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**AMENDED AND RESTATED**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**OLIVETREE AT SPURWING SUBDIVISION**

EFFECTIVE: July 5, 2017

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
OLIVETREE AT SPURWING SUBDIVISION**

THIS DECLARATION is made effective as of July 5, 2017, by Spurwing Limited Partnership, an Idaho limited liability partnership (“Declarant” or “Owner” or “Grantor”). This Declaration is an Amended and Restated Declaration of the original Declaration recorded with the Ada County Recorder’s Office on May 11, 2018, as Ada County Instrument No. 2018-043283.

**ARTICLE I: RECITALS**

1.1 Declarant is the owner of all of the real property located in the City of Meridian, County of Ada, State of Idaho, described in the attached Exhibit “A” (the Property).

1.2 The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions, and equitable servitudes (collectively Restrictions) that apply to the Property. The Restrictions are designed to preserve the Property’s value, desirability, and attractiveness, to ensure a well integrated high-quality development, and to guarantee adequate maintenance of the Common Area, and the Improvements located thereon, in a cost effective and administratively efficient manner.

**ARTICLE II: DECLARATION**

Grantor declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following terms, covenants, conditions, easements, 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, covenants, conditions, easements, and restrictions set forth herein:

- A. shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title, or interest in the Property or any lot, parcel, or portion thereof;
- B. shall inure to the benefit of every lot, parcel, or portion of the Property and any interest therein; and,
- C. shall inure to the benefit of, and be binding upon, Grantor, Grantor’s successors in interest, and each grantee or Owner, and such grantees or Owner’s respective successors in interest, and may be enforced by Grantor, by any Owner, or such Owner’s successors in interest, or by the Association as hereinafter described.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to modify this Declaration, complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales, or leasing offices, or similar facilities (temporary or otherwise) on any portion of the Property, including the Common Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales, or leasing, nor Grantor's right to modify plans for the Property, all in accordance with any necessary approvals of the City.

### ARTICLE III: DEFINITIONS

3.1 Architectural Committee shall mean the committee created by the Grantor or an Association pursuant to Article X hereof.

3.2 Articles shall mean the Articles of Incorporation of an Association or other organizational or charter documents of an Association.

3.3 Assessments shall mean those payments required of Owners or other Association Members, including Regular, Special, and Limited Assessments of any Association as further defined in this Declaration.

3.4 Association shall mean the Idaho non-profit corporation, and its successors and assigns, 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 its discretion, to name the Association the Olivetree Homeowners' Association, Inc., or any similar name which fairly reflects its purpose.

3.5 Association Rules shall mean those rules and regulations promulgated by an Association governing conduct upon and use of the Property under the jurisdiction or control of an Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of an Association.

3.6 Board shall mean the Board of Directors or other governing board or individual, if applicable, of the Association indicated in Section 4.

3.7 Building Lot shall mean one or more lots within the Property as specified or shown on any Plat and/or by Supplemental Declaration, upon which Improvements may be constructed.

3.8 Bylaws shall mean the Bylaws of the Association indicated in Section 4.

3.9 Common Area shall mean all real property in which the Association holds an interest or which is held or maintained, permanently or temporarily by the Owners as tenants-in-common, for the common use, enjoyment, and benefit of the entire Olivetree at Spurwing Subdivision and each Owner therein, and shall include, without limitation, all such parcels that are designated as private streets or drives, common open spaces, common landscaped areas, and waterways. The Common

Area may be established from time to time by Grantor on a portion of the Property by describing it on a plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration or any Supplemental Declaration. The Common Area may include easement and/or license rights and includes Lots 1, 8, 21, 22, 35, and 45 of Block 1, and Lot 1 of Block 2 as set forth in the Plat.

3.10 Declaration shall mean this Declaration as it may be amended from time to time.

3.11 Design Guidelines shall mean the construction guidelines approved by the Architectural Committee.

3.12 Grantor shall mean Spurwing Limited Partnership, an Idaho limited liability partnership, and its successors in interest, or affiliates of the Grantor, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor or its successor. An affiliate shall mean any entity with some form of common ownership interest with the Grantor or partners of the Grantor.

3.13 Improvement shall mean any structure, facility, or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, or placed upon, under, or in, any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, and fixtures of any kind whatsoever. Improvements shall also include shared recreational facilities located in the Property, if any.

3.14 Landscape Easements, if any, shall mean any portion of a Building Lot located within the landscape easements designated on the Plat or in a Supplemental Declaration. This Landscape Easement is in addition to the general landscape easement described in Sections 12.7 of this Declaration.

3.15 Limited Assessment shall mean a charge against a particular Owner and such Owners Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.

3.16 Member shall mean each person or entity holding a membership in the Association. Where specific reference or the context so indicates, it shall also mean persons or entities holding membership.

3.17 Owner shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

3.18 Olivetree at Spurwing Subdivision shall mean the Property.

3.19 Person shall mean any individual, partnership, corporation, or other legal entity.

3.20 Plat shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof.

3.21 Property shall mean the real property described in Exhibit "A," including each lot, parcel, and portion thereof and interest therein, including all water rights associated with or appurtenant to such property, which are brought within the jurisdiction hereof by Supplemental Declaration or otherwise. The Property also may include, at Grantor's sole discretion, such additional property as may be annexed by means of Supplemental Declaration as provided herein.

3.22 Regular Assessment shall mean the portion of the cost of maintaining, improving, repairing, managing, and operating the Common Area and all Improvements located thereon, and the other costs of an Association which is to be levied against the Property of and paid by each Owner to the Association, pursuant to the terms of this Declaration or a Supplemental Declaration.

3.23 Special Assessment shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association, pursuant to the provisions of this Declaration or a Supplemental Declaration.

3.24 Supplemental Declaration shall mean any Supplemental Declaration including additional covenants, conditions, and restrictions that might be adopted with respect to any portion of the Property.

#### ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

4.1 Structures - Generally. All structures are to be designed, constructed and used in such a manner as to promote compatibility between the types of use contemplated by this Declaration.

4.1.1 Use and Size of Dwelling Structure. All Building Lots shall be used exclusively for single-family residential purposes. No Building Lot shall be improved except with a single-family dwelling unit or structure.

4.1.2 Approved Roofing Materials. All Improvements with a roof shall be required to use approved shingles.

4.1.3 Architectural 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 or removed from the Property unless and until the building plans, specifications, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: size, height, design and style elements, mass and form, topography,

setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, including Architectural Committee approved black thirty (30) year architectural shingles roofing material, physical or aesthetic impacts on other properties, including Common Areas, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors which the Architectural Committee, in its reasonable discretion, deems relevant. The requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by the use, size, and height restrictions.

4.1.4 Setbacks and Height. No residential or other structure (exclusive of fences and similar structures) shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat for the Property in which the Building Lot is located, or by any applicable zoning restriction, by any conditional use permit, or by a building envelope designated either by Grantor or applicable Architectural Committee, whichever is more restrictive.

4.1.5 Accessory Structures. Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the applicable Architectural Committee. Garages, storage sheds attached to the residential structure, patio covers, and detached patio covers, shall be constructed of, and roofed with similar colors and design, as the residential structure on the applicable Building Lot. No playhouses, playground equipment, 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 so allowed by the Architectural Committee, in its sole discretion. Basketball courts, backboards, tennis courts, shall not be allowed in the backyard of any Building Lot. No metal Improvements are allowed.

4.1.6 Driveways. All access driveways shall have a wearing surface approved by the Architectural Committee of concrete or other hard surface materials, shall be properly graded to assure proper drainage and there shall be no interference or other restriction of the free right of passage of the Owners, their agents, servants, tenants, guests, and employees over driveways or passages leading to garages.

4.1.7 Mailboxes. All mailboxes and replacement mailboxes shall be provided by the Association, stands will be of consistent design, material, and coloration and shall be located on or adjoining Building Lot lines at places designated by Grantor or the Architectural Committee.

4.1.8 Fencing. Fence designs shall not extend into any Common Areas within the subdivision. All fencing and boundary walls constructed on any Building Lot shall be of wrought iron, and shall otherwise be as approved by the Architectural Committee. Fencing shall not extend higher than five (5) feet above the finished grade surface of the Building Lot or extend past the front setback of the home. All fencing must meet the setback requirements of Meridian City ordinance. Certain entryway, corner and view lots are restricted from

fencing. All residences located on the first, second and third holes of the Spurwing Golf Course shall have installed and maintained at the time of the construction of the residence, a five-foot standard wrought iron fence as depicted in Exhibit "E" separating the property from the fairway on such holes. The design, appearance and location of the wrought iron fence shall be subject to the approval of the Architectural Committee and the plans shall be submitted to the Architectural Committee pursuant to its procedures and Design Guidelines.

4.1.9 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 applicable Architectural Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided. Only down lighting shall be allowed at the back of the Building Lot or in the backyard.

4.2 Antennae. No exterior radio antenna, television antenna or other antenna of any type shall be erected or maintained on the property unless it is approved by the Architectural Committee and located or screened in a manner acceptable to said Architectural Committee. No satellite dishes shall be allowed on the Property; provided, however, that small dishes of approximately three (3) feet or less diameter may be placed in an appropriate portion of a Lot not visible from the street if allowed by the Architectural Committee, and subject to all terms and conditions, including screening, which may be imposed in the sole discretion of the Architectural Committee.

4.3 Insurance. Each Owner shall at all times maintain in full force and effect customary casualty insurance for the full insurable value of the improvements on the Owner's Building Lot. Each Owner of a patio home with a common party wall (Lots 23 through 34 of Block 1, and Lots 2 through 19 of Block 2) shall in addition ensure that the insurance policy for a patio home owned by an Owner with a common party wall shall have insurance policy endorsements HO3 or HO5 or such similar or replacement endorsements that provide for interior and exterior damage. Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance on any property owned or managed by any such Association or which would be in violation of any law.

4.4 No Further Subdivision. No Building Lot may be further subdivided, nor may any easement or other interest therein.

4.5 Signs. No sign of any kind shall be displayed to the public view without the approval of the applicable Architectural Committee or Association, and City of Meridian if otherwise so required, except:

(A) such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots or standard size real estate for sale signs placed by an Owner on a Building Lot;

(B) temporary signs naming the contractors, the architect, and the lending institution for particular construction operation;

(C) such signs identifying subdivision, or informational signs, of customary and reasonable dimensions as prescribed by the Architectural Committee may be displayed on or from the Common Area; and,

All signage, including signage for the exceptions listed as (A)-(C), must be done in accordance with the Association signage format. Without limiting the foregoing, no sign shall be placed in the Common Area without the written approval of the applicable Architectural Committee or the Association. House numbering shall be in accordance with the city requirements and approved by the Architectural Committee. Except for the marketing signs of Grantor, no for sale or for rent signs shall be permitted on any Building Lot or Common Area.

4.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area or vacant Building Lots, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. No noise or other nuisance, as described in the Meridian City Code, as amended from time to time, shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Association), flashing lights, or search lights, shall be located, used, or placed on the Property without the prior written approval of the Association.

4.7 Exterior Maintenance: Owners Obligations. 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 of facilities on or adjoining their Building Lot which would otherwise be the Association's responsibility to maintain, the Board of the Association, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owners Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the 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 set forth in Article VIII of this Declaration. The Owner of the offending property shall be personally liable, and such Owners' property may be subject to a Limited Assessment, for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due, including attorney's fees and costs. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board of the Association, be added to the amounts payable by such Owner as Regular Assessments. Each Owner shall have the remedial rights set forth herein if the

Association fails to exercise its rights within a reasonable time following written notice by such Owner.

4.8 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 Architectural 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 Architectural Committee, which may include drainage from the Common Area over any Building Lot in the Property.

4.9 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 provisions of Meridian City Code shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means, or devices which are not the responsibility of the Ada County Highway District, the Association, or other public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided herein, as may be applicable.

4.10 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 designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of the Board of the Association and all governmental authorities having jurisdiction. Grantor or affiliates of Grantor may use the water supply as deemed necessary for temporary or other irrigation purposes.

4.11 No Hazardous Activities. No activities shall be conducted on the Property, and improvements constructed on any property which are or might be unsafe or hazardous to any person or property.

4.12 Unsightly Articles. 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, and trash shall be kept at all times in such containers and in areas approved by the applicable Architectural Committee. No clothing or fabrics shall be hung, dried, or aired in such a way as to be visible to other property, and no equipment, treat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse, or trash shall be kept, stored or allowed to accumulate on any Building Lot except within an enclosed structure or as appropriately screened from view. No vacant residential structures shall be used for the storage of building materials.

4.13 No Temporary Structures. Except for Grantor's marketing structures as allowed by Section 4.21, no house trailer, mobile home, tent (other than for short term individual use which shall not exceed one (1) week unless approved by the Association), 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. Also excepted from this requirement is any sales office established for the Property.

4.14 No Unscreened Boats, Campers, and Other Vehicles. No boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepairs and unsightly vehicles, or similar equipment 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 Architectural Committee. To the extent possible, garage doors shall remain closed at all times.

4.15 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Building Lot to the Meridian City Sewer System and pay all charges assessed therefore.

4.16 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This paragraph 4.16 shall not prohibit exploratory drilling or coring which is necessary to construct a residential structure or Improvements.

4.17 Energy Devices. Outside. No energy production devices, including, but not limited to, 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 applicable Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This paragraph 4.17 shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

4.18 Vehicles. The use of all vehicles, including, but not limited to, trucks, automobiles, bicycles, motorcycles, snowmobiles, aircraft, and boats, shall be subject to all Association Rules, which may prohibit or limit the use thereof within Olivetree at Spurwing Subdivision. No on-street parking shall be permitted except where expressly designated for parking use. No parking bays shall be permitted in any side, front, or backyard. Vehicles parked on a driveway shall not extend into any sidewalk or bike path or pedestrian path.

4.19 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property. This paragraph 4.19 does not apply to the keeping of up to two (2) domesticated dogs or two (2) domesticated cats in any combination provided the total of such domesticated dogs and domesticated cats shall in no event exceed two, and other 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 shall be considered a nuisance. Each dog in Olivetree at Spurwing Subdivision shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of its owner. Such owner shall clean up any animal defecation immediately from the Common Area or public right-of-way. Failure to do so may result, at the Board of the Association'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 Architectural Committee approval, shall be appropriately screened, and shall be maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of ten (10) feet from the side and

twenty-five (25) feet from the 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 the Common Area or an adjacent Building Lot. Notwithstanding the foregoing, nothing herein shall prevent the possession by an Owner, Occupant, Licensee, Tenant, or Invitee of a dog which has been trained and is used for the purpose of a seeing eye, guide dog for the blind or other qualified service dog.

**4.20 Landscaping.** The Owner of any Building Lot shall maintain the sod and landscape such Building Lot in conformance with the landscape plan approved by the Association, and as approved by the Architectural Committee. All landscaping shall be planted within thirty (30) days after said dwelling structure is completed, weather permitting. The initial front landscaping shall include as a minimum, sod in the front and side yards, shall not exceed more than two (2) trees of at least two inch (2") caliper which may be any combination of deciduous or flowering in front yard, ten (10) - five (5) gallon shrubs or plants, five (5) - two (2) gallon shrubs or plants. But if Grantor or an affiliate of Grantor constructs the dwelling structure, only the front yard of the Building Lot is required to be landscaped within thirty (30) days of substantial completion of the dwelling structure. The Owner is then responsible for completing the balance of the Building Lot landscaping within ninety (90) days after the Building Lot is conveyed to the first Owner of the Building Lot. Additionally, Grantor may grant extensions of the landscaping deadlines to any party for up to ninety (90) days. Prior to construction of Improvements, the Owner (or any Association to which such responsibility has been assigned) shall provide adequate irrigation and maintenance of existing trees and landscaping, shall control weeds, and maintain the Owner's (or Association's) property in a clean and safe condition free of debris or any hazardous condition. All trees located on common Building Lot lines shall be the joint responsibility of the adjoining Building Lot owners. All landscaped Common Areas shall be irrigated by an underground sprinkler system.

Following commencement of any construction of any Improvement, construction shall be diligently pursued and completed as soon as reasonably practical. All landscaping on a Building Lot, unless otherwise specified by the applicable Architectural Committee, shall be completed as soon as reasonably practical following completion of the residential structure on such Building Lot.

**4.21 Exemption of Grantor.** Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements with respect to the Common Area to utility companies, public agencies, or others, or to complete excavation, grading, and construction of Improvements to and on any portion of the property owned by Grantor, or to alter the foregoing and its 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 remains unsold. Such right shall include, but shall not be limited to, erecting, constructing, and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same 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 from Grantor 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 reasonably necessary to the proper development and disposal of the Property. Grantor may use any structures owned by Grantor on the Property as model home complexes or real estate sales or leasing offices for lots and homes within the Olivetree

at Spurwing Subdivision. Grantor need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Grantor or an affiliate of Grantor on any portion of the Property owned by Grantor or an affiliate of Grantor. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantors interest in any portion of the Property, by an express written assignment recorded in the Office of the Ada County Recorder.

4.22 Conveyances to and from Municipalities. The Board of the Association shall have the power to convey any portion of the Common Area in Olivetree at Spurwing Subdivision to the City of Meridian, the County of Ada, Ada County Highway District, the State of Idaho, the United States of America, or any political subdivision thereof if titled in the name of the Association. The Board of the Association shall also have the power to receive a conveyance of any property interest from the above-referenced entities, or any other individual or entity, and to hold such property interest as Common Area.

## ARTICLE V: OLIVETREE HOMEOWNERS' ASSOCIATION, INC.

5.1 Organization of Olivetree Homeowners' Association, Inc. Olivetree Homeowners' Association, Inc. (Association) shall be initially organized by Grantor as an Idaho nonprofit corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or with any Supplemental Declaration which Grantor might adopt pertaining to the Property.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association and no Owner shall have more than one membership in the Association. Memberships in the Association shall be appurtenant to the Building Lot or other portion of the Property owned by such Owner. The memberships in the Association shall not be transferred, pledged, assigned, or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

5.3 Voting. Voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own, or attributable to the Building Lots owned by Grantor. The number of votes any Member may cast on any issue is determined by the number of Building Lots which the Member, including Grantor, owns. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Building Lot. For voting purposes, the Association shall have two (2) classes of Members as described below:

5.3.1 Class A Members. Owners other than Grantor shall be known as Class A Members. Each Class Member shall be entitled to cast one (1) vote for each Building Lot owned by such Class A Member on the day of the vote.

5.3.2 Class B Members. The Grantor shall be known as the Class B Member, and until such time as Grantor is no longer the owner of any Building Lot in the Olivetree at Spurwing Subdivision, Grantor shall have the exclusive right, power and authority to appoint and elect the Board of Directors and otherwise manage the affairs of the Olivetree Homeowners' Association, Inc. The Class B Member shall cease to be Class B Member when the Grantor no longer owns a Building Lot in the Subdivision.

Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary, or contract purchaser of the Building Lot concerned, for the term of the lease, mortgage, deed of trust, or contract. Any sale, transfer, or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by a Board of Directors (Board) and such owners as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of the Association shall be elected in accordance with the provisions set forth in the Association Bylaws.

5.5 Power and Duties of the Association.

5.5.1 Powers. The Association shall have all the powers of a corporation organized under the general non-profit corporation laws of the state of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Declarations other assets (including water rights, if any, when and if received from Grantor) and affairs and the performance of the other responsibilities herein assigned, including without limitation:

5.5.1.1 Assessments. The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

5.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or

threatened breach of this Declaration or the Article or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof. The Board shall also have the power, obligation and duty to enforce the provisions of the Association Rules. In the event of a breach of any of the restrictions contained in this Declaration or of any Association Rules by a Building Lot Owner, his or her family, guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Building Lot Owners may enforce the obligations of each Owner to obey such Association Rules or restrictions in any manner provided by law or in equity, including but not limited to, appropriate legal action, suspension of the Owner's right to use the common facilities of the Project or suspension of the Owner's voting rights; provided, however, such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for an infraction of such rules. In addition to the other remedies herein set forth, the Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in an amount not to exceed One Thousand and no/100 Dollars (\$1,000.00) for each violation and the payment of such fine may be enforced in the same manner as set forth hereof. Prior to imposing any penalty provided herein for breach of any rules enacted hereunder or restrictions contained in this Declaration, the Board shall send written notice to the Building Lot Owner specifying the nature of the infraction and provide an opportunity to the Building Lot Owner to a hearing before the Board regarding such infraction and the penalty to be imposed. In the event that the Board determines that said infraction has occurred and that a penalty shall be imposed, after a reasonable opportunity for a hearing has been provided, the determination of the Board shall be final. Notwithstanding anything to the contrary herein contained, neither the Board nor the Association of Members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Building Lot on account of such Owner's failure to comply with the provisions in this Declaration or of the Bylaws or any Association Rules adopted by the Board relating to the operation of the Common Area or Common Area facilities except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration or on account of a foreclosure or under the power of sale herein granted for failure of the Owner to pay the assessment levied pursuant to the provisions hereof. In the event legal action is instituted by the Board pursuant to this paragraph, any judgment rendered in any such action shall include costs of collection, court costs, and reasonable attorneys' fees in favor of the Association.

5.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm, or corporation to act as manager, and to contract for the maintenance, repair, replacement, and operation of the Common Area. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.5.1.4 Association Rules. The power to adopt, amend, and repeal by majority vote of the Board of the Association such rules and regulations as the Association deems reasonable, including any rules or regulations related in any way to the Architectural Committee. The Association may govern the use of the Common Areas, including, but not limited to, the use of private streets by the Owners, if any, their families, invitees, licensees, lessees, or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner. 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 of any conflict between such Association Rules and any other provisions of this Declaration, or the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by provisions of this Declaration, the Articles, or the Bylaws to the extent of any such inconsistency.

5.5.1.5 Emergency Powers. The power, exercisable by the Association or by any person authorized by it, to enter upon any 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 Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the 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, or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation, and enjoyment of the Common Area, and for the preservation of the health, safety, convenience, and welfare of the Owners, for the purpose of constructing, erecting, operating, or maintaining:

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; and,

5.5.1.6.2 Public sewers, 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, berms, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, but not limited to, bicycle pathways.

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

5.5.2.1 Operation and Maintenance of the Common Area. Operate, maintain, and otherwise manage, or provide for the operation, maintenance, and management of, the Common Area and Landscape Easement areas, if any, including the repair and replacement of property damaged or destroyed by casualty loss, and the discharge of any of the Association's duties and obligations under any shared use agreement with any other entity, including, without limitation, the payment of its share of any and all maintenance or capital improvement costs and expenses. Specifically, the Association shall, at Grantors sole discretion, operate and maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association. Such properties may include those lands intended for open space uses and which may be referred to as non-buildable lots per the Plat. Additionally, the Association may, in its discretion, limit or restrict the use of the Common Area to the Owners residing in the Subdivision.

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 the Common Area.

5.5.2.3 Maintenance of Berms Retaining Walls and Fences. Maintain the berms, retaining walls, fences, and water amenities within and abutting the Common Area and Landscape Easement areas, if any.

5.5.2.4 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Area, the Association, and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the 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 Association shall pay all other federal, state, or local taxes, including income or corporate taxes levied against the Association, it may be required to pay by law.

5.5.2.5 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 the Common Area, and manage for the benefit of the Olivetree at Spurwing Subdivision all domestic, irrigation, and amenity water rights

and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership, or otherwise. The Association shall maintain, repair, and operate any sewer lift stations located on the Property, if any.

5.5.2.6 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the state of Idaho, and maintain in effect any insurance policy the Board of the Association deems necessary or advisable, including, without limitation, the following policies of insurance:

5.5.2.6.1 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 the Common Area.

5.5.2.6.2 Comprehensive public liability insurance insuring the Board of the Association, the Association, the Grantor, and the individual grantees and agents and employees of each of the foregoing, against any liability incident to the ownership and/or use of the Common Area. Limits of liability of such coverage shall be as follows:

Not less than One Million Dollars and No Cents (\$1,000,000.00) per person, and Two Million Dollars and No Cents (\$2,000,000.00) per occurrence, with respect to personal injury or death, and One Million Dollars and No Cents (\$1,000,000.00) per occurrence with respect to property damage.

5.5.2.6.3 Full coverage directors and officers liability insurance with a limit of at least Five Hundred Thousand Dollars and No Cents (\$500,000.00).

5.5.2.6.4 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 other bonds as the Board of the Association shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

5.5.2.6.5 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owners interests in such proceeds and to deal therewith.

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

5.5.2.7 Rule Making. Make, establish, promulgate, amend, and repeal such Association Rules as the Board of the Association shall deem advisable and to levy fines for the violation thereof.

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

5.5.2.9 Architectural Committee. Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration.

5.5.2.10 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or the Bylaws, including, without limitation, the recordation of any claim of lien with the Ada County Recorder, assessing fines, all as more fully provided herein.

5.5.2.11 Private Streets, Signs, and Lights. Maintain, repair, or replace private streets, if any (as noted on the Plat and including any cul-de-sac easements), street signs, and private street lights located on the Property. This duty shall run with the land and cannot be waived by the Association unless the City of Meridian consents to such waiver.

5.6 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officer of the Association, or the Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on the account of any act, omission, error, or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Grantor, or the Architectural Committee, or any other committee, or any owner of the Association, or the Grantor, 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 misconduct.

5.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and copies shall be distributed to each Member of the Association, including pro forma operating statement or budget, for each fiscal year shall be distributed not less than thirty (30) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable, identified by the Building Lot number and the name of the person or entity assigned.

5.8 Meetings of Association. Each year the Association shall hold at least one (1) meeting of the Members, according to the schedule for such meetings established by the Bylaws; provided,

however, that such meeting shall occur no later than November 1 each year. Only Members shall be entitled to attend Association meetings, and all other persons may be excluded. Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, and any person in possession of a Building Lot, not less than ten (10) days, nor more than thirty (30) days, before the meeting and shall set forth the place, date, and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board of the Association. The presence at any meeting in person of the Class B Member, where there is such a Member, and of the Class A Members representing Owners holding at least thirty percent (30%) of the total votes of all Class A Members, shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was scheduled. A second meeting may be called as the result of such an adjournment, provided notice is given as provided above. The required quorum at the adjourned meeting shall be twenty-five percent (25%) of all voting Owners. At any such meeting properly called, the presence of any Member shall constitute a quorum.

## ARTICLE VI: RIGHTS TO COMMON AREAS

6.1 Common Area. Each Owner of a Building Lot shall also own an undivided interest-in-common in the Common Area. The percentage of ownership in the Common Area which is to be allocated to each Building Lot as a whole for purposes of assessments, tax assessments, and liability, is attached hereto as Exhibit "B" and is incorporated herein by reference. Every Owner shall also have a right to use each parcel of the 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;

6.1.2 The right of the Association to suspend the voting rights and rights to use of, or interest in, the Common Area recreational facilities (but not including access to private streets, if any, cul-de-sacs and walkways of the Property) 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 thirty (30) days for any infraction of the Association Rules; and,

6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area titled in its name to any public agency, authority, or utility for such purposes and subject to such conditions as may be permitted by the Articles and the Bylaws and agreed to by the Members. No dedication or transfer of said Common Area shall be effective unless an instrument agreeing to such dedication or transfer signed by Members representing two-thirds (2/3) of each class of Members has been recorded.

6.1.4 The right of the Association to prohibit the construction of structures or Improvements on all Common Areas which interfere with the intended use of such areas as private street, cul-de-sacs and walkways.

6.1.5 The right of the Association to protect wildlife habitat.

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

6.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the respective Bylaws and Association Rules of the Association, such Owner's right of enjoyment to the Common Area, to the members of such Owners family in residence, and such Owners tenants or contract purchasers who reside on such Owners Building lot.

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 Owners resident tenant or contract purchaser, or such Owner's family and 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 a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments.

6.5 Common Area Adjustments. The Declarant and the Association at all times reserve the right to grant easements for utility and/or access purposes over, upon, across, under, or through any portion of the Common Area, and adjust the boundary lines of the Common Areas, and each owner hereby irrevocably appoints the Declarant and the Association as the Owner's limited attorney-in-fact coupled with an interest for such purposes.

## ARTICLE VII: ASSESSMENTS

7.1 Covenant to Pay Assessments. By acceptance of a deed to any property in the Subdivision, each Owner of such property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special, and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

7.1.1 Assessment Constitutes Lien. Such Assessments and charges, together with interest, costs, and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land 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 interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.

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

7.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by an Association, including legal and attorneys fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management, and operation of the Common Areas, including all Improvements located on such areas owned and/or managed and maintained by such Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance, and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively "Expenses").

7.2.2 Computation of Regular Assessments. The Association shall compute the amount of its Expenses on an annual basis. The Board of the Association shall compute the amount of Regular Assessments owed beginning the first day of the third month following the month in which the closing of the first sale of a Building Lot occurred in Olivetree at Spurwing Subdivision for the purposes of the Association's Regular Assessment (Initiation Date). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of an 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.

7.2.3 Amounts Paid by Owners. The Board of the Association can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual, or annual installments. The Regular Assessment to be paid by any particular Owner for any given fiscal year shall be computed as follows:

7.2.3.1 As to the Association's Regular Assessment, each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Building Lots in the applicable Property attributable to the Owner by the total number of Building Lots in such Property.

The Grantor shall not be obligated to pay any assessment of any nature while the Grantor owns a Building Lot or lot.

### 7.3 Special Assessments.

7.3.1 Purpose and Procedure. In the event that the Board of the Association shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of such Association for any reason, including but not

limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorneys fees and/or litigation costs, other professional fees, or for any other reason, the Board of the Association 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. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross Expenses of such Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of such Association. The Board of the Association shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

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

7.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board of the Association may levy a Limited Assessment against a Member as a fine or as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Members Building Lot or restricted Common Area into compliance with the provisions of the governing instruments for Olivetree at Spurwing Subdivision.

7.5 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Building Lot for all Members of the Association, except for those Building Lots in Block 2 of the Property where such assessments shall be uniform for such Building Lots.

7.6 Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1st of each year and terminate December 31st of the year in which the Initiation Date occurs. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments.

7.7 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board of the Association. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by an Association. An Association may bring an action against the delinquent Owner and may foreclose the lien against such Owners Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may exempt such Owner from

such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owners Building Lot.

7.8 Estoppel Certificate. The 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 or not, to the knowledge of the Association, a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 7.8 may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge. The Association may, in its unfettered discretion, charge a reasonable fee to cover the cost of obtaining an estoppel certificate.

7.9 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, 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 Property, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of 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 requirement, 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 ASSESSMENT; LIENS

8.1 Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of 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 attorneys fees in addition to any other relief or remedy obtained against such Owner. The Board of the Association or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board of the Association may exercise the power of foreclosure and sale pursuant to paragraph 8.3 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 with power of sale 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 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 Lot upon recordation of a claim of lien with the Ada County Recorder. 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 Association may cause to be recorded in the office of the Ada County Recorder 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 Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The 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 or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board of the Association is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

**8.4 Required Notice.** Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Building Lot(s) and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

**8.5 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 deed of trust or 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 paragraph 8.6 with respect to a first mortgagee who acquires title to 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

of 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.

8.6 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under any deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Building Lot shall remain subject to this Declaration as amended.

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

9.1 Members' Right of Inspection. The membership register, books of account and minutes of meetings of the Board of the Association and committee of an Association shall be made available for inspection and copying by any Member of the Association or by such Members duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Members 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 the Association or for reasons unrelated to the affairs of the Association.

9.2 Rules Regarding Inspection of Books and Records. The Board of the Association shall establish reasonable rules with respect to:

9.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.

9.2.2 Hours and days of the week when such an inspection may be made.

9.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this Article IX.

9.3 Directors' Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the 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: ARCHITECTURAL COMMITTEE

10.1 Creation. Within ten (10) days of the date on which the Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on the Olivetree at Spurwing Subdivision Architectural Committee (Architectural Committee). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity

appointing them at any time without cause. The initial members of the Architectural Committee selected by Grantor are John W. Hewitt, Charlene Hewitt, and William D. Waite.

10.2 Grantor's Right of Appointment. At any time, and from time to time, for so long as Grantor owns any Building Lots, Grantor shall have the exclusive right to appoint and remove all members of the Architectural Committee. At all other times, the Association Board shall have the right to appoint and remove all members of the Architectural Committee. If a vacancy on the Architectural Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board of the Association, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.

10.3 Review of Proposed Construction. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Association, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. The Board of the Association shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, licensed with the state of Idaho, to assist the Architectural Committee in its review of proposals or plans and specifications submitted to the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the habitat of the Common Areas, or appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee acting on behalf of the Association shall have the right to approve all builders who may be retained for the purpose of constructing any residence or other improvement constituting the Property as reflected in the Plat.

10.3.1 Conditions on Approval. The Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, and/or upon the agreement of the Applicant to reimburse an Association for the cost of maintenance, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

10.3.2 Architectural Committee Rules and Fees. The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approvals or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the costs and expenses of the Architectural Committee, including the cost and expense of hiring an architect licensed by the state of Idaho, as provided above, or for such other purposes as established by the Board of the Association, and such fee shall be refundable to the extent not expended for the

purposes herein stated. If plans submitted are the same or substantially similar to plans previously approved by the Architectural Committee, fees may be reduced for such application approvals.

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

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

**10.3.4 Architectural Committee Decisions.** Decisions of the Architectural Committee and the reasons therefore shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the Architectural Committee. Any materials submitted pursuant to this Article X shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed to the Applicant within thirty (30) days after the date of filing said materials with the Architectural Committee. The Architectural Committee shall have the power to hire an architect, licensed with the state of Idaho, to assist the Architectural committee in its review of proposals or plans and specifications submitted to the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the habitat of the Common Areas, or appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

**10.4 Meetings of the Architectural Committee.** The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time by resolution unanimously adopted in writing, designate an Architectural Committee representative (who may, but need not be, one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to paragraph 10.9. In the absence of such designation, the vote of any two (2) members of the Architectural Committee, or the written consent of any two (2) members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

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

proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

10.6 Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Board of the Association and except if a professional architect is a member of the Committee.

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

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

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

10.7.3 If upon the expiration of thirty (30) days from the date of such notification, or any longer time the Architectural Committee determines to be reasonable, the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board of the Association in writing of such failure. Upon notice and hearing, as provided in the Bylaws, the Board of the Association shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board of the Association ruling unless the Board of the Association specifies a longer time as reasonable. If the Owner does not comply with Board of the Association ruling within such period, the Board of the Association, at its option, may either remove the non-complying improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of the Association shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

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

10.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Architectural Committee nor any member thereof, nor its duly authorized Architectural Committee representative, shall be liable to any Association, or to any Owner or Grantee for any loss, damage, or injury arising out of or in any way connected with the performance of the Architectural Committees duties hereunder, unless due to the willful

misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

**10.9 Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area, or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require. However no variances will be granted for construction of structures or Improvements, including without limitation manicured lawns, in the Common Areas. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the office of the county Recorder of Ada County. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Building Lot and particular provision hereof covered by the variance, nor shall it affect any way the Owners obligation to comply with all governmental laws and regulations affecting such Owners use of the Building Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

## ARTICLE XI: ANNEXATION OF ADDITIONAL PROPERTIES

**11.1 By Grantor.** In Grantor's sole discretion, it may deem it desirable to annex some other properties to the Property covered by this Declaration. Additional property may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Grantor, its successors or assigns, at any time, and from time to time, without the approval of any Owner or Association. The use and development of such property shall conform to all applicable land use regulations, as such regulations are modified by variances.

**11.2 By Association.** In addition to the provisions concerning annexations by Grantor specified in section 11.1 above, additional property may be created, subject to the same conditions, by the Association upon the exercise by Members of at least two-thirds percent (2/3%) of the votes of the Association.

**11.3 Rights and Obligations of Owners of Annexed Property.** Subject to the provisions hereof, upon the recording of a Supplemental Declaration as to any property all provisions contained in the Declaration shall apply to the property in the same manner as if it were originally covered by this Declaration, subject to such modifications, changes and deletions as are specifically provided in such Supplemental Declaration, such property shall be treated for all purposes as property as defined above. The Owners of lots located in the additional property shall become members of the

Association and shall become liable for their appropriate share of Assessments. Title to the Common Areas which are to be owned and managed by the Association within said additional property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record including those set forth in this Declaration or any Supplemental Declaration applicable to such additional property.

11.4 Method of Annexation. The addition of a property to the Property authorized under sections 11.1 and 11.2 shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the additional property, which shall be executed by Grantor or the Owner thereof and which shall annex such property to the Property. Thereupon each additional piece of property shall be part of the Property, shall be subject to this Declaration and encompassed within the general plan and scheme hereof as modified by such Supplemental Declaration, and shall be subject to the functions, powers, and jurisdiction of the Association established for the area encompassing such property. Such Supplemental Declaration or other appropriate document may contain such additions, modifications or deletions as may be deemed by Grantor or the Owner thereof desirable to reflect the different character, if any, of the property, or as Grantor or such Owner may deem appropriate in the development of the property. If any property is created, the Association shall have the authority to levy Assessments against the Owners located within such additional property, and the Association shall have the duty to maintain additional Common Area located within the additional property if so specified in any Supplemental Declaration.

11.5 De-annexation. Grantor may delete all or a portion of the property described on Exhibit A, including previously annexed property, from the Property and from coverage of this Declaration and the jurisdiction of any Association so long as Grantor is the owner of all such additional property and provided that a Supplemental Declaration of Deletion of Property is recorded in the Office of the Ada County Recorder in the same manner as a Supplemental Declaration of annexation. Members other than Grantor as described above, shall not be entitled to de-annex all or any portion of additional property except on the favorable vote of seventy-five percent (75%) of all members of the Association and written approval of Grantor so long as Grantor owns any portion of the property described on Exhibit A.

## ARTICLE XII: EASEMENTS

12.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to the unwillful placement or settling or shifting of the sidewalks, buildings 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 act or acts of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, the owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph 12.1

12.2 Easements of Access. All Owners of Building Lots will have a perpetual easement for access, ingress and egress over the Common Area, including but not limited to the private streets, if any, cul-de-sacs and walkways. This easement shall run with the land. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area.

12.3 Drainage and Utility Easements. Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair for any improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, and landscaping. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and 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, as appropriate, to the Property until close of escrow for the sale of the last Building Lot in the property to a purchaser.

12.3.1 Improvement of Drainage and Utility Easement Areas. The owners of Building Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas as shown on the Plat of Olivetree at Spurwing Subdivision or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose; provided, however, that the Owner of such Building Lot and the Grantor, Association or designated entity with regard to the landscaping easement described in this Article XII, shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the Association Architectural Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided, that any damage sustained to improvements on the easement areas as a result of legitimate use of the easement areas shall be the sole and exclusive obligation of the Owner of the Building Lot whose Improvements were so damaged.

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

12.4.1 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 therefore, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which said connections or any portion

thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

12.4.2 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 said connections as service to such Owners Building Lot.

12.5 Driveway Easements. Whenever a driveway is installed within the Property (which in whole or in part lies upon a Building Lot owned) by an Owner other than the Owner of the Building Lot served, or installed to serve more than one Building Lot, the Owner of each Building Lot served or to be served by such driveway Building Lot shall be entitled to full use and enjoyment of such other Building Lot as required to service such Owners Building Lot or to repair, replace, or maintain such driveway.

12.6 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections or driveways, or with respect to the sharing of the cost therefore, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of the Association which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

12.7 General Landscape Easement. An easement is hereby reserved to the Association, its contractors and agents, to enter those portions of Building Lots, for the purpose of installing, maintaining, replacing, and restoring exterior landscaping, and natural vegetation and habitat if an Owner fails to maintain such Building Lot. 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 such Association shall determine to be necessary from time to time. Such special costs shall be a Limited Assessment.

12.8 Overhang Easement. There shall be an exclusive easement appurtenant to each Building Lot over the Common Areas for overhanging eaves, and for any projections from the buildings, which projections shall not extend beyond the save line and shall be consistent with all building codes.

12.9 Maintenance and Use Easement Between Walls and Lot Lines. Whenever the wall of a structure, or a fence or retaining wall legitimately constructed on a Building Lot under plans and specifications approved by the Architectural Committee is located within five (5) feet of the lot line of such Building Lot, the Owner of such Building Lot is hereby granted an easement over and on the adjoining Building Lot (not to exceed five (5) feet from the Building Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Building Lot is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure or fence.

12.10 Sewer Covenants and Restrictions. All Lots within Olivetree at Spurwing Subdivision shall be subject to and restricted by the following covenants and restrictions:

12.10.1 A monthly sewer charge must be paid after connecting to the Meridian City public sewer system, according to the ordinances and laws of Meridian City.

12.10.2 The Owner of the Building Lot shall submit to inspection by either the Department of Public Works or the Department of Building whenever a Building Lot is to be connected to the City's sewage system and building sewer is constructed or installed on or with Owners Lot.

12.10.3 The Grantor of this subdivision shall have the right and power to bring all actions against the Owner of the Property conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

12.11 Specific Landscape Easement. Grantor hereby reserves for the benefit of the Association a perpetual Landscape Easement. Such easement shall allow the Association to install and maintain the berms, retaining walls, fences, and landscaping within the area defined as the Landscape Easement on the Plat, if any.

### ARTICLE XIII: MISCELLANEOUS

13.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions, and equitable servitudes of this Declaration shall run until January 1, 2039, unless amended as herein provided. After such date, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Members holding at least three-fourths (3/4) of the voting power of the Association and such written instrument is recorded with the Ada County Recorder.

#### 13.2 Amendment.

13.2.1 By Grantor. Except as provided in paragraph 13.3 below, until the recordation of the first deed to Building Lot in the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, amendment) or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination. Any amendment affecting only a particular piece of property may be made by Grantor by an amendment to this Declaration at any time up to the recordation of the first deed to a Building Lot in such property.

13.2.2 By Owners. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration, other than this Article XIII, any amendment shall be by an instrument in writing signed and acknowledged by the president

and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than fifty percent (75%) of the votes in the Association, and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Article XIII shall require the vote or written consent of Members holding ninety-five percent (95%) of the voting power of the Association.

13.2.3 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 properties 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 Owners property which existed prior to the said amendment.

13.3 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 deed of trust 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 deed of trust such Building Lots shall remain subject to this Declaration, as amended.

13.4 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association, as provided in this paragraph 13.4.

#### 13.5 Enforcement and Non-Waiver.

13.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

13.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of any Association, is hereby declared a nuisance and will give rise to a fine assessed by the Association and cause of action in the Grantor, the Association or any Owner Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

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

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

13.5.5 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.

13.6 Interpretation. The provisions 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.

13.6.1 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.

13.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph 13.6.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

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

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

13.7 Successors and Assigns. All references herein to Grantor, Owners, any Association, or person shall be construed to include all successors, assigns, partners, and authorized agents of such Grantor, Owners, Association, or person.

13.8 No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

13.9 Disclaimers. All Owners expressly acknowledge that there are no understandings, representations, warranties or promises of any kind that have been made to induce the Owners into owning Building Lots in the Property except as set forth in this Declaration or any other written valid and binding agreement between the Declarant and the Owners, that this Declaration or any other

written valid and binding agreement between the Declarant and the Owners sets forth in full the entire agreement between the parties and governing the Property, and the Owners have not relied on any verbal agreement, statement, representation, warranty or other promise that is not expressed in writing in this Declaration or any other written valid and binding agreement between the Declarant and the Owners. No person, agent or employee of Declarant has any authority to modify the terms of this Section, and no person on Declarant's behalf is authorized to make any future verbal agreement upon which any Owner may rely to cancel, change or modify any portion of this Declaration. This Declaration or any other written valid and binding agreement between the Declarant and the Owners supersedes any and all prior understandings and agreements. This Declaration or any other written valid and binding agreement between the Declarant and the Owners may be amended or modified only by the terms included herein.

13.10 Limited Warranty and Arbitration. For a period of one (1) year from the date of the recording of the Plat, Declarant warrants and represents to the Association that the Property has been completed in a good and workmanlike manner, but such warranty is the sole and exclusive warranty by Declarant to the Association and any Owner with regard to the Property and the Building Lots. Except for the forgoing limited warranty, Declarant makes no other warranties whatsoever and all such warranties express and implied are hereby disclaimed and there are no WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. In the event the foregoing warranty is breached within one (1) year of the date of the recording of the Plat for the Property, then Declarant's sole obligation is to repair or replace any portion of the work performed in the Property which is defective as a result of the work not being performed in a good and workmanlike manner. All claims against Declarant shall automatically expire one (1) year from the date of the recording of the Plat. In the event there is a dispute between Declarant and the Association or any Owner with regard to the construction of the Property within such one (1) year period of time which constitutes a breach of the foregoing warranty, then all such disputes, claims, and controversies between them, whether individual, joint, or class in nature, shall be arbitrated pursuant to the rules of the American Arbitration Association upon the request of Declarant, the Association or any Owner. The duty to arbitrate includes without limitation obtaining injunctive relief or a temporary restraining order or an action to obtain damages. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. The decision of the arbitrator shall be binding upon the parties and shall not be appealable. Each party to the arbitration proceeding shall bear their own costs and attorneys' fees regardless of who is the prevailing party.

13.11 Association Articles and Bylaws. True and accurate copies of the Association's Articles of Incorporation and Bylaws as of the effective date of this Declaration are attached hereto as Exhibits "C" and "D" and are incorporated herein by reference.

#### ARTICLE XIV: SPURWING GOLF COURSE

14.1 No Access to Golf Course. No owner of a Building Lot shall be entitled to access The Spurwing Golf Course ("Golf Course") from their Building Lot or any Common Area or other property located in the Project.

## 14.2 Golf Course Easements.

14.2.1 There is hereby created an easement ("Golf Course Easement") in favor of Declarant and The Club at Spurwing, and the invitees, members and social guests of The Club at Spurwing, or their assignees, upon, over, across and through the Golf Course Easement area, as designated on the Plat of the Olivetree at Spurwing Subdivision. The holder of this Golf Course Easement shall be allowed to make full and complete use of the easement area, including permitting members and invitees of the Golf Course to play golf thereon, retrieve balls therefrom, as well as to drive golf carts thereon, and make such other uses of the Golf Course Easement area as are incidental and necessary and proper to the enjoyment of the Golf Course Easement area for Golf Course uses and purposes. No Owner or Member shall, at any time, construct any improvement or in any way landscape any area lying within the Golf Course Easement, it being the intention of Declarant that all improvements of any nature, including all landscape improvements, be installed and maintained by The Club at Spurwing, for the purpose of maintaining the integrity of the Golf Course Easement area. There is hereby reserved a further easement in favor of Declarant and The Club at Spurwing, upon, over, across and through the Common Areas for the purpose of operating, maintaining, planting, replanting and repairing the Golf Course facilities.

14.2.2 The Building Lots and any Common Areas immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course, as well as for any chemicals, fertilizers, insecticides and other substances which may be applied to the Golf Course but which may impact the Building Lots and any Common Areas. Under no circumstances shall the Grantor, Pacific Links, the Association or The Club at Spurwing or any subsequent owners of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of these easements.

14.2.3 The Club at Spurwing, Pacific Links, or any later owner of the Golf Course, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Property lying reasonably within range of golf balls hit from the Golf Course for the purpose of retrieving golf balls from bodies of water within the Common Areas, if any.

14.2.4 The Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property and the Golf Course; provided, no person shall alter the natural drainage on any Common Area so as to materially increase the drainage of storm water onto adjacent portions of the Project without the consent of the owner of the affected property.

14.2.5 The Declarant hereby further reserves for itself and for the benefit of the person or entity developing or owning the Golf Course, including The Club at Spurwing, which is located outside the Project, the following described easements:

14.2.5.1 All golf cart path easements, private roads and ingress and egress easements designated as such on a Plat or Plats of the Property which shall be used as golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between the Project and the Golf Course. Nothing shall be placed or maintained in any golf cart path easements which shall interfere with utilization thereof as a playable part of the Golf Course.

14.2.5.2 The right to utilize areas of the Common Areas and Golf Course Easement areas for temporary, above-ground utility lines for use solely in conjunction with tournaments and special events on the Golf Course Facilities. Such use shall not interfere with or damage the primary use of the areas so affected and the utility lines and installations shall be removed by The Club at Spurwing, and all damage repaired promptly upon conclusion of each such tournament and special event.

14.2.5.3 Declarant reserves the right to grant or deed such other easement rights to The Club at Spurwing, or the person or entity developing the Golf Course and to impose such additional restrictions on the Golf Course Easement areas at that time and from time to time as may be reasonably required to effectuate the purposes of the foregoing easements. The reservation of the Golf Course Easement is made for the benefit of the Declarant, The Club at Spurwing, Pacific Links, the members and invited guests or any golf club associated with the Golf Course, and for associated maintenance and service personnel, for golf course and related recreational purposes.

#### 14.3 Golf Course and Clubhouse Facilities.

14.3.1 ALL PRESENT AND FUTURE OWNERS, OCCUPANTS AND OTHER PERSONS AT ANY TIME PRESENT UPON OR HOLDING ANY INTEREST IN THE PROPERTY OR ANY PORTION OR A BUILDING LOT HEREBY ACKNOWLEDGE AND AGREE THAT THEY ARE FULLY AWARE OF THE FACT THAT THE ACQUISITION OF PROPERTY ADJACENT TO OR IN THE VICINITY OF A GOLF COURSE HAS CERTAIN RISKS, INCLUDING THE RISK THAT FROM TIME TO TIME GOLF BALLS FROM THE GOLF COURSE MAY ENTER UPON OTHER PORTIONS OF THE PROPERTY AND DO DAMAGE TO PERSONS AND PROPERTY. ALL SUCH PERSONS ARE HEREBY ADVISED THAT THE GOLF COURSE HAS BEEN DESIGNED WITH LIMITED BUFFERS BETWEEN PLAYING AREAS AND ADJOINING ROADWAYS AND RESIDENTIAL PROPERTIES AND ALL SUCH PERSONS AND OWNERS HEREBY EXPRESSLY ASSUME SUCH RISK AND ACKNOWLEDGE AND AGREE THAT NO CLAIM FOR ANY HARM, DAMAGE OR INJURY OF ANY KIND CAUSED OR OCCASIONED BY GOLF BALLS OR ANY OTHER HAZARD ASSOCIATED WITH THE MAINTENANCE, OPERATION AND USE OF THE GOLF COURSE OR TO ENJOIN THE SAME SHALL BE MADE AGAINST THE DECLARANT, THE CLUB AT SPURWING, PACIFIC LINKS, THE DESIGNERS, THE OWNER OR OPERATOR OF SUCH GOLF COURSE, OR ANY PLAYERS THEREON OR MEMBERS, THEIR INVITED GUESTS OR ANY OTHER OWNER OR OTHER PERSON.

14.3.2 All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing existence, ownership or operation of the Golf Course, if any, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by the Declarant. Further, the ownership and/or operation of the Golf Course, if any, may change at any time and from time to time by virtue of (a) the sale to or assumption of operations of the Golf Course by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course to a "public play" club or

similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the Declarant; and (d) the cessation of the use of the Golf Course Facilities as a functioning golf course and its conversion to an entirely different use. No consent of the Association or any Owners shall be required to effectuate such transfer or conversion.

14.3.3 Neither the Declarant, the Association, Pacific Links, The Club at Spurwing nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Building Lots will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune the trees or other landscaping, and shall have the right, in its sole and absolute discretion, to change the location, configuration, size and elevation of the trees, bunkers, fairways and greens on the Golf Course from time to time in its unfettered discretion. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Building Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

14.3.4 In recognition of the fact that the provisions of these paragraphs are for the benefit of the owner of the Golf Course, no amendment to this Section, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

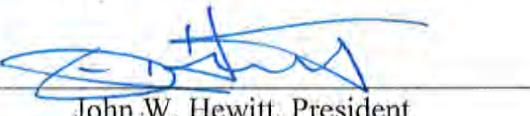
14.3.5 It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Property and the Golf Course. Each shall reasonably assist the other in upholding the high quality of the overall project. The Association shall have no power to promulgate rules and regulations affecting activities on any portion of the Golf Course.

14.3.6 The pressurized irrigation system used in conjunction with the Property shall be available for irrigation purposes on the Property. Declarant reserves the right to collect, use, appropriate all underground and percolating water, both tributary and non-tributary, within and under the Property, together with easements to construct, maintain, replace, and repair tiles, drains, lines, and pipes at appropriate locations for collection and carrying underground or percolating water.

IN WITNESS WHEREOF, the Declarant has executed this Declaration effective as of the date first set forth above.

SPURWING LIMITED PARTNERSHIP,  
an Idaho limited liability partnership

By: Spurwing Corporation, General Partner

By:   
John W. Hewitt, President

STATE OF IDAHO )  
                  ) ss.  
County of Ada    )

On this 3<sup>rd</sup> day of August, in the year 2018, before me, the undersigned Notary Public in and for said State, personally appeared JOHN W. HEWITT, known or identified to me to be the President of Spurwing Corporation, an Idaho corporation, the Manager of Spurwing Limited Partnership, an Idaho limited liability partnership, the person who executed the instrument on behalf of said limited liability partnership, and acknowledged to me that such limited liability partnership executed the same.

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



Notary Public for Idaho

Residence: Minidin, Id.

My Commission Expires: 11-17-2022

Exhibit "A"

Lots 1 through 53 of Block 1, and Lots 1 through 19 of Block 2, of the Olivetree at Spurwing Subdivision. The foregoing being a Resubdivision of Lot 3, and portions of Lots 2 & 4, Block 1, Spurwing Subdivision located in the SW 1/4 of Section 23, T.4N., R.1W., B.M. Meridian, Ada County, Idaho.

Exhibit "B"

Olivetree at Spurwing Subdivision common area ownership

Block 1		Block 1		Block 2	
Lot	Percentage	Lot	Percentage	Lot	Percentage
2	1.87	42	2.15	2	0.88
3	1.88	43	2.24	3	1.14
4	1.67	44	2.43	4	1.17
5	1.71	48	1.88	5	0.89
6	1.97	47	1.78	6	0.89
7	2.63	48	1.79	7	0.89
9	2.54	49	1.77	8	0.89
10	2.28	50	1.83	9	0.90
11	1.88	51	1.88	10	1.31
12	1.88	52	1.88	11	1.08
13	1.74	53	1.78	12	0.88
14	1.86			13	0.89
15	1.90			14	0.89
16	1.85			15	0.88
17	1.91			16	1.00
18	1.88			17	1.18
19	2.13			18	0.89
20	1.88			19	0.88
23	1.12				
24	1.00				
25	1.10				
26	1.08	<b>Common area lots</b>			
27	0.93	Lot 1, 8, 21, 22, 35 & 45, Block 1			
28	0.93	Lot 1, Block 2			
29	0.93				
30	0.94	<b>Lots = 564,216 sf</b>			
31	1.03	<b>Common Area = 152,848 sf</b>			
32	1.41				
33	1.71				
34	1.00				
36	1.85				
37	2.48				
38	2.12				
39	2.20				
40	2.08				
41	2.09				

# Exhibit "C"

201



## ARTICLES OF INCORPORATION (Non-Profit)

Title 30, Chapters 21 and 30, Idaho Code

Filing fee: \$30 typed, \$50 not typed

Complete and submit the form in duplicate.

2017 JUL -5 PM 2:45

SECRETARY OF STATE  
STATE OF IDAHO

**Article 1:** The name of the corporation shall be:  
Olivetree Homeowners' Association, Inc.

**Article 2:** The purpose for which the corporation is organized is: the maintenance, preservation and architectural control of residential lots within the boundaries of the Olivetree at Spurwing Subdivision.

**Article 3:** Registered agent name and address:

John W. Hewitt 1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Name) (Address)

**Article 4:** The board of directors shall consist of no fewer than three (3) people. The names and addresses of the initial directors are:

John W. Hewitt 1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Name) (Address)

Charlene Hewitt 1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Name) (Address)

William D. Waite 1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Name) (Address)

**Article 5:** Incorporator name(s) and address(es):

John W. Hewitt 1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Name) (Address)

(Name) (Address)

(Name) (Address)

**Article 6:** The mailing address of the corporation shall be:

1406 North Main Street, Suite 205, Meridian, Idaho 83642  
(Address)

**Article 7:** The corporation (  does  does not ) have voting members.

**Article 8:** Upon dissolution the assets shall be distributed: to an appropriate public agency for purposes similar to those for which the Association was created.

Signatures of all incorporators:

Printed Name: John W. Hewitt

Signature:

Secretary of State use only

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Exhibit "D"

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BYLAWS

OF

OLIVETREE HOMEOWNERS' ASSOCIATION, INC.

DATED: July 5, 2017

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**BYLAWS**  
**OF**  
**OLIVETREE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the corporation is Olivetree Homeowners' Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at 1406 North Main Street, Suite 205, Meridian, Idaho 83646, or such other place as the Board of Directors may designate, but meetings of members and Directors may be held at such places within the State of Idaho, as may be designated by the Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

2.1 "Association" shall mean and refer to Olivetree Homeowners' Association, Inc., its successors and assigns.

2.2 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Olivetree at Spurwing Subdivision.

2.3 "Member" shall mean and refer to those persons or entities entitled to membership as provided in Article 4 of the Declaration.

2.4 "Member in Good Standing" shall mean and refer to those members having paid all fees, dues and assessments.

2.5 The terms "Common Area," "Declarant," "Development," "Lot," "Owner," and "Plat" shall have the same meanings in these Bylaws as in the Declaration.

**ARTICLE III**  
**MEETING OF MEMBERS**

3.1 Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at such time and date as determined by the Board of Directors.

3.2 Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board of Directors or upon written request of no less than ten (10%) percent of the Members in Good Standing.

3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by personal delivery or by mailing a copy of such notice, postage prepaid, at least ten (10) days, but not more than sixty (60) days, before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, date and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

3.4 Quorum. The presence at the meeting of twenty-five (25%) percent of the total number of votes available to vote at the meeting shall constitute a quorum for any action except as otherwise provided in the Declaration, Articles of Incorporation, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting and schedule a new meeting by again giving notice to the Members as set forth in Section 3.3, until a quorum as aforesaid shall be present or be represented.

3.5 Proxies. At all meetings of Members, each Member in Good Standing may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member or the Member's Lot or failure to pay required fees or dues.

## ARTICLE IV BOARD OF DIRECTORS SELECTION AND TERM OF OFFICE

4.1 Number. The affairs of this Association shall be managed by a Board of three (3) Directors ("Board"), who must either be Members in Good Standing of the Association, or appointed by Declarant.

4.2 Term of Office. Declarant shall appoint the Board of Directors for so long as Declarant is the owner of a Lot or until Declarant revokes its right to appoint the Board of Directors by written notice to the Association and thereafter holds an election for the Board of Directors. Each elected director shall serve for a term of one (1) year and at each annual meeting of the Association after the first election of the Board, the Members in Good Standing shall elect three (3) Directors for a term of one (1) year. Each appointed Director shall serve until he or she is removed, resigns or is replaced by an elected Director.

4.3 Removal. Any appointed director may be removed for gross negligence, embezzlement or self-dealing by a majority vote of the Members in Good Standing. Any elected Director may be removed from the Board, with or without cause, by a majority vote of the Members in Good Standing. In the event of death, resignation or removal of a Director, a successor shall be selected by the remaining Members of the Board and shall serve for the predecessor's term.

4.4 Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his Director's duties.

4.5 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

4.6 Voting. Voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own, or attributable to the Building Lots owned by Spurwing Limited Partnership. The number of votes any Member may cast on any issue is determined by the number of Building Lots which the Member, including Spurwing Limited Partnership, owns. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Building Lot. For voting purposes, the Association shall have two (2) classes of Members as described below:

4.6-1 Class A Members. Owners other than Spurwing Limited Partnership shall be known as Class A Members. Each Class Member shall be entitled to cast one (1) vote for each Building Lot owned by such Class A Member on the day of the vote.

4.6-2 Class B Members. Spurwing Limited Partnership shall be known as the Class B Member, and until such time as Spurwing Limited Partnership is no longer the owner of any Building Lot in the Olivetree at Spurwing Subdivision, Spurwing Limited Partnership shall have the exclusive right, power and authority to appoint and elect the Board of Directors and otherwise manage the affairs of the Olivetree Homeowners' Association, Inc. The Class B Member shall cease to be Class B Member when the Spurwing Limited Partnership no longer owns a Building Lot in the Subdivision.

Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary, or contract purchaser of the Building Lot concerned, for the term of the lease, mortgage, deed of trust, or contract. Any sale, transfer, or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

## ARTICLE V MEETINGS OF DIRECTORS

5.1 Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. Meetings may be held by telephone if all Directors in attendance can hear all other Directors simultaneously.

5.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director. Notice may be oral or written if it is reasonable under the circumstances.

5.3 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by an affirmative majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

6.1 Powers. The Board shall have the power to:

6.1-1 adopt and publish rules and regulations governing the use of any Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

6.1-2 suspend the right to vote of a Member and suspend the right of a Member to use any facilities owned, operated or maintained by the Association during any period in which such Member shall not be a Member in Good Standing. Such rights and voting rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for infraction of published rules and regulations;

6.1-3 exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws or the Articles of Incorporation or the Declaration.

6.1-4 serve as the architectural review committee, appoint an architectural review committee or designate an architect, at the Association's expense, to review proposed home plans and Lot Development;

6.1-5 employ an attorney or such other employees as they deem necessary, at the Association's expense, and to prescribe their duties; and

6.1-6 appoint the registered agent for the Association.

6.2 Duties. It shall be the duty of the Board of Directors to:

6.2-1 cause to be kept a complete record of all its acts taken by the Members or Directors without a meeting, and a record of all actions taken by committees of the Board of Directors;

6.2-2 supervise all officers, agents and employees of the Association and to see that their duties are properly performed;

6.2-3 fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period, foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same;

6.2-4 issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

6.2-5 procure and maintain adequate liability and hazard insurance; and to take such actions as deemed appropriate to enforce reasonable compliance with the Declaration.

## ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The officers of this Association shall be a president and vice president, who shall at all times be Members of the Board of Directors, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following such annual meeting of the Members.

7.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

7.4 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer no longer meeting the qualifications for membership in the Association shall be removed.

7.5 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

7.6 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices.

7.7 Duties. The duties of the officers are as follows:

7.7-1 President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

7.7-2 Vice President. The vice president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

7.7-3 Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep current books and records required under Article IX and shall perform such other duties as required by the Board.

7.7-4 Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; and shall assist the secretary in keeping current the books and records required under Article IX.

## ARTICLE VIII COMMITTEES

The Board of Directors shall appoint any committees it deems appropriate in carrying out its purpose.

## ARTICLE IX BOOKS AND RECORDS

9.1 The Association shall maintain the following records at its principal office:

9.1-1 appropriate accounting records;

9.1-2 a list of the names and addresses of all Members in alphabetical order by class, showing the number of votes each Member is entitled to cast;

9.1-3 the Articles of Incorporation and all amendments thereto;

9.1-4 These Bylaws and all amendments thereto;

9.1-5 All resolutions adopted by the Board of Directors;

9.1-6 Minutes of all meetings of the Members of the Board of Directors;

9.1-7 Copies of all written communications to the Members for the previous seven (7) years;

9.1-8 Financial statements of the Association for the previous seven (7) years;

9.1-9 The names and business or residence addresses of the current Directors and officers; and

9.1-10 The most recent annual report filed with the Secretary of State.

9.2 The books and records of the Association shall be available to the Members for inspection subject to the limitations set forth in the Act.

## ARTICLE X INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify the Members of the Board of Directors and officers for all costs, losses, liabilities, expenses and damages, including reasonable attorneys' fees, suffered or incurred by an officer or Director arising out of or related to the business of the Association, to the fullest extent provided or allowed by the laws of Idaho. In addition, the Association may advance costs of defense of any proceeding to the Director or officer.

## ARTICLE XI AMENDMENTS

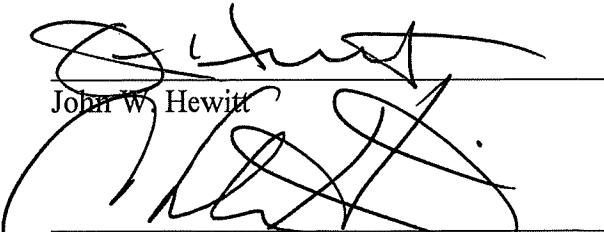
11.1 These Bylaws may be amended, at regular or special meetings of the Members, by a vote of two-thirds (2/3) of all the votes entitled to vote at the meeting whether present or not and upon the written approval of the Declarant in the Declaration or the Declarant's successors and assigns.

11.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control and, in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

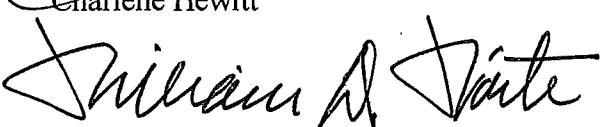
## ARTICLE XII MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the \_\_\_\_\_ day of \_\_\_\_\_ of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors of the OLIVETREE HOMEOWNERS' ASSOCIATION, INC., have hereunto set our hands this 5 day of July, 2017.

  
John W. Hewitt

  
Charlene Hewitt

  
William D. Waite

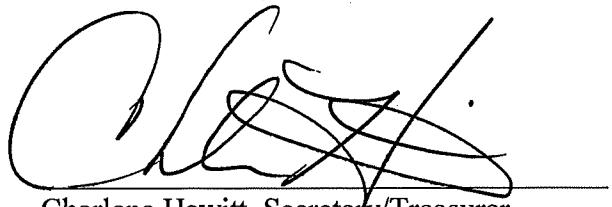
CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the OLIVETREE HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation, and

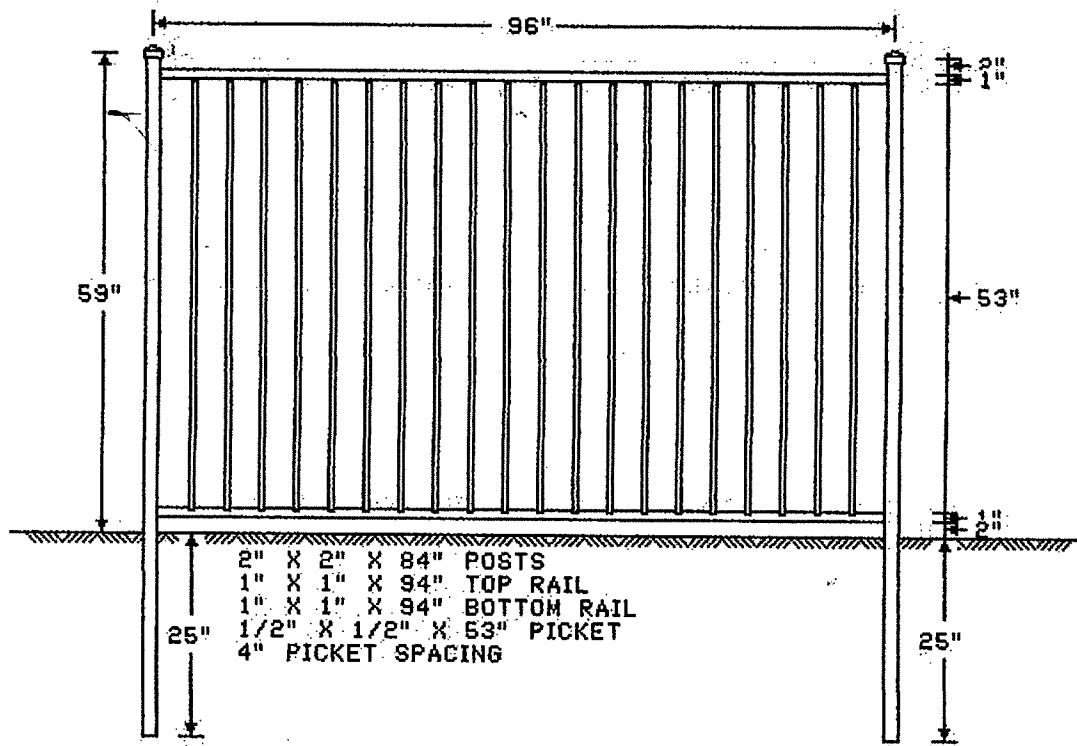
THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 5 day of July, 2017.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5 day of July, 2017.



Charlene Hewitt, Secretary/Treasurer

Exhibit "E"



Feel secure knowing you've called the best



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208-383-9535

5' WESTERN 2-RAIL

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