



FOR RECORDING INFORMATION

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BLACKROCK SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLACKROCK SUBDIVISION is made effective as of the 26 day of October, 2006, by Blackrock Developers, LLC, an Idaho limited liability company.

NOTICE

THIS IS A VERY IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL BUYER AND OWNER OF PROPERTY WITHIN THE BLACKROCK SUBDIVISION SHOULD READ AND UNDERSTAND.

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## ARTICLE I: RECITALS

**1.1 Property Covered.** The real property potentially subject to this Declaration of Covenants, Conditions and Restrictions for Blackrock Subdivision is the property legally described in **Exhibit A**, attached hereto and made a part hereof, which real property consists of approximately 223.83 acres, which acreage was approved by Ada County for a non-farm development of up to forty-four (44) residential units ("**Blackrock**"). A portion of Blackrock legally described on **Exhibit B**, attached hereto and made a part hereof, which real property consists of approximately 45.735 acres, is hereby made subject to this Declaration ("**Phase 1**"), which Phase 1, and any other real property annexed into Blackrock Subdivision, as provided further herein, shall be referred to herein as the "**Property**." Grantor may develop Blackrock in several development Phases, defined below. In addition to Phase 1, which is hereby made subject to this Declaration, any Phase, and/or any other real property annexed into Blackrock, as provided further herein, may be made subject to this Declaration through a Supplemental Declaration. Other than Phase 1, which is hereby made subject to this Declaration, unless and until a Supplemental Declaration annexing additional real property into Blackrock is recorded with the Ada County Recorder's Office, no real property located within Blackrock or otherwise shall be subject to this Declaration. Each Owner, by accepting a deed to any portion of the Property, acknowledges and agrees that Grantor is under no obligation to subject any portion of Blackrock to this Declaration other than Phase 1.

**1.2 Residential Development.** Blackrock is presently planned as a residential development that Grantor currently intends to develop in accordance with existing development approvals obtained by Grantor from Ada County, or any other development plan(s) for which Grantor may from time to time obtain approval from Ada County and/or the City of Meridian (the "**Development Plan**"). The Property may be developed for single-family residential homes, including, without limitation, single-family residential housing and Common Area. The Property may contain parcels of Common Area, including streams, ponds and canals, public and/or private open space, park areas, landscaping, recreational facilities, private streets, drives, and other amenities and facilities. Any development plans or schemes for the Property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, and impose no obligation on Grantor as to how the Property is to be developed or improved.

**1.3 Purpose of Declaration.** The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "**Restrictions**") that will apply to the entire development and use of any and all portions of the Property, and any other property annexed into Blackrock, as provided further herein. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; to ensure a well-integrated, high quality development; and to guarantee adequate maintenance of Common Area, including any improvements located thereon in a cost effective and administratively efficient manner.

## ARTICLE II: DECLARATION

Grantor hereby declares that the Property subjected to this Declaration through a Supplemental Declaration and Phase 1 which is hereby made subject to this Declaration, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms and Restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, any grantee or grantee's successors, any Owner or Owner's successors, or by the Owners Association. In the event of any conflict between this Declaration and any other of the Project Documents, this Declaration shall control.

Notwithstanding the foregoing, until one hundred percent (100%) of all the Building Lots in the Property and Blackrock are transferred by Grantor, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and Blackrock, including any subdivision or resubdivision of the Property and Blackrock, and to construct improvements thereon, nor Grantor's right to use and to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property and Blackrock, including Common Area, recreational facilities, and/or any public and/or private right-of-way, nor Grantor's right to post signs incidental to construction, sales and/or leasing. Grantor and authorized builders shall have easements for access to and use of such location and facilities.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property or Blackrock without Grantor's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Grantor. This Article may not be amended without the written consent of Grantor. The rights contained in this Article shall terminate upon the earlier of: (1) twenty (20) years from the date this Declaration is recorded; or (2) upon recording by Grantor of a written statement that all construction, sales and/or leasing activity has ceased.

### ARTICLE III: DEFINITIONS

3.1 **"Articles"** shall mean the Articles of Incorporation of the Association.

3.2 **"Assessments"** shall mean those payments required of Owners who are Owners Association Members, including Regular, Special and Limited Assessments. The Owners Association shall have the right to require assessments from its Members.

3.3 **"Association"** shall mean the Owners Association.

3.4 **"Association Rules"** shall mean those rules and regulations that may be promulgated by the Association governing conduct upon and use of the Property, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.

3.5 **"Board"** shall mean the duly qualified Board of Directors, or other governing board or individual, if applicable, of the Owners Association. The Board shall be comprised of the Members elected and/or appointed by the Grantor or the Owners.

3.6 **"Building Envelope"** shall mean the area within a Building Lot where a residential structure and accessory structures may be located, always subject to the prior written approval of the Design Committee. Building Envelopes shall be designated by Grantor by describing such an area on a recorded Plat, reserving Building Envelopes in a deed or other instrument, or by designating Building Envelopes as such in this Declaration, any Supplemental Declaration or the Design Guidelines. If a Building Envelope is not so designated within a Building Lot, then the Building Envelope shall be that portion of the Building Lot located inside the legal setback areas and/or designated easements.

3.7 **"Building Lot"** shall mean a lot within any Phase of Blackrock as specified or shown on any Plat and/or by Supplemental Declaration upon which Improvements may be constructed. Building Lot shall not include any Common Area.

3.8 **"Bylaws"** shall mean the Bylaws of the Association.

3.9 **"Common Area"** shall mean any or all parcels of Common Area and may include, without limitation, all such parcels that are designated as private streets or drives, parking areas or drives, common open space, pastures, common landscaped areas, storage facilities, recreational facilities, and other amenities and facilities. Common Area may be established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving Common Area in a deed or other instrument, or by designating Common Area as such in this Declaration or in any Supplemental Declaration.

In addition, the Owners Association may acquire any other real or personal property such Association deems necessary and/or beneficial to its Members. The Common Area may include easement and/or license rights.

**3.10** “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property and Blackrock. Such standard may be more specifically determined by the Board and/or the Design Committee.

**3.11** “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Blackrock Subdivision as the Declaration may be amended and supplemented from time to time.

**3.12** “Design Committee” shall mean the Design Committee created by Grantor pursuant to Article X hereof.

**3.13** “Design Guidelines” shall mean the design guidelines and rules promulgated, published, amended and supplemented from time to time pursuant to Article X.

**3.14** “First Mortgage” shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**3.15** “Grantor” shall mean Blackrock Developers, LLC, or its successors in interest, or any Person to whom the rights under this Declaration are expressly transferred, in whole or in part, other than a transfer to individual Building Lot Owners, by Blackrock Developers, LLC, or its successors.

**3.16** “Improvements” shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, residential structures, accessory structures, fences, streets, drives, driveways, parking areas, sidewalks, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, living and/or dead vegetation, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

**3.17** “Limited Assessment” shall mean a charge against a particular Owner, and such Owner's Building Lot, directly attributable to such Owner, equal to the cost incurred by the Owners Association in connection with corrective action performed pursuant to the provisions of this Declaration and/or any Supplemental Declaration, including, without limitation, damage to the Common Area or the failure of an Owner to keep such Owner's Building Lot and/or Improvements in proper repair, and including interest thereon as provided in this Declaration and/or a Supplemental Declaration.

**3.18** “Member” shall mean each Owner holding a membership in the Owners Association, including Grantor.

**3.19** “Mortgage” shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

**3.20** “Occupant” shall mean any resident or occupant of a Building Lot other than the Owner, including, without limitation, family members, guests, invitees and/or tenants.

**3.21** “Owner” shall mean the record owner, whether one or more Persons, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

**3.22** **“Owners Association”** shall mean any Idaho nonprofit corporation, or its successors, organized and established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration. Grantor shall have the power, in Grantor’s discretion, to name the Owners Association the **“Blackrock Subdivision Homeowners’ Association, Inc.”**, or any similar name which fairly reflects its purpose.

**3.23** **“Person(s)”** shall mean any individual, partnership, corporation, trust, estate or other legal entity, including Grantor.

**3.24** **“Phase”** shall mean a defined portion of the Property which has been designated as a Phase by Plat and/or recorded Supplemental Declaration. Each Phase shall contain one or more Building Lots.

**3.25** **“Plat”** shall mean any subdivision plat covering any portion of the Property as recorded in the Ada County Recorder’s Office, Ada County, Idaho as the same may be amended by duly recorded amendments thereof.

**3.26** **“Project Documents”** shall mean the basic documents creating and governing the Property including, without limitation, this Declaration, any Supplemental Declarations, Articles of Incorporation and Bylaws of the Owners Association, Association Rules, any Plat, the Design Guidelines and any other procedures, rules, regulations or policies adopted under such documents by the Association and/or the Design Committee.

**3.27** **“Property”** shall mean that certain real property legally described on **Exhibit B** hereto, and those portions of property subjected to this Declaration by any recorded Supplemental Declaration, including, without limitation, each lot, parcel and portion thereof and interest therein.

**3.28** **“Regular Assessment”** shall mean the portion of the cost of designing, constructing, maintaining, improving, repairing, managing and/or operating all Common Area, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association that are levied against the Building Lot of each Owner by the Owners Association, pursuant to the terms of this Declaration and/or a Supplemental Declaration.

**3.29** **“Special Assessment”** shall mean that portion of the cost of the capital improvements or replacements, equipment purchases and/or shortages in Regular Assessments which are authorized to be paid to the Owners Association pursuant to the provisions of this Declaration, or a Supplemental Declaration.

**3.30** **“Supplemental Declaration”** shall mean any Supplemental Declaration including additional covenants, conditions and restrictions that may be adopted by Grantor with respect to any Phase or any portion of the Property or adjacent property.

#### **ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS**

**4.1** **Improvements – Generally**. All improvements are to be designed, constructed and used in such a manner as to promote compatibility between the types of uses contemplated by this Declaration and to maintain the Community-Wide Standard. Specific design and construction guidelines are contained in the Design Guidelines. The Design Guidelines and the general instructions set forth in this Declaration shall govern the right of a Person or Owner, excluding Grantor, to construct, reconstruct, refinish, remove, add, alter or maintain any Improvement upon, under or above the Property, and to make or create any excavation or fill on the Property, or to make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on, under or above the Property, including, without limitation, any Building Lot. All Improvements by any Owner, excluding Grantor, must be pre-approved in writing by the Design Committee prior to such Owner’s construction or reconstruction.

All Building Lots, other than the Building Lot(s) used for Common Area or utility facilities and services, shall be used exclusively for and/or in connection with single-family residential purposes. No Building Lot, other than the Building Lot(s) used for Common Area or utility facilities and services, shall be

improved except with residential structures and accessory structures as permitted under the Design Guidelines. Garages shall be used to store vehicles; provided however, garage space that is not needed to house vehicles typically found on a Building Lot may be used by the Owner and/or Occupant of a Building Lot in connection with the single-family residential purpose of the Building Lot. By way of example, and not by way of limitation, if a residential structure has a three (3) car garage and the Occupant maintains only two (2) cars, the third garage bay may be used in connection with the single-family residential purpose of the Building Lot however, if the Occupant regularly maintains three (3) cars, all three (3) cars must be garaged. This Declaration is not intended to serve as authority for the Design Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions. This Declaration is intended to serve as authority for the Design Committee, to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Property, height, grade and finished ground elevation, natural conditions, landscaping, and all aesthetic considerations as set forth in this Declaration and in the Design Guidelines.

**4.1.1 Design Committee Review.** No improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specifications, and plot plan have been reviewed in advance by the Design Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, including mandatory roofing materials, physical or aesthetic impacts on other properties, including Common Area, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors in connection with the Community-Wide Standard that the Design Committee in its reasonable discretion, deem relevant.

**4.1.2 Setbacks and Heights.** No residential or other structure shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat and/or any Supplemental Declaration for the Phase in which the Building Lot is located, by any applicable zoning restriction, by any conditional use permit, or by a building envelope designed either by Grantor or the Design Committee, whichever is more restrictive.

**4.1.3 Accessory Structures.** Detached garages shall be allowed if in conformity with the provisions of this Declaration and as approved by the Design Committee. No detached storage sheds shall be allowed on any residentially-improved Building Lot. No playhouses, playground equipment, pools, pool slides, diving boards, hot tubs, spas, or similar items shall extend higher than five (5) feet above the finished graded surface of the Building Lot upon which such item(s) are located unless specifically approved by the Design Committee. Basketball courts, backboards, or portable basketball devices shall be allowed in the back yard or side yard of any Building Lot, provided that such courts, backboards or devices are not lighted and do not promote noise or other nuisance that is offensive or detrimental to other property in the vicinity of the Building Lot or offensive or detrimental to the occupants of such other property.

**4.1.4 Accessory Living Space.** Accessory living space shall be allowed if in conformity with the provisions of this Declaration, the Project Documents, as approved by the Design Committee and if in compliance with any and all applicable governmental laws, ordinances and regulations. No more than one (1) attached or detached accessory living space is permitted on a Building Lot and such accessory living space shall not require or result in separate utility facilities and/or meters. Only the Owner of the Building Lot is eligible to apply to the Design Committee for approval of an accessory living space. If a Building Lot containing accessory living space is leased to a single tenant, the Owner of Building Lot must occupy either the primary dwelling structure or the accessory living space (that is, there cannot be two (2) tenants of a Building Lot). The architectural treatment of the accessory living space shall be consistent with that of the primary dwelling structure and shall use materials similar to those of the primary dwelling structure.

**4.1.5 Driveways.** All access driveways shall have a wearing surface of concrete or other hard surface materials, including pavers, and shall be properly graded to assure proper drainage. No driveway shall be wider than a two-car garage at the front of a Building Lot at the point intersecting with the

street and shall extend back into the Building Lot at this same width for a minimum length as established by the Design Guidelines and/or the Design Committee.

**4.1.6 Mailboxes.** All mailboxes shall be of consistent design, material and coloration and shall be located on or adjoining Building Lot lines at places designated by Grantor or the Design Committee.

**4.1.7 Fencing.** No fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than four (4) feet above the finished graded surface of the Building Lot or Common Area upon which such fence, hedge or boundary wall is situated. Except that any fence constructed immediately adjacent to a swimming pool for the purpose of safety may be at a height required by applicable government agencies and/or homeowner liability insurer(s). Any fence or boundary wall constructed on or near the lot line common to one or more Building Lots shall be constructed as a "good neighbor" fence or wall. No fence shall be constructed so as to extend toward the front of the Building Lot past the front plane of the residential structure constructed thereon (except to allow fencing along driveways to a point where privacy gates may be installed as approved by the Design Committee), or closer than ten (10) feet to any side Building Lot line of a corner of a Building Lot adjacent to a dedicated street. No fence, hedge or boundary wall which obstructs site lines at an elevation between four (4) and eight (8) feet above the street shall be placed or permitted to remain on any corner lot. All fencing and boundary walls constructed on any Building Lot shall be compatible style and material to that other fencing constructed adjacent to or abutting Common Area, public and private streets, and shall otherwise be as approved by the Design Committee and/or as stipulated in the Design Guidelines.

**4.1.8 Lighting.** Exterior lighting, including flood lighting, shall be part of the architectural concept of the Improvements on a Building Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Design Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided so as not to illuminate nearby properties.

**4.2 Exterior Maintenance: Owner's Obligation.** No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining such Owner's Building Lot, the Owners Association, upon thirty (30) days' prior written notice to the Owner of such Building Lot, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Owners Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending Building Lot shall be personally liable, and such Owner's Building Lot may be subject to a lien for all costs and expenses incurred by the Owners Association in taking such corrective acts, plus all costs incurred in collecting the amounts due, if any. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

**4.3 Landscaping.** The Design Committee shall adopt guidelines regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such guidelines, or shall allow such Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Owners Association, upon thirty (30) days' prior written notice to such Owner, and such Owner shall promptly reimburse the Owners Association for the cost thereof. Such costs shall be Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending Building Lot shall be personally liable, and such Owner's Building Lot may be subject to a lien for all costs and expenses incurred by the Owners Association in taking such corrective acts, plus all costs incurred in collecting the amounts due, if any. Each Owner shall pay all amounts due for such work within (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

**4.4 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including Common Area or Building Lots, and no odor shall be permitted to arise

from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers and in areas approved by the Design Committee. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property. There shall be no excessive noise before 8:00 a.m. and after 6:00 p.m.

**4.5 Trade or Business.** No trade or business of any kind may be conducted in or from any Building Lot; provided, however, an Owner or Occupant of a Building Lot may conduct such business activity from such Building Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the owners or occupants dwelling on the Building Lot; (b) the business activity conforms to all applicable governmental regulations for the trade or business; (c) the business activity does not involve persons coming onto the Building Lot who do not own or occupy the Building Lot; (d) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and, (e) the business activity is consistent with the Community-Wide Standard and does not constitute a nuisance or hazardous or offensive use, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this Section, shall be construed to have their ordinary generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full- or part-time; (b) such activity is intended to or does generate a profit; and, (c) a license is required therefor. An Owner or Occupant of a Building Lot shall not, without the prior written consent of the Board, make any structural alterations in or additions to the Building Lot, or make any interior alterations in or additions to such dwelling visible from the exterior of such dwelling, to facilitate such trade or business.

**4.6 No Hazardous Activities.** No activities shall be conducted on the Property, and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any Person or property.

**4.7 No Mining or Drilling.** No portion of the Property shall be used for the purpose of blasting, mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This Section shall not prohibit exploratory drilled or coring which is necessary to construct Improvements including, without limitation, water facilities.

**4.8 Insurance Rates.** Nothing shall be done or kept on the Property and/or any Building Lot that will increase the rate of, or cancel any insurance on any other portion of the Property without the approval of the Owner(s) of such other portion, nor shall anything be done or kept on the Property and/or any Building Lot that would result in the cancellation of insurance on any portion of the Property owned and/or managed by any Association or which would be in violation of any law.

**4.9 Vehicles and Equipment.** The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to any of the Project Documents that prohibit or limit the use thereof within the Property.

Without limiting the foregoing, the following specific restrictions apply:

- (a) on-street overnight parking is prohibited;

(b) vehicles shall be garaged and shall not extend or otherwise be permitted on or into any sidewalk, bicycle path or pedestrian path, unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Project Documents;

(c) no motors homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (that is, any vehicle which has not been driven under its own propulsion for a period of seven (7) days or longer), oversized vehicles (that is, vehicles which are too high or too wide to clear the entrance of an approved residential garage door opening), dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and all other potentially unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, parking areas and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Design Committee;

(d) the use of electronic, gas or other fuel operated gardening, yard or snow removal equipment shall only be allowed from 8:00 a.m. to 8:00 p.m.; and

(e) the placement of exhaust fans used for exhausting odors, fumes, dust, or similar substances shall be placed in a location that will not offend or be a nuisance to adjacent Building Lots or their occupants.

**4.10 Animals/Pets.** No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property. This Section is not intended to prohibit the keeping of up to two (2) domesticated dogs, up to two (2) domesticated cats, and other typical household pets which do not unreasonably bother or constitute a nuisance to others. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs or similar sounds by other household pets shall be considered a nuisance. Each dog or other similar household pet in Blackrock shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of its owner and are to be kept in compliance with all applicable State and local laws and ordinances. Such owner shall clean up any animal defecation immediately from any Common Area or public right-of-way. Failure to do so may result, at the Owners Association's Board's discretion, with a Limited Assessment levied against such animal owner. The construction of dog runs or other pet enclosures shall be subject to applicable Design Guidelines and shall be appropriately screened and maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of ten (10) feet from the side and/or rear Building Lot line, shall not be placed in any front yard of a Building Lot, and shall be screened from view so as not to be visible from Common Area or an adjacent Building Lot.

**4.11 No Mobile Homes or Temporary Structures.** No house trailer, manufactured home, mobile home, tent (other than for short term recreational use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property. Providing however, that a mobile office may be placed upon a portion of the Property and/or Common Area by Grantor or Grantor's agents and/or employees for the purpose of construction, operation and/or marketing Blackrock or other adjacent land until all such construction and/or marketing is complete. As of the date hereof, one (1) mobile home and one (1) shop structure exists in Blackrock and may remain until the final plat is recorded for the Phase upon which such structures exist.

**4.12 Drainage.** There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Design Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Design Committee, which may include drainage from a Common Area over a Building Lot in the Property.

**4.13 Grading.** The Owner of any Building Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable State or local laws, ordinances and/or by the Design Committee shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public agency,

and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Limited Assessments provided for herein.

**4.14 Water Supply Systems.** No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Building Lot unless such system is approved by all government authorities having jurisdiction, and designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Design Committee and Grantor, so long as Grantor is the Owner of Building Lots. Provided, however, a domestic well and booster located in Lot 1, Block 24, of Blackrock shall be owned and maintained by the City of Meridian to supply domestic water to all Building Lots in Blackrock.

**4.15 Sewage Disposal Systems.** Unless otherwise approved by Ada County and/or the City of Meridian, connection to a central forced-main sewer system is required. Such dry-line sewer system and associated lift station constructed on the Property shall be owned and operated by the Owners Association. If and when Blackrock is annexed into the City of Meridian, such sewer system shall be dedicated to the City of Meridian. Connection to the central sewer and lift station system shall be at a Building Lot Owner's expense. All necessary construction of sewer line extensions by a Building Lot Owner shall be done in a good and workmanlike manner and shall not cause a nuisance to adjacent Owners, such other Owners' Building Lots and/or Common Area. Owners shall be required to pay any and all such fees as are necessary and/or required to operate such central sewer and lift station system by the operator of such central sewer system.

**4.16 Water Rights Appurtenant to Subdivision Lands.** Grantor owns certain water rights which are appurtenant to the Property and which may be utilized in connection with the Irrigation System, defined below, that will supply non-potable irrigation water to the Property, as provided further herein. Grantor hereby reserves unto itself any and all water and water rights, ditch and ditch rights, and storage and storage rights appurtenant to the Property, and accordingly, the Owner of any Building Lot(s) shall have no right, title or interest in any of such water and water rights, ditch and ditch rights, and storage and storage rights.

**4.17 Energy Devices; Outside.** No energy production devices, including, without limitation, generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Design Committee, except for heat pumps shown in the plans for a residential structure and as approved by the Design Committee. This Section shall not apply to passive solar energy systems incorporated into the approved design of a residential structure or any back-up devices necessary for utility pump stations.

**4.18 Signs.** No signs of any kind, including, without limitation, "for sale" signs, shall be displayed on or from any portion of the Property except those signs approved by the Design Committee, or signs of Grantor or its representatives, agents, employees or assigns, or signs required by law.

**4.19 Antennae.** No exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be erected or maintained on the Property unless such is not visible to the public or visible from any ground floor elevation of a Building Lot, and such is located or screened in a manner acceptable to and approved by the Design Committee.

**4.20 No Further Subdivision.** No Building Lot may be further subdivided.

**4.21 Leasing.** The Owner of a Building Lot shall have the right to lease such Building Lot and residential structure thereon, subject to the following conditions: (1) all leases shall be in writing; (2) such lease shall be specifically subject to the Project Documents, and any failure of a tenant to comply with the Project Documents shall be a default under the lease; and (3) the Owner shall be liable for any violation of the Project Documents committed by the tenant of such Owner, without prejudice to the Owner's right to collect any sums from such tenant paid by the Owner on behalf of the tenant.

**4.22 Grantor's Right of Development.** Nothing contained herein shall limit the right of Grantor to grant licenses, to reserve rights-of-ways and easements for utility companies, public agencies or others, or to complete excavation, grading and construction of improvements to and on, under or about any portion of the

Property owned by Grantor and/or the Association, or to alter the foregoing and Grantor's construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property and Blackrock remains unsold by Grantor. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property and Blackrock such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the development work and disposing of the Property and Blackrock by sales, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others as may from time to time be reasonable necessary for the proper development and disposal of the Property and Blackrock. Grantor may use any structures owned by Grantor on the Property and Blackrock as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Owners Association, or Design Committee approval of any Improvement constructed or placed by Grantor on any portion of the Property and/or Blackrock. The rights of Grantor in connection with the Declaration may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property and Blackrock, by an express written assignment recorded in the Ada County Recorder's Office.

Grantor, in Grantor's sole discretion and in accordance with all applicable State and local zoning laws, may amend and modify the Development Plan. By acceptance of a deed to any property in Blackrock, each Owner of such property thereby acknowledges and agrees the Development Plan for the Property may be amended, modified or changed in Grantor's sole discretion, so long as the Development Plan is consistent with applicable State and local zoning laws. Each Owner by acceptance of a deed to any Building Lot or other property within Blackrock agrees that such Owner shall not object to or oppose any development of any portion of the Property and/or Blackrock or and/or any other property owned or purchased by Grantor and annexed to the Property. Such agreement not to oppose development is a material consideration to the conveyance of any portion of the Property by Grantor to any and all Persons.

**4.23 Compliance with Laws.** Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

## **ARTICLE V: OWNERS ASSOCIATION**

**5.1 Organization of Owners Association.** The Owners Association shall be initially organized by Grantor as an Idaho nonprofit corporation under the provisions of the Idaho Code relating to nonprofit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles and Bylaws of the Owners Association and this Declaration. Neither the Articles nor the Bylaws of the Owners Association shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Grantor grants to the Owners Association a revocable, non-exclusive license to use the name "**Blackrock**" for the sole purpose of identifying the Owners Association.

**5.2 Members of Owners Association.** The Members shall be all Owners and no Owner, except Grantor, shall have more than one membership in the Owners Association. Memberships in the Owners Association shall be appurtenant to the Building Lot or other portion of the Property owned by such Owner. The memberships in the Owners Association cannot be terminated and shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of an Owner's title in and to such Building Lot or other portion of the Property owned by such Owner, and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and shall not be reflected on the books of the Owners Association.

**5.3 Voting.** The Owners Association will have two (2) classes of memberships.

**5.3.1 Class A Members.** Class A Members shall be the Owners other than Grantor. Each Owner other than Grantor shall be entitled to one (1) vote for each single-family residential Building Lot owned by such Owner.

**5.3.2 Class B Member.** Grantor shall be the Class B Member, and shall be entitled to five (5) votes for each of the forty-four (44) residential units planned for Blackrock (that is, 220 total votes), less five (5) votes for each Building Lot owned by someone other than Grantor. The Class B Member shall cease to be a voting Member in the Owners Association at the earlier of: (a) when Grantor has ten (10) or fewer votes in the Owners Association; or (b) December 31, 2026.

**5.4 Board of Directors and Officers.** The affairs of the Owners Association shall be conducted and managed by such directors and officers as the Board may elect or appoint, in accordance with the Articles and Bylaws of the Owners Association, as the same may be amended from time to time. The Board shall be comprised of the duly appointed Members, including Grantor. The Owners Association may exercise any right or privilege given to the Owners Association expressly by this Declaration and the Project Documents, or as reasonably implied from or reasonably necessary to effectuate any such right or privilege.

**5.5 Power and Duties of the Owners Association.**

**5.5.1 Powers.** The Owners Association shall have all the powers of a nonprofit corporation organized under the nonprofit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents, and to do and perform any and all acts which may be necessary, proper, and/or incidental to the proper management and operation of the Owners Association's business, Common Area, and the Owners Association's other assets, including water and water rights, ditch and ditch rights, and storage and storage rights, when and if received from Grantor, and the performance of the other responsibilities herein enumerated, including, without limitation:

**5.5.1.1 Assessments.** The power to levy Assessments on any Owner, or any portion of the Property, pursuant to the restrictions provided in this Declaration, and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration. This power shall include the right of the Owners Association to levy Assessments on any Owner or any portion of the Property to cover the operation and maintenance costs of Common Area.

**5.5.1.2 Right of Enforcement.** The Owners Association shall be the primary entity responsible for enforcement of this Declaration. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Project Documents, and to enforce by injunction or otherwise, all provisions hereof. The Owners Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Declaration and/or the Design Guidelines, and the Owner of the Improvements shall immediately reimburse the Owners Association for all expenses incurred with such removal. Each violation of this Declaration and the Design Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable.

**5.5.1.3 Delegation of Powers.** The Association has authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager for the maintenance, repair, replacement and operation of any Common Area. The Owners Association and its members shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any Common Area shall be for a term not exceeding one (1) year, shall be terminable on thirty (30) days notice with or without cause, and shall be subject to review by the Board.

**5.5.1.4 Owners Association Rules.** The Owners Association shall be the primary entity responsible for enforcement of the Owners Association Rules. The power to adopt, amend and repeal by majority vote of the Board such Association Rules and regulations as the Owners Association deems reasonable. The Owners Association may govern the use of Common Area by Owners, their families, invitees, licensees, lessees, or contract purchasers, including, without

limitation, the use of Common Area for organized recreational activities; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration.

A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event such Association Rules are inconsistent with or less restrictive than any other provisions of this Declaration, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration to the extent of any such inconsistency.

**5.5.1.5 Emergency Powers.** The power, exercised by the Owners Association or by any Person authorized by the Owners Association, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Owners Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such portion of the Property as practicable, and any damage caused thereby shall be repaired by the Owners Association.

**5.5.1.6 Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements and rights-of-way in, on, under and about Common Area as may be necessary or appropriate for the orderly construction of Improvements, maintenance, preservation and enjoyment of the same, and for the preservation of the health, safety, convenience and the welfare of Owners:

**5.5.1.6.1** Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

**5.5.1.6.2** Public or private sewers, septic systems, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

**5.5.1.6.3** Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common area, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.

**5.5.2 Duties.** In addition to duties necessary and proper to carry out the power delegated to the Owners Association by the Project Documents, without limiting the generality thereof, the Owners Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Owners Association and to perform, without limitation, each of the following duties:

**5.5.2.1 Operation and Maintenance of Common Area.** Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of Common Area, including the repair and replacement of property damaged or destroyed by casualty loss and including any signs placed at the entrances to, or otherwise in the vicinity of the Property. All drainage ponds, pipes and related facilities shall be maintained in accordance with sound hydrological principles and irrigation company rules, where applicable. The Owners Association shall, at Grantor's sole discretion, own and/or operate and/or maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Owners Association;

**5.5.2.2 Reserve Account.** Establish and fund a reserve account with a reputable banking institution or savings and loan Association or title insurance company authorized to do

business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of Common Area;

**5.5.2.3 Maintenance of Berms, Retaining Walls and Fences.** Maintain any berms, retaining walls and/or fences within and abutting any Common Area;

**5.5.2.4 Maintenance of the Irrigation System; Sewer System.** The operation and maintenance of the Irrigation System, defined below, contemplated for the Property when and if conveyed to the Owners Association. It is contemplated that Grantor shall construct the Irrigation System and the Sewer System, and that Grantor may transfer the Irrigation System and the Sewer System to the Owners Association by describing such transfer on a recorded Plat, or granting or reserving the Irrigation System and the Sewer System in a deed or other instrument, or in this Declaration or in any Supplemental Declaration. Notwithstanding any other provision of this Declaration, if Grantor has transferred the Irrigation System or the Sewer System to the Owners Association, the Owners Association shall have the right to transfer, sell or convey the Irrigation System or the Sewer System to a public or private entity, conditioned only upon reasonable assurances that the Irrigation System or the Sewer System will be owned, operated and maintained in a manner that will provide service from the Irrigation System or Sewer System to Owners on a continuing basis with quality of service equal to the Community-Wide Standard, and service that meets all applicable governmental laws, ordinances and regulations. For purposes of this Article, Grantor is hereby appointed and made attorney-in-fact for the Owners Association, with full power of attorney to consummate any such transfer of the Irrigation System or Sewer System.

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

**5.5.2.6 Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for Common Area, and to own and/or manage for the benefit of Blackrock all water and water rights, ditch and ditch rights, and storage and storage rights, and rights to receive water held by the Owners Association, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise;

**5.5.2.7 Insurance.** Obtain insurance from any reputable insurance company authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance:

**5.5.2.7.1** Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within Common Area;

**5.5.2.7.2** Comprehensive public liability insurance insuring the Board, the Owners Association, Grantor, and their agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of Common Area. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to

personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage;

**5.5.2.7.3** Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000);

**5.5.2.7.4** Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws, and indemnity, faithful performance, fidelity and/or other bonds as the Board shall deem necessary or required to carry out the Owners Association functions or to insure the Owners Association against loss from malfeasance or dishonesty of any employee or other Person charged with the management or possession of any Owners Association funds or other property;

**5.5.2.7.5** The Owners Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Master Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and

**5.5.2.7.6** Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Owners Association.

**5.5.2.8** **Rule Making.** Make, establish, promulgate, amend and repeal such Association's Rules as the Owners Association shall deem advisable;

**5.5.2.9** **Newsletter.** If the Owners Association so elects, prepare and distribute a newsletter on matters of general interest to Owners Association Members, the cost of which shall be included in Regular Assessments;

**5.5.2.10** **Design Committee.** Appoint and remove members of the Design Committee, subject to the provisions of this Declaration; and

**5.5.2.11** **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advised or necessary to enforce any of the provisions of the Project Documents and any and all State or local laws, ordinances, rules and regulations. Also including, without limitation, the recordation of any claim of lien with the Ada County Recorder's Office, as more fully provided herein.

**5.6** **Annual Meeting.** The Owners Association shall hold an annual meeting each year and the first annual meeting shall be held during the month of May of the first calendar year following the first sale of a Building Lot in the Property. Subsequent regular annual meetings of the Owners Association shall be held as provided in the Bylaws of the Owners Association. Special meetings may be called as provided for in the Bylaws of the Owners Association. Notice of annual or special meetings of the Owners Association shall be delivered to all Members of the Owners Association as provided in the Bylaws of the Owners Association. All meetings shall be held within the Property or as close thereto as practicable at a reasonable place selected by the Board. All Members of the Owners Association are encouraged to attend all annual and special meetings of the Owners Association.

**5.7** **Budgets and Financial Statements.** Financial statements for the Owners Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Owners Association as follows:

**5.7.1** A pro forma operating statement or budget representing the Owners Association for each fiscal year shall be available for distribution not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

**5.7.2** Within ninety (90) days after the close of each fiscal year, the Owners Association shall cause to be prepared and available to each Owner, a balance sheet as of the last day of the Owners Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Owners Association for its fiscal last year. Copies of the balance sheet and operating statement shall be available for distribution to each Member within ninety (90) days after the end of each fiscal year.

**5.8 Manager.** The Owners Association may employ or contract for the services of a professional manager or management company, provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Owners Association up to thirty (30) days notice, with or without cause, and without payment of a termination fee. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Owners Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.

**5.9 Personal Liability.** No Member of the Board, or member of any committee of the Owners Association, or any officer of the Owners Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party including, without limitation, the Owners Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Owners Association, the Board, the manager, if any, or any officer, committee, or other representative or employee of the Owners Association, Grantor, or the Design Committee, provided that such Person, upon the basis of such information as may be possessed by such Person, has acted in good faith without willful or intentional negligence and/or misconduct.

**5.10 Security.** The Owners Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than otherwise might be. Neither the Owners Association, Grantor, nor any successor of Grantor shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, that the Owners Association, Grantor, and any successor of Grantor are not insurers and that each person using the Property assumes all risks for loss or damage to persons, property, Building Lots, to Common Area, and to the contents of Building Lots resulting from acts of third parties.

## **ARTICLE VI: RIGHTS TO COMMON AREA**

**6.1 Use of Common Area.** Every Owner, unless expressly designated otherwise by Grantor in a Supplemental Declaration, shall have a right to use each parcel of Common Area, which right shall be appurtenant to and shall pass with the title to every Building Lot subject to the following provisions:

**6.1.1** The right of the Association holding or controlling such Common Area to levy and increase Assessments for the construction, protection, maintenance, repair, management and operation of improvements on Common Area, including the right to Special Assessments;

**6.1.2** The right of the Association to suspend the voting rights and rights of use, or interest in, Common Area by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association Rules;

6.1.3 The right of the Association to dedicate or transfer all or any part of Common Area to any public agency, authority or utility or other Person as provided further herein;

6.1.4 The right of such Association to prohibit the construction of Improvements on all Common Area;

6.1.5 The right of the Association to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Building Lots and their guests and rules limiting the number of guests who may use the Common Area;

6.1.6 The right of the Owners Association to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board. The Owners Association may lease any Common Area to a private club composed of such Owners who use the facility, or to a commercial operator, or to Grantor, or to a city or county parks department, or to any other appropriate body, on such terms and conditions as may be agreed to by the Owners Association. If the Owners Association so agrees in the lease of such facilities, the lessee shall have the right to permit public use upon payment of use fees, which shall not be less than the fees charged to Owners for such use. There is hereby reserved to all authorized users of any portion of the Common Area an easement over the remaining Common Area of the Owners Association for direct ingress and egress to and from such Common Area being leased, subject to Owners Association Rules and regulations; and

6.1.7 The Common Area cannot be mortgaged or conveyed without the approval of Owners, excluding Grantor, of at least two-thirds (2/3) of the total voting power in the Owners Association. If ingress or egress to any Building Lot is through Common Area, any conveyance or encumbrance of Common Area shall be subject to an easement of Owners of such Building Lots for the purpose of ingress and egress.

6.2 **Designation of Common Area.** Grantor shall designate and reserve Common Area in the Declaration, Supplemental Declarations and/or recorded Plats, deeds or other instruments.

6.3 **Delegation of Right to Use.** Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment to Common Area to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot. As provided above, only the Owners Association shall have the right to delegate the right of enjoyment to Common Area to the general public, and such delegation to the general public shall be for a fee set by the Owners Association.

6.4 **Damages.** Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family or guests, both minor and adult. In the case of joint ownership of a Building Lot the liability of such Owners shall be joint and several. The cost of correcting such damage shall be Limited Assessment against such Owner(s) Building Lot(s) and may be collected as provided herein for the collection of other Assessments.

## ARTICLE VII: ASSESSMENTS

7.1 **Covenant to Pay Assessments.** By acceptance of a deed to any Building Lot, each Owner of such Building Lot, thereby covenants and agrees to pay when due all Assessments or charges made by the Owners Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provision of this Declaration, any Supplemental Declaration or other applicable Project Document.

7.1.1 **Assessment Constitutes Lien.** Such Assessments and charges together with late charge(s), interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, and shall be a continuing lien upon the property against which each such Assessment or charge is made.

**7.1.2 Assessment is Personal Obligation.** Each such Assessment, together with late charge(s), interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. No Owner shall be exempt from such obligation by a waiver of the use and enjoyment of Common Area or by lease or abandonment of such Owner's Building Lot.

No Owner may exempt such Owner from liability for Assessments, by nonuse of Common Area, abandonment of such Owner's Building Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Owners Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**7.2 Uniform Rate of Assessment.** All Assessments must be fixed at a uniform rate for each type of Building Lot.

**7.3 Date of Commencement of Assessments.** The obligation to pay Assessments shall commence as to each Building Lot on the first day of the month following: (1) the month in which record title to a Building Lot is held by the first owner thereof other than Grantor or a builder; or (2) the month in which the Board first determines a budget and levies Assessments pursuant to this Article, whichever is later. The first annual Regular Assessment levied on each Building Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Building Lot.

**7.4 Exempt Property.** The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Building Lot which is subject to Assessment (in which case the Building Lot shall not be exempted from Assessment).

**7.5 Capitalization of Owners Association.** Upon acquisition of record title to a Building Lot by the first Owner thereof other than Grantor or a builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Owners Association in an amount equal to one-half of annual Regular Assessment per Building Lot for that year. This amount shall be in addition to, not in lieu of, the annual Regular Assessment and shall not be considered an advance payment of such Assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Owners Association for use in covering operating expenses and other expenses incurred by the Owners Association pursuant to the terms of this Declaration and the Project Documents.

**7.6 Regular Assessments.** All Owners are obligated to pay Regular Assessments to the treasurer of the Owners Association on a schedule of payments established by the Board.

**7.6.1 Purposes of Regular Assessments.** The proceeds from Regular Assessments are to be used for all costs and expenses incurred by the Owners Association, including attorney's fees and other professional fees, for the conduct of such Association affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of Common Area, including all Improvements located on such areas owned and/or managed and maintained by the applicable Associations (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement to those elements of Common Area, or other property of the Associations that must be replaced and maintained on a regular basis (the "Repair

Expenses"). The Operating Expenses and the Repair Expenses are collectively referred to herein as the "Expenses."

**7.6.2 Computation of Regular Assessments.** The Association shall compute the amount of its Expenses on an annual basis. The board of the Association shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Building Lot occurs in the Property for the purposes of the Owners Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) or more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year. The Owners Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Grantor or other entities for payment of Expenses.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Regular Assessment shall be set at a level which is reasonably expected to produce total income for the Owners Association equal to the total budgeted expenses, including reserves. In determining the level of Assessments, the Board, in its discretion, may consider other sources of funds available to the Owners Association. In addition, the Board shall take into account the number of Building Lots subject to Assessment on the first day of the fiscal year for which the budget is prepared and the number of Building Lots reasonably anticipated to become subject to Assessment during the fiscal year.

**7.6.3 Amounts Paid by Owners.** The Board can require, in its discretion or as provided in the Project Documents, payment of Regular Assessments to the Association in monthly, quarterly, semi-annual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its sole discretion. The Regular Assessments to be paid by any particular Owner for any given fiscal year shall be computed as follows:

**7.6.3.1** As to the Owners Association's Regular Assessment, each Owner, except for Grantor, shall be assessed and shall pay an amount computed by multiplying the Owners Association's total advance estimate of Expenses by the fraction produced by dividing the Building Lots in the Property subject to this Declaration.

## **7.7 Special Assessments.**

**7.7.1 Purpose and Procedure.** In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

**7.7.2 Consistent Basis of Assessment.** Every Special Assessment levied by and for the Owners Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Owners Association.

**7.8 Limited Assessments.** Notwithstanding the above provisions with respect to Regular and Special Assessments, a board of the Association may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building

Lot into compliance with the provisions of the Project Documents or for damage caused by the Owner, or any of such Owner's family, representatives or invitees, to any Common Area, or any other portion of the Property.

**7.9 Assessment Period.** Unless otherwise provided in the Project Documents, the Assessment period for all Associations, shall be determined by the Board. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in equal installments.

**7.10 Notice and Assessment Due Date.** Thirty (30) days prior written notice of Regular and Special Assessments shall be sent by the Owners Association to the Owner of every Building Lot subject thereto, and to any Person in possession of such Building Lot. The due dates for installment payments of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after due. There may accrue, solely at the Board's discretion, on each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, there may accrue, solely at the Board's discretion, on each installment payment delinquent for more than twenty (20) days, interest at twelve percent (12%) per annum calculated from the date of delinquency to and including the date full payment is received by the Owners Association. The Owners Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein.

**7.11 Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets for both general and Phase purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Owners Association, as shown on the budget, with respect both to amount and timing by annual Regular Assessments over the budget period.

**7.12 Estoppel Certificate.** The Owners Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether, to the knowledge of the Owners Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates through which any Assessments have been paid by such Owner. Any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or mortgagee of Owner's Building Lot. Reliance on such statement may not extend to any default of such Owner of which the signor of such statement shall have had no actual knowledge.

**7.13 Special Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in the Project Documents, written notice of any meeting called for the purpose of levying a Special Assessment by the Association, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment shall be sent to all Members of the Association and to any Person in possession of a Building Lot in the applicable Phase, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of voting Members or of proxies entitled to cast sixty percent (60%) to the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirements, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

## **ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS**

**8.1 Right to Enforce.** The Owners Association has the right to collect and enforce Owners Association Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms, and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy

obtained against such Owner. The Board or its authorized representative(s) may enforce the obligations of Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

## **8.2 Assessment Liens.**

**8.2.1 Creation.** There is hereby created a claim of lien on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Owners Association making the Assessment in connection therewith, including reasonable attorney's fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Ada County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

**8.2.2 Claim of Lien.** Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Owners Association may cause to be recorded in the Ada County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Owners Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Owners Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Owners Association may demand and receive the cost of preparing and recording such release before recording the same.

**8.3 Method of Foreclosure.** Such lien may be foreclosed by appropriate action in court.

**8.4 Subordination to Certain Trust Deeds.** The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a First Mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article, with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

## **ARTICLE IX: INSPECTION OF THE ASSOCIATION'S BOOKS AND RECORDS**

**9.1 Member's Right of Inspection.** The membership register, books of account and minutes of meetings of the Board and committees of any Association shall be made available for inspection and copying by any Member of such Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board of such Association shall prescribe. No Member or any other Person shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of such Association.

**9.2 Rules Regarding Inspection of Books and Records.** The Board of the Association shall establish reasonable rules with respect to: notice to be given to the custodians of the records by the Persons

desiring to make the inspection; hours and days of the week when such inspection may be made; and payment of the cost of reproducing copies of documents requested pursuant to this Article.

**9.3 Director's Rights of Inspection.** Every director of the Board of the Association shall have the absolute right at any reasonable time to inspect all books, records and documents of such Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

## ARTICLE X: DESIGN COMMITTEE

**10.1 Design Committee Creation; Right of Appointment.** Before or within thirty (30) days after the date on which Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on the Blackrock Subdivision Design Committee which Design Committee shall have exclusive jurisdiction over all original construction on any portion of the Property or any other real property annexed as provided further in Article XVIII. Until one hundred percent (100%) of the Property have been developed and conveyed to Owners other than builders, Grantor retains the right to appoint all members of the Design Committee who shall serve at Grantor's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Grantor. Upon the expiration of such right, the Board shall appoint the members of the Design Committee, who shall serve and may be removed in the Board's discretion.

**10.2 Vacancies.** If a vacancy on the Design Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting member of the Design Committee to serve for a specified temporary period not to exceed one (1) year. A member of the Design Committee need not be an Owner. Members of the Design Committee may be removed by the Person appointing them at any time without cause. The Design Committee shall review, study, and either approve or reject the proposed Improvements on the Property, all in compliance with the Declaration, any Supplemental Declaration, the Design Guidelines and the Project Documents. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of the proposed Improvements on the Property, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

**10.3 Appointment of Design Committee Representative.** The Design Committee may appoint in writing one (1) of its members to act as its designated representative (the "**Committee Representative**"). The Committee Representative may be delegated all duties and obligations of the Design Committee. In the event a Committee Representative is appointed, it is intended that the Design Committee shall look to the Committee Representative to perform all functions of the Design Committee provided however, the Design Committee shall make all final determinations and decisions regarding all Design Committee duties and obligations. Any action or decision made by two (2) members of the Design Committee shall be a binding decision of the entire Design Committee.

**10.4 Improvements Generally.** The Grantor and Design Committee shall draft the Design Guidelines for the construction and reconstruction of all Improvements on the Property. No Improvements on any portion of the Property shall be constructed, reconstructed, placed or removed from the Property without prior written consent of the Design Committee. The Design Guidelines shall be used and drafted by the Design Committee to ensure that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Building Lot, height, grade and finish ground elevation, natural conditions, landscaping and all aesthetic considerations, including guidelines designed to protect the special qualities and Community-Wide Standard of Blackrock, and to encourage creative design, by providing general architectural, design and construction guidelines (including building envelope guidelines), landscape guidelines (including a description of existing, natural conditions and vegetation), submittal and review procedures, and fees and charges for review. The Design Guidelines shall be drafted to conform to this Declaration. In the event of a conflict between the Design Guidelines and this Declaration, this Declaration shall govern. The content of the Design Guidelines, may be modified and amended from time to time as provided in the Design Guidelines, and in all events can be modified and changed by a majority vote of the Board. Nothing contained in this Article limits any Owner's obligation and duty to ensure that such Owner's Building Lot Improvements are in compliance with this Declaration, any

Supplemental Declaration, the Design Guidelines, any other Project Documents or applicable State or local laws.

**10.5 Expenses.** The Design Committee shall have the right to charge a fee for each application submitted to the Design Committee for review in an amount which may be established by the Design Committee from time to time and such fees shall be collected by the Design Committee, and remitted to the Owners Association to help defray the expenses of the Design Committee's operation, including reasonable payment to each member of the Design Committee for its services as provided herein.

**10.6 Non-Liability of Design Committee Members.** Approval by the Design Committee or shall not imply that Improvements meet any applicable federal, state and/or local laws and ordinances, and does not assure approval of the Improvements by any appropriate governmental or quasi-governmental agency, board or commission. Applicant and/or Owner shall ensure that such Improvements meet any and all applicable federal, state and/or local laws and ordinances. Notwithstanding that the Design Committee has approved Improvements, plans and specifications, the Design Committee or any of its members shall be responsible or liable to any Association or to any Person, Owner, or Grantor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the Improvements, unless due to the willful misconduct or bad faith of the Design Committee. Neither the Board nor the Design Committee, nor any agent thereof nor Grantor nor any of its members, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Design Guidelines, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the Design Committee shall be defended, indemnified and held harmless by the Owners Association in such suit or proceeding which may arise in connection with a Design Committee decision. The Owners Association, however, shall not be obligated to defend, indemnify and hold harmless any member of the Design Committee to the extent any such member of the Design Committee shall be adjudged to be liable for willful misconduct or bad faith in the performance of such member's duty as a member of the Design Committee, unless and only to the extent that a court in which such action or suit may be brought shall determine that, in view of all circumstances of the case, such member is fairly and reasonably entitled to indemnification and defense for such expenses if such court shall deem it proper.

**10.7 Variances.** The Design Committee may authorize variances from compliance with any of the Design Guidelines, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, and must be signed by at least two (2) members of the Design Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration, or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular Building Lot and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Property, including but limited to zoning ordinances and lot setback lines or requirements imposed by governmental or municipal authority.

**10.8 Enforcement.** Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Grantor, such offending Owner shall, at its own cost and expense, remove such Improvement or restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Building Lot, remove the violation, and restore the Building Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Building Lot and collected as a Limited Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration and the Design Guidelines may be excluded by the Board from the Property. In such event, neither the Owners Association nor its officers, or directors shall be held liable to any Person for exercising the rights granted hereunder. In addition to the foregoing, the Owners Association shall

have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Declaration and the decisions of the Design Committee.

**10.9 Grantor's Exemption.** Any and all Improvements constructed by Grantor on or to the Property are not subject to review and approval by the Design Committee.

## ARTICLE XI: EASEMENTS

**11.1 Owners: Easements of Enjoyment.** Every Owner shall have a nonexclusive easement for the use and enjoyment of Common Area which shall be appurtenant to and shall pass with the title to every Building Lot, subject to the easements set forth in this Declaration, as supplemented and amended from time to time.

**11.2 Delegation of Use.** Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment in Common Area, to such Owner's tenants, employees, family, guests or invitees.

**11.3 Recorded Easements.** The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Declaration, as supplemented and amended from time to time.

**11.4 Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of Common Area adjacent thereto, or as between adjacent Building Lots, due to the inadvertent placement or settling or shifting of Improvements including, without limitation, structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, Owners of each Building Lot agree that minor encroachments within and over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Section.

**11.5 Easements of Access.** Grantor expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to, from over and across their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots and Common Area resulting from the normal use of adjoining Building Lots and Common Area, and for necessary construction, maintenance and repair of any Improvement including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, pathways and landscaping. Such easements may be used by Grantor, and be all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonable necessary for the use and enjoyment of a Building Lot or Common Area.

**11.6 Drainage and Utility Easements.** Notwithstanding anything expressly or impliedly contained to the contrary, the Property shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and/or drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of any Association the right to grant additional easements and rights-of-way over the Property and/or a Phase, as appropriate, to utility companies and/or public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property.

**11.6.1 Improvement of Drainage and Utility Easement Areas.** The Owners of Building Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage and/or utility easement areas as shown on the Plat(s) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose; provided,

however that any Owner, Association, designated Person or Grantor having interest in the landscaping easement described in this Article, shall be entitled to install and maintain landscaping on such easement areas, subject to approval by the Design Committee, so long as the same would not interfere with or prevent the easement area from being used for their intended purposes; provided further, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Building Lot where Improvements were so damaged, or in the event the easement area where Improvements were so damaged is located in a Common Area, the Owners Association shall be responsible for the damage sustained and may impose a Special Assessment therefor.

**11.7 Rights and Duties Concerning Utility Easements.** The rights and duties of Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

**11.7.1** Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary; and

**11.7.2** Whenever utility house connections are installed within the Property, which connections serve more than one Building Lot the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of such connections as service such Owner's Building Lot.

**11.8 General Landscape Easement.** An easement is hereby reserved to the Owners Association, its contractors, employees, and agents, to enter those portions of Building Lots, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and/or habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Owners Association shall determine to be necessary from time to time.

**11.9 Grantor's Rights Incident to Construction.** Grantor, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Grantor; provided, however, that no such rights shall be exercised by Grantor in such a way so as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Building Lot by that Owner or such Owner's family, tenants, employees, guests, or invitees.

**11.10 Easements Deemed Created.** All conveyances of Building Lots made after the date of the recording of the Declaration, as amended and supplemented from time to time, whether by Grantor or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easement or to this Article appears in the instrument for such conveyance.

**11.11 Reservation for Expansion.** Grantor hereby reserves to itself and for Owners of Building Lots and Phases of the Property a perpetual easement and right-of-way for access over, upon, across and through the Property for construction, utilities, drainage, ingress and egress, and for use of Common Area for the expansion of Blackrock. The location of these easements and rights-of-way must be approved by the Board and may be documented by Grantor by recorded instruments.

**11.12 Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter the Property in the proper performances of their duties.

**11.13 Maintenance Easement.** An easement is hereby reserved to Grantor, which may be granted to any or all Associations, and any Member of their Board or manager, if any, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Building Lots and Phases and a right to make such use of the Building Lots and Phases as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Projects Documents, including the right to enter upon any Building Lot or Phase for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Building Lot or Phase as required by the Project Documents.

**11.14 Association's Responsibility.** The Owners Association shall maintain and keep Common Area in good repair, such maintenance to be funded as provided herein. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements situated within Common Area.

## **ARTICLE XII: IRRIGATION/DRAINAGE**

**12.1 Irrigation System.** Each Building Lot shall have access to a pressured irrigation water system ("**Irrigation System**"). It is contemplated that Grantor shall construct the Irrigation System, and that Grantor may transfer the Irrigation System to the Owners Association by describing such transfer on a recorded Plat, or granting or reserving the Irrigation System in a deed or other instrument, or in this Declaration or in any Supplemental Declaration. Payments for water use will be made by the Owners Association. Use of and Assessments in connection with the Irrigation System shall be subject to such rules and regulations of the Owners Association governing use of and Assessments in connection with the Irrigation System as may be adopted by the Owners Association from time to time. Notwithstanding any other provision of this Declaration, if Grantor has transferred the Irrigation System to the Owners Association, the Owners Association shall have the right to transfer, sell or convey the Irrigation System to a public or private entity, conditioned only upon reasonable assurances that the Irrigation System will be owned, operated and maintained in a manner that will provide service from the Irrigation System to Owners on a continuing basis with quality of service equal to the Community-Wide Standard, and service that meets all applicable governmental laws, ordinances and regulations. For purposes of this Article, Grantor is hereby appointed and made attorney-in-fact for the Owners Association, with full power of attorney to consummate any such transfer of the Irrigation System.

**12.2 Non-Potable Water.** The non-potable Irrigation System contains inherent dangers. Use of the Irrigation System shall be subject to such rules, regulations, laws and ordinances as may be adopted and amended from time to time, of the local jurisdiction, State of Idaho, and federal government, if any, and the Owners Association, governing the use of the Irrigation System including, without limitation, all requirements of the "Idaho Rules for Public Drinking Water Systems." Each Owner shall clearly mark every non-potable water tap on such Owner's Building Lot with a warning label or sticker, and shall maintain such label or sticker. No Owner, or any other person claiming right under any Owner, shall cause or allow to be caused, any connection between the Domestic Water System and the Irrigation System. Cross-connections of any type or kind whatsoever between the non-potable Irrigation System and potable water lines are strictly prohibited.

**12.3 ACHD Special Easements; ACHD Storm Water and Drainage Easements Over Common Area Lots.** Ada County Highway District has an easement over Lots 2, 3, 6, 7, 8, 16 and 24 of Block 1; Lots 1, 11, 12, 14 and 15 of Block 2; and Lots 7, 8, 9 and 10 of Block 3 for drainage facilities as identified on the plat or any ACHD recorded easement agreement. Improvements in these easement areas which would affect the easement are prohibited. Prior to placing any Improvements, trees, fences or the like in these easement areas, the Owner shall first obtain approval of ACHD.

ACHD was also granted perpetual storm water retention and drainage easements over portions of the Common Areas of this subdivision. No changes in this document shall be allowed unless agreed to in writing by ACHD. These easements are for access and inspection, to retain water, and to construct, install, maintain and replace the storm water and drainage system and all facilities relating thereto. The storm drain system also includes the street gutters, drop inlets, storm drain pipes and all related facilities. The primary purpose of these storm drainage easements are for the storage and drainage of storm water.

**12.3.1 "Heavy" Maintenance of Drainage/Retention Area.** Heavy maintenance consists of periodically inspecting the retention and drainage facility to ensure it is functioning properly; cleaning out the facility piping and mucking out the facility when the sediment level exceeds the designed storage level. All other maintenance shall be referred to herein as "light" maintenance. ACHD has opted to perform this "heavy" maintenance and shall be allowed to perform this maintenance work. In the event the ACHD shall decide not to do such "heavy" maintenance, then the Association shall do so.

**12.3.2 "Light" Maintenance.** The Association shall provide all "light" maintenance of the drainage/retention and easement areas as set out in the Operation and Maintenance Manual for Blackrock Subdivision. This Manual is on file with ACHD and the Association

**12.3.3 Association Failure to Maintain; ACHD Remedies.** In the event that ACHD determines, in its sole discretion, that the Association is not adequately performing its maintenance responsibilities set out in the Manual above, then ACHD shall, before undertaking maintenance of said area, provide written notice of its intention to begin maintenance after a thirty (30) day period. Within that 30 days Association may undertake to initiate and conclude all maintenance defects as identified by ACHD. In the event that the Association shall fail to commence and conclude maintenance to the extent said items of specific maintenance are identified by ACHD within the prescribed thirty (30) days, then in that event, ACHD may begin to undertake such maintenance. ACHD is hereby granted an irrevocable license and easement to enter upon any portion of the common area to perform such inspection and maintenance of the Common Areas identified herein.

Should ACHD engage in maintenance of the defined common area or facility after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Association shall pay all of the costs of the maintenance. ACHD shall first bill the Association and if such bill shall not be paid within sixty (60) days, then ACHD shall be entitled and empowered to file a taxable lien against all lots within this subdivision with power of sale as to each and every lot in order to secure payment of any and all assessments levied against all Lots pursuant to the CC&R's as if said maintenance had been performed by the Association, together with interest at the rate which accrues on judgments thereon and all costs of collection which may be paid or incurred by ACHD.

The Association shall not be dissolved or relieved of its responsibility to maintain the defined common area and facilities contained therein without the prior written approval from ACHD.

The Association and all lot owners by accepting title to a lot agree that all lot owners within these subdivisions are benefited property owners of such maintenance.

**12.4 Grading and Drainage Requirements.** Each Owner shall grade and drain such Owner's Building Lot or property (and maintain that grading and drainage) to prevent the runoff or drainage of water onto any adjacent Building Lots. Each Owner shall also refrain from using excessive irrigation water that overflows onto adjacent property. Grantor shall have no duty to grade any property. All grading and elevations shall be done by each Owner. All Building Lots shall be graded at the time of building (and such grading shall be maintained thereafter) so that:

- (a) the Building Lot or property will drain sufficiently away from the foundation with a proper slope to keep water out of the crawl space of the home;
- (b) drainage will be directed to the side, rear and front yards and not to the adjacent Building Lots; and
- (c) grading and drainage shall comply with all local building code requirements.

It shall be the specific affirmative duty of each Owner to prevent any water on that Owner's Building Lot from draining onto any other Owner's Building Lot (and/or into any neighboring crawl spaces). In the event that an Owner does not adequately maintain the grade, drainage and slope of the Building Lot as provided herein, or uses excessive irrigation water, and water flows off the Building Lot onto an adjacent property

causing damage or injury, the offending Owner could be liable for any damages occurring as a result of the drainage and liable for all of the costs of reasonable remedial actions to correct the problem if the offending Owner fails to correct it.

### ARTICLE XIII: DAMAGE OR DESTRUCTION

**13.1 Owners Association as Attorney in Fact.** Each and every Owner hereby irrevocably constitutes and appoints the Owners Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on Common Area upon damage or destruction as provided in this Article. Acceptance by any grantee of a deed or other instrument of conveyance from Grantor or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted herein to the Association as attorney-in-fact.

**13.2 Estimate of Damages or Destruction.** As soon as practical after an event causing damage to or destruction to any part of Common Area, the appropriate Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that such Association deems reliable and complete of the costs of repair and reconstruction of that part of Common Area so damaged or destroyed. "**Repair and reconstruction**" as used in this Article shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

**13.3 Repair and Reconstruction.** As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during any period of insurance adjustments and repair and reconstruction.

**13.4 Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual costs of such repair and reconstruction, the Association may assess in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Further assessments may be made in like manner if the amounts collected prove insufficient to complete such repair and reconstruction.

**13.5 Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all cost of such repair and reconstruction, such balance shall be distributed to Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Article or, if no Special Assessments were made, in equal shares per Building Lot, first to the holders of the First Mortgage and then to Owners, as their interests appear.

**13.6 Decision Not to Rebuild.** If Owners representing at least sixty seven percent (67%) of the total allocated votes within the jurisdiction of the Owners Association and sixty seven percent (67%) of the holders of a First Mortgage (based upon one vote for each mortgage owned) of the Building Lots agree in writing not to repair or reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of Common Area by the appropriate Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Building Lot, first to the holders of the First Mortgage and then Owners, as their interests appear.

**13.7 Damage or Destruction Affecting Building Lots.** In the event of damage or destruction to the Improvements located on any of the Building Lots, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair or reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Owners Association may impose a fine of not less than fifty dollars (\$50) per day on the Owner of the Building Lot until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Owners Association that such failure is due to circumstances beyond the Owner's control.

#### **ARTICLE XIV: CONDEMNATION**

**14.1 Rights of Owners.** Whenever all or any part of Common Area shall be taken or conveyed in lieu of and under threat of condemnation, the Board acting as attorney-in-fact for all Owners, shall notify each Owner of the taking, but the Owners Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**14.2 Condemnation; Distribution of Award; Reconstruction.** The award made for such partial or complete taking shall be payable to the Owners Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Grantor and Owners representing at least sixty-seven percent (67%) of the Class A and B Members shall otherwise agree, the Owners Association shall restore or replace such Improvements so taken on the remaining land including in Common Area to the extent lands are available therefor, in accordance with plans approved by the Board and the Design Committee. If such Improvements are to be repaired or restored, the provisions in Article XIII regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Building Lot, first to the holders of any First Mortgage and then to Owners, as their interests appear.

#### **ARTICLE XV: RESOLUTIONS OF DISPUTES**

**15.1 Avoiding Costs of Litigation and Limiting Right to Litigate Disputes.** The Owners Association, Grantor, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article, (collectively, "**Bound Parties**") shall encourage the amicable resolution of disputes involving the Property, and avoid the emotional and financial costs of litigation if at all possible. Accordingly, all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Project Documents, and/or the Owners Association rules (collectively "**Claim**"), shall be subject to the procedures set forth herein.

**15.2 Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

**15.2.1 Notice.** The Claimant shall notify each Respondent in writing the Claim (the "**Notice**"), stating plainly and concisely:

(a) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Declaration, the Project Documents, the Owners Association Rules, or other authority out of which the Claim arises;

(b) the basis of the Claim (i.e., the provision of the Declaration, the Project Documents, Owners Association Rules triggered by the Claim);

- (c) what Claimant wants Respondent to do or not do to resolve the Claim; and
- (d) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

**15.2.2 Negotiation.** Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion the Owners Association believes the Owners Association's efforts will be beneficial to the Parties and to the welfare of Blackrock.

**15.2.3 Mediation.** If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of Idaho law. If Claimant does not submit the Claim to mediation with thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

**15.3 Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by mediator(s).

**15.4 Enforcement of Resolution.** If the Parties fail to abide by the terms of such mediation agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.2. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys fees and court costs.

## ARTICLE XVI: ANNEXATION AND WITHDRAWAL OF PROPERTY

**16.1 Annexation without Approval of Membership.** Until December 31, 2026, Grantor may unilaterally subject to the provisions of this Declaration any property adjacent and contiguous to Blackrock. Grantor may transfer or assign this right to annex, provided that the transferee or assignee is the developer of at least a portion of the property described in **Exhibit A** and that such transfer is memorialized in a written, recorded instrument executed by Grantor. Nothing in this Declaration shall be construed to require Grantor or any successor to annex or develop any of the property set forth in Exhibit A in any manner whatsoever. Such annexation shall be accomplished by filing a Supplemental Declaration in the records of Ada County, Idaho, describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of voting Members, but shall require the consent of the owner of such property, if other than Grantor. Any such annexation shall be effective upon the recording of such Supplemental Declaration.

**16.2 Annexation with Approval of Membership.** The Association may subject any other real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative majority of votes of the Members of the Owners Association at a meeting duly called for such purpose, and the consent of Grantor so long as Grantor owns Property subject to this Declaration or that may become subject to this Declaration. Such annexation shall be accomplished by filing a Supplemental Declaration in the records of Ada County, Idaho, describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the

Secretary of the Owners Association, and by the owner of the annexed property. Any such annexation shall be effective upon the recording of such Supplemental Declaration. Any such real property so annexed may be developed with residential uses including, without limitation, multi-family homes, and/or with commercial uses.

**16.3 Withdrawal of Property.** Grantor reserves the right to amend this Declaration so long as Grantor has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by Grantor, Grantor's affiliates, or the Owners Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Grantor's plans for Blackrock, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

**16.4 Additional Covenants and Easements.** Grantor may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Owners Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Owners Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration recorded either concurrently with or after the annexation of the such property, and shall require the written consent of the owner(s) of such property, if other than Grantor.

**16.5 Amendment.** This Article shall not be amended without the prior written consent of Grantor so long as Grantor owns any property described in Exhibit A.

#### **ARTICLE XVII: MISCELLANEOUS**

**17.1 Term.** The Restrictions created hereunder shall be perpetual, subject only to extinguishment by the holders of such Restrictions as provided by law.

**17.2 Amendment.**

**17.2.1 By Grantor.** Until the recordation of the first deed to a Building Lot, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively, "amendment") by Grantor by recordation of a written instrument setting forth such amendment.

**17.2.2** deed to a Building Lot, any amendment to any provision of the Declaration, other than to this Article, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Owners Association certifying and attesting that such amendment has been approved by the vote of the Members representing at least two-thirds (2/3) of the total voting power in the Owners Association, except where a greater percentage is required by express provision in this Declaration, and such amendment shall be effective upon its recordation with the Ada County Recorder's Office. Any amendment to this Article shall require the vote of Members representing ninety percent (90%) of the voting power of the Owners Association.

**17.2.3 Effect of Amendment.** Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective Building Lots notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Building Lot(s) which existed prior to the such amendment.

**17.3 Mortgage Protection.** Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any First Mortgage upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such First Mortgage, such Building Lot shall remain subject to this Declaration, as amended.

**17.4 Notices.** Any notices permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, by facsimile or by U.S. mail. If delivery is made by U.S. mail, delivery shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, first class, postage prepaid, addressed to any Person at the address given by such Person to the Owners Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Owners Association or to the address of such Person as contained in the Ada County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Owners Association.

**17.5 Enforcement and Non-Waiver.**

**17.5.1 Right of Enforcement.** Except as otherwise provided herein, any Owner, Association or Grantor shall have the right to enforce any or all of the provisions hereof against any portion of the Property and against Owners thereof.

**17.5.2 Violations and Nuisances.** The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Project Documents, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both.

**17.5.3 Violation of Law.** Any violation of any State, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth in this Declaration and any and all enforcement procedures in law and equity.

**17.5.4 Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

**17.5.5 Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

**17.6 Use of Trade Name.** Each Owner by acceptance of a deed for such Owner's Building Lot shall be deemed to acknowledge that "Blackrock" is or may become a servicemark, trade name and/or trademark of Blackrock Developers, LLC, or its licensees, and to covenant that any such Owner shall not use the term Blackrock without the prior written permission of Blackrock Developers, LLC, or its licensees.

**17.7 Interpretation.** The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

**17.7.1 Restrictions Construed Together.** All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

**17.7.2 Restrictions Severable.** Notwithstanding the provision of the foregoing Subsection 17.7.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity of partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

**17.7.3 Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

**17.7.4 Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**17.8 Successors and Assigns.** All references herein to Grantor, Owner, Members, the Association or Person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Members, Association or Person.

**17.9 Owners' Further Acknowledgments.** By accepting a deed to any Building Lot(s) contained within the Property, each Owner acknowledges and agrees to the following:

- (a) that Owner has read and understands the Project Documents;
- (b) that certain portions of Blackrock may be utilized by the general public, including, without limitation, any paths established along irrigation ditches and specified as part of City of Meridian and/or Ada County future trail system;
- (c) that Owner understands that the property including and surrounding Blackrock may be included in future development plans by Grantor or other entities and acknowledges the right of such property to be developed in compliance with applicable local, county, and State law;
- (d) that Owner recognizes Section 22-4503 of Idaho Code that states: "No agricultural operation or appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or appurtenance to it";
- (e) that Owner acknowledges that property in the vicinity of Blackrock may be developed for other than residential uses;
- (f) that Owner has accepted title to the Building Lot(s) after conducting all necessary inquiries and due diligence, and that Owner takes such Building Lot(s) "as is," without any express or implied warranty from Grantor; and
- (g) that Blackrock may be annexed by the City of Meridian when Blackrock becomes contiguous to the limits of the City of Meridian.

[end of text]

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration of Covenants, Conditions and Restrictions for Blackrock Subdivision effective the day and year first written above.

BLACKROCK DEVELOPERS, LLC,  
an Idaho limited liability company

By: *SK*  
Steve Kunzweiler, Manager

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 26 day of October, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Steve Kunzweiler, known or identified to me to be a Manager of Blackrock Developers, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

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

*Lea Reynick*  
Notary Public for Idaho  
Residing at Ada county Boise, Idaho  
My commission expires: 9-6-2012

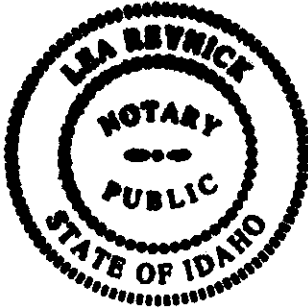


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Project No. 06-135

May 1, 2006

Blackrock Annexation  
Description

The SE 1/4 of the NW 1/4 and the NE 1/4 of the SW 1/4 of Section 32, a portion of the South 1/2 of the NE 1/4 and a portion on the North 1/2 of the SE 1/4 of Section 32, T.3N., R.1E., B.M., Ada County, Idaho, more particularly described as follows: Commencing at the corner common to Sections 29, 30, 31, and 32 of T.3N., R.1E., B.M.; Thence South 89°43'50" East, 2645.04 feet to the 1/4 corner common to said Sections 29 and 32; Thence South 00°18'40" West, 1337.16 feet to the C-N 1/16 corner of said Section 32 and the **REAL POINT OF BEGINNING**.

Thence along the North line of the South 1/2 of the NE 1/4 South 89°41'43" East, 1718.23 feet to a point on the Northeasterly top of bank of the Ten Mile Drain;

Thence along said top of bank South 36°35'49" East, 198.64 feet;

Thence South 47°26'09" East, 889.12 feet;

Thence departing said top of bank North 89°40'11" West, 113.10 feet;

Thence South 00°13'16" West, 255.57 feet;

Thence South 89°40'11" East, 276.94 feet to a point on the East boundary of said Section 32;

Thence along said East boundary South 00°13'16" West, 326.37 feet to the East 1/4 corner of said Section 32;

Thence South 00°13'44" West, 472.01 feet;

Thence departing said East boundary North 89°48'49" West, 528.00 feet;

Thence South 00°13'44" West, 866.05 feet to a point on the South line of the North 1/2 of the SE 1/4 of said Section 32;

Thence North 89°48'49" West, 2131.71 feet to the C-S 1/16 corner;

Thence North 89°49'57" West, 1340.61 feet to the SW 1/16 corner;

*Professional Land Surveyors*

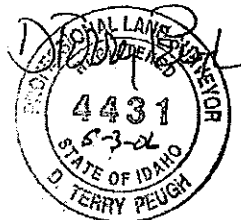
Thence North 00°07'50" West, 1347.13 feet to the C-W 1/16 corner of said Section 32;

Thence North 00°51'00" East, 1337.33 feet to the NW 1/16 corner;

Thence South 89°44'17" East, 673.82 feet to the Southwest corner of the East 1/2 of the NE 1/4 of the NW 1/4 of said Section 32;

Thence South 89°45'14" East, 661.99 feet to the Point of Beginning. Containing 224.26 acres, more or less.

Prepared By:  
Idaho Survey Group, P.C.



D. Terry Peugh, PLS

**EXHIBIT B  
LEGAL DESCRIPTION OF PHASE 1**

Project No. 06-142-01

July 3, 2006

**Blackrock  
Rezone to R-2**

A parcel of land located in SE 1/4 of the NW 1/4, the NE 1/4 of the SW 1/4, and the NW 1/4 of the SE 1/4 of Section 32, T.3N., R.1E., B.M., Ada County, Idaho, more particularly described as follows: Commencing at the East 1/4 corner of said Section 32, from which the Southeast corner of said Section bears South 00°13'44" West, 2676.16 feet; Thence South 00°13'44" West, 472.01 feet; Thence North 89°48'49" West, 528.00 feet; Thence South 00°13'44" West, 866.05 feet to a point on the South line of the NE 1/4 of the SE 1/4 of said Section 32; Thence along said South line and the South line of the NW 1/4 of the SE 1/4 North 89°48'49" West, 1600.61 feet to the **REAL POINT OF BEGINNING**.

Thence continuing North 89°48'49" West, 531.10 feet to the C-S 1/16 corner;

Thence North 89°49'57" West, 1340.61 feet to the SW 1/16 corner;

Thence North 00°07'50" West, 1347.13 feet to the C-W 1/16 corner;

Thence along the West line of the SE 1/4 of the NW 1/4 North 00°51'00" East, 675.38 feet;

Thence South 36°45'50" East, 852.97 feet;

Thence South 57°19'56" East, 173.04 feet;

Thence South 41°47'50" East, 170.59 feet;

Thence South 37°30'04" East, 172.16 feet;

Thence South 63°50'17" East, 178.01 feet;

Thence South 74°49'32" East, 192.98 feet;

Thence South 46°34'51" East, 190.00 feet;

Thence South 79°29'24" East, 63.08 feet;

Page 1 of 2

*Professional Land Surveyors*

Thence South 46°34'51" East, 612.65 feet;

Thence South 00°11'34" West, 295.42 feet to the Point of Beginning. Containing 45.93 acres, more or less.

Prepared By:  
Idaho Survey Group, P.C.



D. Terry Peugh, PLS