhome subplot. The subsequently levied assessments provided all owners, including the foreclosure purchaser and their successors and assigns are required to pay their proportionate share as provided in this section.

(c) Amendment. The prior written consent of seventy-five percent (75%) of the holders of all first mortgages (based upon one vote for each mortgage held) shall be required for any material amendment to this Declaration, to the Articles or to the By-Laws. As used in this paragraph, the term "any material amendment" is defined to mean amendments to provisions of this Declaration, to the Articles or to the By-Laws governing the following subjects:

- (1) The purpose for which the project may be used;



(2) Voting;

(3) Assessments, collection of assessments, creating and subordination of assessment liens;

(4) Any provision, which by its terms is specifically for the benefit of first mortgagees, or specifically confers rights on the first mortgagees.

(d) Right to Examine Books and Records. First mortgagees can examine the books and records of the Association or the townhome project and can require the submission of financial data concerning the Association or the townhome project, including annual audit reports and operating statements as furnished to the owners.

(e) Distribution of Insurance and Condemnation Proceeds. No owner, or any other party, shall have priority over any right of first mortgagees of townhome sublots pursuant to their mortgages in case of a distribution to owners of insurance proceeds or condemnation awards for losses to or a taking of sublots or common area. Any provision to the contrary in this Declaration or in the By-Laws or other documents relating to the project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected first mortgagees naming the mortgagees, as their interests may appear.

(f) Foreclosure. If any townhome subplot is encumbered by a mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of mortgage. On foreclosure of the mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure purchaser taking title to the townhome subplot free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the townhome subplot, the foreclosure purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure purchaser acquired title to the townhome subplot. The subsequently levied assessments or other charges may include previously unpaid assessments provided all owners, including the foreclosure purchaser, and his successors and assigns are required to pay their proportionate share as provided in this paragraph.

#### 18. General Provisions.



(a) Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

(b) Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions or portions of it shall not invalidate any other provisions.

(c) Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

(d) Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any owner, any member of the Board, the manager, or the Association.

(e) Access to Books. Owners may, at any reasonable time and upon reasonable notice to the Board or manager at their own expense, cause an audit or inspection to be made of the books and financial records of the Association.

(f) Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

(g) Notification of Sale of Townhome Sublot. Concurrently with the consummation of the sale of any townhome sublot under circumstances whereby the transferee becomes an owner thereof, or within ten (10) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee, the mortgagee and the transferor, the common address of the townhome sublot purchased by the transferee, the transferee's and the mortgagee's mailing address, the date of sale, the amount of such mortgages and the recording information pertinent to identify the same. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Board has received no notice of transfer as above provided, by certified mail, return receipt request, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being



sent by telegram or upon personal delivery to any occupant of a townhome subplot over the age of eighteen (18) years.

(h) Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

(i) Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

(j) Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any townhome subplot.

(k) Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the owners.

IN WITNESS WHEREOF, the Declarant has executed this instrument on this 17<sup>th</sup> day of July, 1998.

DECLARANT:

KETCHUM WEST, L.L.C.

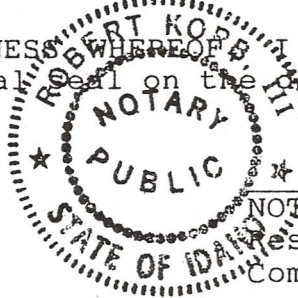
*Witness in presence of*  
by Robert L. Van Fossan, Jr.  
Robert L Van Fossan, Jr.  
Its Managing Member



STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this 17<sup>th</sup> day of July, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert L. Van Fossan, Jr., and known to me to be the person whose name is subscribed to the within instrument as managing member of Ketchum West, L.L.C. and acknowledged to me that he subscribed the same on behalf of said company.

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



Robert Korb  
NOTARY PUBLIC for Idaho  
residing at Ketchum  
Commission Expires 4-16-2003

(seal)



EXHIBIT A

PARCEL 1:

TOWNSHIP 4 NORTH, RANGE 17 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO.

SECTION 13: A portion of Government Lot 3 of said Section more particularly described as follows:

BEGINNING at the Southwest corner of Government Lot 3 marked with a Brass Cap; thence South  $89^{\circ}12'12''$  East, 422.30 feet along the Southerly boundary of said Government Lot 3 to the TRUE POINT OF BEGINNING; thence North  $00^{\circ}53'49''$  West, 226.79 feet along the Easterly boundary of "Bird Drive" to the Southwesterly boundary of the Corporate Limit of the Village of Ketchum; thence South  $44^{\circ}41'47''$  East, 183.19 feet along said Corporate Limit to the Westerly boundary of the U.P.R.R. Railroad right-of-way; thence Southeasterly 102.30 feet along the Arc of a Curve left on said Railroad right-of-way having a radius of 5779.65 feet, a delta of  $01^{\circ}00'51''$  left and a chord bearing South  $15^{\circ}19'11''$  East 102.29 feet to the Southerly boundary of Government Lot 3; thence North  $89^{\circ}12'12''$  West, 152.34 feet along the Southerly boundary of Government Lot 3 to the TRUE POINT OF BEGINNING.

PARCEL II:

TOWNSHIP 4 NORTH, RANGE 17 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO.

SECTION 13: BEGINNING at the Southwest corner for Government Lot 3 marked with a Brass Cap; thence South  $89^{\circ}12'12''$  East, 574.64 feet along the Southerly boundary of said Government Lot 3 to the TRUE POINT OF BEGINNING: thence South  $89^{\circ}12'12''$  East, 36.60 feet along the Southerly boundary of said Government Lot 3 to a point 15.00 feet radial and Westerly of the center of the U.P.R.R. right-of-way and known as the Westerly boundary of a "Greenbelt Bike Path"; thence Northwesterly 50.58 feet along the Arc of a Curve right having a radius of 5744.65 feet and a delta of  $00^{\circ}30'15''$  right and a chord bearing North  $15^{\circ}40'53''$  West, 50.56 feet to the Southwesterly Corporate Limit of the Village of Ketchum; thence North  $44^{\circ}41'47''$  West, 71.03 feet along said corporate limit to the Westerly boundary of the U.P.R.R. right-of-way; thence Southeasterly 102.30 feet along the Arc of a Curve left on said Railroad right-of-way having a radius of 5779.65 feet, a delta of  $01^{\circ}00'51''$  left and a chord bearing South  $15^{\circ}19'11''$  East, 102.29 feet to the TRUE POINT OF BEGINNING.

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS



FILED

EXHIBIT B

58 MAR 30 AM 10:25

ARTICLES OF INCORPORATION

OF

SECRETARY OF STATE  
STATE OF IDAHO

VALLEY RUN TOWNHOMES OWNERS ASSOCIATION, INC.

IDAHO SECRETARY OF STATE

03/30/1998 09:00

CK: 7822 CT: 2204 BH: 95726

1 30.00 = 30.00 INC NONP

C 123488

The undersigned, acting as incorporator of a corporation under the Idaho Nonprofit Corporation Act, adopts the following articles of Incorporation.

ARTICLE I

The name of the corporation is Valley Run Townhomes Owners Association, Inc., hereinafter called "Association".

ARTICLE II

The initial location and principal office of the Association is Kneeland Building, Suite 103, 128 Saddle Road, Ketchum, Idaho 83340, and the post office address is P.O. Box 249, Ketchum, Idaho 83340. The registered agent of the Association is Robert Korb.

ARTICLE III

The incorporator and his address are as follows:

Robert L. Van Fossan, Jr., Walnut Grove Farm, 4240 Claylands Road, Trappe, Maryland 21673.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of the exterior and roofs of townhouse units and common area within that certain tract of property known as



Valley Run Townhomes, City of Ketchum, Blaine County, Idaho, and to promote the health, safety and welfare of the occupants within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for the purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions of Valley Run Townhomes, and any supplemental Declaration, hereinafter called the "Declaration", applicable to the property and recorded or to be recorded in the Office of the Blaine County Recorder and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own, held, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;



(d) Borrow money and with the assent of two-thirds (2/3) of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by three-fourths (3/4) of the members agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional property and common area; and

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-profit Corporation Law of the State of Idaho by law may now or hereafter have or exercise.

Under no circumstances shall the income of the Association be distributed to the members, directors and officers. The assets of the Association after all creditors have been paid shall be distributed prorata to its members on dissolution.

#### ARTICLE V

#### MEMBERSHIP

Every person or entity who is a record owner of a fee interest in any townhome subplot or unit which is subject by the Declaration to assessment by the Association, including contract sellers who



retain fee title, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any townhome subplot or unit which is subject to assessment by the Association.

#### ARTICLE VI

##### VOTING RIGHTS

The members of the Association shall have the voting rights as set forth in the Bylaws of the Association.

#### ARTICLE VII

##### BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of three (3) Directors. The number of Directors may be changed by amendment of the Bylaws of the Association. The Bylaws may be changed by amendment to provide that the Directors must be members of the Association.

The initial Directors of the Association and their addresses are as follows: Robert L. Van Fossan, Jr., Walnut Grove Farm, 4240 Claylands Road, Trappe, Maryland, 21673; Joan Cameron, Post Office Box 665, Sun Valley, Idaho 83353; and Richard Schaefer, Post Office Box 665, Sun Valley, Idaho 83353

#### ARTICLE VIII

##### DISSOLUTION

The Association may be dissolved as provided by law.



ARTICLE IX

DURATION

The Association shall exist perpetually.

ARTICLE X

AMENDMENTS

Amendments of these Articles shall require the assent of two-thirds (2/3) of the Association members.

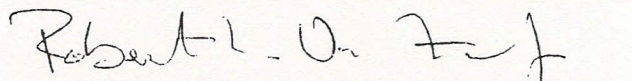
ARTICLE XI

LIABILITY

The personal liability of a director to the Association or its members for monetary damages for breach of fiduciary duty as a director is eliminated except as follows:

1. For any breach of the director's duty of loyalty to the Association or its members.
2. From acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.
3. Provided for under Section 30-1-48, Idaho Code, as may be amended or renumbered from time to time.
4. For any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Idaho, the undersigned, constituting the incorporator of this Association, has executed these Articles of Incorporation this 26<sup>th</sup> day of March, 1998.

  
Robert L. Van Fossan, Jr.



ACKNOWLEDGEMENT

STATE OF IDAHO                                 )  
  ) ss.  
County of Blaine                     )

On this 26<sup>th</sup> day of March, 1998, before me,  
a Notary Public in and for said State, personally appeared Robert  
L. Van Fossan, known to me to be the person whose name is  
subscribed to the within instrument, and acknowledged to me that he  
executed the same.

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

Carol Monteverde  
Notary Public for ID(seal)  
Residence: Ketchum Idaho  
Commission expires: 83340

condowk\valleyrun.art



EXHIBIT C  
BYLAWS  
OF  
VALLEY RUN TOWNHOMES OWNER ASSOCIATION  
IDAHO NONPROFIT CORPORATION ACT

ARTICLE I - OFFICES

The principal office of the association in the State of Idaho shall be located in the City of Ketchum, County of Blaine. The association may have such other offices, either within or without the state of incorporation as the board of directors may designate or as the business of the association may from time to time require.

The registered office of the association required by the Idaho Nonprofit Corporation Act to be maintained in the State of Idaho may be, but need not be, identical with the principal office in the State of Idaho, and the address of the registered office may be changed from time to time by the board of directors.

ARTICLE II - MEMBERS

1. ANNUAL MEETING.

The annual meeting of the members shall be held on the first day of March in each year, beginning with the year 2000 at the hour of 4:00 p.m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the date fixed for the annual meeting shall be a legal holiday such meeting shall be held on the next succeeding business day.

2. SPECIAL MEETINGS.

Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president or by the directors, and shall be called by the president at the request of the members of not less than twenty five percent (25%) of all the outstanding membership interests of the association entitled to vote at the meeting.

3. PLACE OF MEETING.

The directors may designate any place, either within or without the state unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the directors. A waiver of notice signed by all members



entitled to vote at a meeting may designate any place either within or without the state unless otherwise prescribed by statute, as the place for holding such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the association.

4. NOTICE OF MEETING.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than fourteen (14) nor more than twenty-eight (28) days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at the member's address as it appears on the membership books of the association, with postage thereon prepaid.

5. QUORUM.

At any meeting of members, members holding one-fourth (1/4) of the outstanding memberships of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of members. If less than said number of the outstanding members are represented at a meeting, a majority of the memberships so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

6. PROXIES.

At all meetings of members, a member may vote by proxy executed in writing by the member or by the member's duly authorized attorney in fact. Such proxy shall be filed with the secretary of the association before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. Each proxy shall be revocable at the pleasure of the member who executed it.

7. VOTING.

Class A. Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one (1) vote for each townhouse unit owned. When more than one (1) person holds an interest in any townhouse unit, all such persons shall be members. The vote for such townhouse unit shall be exercised as they among



themselves determine, but in no event shall more than one (1) vote be cast with respect to any townhouse unit.

Class B. Class B member(s) shall be the Declarant and shall be entitled to 51% of the votes of the Association during its ownership of any townhome subplot, and during construction of townhouse units and future townhouse units on reserved areas as shown on the plat for Valley Run Townhomes. The Class B membership in any event shall terminate twenty (20) years from the date of completion of the first phase.

8. ORDER OF BUSINESS.

The order of business at all meetings of the members shall be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

9. INFORMAL ACTION BY MEMBERS.

Unless otherwise provided by law, any action required to be taken at a meeting of the members, or any other action which may be taken at a meeting of the members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

10. CUMULATIVE VOTING.

At each election for directors every member entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the member for as many persons as there are directors to be elected, and for whose election the member has a right to vote, or to cumulate their votes by giving one candidate as many votes as the number of such directors multiplied by the number of their shares shall equal, or by distributing such votes on the same principal among any number of such candidates.



### ARTICLE III - BOARD OF DIRECTORS

#### 1. GENERAL POWERS.

The business and affairs of the association shall be managed by its board of directors. The directors shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the association, as they may deem proper, not inconsistent with these bylaws and the laws of this state.

#### 2. NUMBER, TENURE AND QUALIFICATIONS.

The number of directors of the association shall be three (3). Directors shall hold office until the next annual meeting of members and until the member's successors shall have been elected and qualified.

#### 3. REGULAR MEETINGS.

A regular meeting of the directors shall be held without other notice than this bylaw immediately after and at the same place as the annual meeting of members. The directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

#### 4. SPECIAL MEETINGS.

Special meetings of the directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the directors may fix the place for holding any special meeting of the directors called by them.

#### 5. NOTICE.

Notice of any special meeting shall be given at least seven (7) days previously thereto by written notice delivered personally or by telegram or mailed to each director at the director's business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

#### 6. QUORUM.



At any meeting of the directors a majority shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

7. MANNER OF ACTING.

The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the directors.

8. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by a vote of a majority of the directors then in office, although less than a quorum exists. Vacancies occurring by reason of the removal of directors without cause shall be filled by vote of the members. A director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of the director's predecessor.

9. REMOVAL OF DIRECTORS.

Any or all of the directors may be removed for cause by a majority vote of the members or by action of the board. Directors may be removed without cause only by vote of the members.

10. RESIGNATION.

A director may resign at any time by giving written notice to the board, the president or the secretary of the association. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

11. COMPENSATION.

By resolution of the board of directors, each director may be paid expenses, if any, of attendance at each meeting of the board of directors, and may be paid a stated salary as director of a fixed sum for attendance at each meeting of the board of directors, or both. No such payment shall preclude any director from serving the association in any other capacity and receiving compensation therefor.

12. PRESUMPTION OF ASSENT.

A director of the association who is present at a meeting of the directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the



director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

### 13. EXECUTIVE AND OTHER COMMITTEES.

The board, by resolution, may designate from among its members an executive committee and other committees, each consisting of one (1) or more directors. Each such committee shall serve at the pleasure of the board.

## ARTICLE IV - OFFICERS

### 1. NUMBER.

The officers of the association shall be a president, a vice-president, a secretary/treasurer, each of whom shall be elected by the directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the directors.

### 2. ELECTION AND TERM OF OFFICE.

The officers of the association to be elected by the directors shall be elected annually at the first meeting of the directors held after each annual meeting of the members. Each officer shall hold office until a successor shall have been duly elected and shall have qualified or until death or until resignation or shall have been removed in the manner hereinafter provided.

### 3. REMOVAL.

Any officer or agent elected or appointed by the directors may be removed by the directors whenever in their judgment the best interests of the association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

### 4. VACANCIES.

A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the directors for the unexpired portion of the term.

### 5. PRESIDENT.

The president shall be the principal executive officer of the association and, subject to the control of the directors, shall in general supervise and control all of the business and affairs of



the association. The President shall, when present, preside at all meetings of the stockholders and of the directors; may sign, with the secretary or any other proper officer of the association thereunto authorized by the directors, certificates for shares of the association, any deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these bylaws to some other officer or agent of the association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

6. VICE-PRESIDENT.

In the absence of the president or in the event of the president's death, inability or refusal to act, the vice-president shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president. The vice-president shall perform such other duties as from time to time may be assigned by the president or by the directors.

7. SECRETARY.

The secretary shall keep the minutes of the members, and of the directors' meetings in one or more books provided for that purpose, see all notices are duly given in accordance with the provisions of these bylaws or as required, be custodian of the corporate records and of the seal of the association and keep a register of the post office address of each member which shall be furnished to the secretary by such member, have general charge of the stock transfer books of the association and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or by the directors.

8. TREASURER.

If required by the directors, the treasurer shall give a bond for the faithful discharge of association duties in such sum and with such surety or sureties as the directors shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the association, receive and give receipts for moneys due and payable to the association from any source whatsoever, and deposit all such moneys in the name of the association in such banks, trust companies or other depositories as shall be selected in accordance with these bylaws and in general perform all of the duties as from time to time may be assigned by the president or by the directors.



## ARTICLE V - CONTRACTS, LOANS, CHECKS AND DEPOSITS

### 1. CONTRACTS.

The directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association, and such authority may be general or confined to specific instances.

### 2. LOANS.

No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the directors. Such authority may be general or confined to specific instances.

### 3. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the association shall be signed by such officer or officers, agent or agents of the association and in such manner as shall from time to time be determined by resolution of the directors.

### 4. DEPOSITS.

All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in such banks, trust companies or other depositories as the directors may select.

## ARTICLE VI - MEMBERSHIP CERTIFICATES AND THEIR TRANSFER

Membership certificates representing shares of the association shall be in such form as shall be determined by the directors. Such certificates shall be signed by the president and by the secretary or by such other officers authorized by law and by the directors. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the member, the number of shares and the date of issue shall be entered on membership transfer books of the association. All certificates surrendered to the association for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the association as the directors may prescribe.

## ARTICLE VII - ACCOUNTING YEAR

The accounting year of the association shall begin on the first day of January of each year.



#### ARTICLE VIII - SEAL

The directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the association, the state of incorporation, year of incorporation and the words "Corporate Seal".

#### ARTICLE IX - WAIVER OF NOTICE

Unless otherwise provided by law, whenever any notice is required to be given to any member or director of the association under the provisions of these bylaws or under the provisions of the articles of incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### ARTICLE X - AMENDMENTS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by a vote of the members representing a majority of all the shares issued and outstanding, at any annual members' meeting or at any special members' meeting when the proposed amendment has been set out in the notice of such meeting.

#### ARTICLE XI - INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER PERSONS

The association shall indemnify, to the fullest extent permitted by law, any person who is made, or threatened to be made, a party to an action, suit or proceeding (whether civil, criminal, administrative or investigative), by reason of the fact that the person is or was a director, officer or employee of the association or serves any other enterprise at the request of the association.

DATED this 17th day of July, 1998.

s/Joan Cameron

\_\_\_\_\_  
Secretary

APPROVED:

s/ Robert L. Van Fossan, Jr.

\_\_\_\_\_  
Director

S/Richard Schaefer

\_\_\_\_\_  
Director

s/Joan Cameron

\_\_\_\_\_  
Director

condowk\valleyrun.byl



EXHIBIT D

Townhome Sublot Numbers and Interest in Common Area

The Townhome Sublot Numbers and Interest in Common Area for Valley Run Townhomes Subdivision are:

<u>Building A</u>	<u>Interest in Common Area</u>
Sublot 1	50%*
Sublot 2	50%*

\* Subject to Declarants development interest in reserved areas for future townhome sublots and the addition of future townhomes. Also, subject to the Declarants and the Associations right to designate parts of the common area as Limited Common Area for the exclusive use by owners of particular townhome sublots as provided by the Declaration.