

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

River Run Phase 5 HOA

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AMENDED AND RESTATED PHASE 5 SUPPLEMENT *240*
TO THE *SEP*
AMENDED AND RESTATED DECLARATION OF *Guallao*
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RIVER RUN HOMEOWNERS ASSOCIATION, INC.

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AMENDED AND RESTATED PHASE 5 SUPPLEMENT
TO THE
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RIVER RUN HOMEOWNERS ASSOCIATION, INC.

This Phase 5 Amended and Restated Supplement to the Amended and Restated Supplement of Covenants, Conditions and Restrictions for River Run Homeowners Association, Inc. ("Phase 5 Supplement") is made this 5th the day of May, 1997. This Amended and Restated Phase 5 Supplement supersedes and replaces in its entirety the Phase 5 Supplement recorded on the 5th day of May, 1986 as Instrument No 8623205 in the Office of the County Recorder of Ada County, Idaho.

ARTICLE I

RECITALS

Section 1.1 Supplement to River Run Declaration. This Phase 5 Amended and Restated Supplement is a supplement to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for River Run Homeowners Association, Inc. ("River Run Declaration") which was recorded at the office of the Ada County Recorder, Ada County, Idaho as Instrument No. 96025281 and supplements such River Run Declaration with respect to the specific property covered herein. The covenants, conditions, and restrictions contained herein are in addition to those set forth in the River Run Declaration except insofar as the provisions of the River Run Declaration are hereinafter expressly modified.

Section 1.2 Property Covered. The property which is covered by this Phase 5 Supplement is as follows:

Lots 38 through 66, inclusive, of Block 1 as depicted on the River Run Phase 5 Subdivision Plat which is filed of record with the Ada County Recorder, Boise, Idaho.

Section 1.3 Purpose. The purpose of the original Phase 5 Supplement was to annex the Phase 5 Subdivision to the property covered by the River Run Declaration, establish a Phase 5 Local Association, and to set forth other terms, covenants, conditions, restrictions and easements which are unique to the Phase 5 Subdivision. The purpose of this Amended and Restated Supplement for Phase 5 is to amend, clarify and restate the Phase 5 Supplement.

ARTICLE II

DECLARATION

The Members of the Phase 5 Local Association hereby declare that the Phase 5 Subdivision and all the property, lots, parcels and portions thereof have been annexed to the property covered by the River Run Declaration and are subject to all of the

covenants, conditions, restrictions and all provisions of the River Run Declaration and are subject to the further conditions, covenants, restrictions and provisions set forth herein.

ARTICLE III

DEFINITIONS

In addition to the definitions contained in this Phase 5 Supplement, all terms initially capitalized and used herein shall have the same meanings as are applied to such terms in the River Run Declaration, the Phase 5 Articles, and the Phase 5 Bylaws.

ARTICLE IV

ASSESSMENTS

Each Owner of a Building Lot and each Member of the Phase 5 Local Association, by acceptance of a deed to a Building Lot, hereby covenants and agrees to pay when due all assessments made against such owner by the River Run Association pursuant to the River Run Declaration and this Phase 5 Supplement. All delinquent assessments shall be enforced, collected or foreclosed in the manner provided for in the River Run Declaration.

ARTICLE V

PHASE 5 LOCAL ASSOCIATION ORGANIZATION

The Phase 5 Local Association shall be organized under the provisions of the Idaho Code relating to general nonprofit corporations and shall be charged with the duties, vested with the powers and subject to the limitations prescribed by law and set forth in the Articles and Bylaws thereof and the River Run Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with the River Run Declaration as herein supplemented. The Membership, Board of Directors, powers and duties of the Phase 5 Local Association shall be as set forth in the River Run Declaration for Local Associations, except as modified by the Phase 5 Articles or Bylaws.

ARTICLE VI

DESIGNATION OF COMMON AREAS

Lots 38 and 66 of Block 1 as depicted on the Phase 5 Subdivision Plat, as well as any portion of Loggers Creek or Lake Heron Creek lying within such subdivision and not included in a Building Lot, are hereby designated as Common Area to be conveyed to and maintained by the River Run Association pursuant to the provisions of the River Run Declaration. Lot 66 shall be maintained as private streets or drives, or as landscaped street medians. Lot 38 shall be maintained by River Run Association as a landscaped sign plot, subject to the easement in favor of the Phase 4 Local Association as described in Article VIII herein.

ARTICLE VII

ADDITIONAL RESTRICTIONS

Section 7.1 Loggers Creek Alterations. Prior to the performance of any work or the doing of any act which would materially obstruct, diminish, destroy, modify, alter, relocate or change the existing shape of the Loggers Creek channel, or which would materially change the direction or impede the flow of water within or below the mean high water mark of Loggers Creek (collectively "alteration"), any person or entity desiring to perform such work or act shall first obtain written approval from the City of Boise Department of Public Works, and any other governmental agency having jurisdiction thereof.

Prior to performing any alteration, such person or entity shall also submit to the River Run Association Architectural Committee, an application which shall set forth maps, sketches, engineering drawings, photographs, work descriptions and specifications sufficient to describe the nature, extent and location of the proposed alteration and the proposed method of accomplishing it. No alteration shall commence until the Architectural Committee shall have consulted and consented thereto in writing.

The following items shall be among those considered by the Architectural Committee in determining whether a proposed alteration and/or proposed method of accomplishing such alteration shall be allowed:

- A. The purpose of the proposed alteration.
- B. Whether the proposed alteration is a reasonable or desirable means of accomplishing such purpose.
- C. Whether the proposed alteration will create turbidity or other water pollution problems with Loggers Creek.
- D. Whether the proposed alteration will detract from the aesthetic beauty of the Loggers Creek area or the River Run Development.
- E. Whether modifications or alternative solutions are reasonably possible which would reduce the disturbance to the Loggers Creek channel and its environment and/or better accomplish the desired goal of the proposed alteration.

Following a review of the application and a consideration of the factors set forth in this Section 7.1, the Architectural Committee shall allow, refuse to allow, modify or amend such proposed alteration as they in their sole discretion determine. If an alteration is allowed, all work performed by the applicant or its contractors, agents or employees shall be accomplished in accordance with the approval issued and under the supervision of the River Run Architectural Committee.

Section 7.2 Loggers Creek and Lake Heron Creek Riparian Zones. The Loggers Creek Riparian Zone and the Lake Heron Creek Riparian Zone (collectively, the "Riparian Zones") have been established on the following portions of the Phase 5 Subdivision:

- A. the Loggers Creek Riparian Zone is comprised of a strip of land running parallel to Loggers Creek through

Lots 53 through 65, inclusive, Block 1, lying within fifteen (15) feet of the ordinary high water mark of Loggers Creek. If the boundary of any building Lot extends over an area lying beyond the ordinary high water mark into or beyond the bed or banks of Loggers Creek, then the Riparian Zone also shall include such area.

B. The Lake Heron Creek Riparian Zone is comprised of a strip of land running parallel to Lake Heron Creek through Lots 40 through 46 and 50 through 53, both inclusive, Block 1, lying within ten (10) feet of the ordinary high water mark of Lake Heron Creek. If the boundary of any Building Lot extends over an area lying beyond the ordinary high water mark into or beyond the bed or banks of Lake Heron Creek, then the Riparian Zone also shall include such area.

No buildings or permanent or semi-permanent structures or objects of any kind shall be placed within, over or upon the Riparian Zone except as allowed pursuant to this Phase 5 Supplement. Each Owner shall maintain that portion of his or her Building Lot lying within the Riparian Zone in an open, natural or semi-natural condition which maintains and promotes Lake Heron Creek's fish and wildlife habitat and which conforms to any rules concerning Riparian Zone use, landscaping or irrigation that may be adopted from time to time by the River Run Association, the Phase 5 Local Association or the River Run Architectural Committee. Each such owner also shall develop, use and manage his or her Building Lot and control activities occurring thereon so as to protect, preserve and maintain the Riparian Zone against activities which would damage the creek's banks, water quality, riparian vegetation, fisheries and suitability as wildlife habitat. The restrictions described in this Section 6.1 are subject to modification by vote of the Architectural Committee of the River Run Association pursuant to Section 7.2 of this Phase 5 Supplement. Any portion of the Riparian Zone lying within a Building Lot in the Phase 5 Subdivision is that Building Lot Owner's private property, and, regardless of its classification as part of the Riparian Zone, shall not be open for ingress or egress by others except as permitted by such Owner or pursuant to the easements reserved in this Phase 5 Supplement.

Section 7.3 Limited Variance from Riparian Zone Restrictions. An Owner whose Building Lot is partially within either Riparian Zone may request a limited variance from the building and improvement restrictions stated above in Section 7.1 and 7.2 upon the following conditions:

A. The request shall be delivered in writing to the River Run Architectural Committee, shall state the reasons for the requested variance and shall be accompanied by any drawings, maps or other documents or information the Owner has which explains the activity or project for which the variance is necessary.

B. All variances shall be restricted to the smallest amount of property within the Riparian Zone reasonably necessary to

accomplish the Owner's purpose.

C. A variance request shall be acted upon by the Architectural Committee within sixty (60) days of its receipt by the Committee. A variance request shall be approved only by an affirmative vote of the Committee after it finds its sole and absolute discretion, that such variance would not be unreasonably detrimental to the fish and wildlife habitat in the Riparian Zone, that the variance is necessary to prevent an undue hardship, economic or otherwise, for the Owner seeking it or that the variance would be in the best interests of the Phase 5 Subdivision as a whole.

ARTICLE VIII

RESERVATION OF EASEMENTS

Section 8.1 Remedial Easement -- Loggers Creek Riparian Zone. A perpetual easement is reserved for the benefit of the River Run Association and the Phase 5 Local Association, their contractors, agents, successors and assigns, over and across the Loggers Creek Riparian Zone for the purpose of carrying out any remedial protective or maintenance measures that such Association deems necessary from time to time.

Pursuant to this easement, either Association or its contractors, agents, successors and assigns shall have the right to enter upon any building Lot subject to the easement in order to (1) prevent or remedy any situation that threatens or is injuring Loggers Creek's banks, water quality, riparian vegetation or fisheries or the riparian Zone's suitability as wildlife habitat; (2) carry out any landscaping or other work that is required by the River Run Association, the Phase 5 Local Association or the Architectural Committee; or (3) take any action to remedy an Owner's failure to observe the restrictions described in this Section 8.1.

The Associations shall, to the extent reasonably possible, exercise their rights under this easement in such a manner as to cause the least possible intrusion onto a building Lot or damage to any permitted improvements, including permitted landscaping which may be located upon the Loggers Creek Riparian Zone. Any damage which results to permitted improvements constructed within the Riparian Zone as a result of the exercise of this easement shall entitle the Owner whose property is damaged to reimbursement by whichever Association caused such damage.

Section 8.2 Remedial Easement -- Lake Heron Creek Riparian Zone. A perpetual easement is reserved for the benefit of the River Run Association and the Phase 5 Local Association, their contractors, agents, successors and assigns, over and across the Lake Heron Creek Riparian Zone. In all other respects the restrictions, conditions and other provisions concerning this easement are identical to those contained in Section 8.1 of this Phase 5 Supplement pertaining to the Loggers Creek Riparian Zone, which restrictions, conditions and provisions are incorporated herein by this reference.

Section 8.3 Lot 38 Easement. An easement is reserved over, under and upon Lot 38 of Block 1 of the Phase 5 Subdivision in favor of the Phase 4 Local Association for the purpose of maintaining and protecting the lot, its landscaping, sprinkling facilities, signage and other improvements. The Phase 4 Local Association is an Idaho non-profit corporation which was organized for a neighboring River Run Subdivision. The Phase 4 Local Association shall be entitled to exercise this easement and undertake such maintenance and protection only if the River Run Association, the Owner of Lot 38 as Common Area, shall fail to do so in a timely manner. Any costs incurred by the Phase 5 Local Association in carrying out such maintenance and protection shall be born by the River Run Association, which shall pay such costs within thirty (30) days after receiving written notice and an itemized statement of such costs from the Phase 4 Local Association.

Section 8.4 Access Corridor. An easement is reserved and conveyed to the River Run Association for emergency access, turnaround and drainage ("Access Corridor") approximately twenty (20) feet wide through portions of Lots 45 and 46, Block 1, of the Phase 5 Subdivision as more particularly described on the plat attached as Exhibit A to this Phase 5 Supplement. This Access Corridor easement shall be landscaped and maintained in accordance with the covenants, conditions and restrictions applicable to such area, but any landscaping or other improvements within the Access corridor shall not be of such a nature as to prohibit the passage of emergency vehicles.

ARTICLE IX

STREET LIGHT

The River Run Association installed and maintains a McGraw-Edison Model CS18221 100 W high pressure sodium luminaire street light, or its equivalent, at the northeast corner of River Run Drive and South Pebblecreek Lane, or at another location that was approved by the City of Boise.

ARTICLE X

MISCELLANEOUS

Section 10.1 Term. The covenants, conditions and restrictions of this Phase 5 Supplement shall run until December 31, 2020 unless amended as herein provided. After December 31, 2020, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless they are amended or extinguished by a written instrument executed by members holding at least three-fourths (3/4) of the voting power of the Phase 5 Local Association and such written instrument is recorded with the Ada County Recorder.

Section 10.2 Amendment. Except where a greater percentage is required by express provision in this Phase 5 Supplement, the

PHASE 5 SUPPLEMENT
TO THE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RIVER RUN HOMEOWNERS ASSOCIATION, INC.

Supplement
5/5/97

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PHASE 5 SUPPLEMENT

TO THE

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

RIVER RUN

THIS PHASE 5 SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER RUN ("Phase 5 Supplement") is made this 30th day of April, 1986, by RIVER RUN DEVELOPMENT COMPANY, a partnership ("Grantor").

ARTICLE I

Section 1.1 Supplement to River Run Declaration. This Phase 5 Supplement is a Supplement to that certain Declaration of Covenants, Conditions and Restrictions for River Run ("River Run Declaration") which was recorded at the Office of the Ada County Recorder, Ada County, Idaho, as Instrument No. 7941486, and supplements such River Run Declaration with respect to the specific property covered hereby, and the covenants, conditions and restrictions contained herein are in addition to those set forth in the River Run Declaration.

Section 1.2 Property Covered. The property which is covered by this Phase 5 Supplement (the "Phase 5 Subdivision") is as follows:

Lots 38 through 66, inclusive, of Block 1 as depicted on the River Run Phase 5 Subdivision Plat which is filed of record with the Ada County Recorder, Boise, Idaho.

Section 1.3 Purpose. The purpose of this Phase 5 Supplement is to annex the Phase 5 Subdivision to the property covered by the River Run Declaration, to establish and provide for management of certain Common Areas, to establish a Local Architectural Committee and a Phase 5 Subdivision Local Association, to include the Owners of Building Lots in the Phase 5 Subdivision in the River Run Recreation Association No. 1 and to set forth other terms, covenants, conditions, restrictions and easements which are unique to the Phase 5 Subdivision.

ARTICLE II

DECLARATION

Grantor hereby declares that the Phase 5 Subdivision and all the property, lots, parcels and portions thereof are hereby annexed to the property covered by the River Run Declaration and are hereby subject to all of the covenants, conditions, restrictions and all provisions of the River Run Declaration and, in addition thereto, is subject to the further conditions, covenants, restrictions and provisions set forth herein.

ARTICLE III

DEFINITIONS

In addition to the definitions contained in this Phase 5 Supplement, terms initially capitalized and used in this Phase 5 Supplement shall have the same meanings as are ascribed to such terms in the River Run Declaration.

ARTICLE IV

PHASE 5 LOCAL ASSOCIATION

Section 4.1 Organization. The Phase 5 Local Association shall be organized by Grantor under the provisions of the Idaho Code relating to general nonprofit corporations and shall be charged with the duties, vested with the powers and subject to the limitations prescribed by law and set forth in the articles and bylaws thereof and the River Run Declaration. Neither the articles and bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with the River Run Declaration as herein supplemented. The memberships, classes of voting memberships, board of directors, powers and duties of the Phase 5 Local Association shall be as set forth in the River Run Declaration for Local Associations, except as hereinafter modified.

Section 4.2 Initial Operating Fund. Upon organization of the Phase 5 Local Association, Grantor shall make a one-time contribution of two hundred seventy dollars (\$270.00) to such Local Association as its initial operating fund.

ARTICLE V

ASSESSMENTS

Section 5.1 Covenant to Pay Assessments. Grantor, on behalf of each Owner, and each Owner by acceptance of a deed to a Building Lot, hereby covenants and agrees to pay when due all Local Regular, Local Special, and Local Limited Assessments (collectively, "Local Assessment(s)") made against such Owner by the Phase 5 Local Association, and all Assessments made against such Owner by the River Run Association and the River Run Recrea-

tion Association No. 1 pursuant to this Phase 5 Supplement and the provisions of the River Run Declaration.

Section 5.2 Local Regular Assessments. The Phase 5 Local Association may impose Local Regular Assessments against all Building Lots according to the procedures set forth in the River Run Declaration and in this Phase 5 Supplement. The total annual Local Regular Assessments against all Building Lots subject thereto shall be based upon advance estimates of annual cash requirements of the Phase 5 Local Association to provide for the payment of all estimated expenses growing out of or in connection with the Phase 5 Subdivision as a whole, including, without limitation, the following:

A. premiums for all insurance which the Phase 5 Local Association is required or permitted to maintain pursuant hereto;

B. administrative and management fees and expenses, employee salaries, and legal and accounting costs;

C. any deficits remaining from the previous fiscal year;

D. reasonable contingency reserves, surpluses and/or sinking funds established at the discretion of the Board, including those for exterior maintenance; and

E. such other and further costs, expenses, obligations and liabilities as the Board in its discretion may incur for the proper management, operation and maintenance of the Phase 5 Subdivision and the Phase 5 Local Association in accordance with this Phase 5 Supplement or the River Run Declaration.

Section 5.3 Local Special Assessments. In addition to the other Local Assessments authorized hereby, the Phase 5 Local Association shall levy Local Special Assessments, payable as the Board shall determine, for the payment of all estimated expenses for any cost or expense for which a Local Special Assessment may be assessed pursuant to the River Run Declaration. Local Special Assessments shall be apportioned among the Owners of Building Lots in a manner to be determined by the Phase 5 Local Association Board.

Section 5.4 Local Limited Assessments. The Phase 5 Local Association may levy against any Owner, and against such Owner's Building Lot, a Local Limited Assessment equal to the costs and expenses incurred by the Phase 5 Local Association, including legal fees, for corrective action performed pursuant to this Phase 5 Supplement which was necessitated by such Owner, including, without limitation, costs and expenses incurred for the repair or replacement of any property owned or maintained by the Phase 5 Local Association which is damaged by the willful or negligent acts of such Owner or any of such Owner's tenants, guests or invitees.

Section 5.5 Allocation of Assessments. All Local Regular and Local Special Assessments in the Phase 5 Subdivision shall be allocated among all Building Lots in the subdivision in a manner to be determined by the Phase 5 Local Association Board.

Section 5.6 Notice of Local Assessments and Time for Payment Thereof. All Local Assessments by the Phase 5 Local Association shall be due and payable as the Board shall determine. The Phase 5 Local Association shall give written notice to each Owner as to the amount of the Local Assessment with respect to each Building Lot subject thereto. Local Assessments are payable as the Board may determine from time to time. Unless the Board determines otherwise, each Local Assessment shall be due and payable within thirty (30) days of mailing notice thereof to affected Owners, and shall bear interest as set forth in Section 5.7 below.

Section 5.7 Interest on Unpaid Assessments. Each Local Assessment levied by the Phase 5 Local Association shall bear interest at the rate of two (2) points over the prime rate of the First Security Bank, Boise, Idaho, per annum from the date it becomes due and payable if not paid within ten (10) days of such date; provided, however, that if such rate of interest is in excess of that permitted by applicable law, then no Owner shall be required to pay interest to the extent it is in excess of the amount permitted by law.

Section 5.8 Personal Obligation of Owner. The amount of any Local Assessment against any Owner and/or his or her Building Lot shall be the personal obligation of such Owner to the Phase 5 Local Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Phase 5 Local Association without foreclosing or waiving the lien securing the same. No Owner may avoid such personal obligation by abandonment of his or her Building Lot. Failure of the Phase 5 Local Association to give timely notice of any Local Assessment shall not affect the liability of any Owner or any Building Lot for such Local Assessment, but the date when payment shall become due in such a case shall be deferred to a date thirty (30) days after such notice shall have been given. In the event any Owner is delinquent in the payment of any assessment for a period in excess of thirty (30) days, the Board may, at its discretion, suspend the Owner's voting rights in the Phase 5 Local Association and take any other action to collect such assessment as is permitted by law.

Section 5.9 Statement of Account. Upon payment of a reasonable fee, which shall be established by the Board but shall not exceed fifty dollars (\$50.00), and upon written request of any Owner or any mortgagee, prospective mortgagee or prospective purchaser of a Building Lot, the Phase 5 Local Association shall issue a written statement setting forth: 1) the amount of the unpaid Local Assessments, if any, with respect to

such Building Lot; 2) the amounts and due dates of the current yearly Local Assessments chargeable to such Building Lot; and 3) the amount of credit accruing to such Building Lot for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid Local Assessments, insurance premiums and taxes. Such statement shall be binding upon the Phase 5 Local Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be compiled with within twenty (20) days, all unpaid Local Assessments which become due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, the lien for such unpaid Local Assessments shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein, and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquired the Building Lot.

ARTICLE VI

DESIGNATION OF COMMON AREAS

Lots 38 and 66 of Block 1 as depicted on the Phase 5 Subdivision Plat, as well as any portion of Loggers Creek or Lake Heron Creek lying within such subdivision and not included in a Building Lot, are hereby designated as Common Area to be conveyed to and maintained by the River Run Association pursuant to the provisions of the River Run Declaration. Lot 66 shall be maintained as private streets or drives, or as landscaped street medians. Lot 38 shall be maintained by River Run Association as a landscaped sign plot, subject to the easement in favor of the Phase 4 Local Association as described in Article X herein.

ARTICLE VII

ARCHITECTURAL COMMITTEE

Section 7.1 Members of the Committee. The Phase 5 Architectural Committee, sometimes referred to in this Phase 5 Supplement as the "Committee," shall consist of three (3) members. The following persons are hereby designated as the initial members of the Committee:

Leo Edward Miller
Bradford Paine Shaw
Steve R. Shane

Each member shall hold office until he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause.

Section 7.2 Grantor's Right of Appointment. At any time prior to December 31, 1991 that Grantor is the owner of at least ten percent (10%) of the aggregate Building Lots within the property covered by the River Run Declaration, Grantor shall have the right to appoint and remove all members of the Committee. Such appointments and removals to be made by written notice, copies of which shall be served upon the River Run Association and the Phase 5 Local Association. At all other times, the Phase 5 Local Association Board shall have the right to appoint and remove all members of the Committee.

Section 7.3 Review of Proposed Construction. The Committee shall review plans, proposals and specifications in the same manner as specified in Section 11.3 of the River Run Declaration with the exception that the Phase 5 Architectural Committee shall charge no fee for the submission of plans, proposals or specifications.

Section 7.4 Other Duties and Responsibilities. All other aspects of the Phase 5 Architectural Committee shall be as specified and limited in Article XI of the River Run Declaration, including meetings, waiver of future approvals, compensation, inspection of work, liability of Committee members and variances.

ARTICLE VIII

RIVER RUN RECREATION ASSOCIATION NO. 1

The Owners of Building Lots covered by this Phase 5 Supplement shall be entitled to use all Recreation Areas owned and managed by the River Run Recreation Association No. 1 and shall be members of such Recreation Association. The rights and responsibilities of the Owners as members of the Recreation Association shall be as specified in the River Run Declaration.

ARTICLE IX

ADDITIONAL RESTRICTIONS

Section 9.1 Loggers Creek Alterations. Prior to the performance of any work or the doing of any act which would materially obstruct, diminish, destroy, modify, alter, relocate or change the existing shape of the Loggers Creek channel, or which would materially change the direction or impede the flow of water within or below the mean high water mark of Loggers Creek (collectively "alteration"), any person or entity desiring to perform such work or act first shall obtain written approval from the City of Boise Department of Public Works, and any other governmental agency having jurisdiction thereof.

Prior to any alteration, such person or entity also shall submit to the Phase 5 Architectural Committee and the Architectur-

al Committee established pursuant to Section 11.1 of the River Run Declaration (the latter is referred to herein as "Architectural Committee"), an application which shall set forth maps, sketches, engineering drawings, photographs, work descriptions and specifications sufficient to describe the nature, extent and location of the proposed alteration and the proposed method of accomplishing it. No alteration shall commence until the Phase 5 Architectural Committee and the Architectural Committee shall have consulted and both consented thereto in writing.

The following items shall be among those considered by the Phase 5 Architectural Committee and the Architectural Committee in determining whether a proposed alteration and/or proposed method of accomplishing such alteration shall be allowed:

- A. The purpose of the proposed alteration.
- B. Whether the proposed alteration is a reasonable or desirable means of accomplishing such purpose.
- C. Whether the proposed alteration will create turbidity or other water pollution problems with Loggers Creek.
- D. Whether the proposed alteration will detract from the aesthetic beauty of the Loggers Creek area or the River Run Development.
- E. Whether modifications or alternative solutions are reasonably possible which would reduce the disturbance to the Loggers Creek channel and its environment and/or better accomplish the desired goal of the proposed alteration.

Following a review of the application and a consideration of the factors set forth in this Section 9.1, the Phase 5 Architectural Committee and the Architectural Committee shall allow, refuse to allow, modify or amend such proposed alteration as they in their sole discretion determine. If an alteration is allowed, all work performed by the applicant or its contractors, agents or employees shall be accomplished in accordance with the approval issued and under the supervision of the Architectural Committee.

Section 9.2 Loggers Creek and Lake Heron Creek Riparian Zones. The Grantor hereby establishes the Loggers Creek Riparian Zone and the Lake Heron Creek Riparian Zone (collectively, the "Riparian Zones") on the following portions of the Phase 5 Subdivision:

- A. The Loggers Creek Riparian Zone is comprised of a strip of land running parallel to Loggers Creek through Lots 53 through 65, inclusive, Block 1, lying within fifteen (15) feet of the ordinary high water mark of Loggers Creek. If the boundary of any Building Lot extends over an area lying

beyond the ordinary high water mark into or beyond the bed or banks of Loggers Creek, then the Riparian Zone also shall include such area.

B. The Lake Heron Creek Riparian Zone is comprised of a strip of land running parallel to Lake Heron Creek through Lots 40 through 46 and 50 through 53, both inclusive, Block 1, lying within ten (10) feet of the ordinary high water mark of Lake Heron Creek. If the boundary of any Building Lot extends over an area lying beyond the ordinary high water mark into or beyond the bed or banks of Lake Heron Creek, then the Riparian Zone also shall include such area.

No buildings or permanent or semi-permanent structures or objects of any kind shall be placed within, over or upon either Riparian Zone except as allowed pursuant to this Phase 5 Supplement. Each Owner shall maintain that portion of his or her Building Lot lying within the Riparian Zone in an open, natural or semi-natural condition which maintains and promotes the fish and wildlife habitat on Loggers Creek or Lake Heron Creek, as the case may be, and which conforms to any rules concerning Riparian Zone use, landscaping or irrigation that may be adopted from time to time by the River Run Association, the Phase 5 Local Association or either entity's Architectural Committee. Each such Owner also shall develop, use and manage his or her Building Lot and control activities occurring thereon so as to protect, preserve and maintain the Riparian Zones against activities which would damage either Creek's banks, water quality, riparian vegetation, fisheries and suitability as wildlife habitat. The restrictions described in this section 9.2 are subject to modification by vote of both the Architectural Committee of the River Run Association and the Architectural Committee of the Phase 5 Local Association pursuant to section 9.3 of this Phase 5 Supplement. Any portion of the Riparian Zone lying within a Building Lot in the Phase 5 Subdivision is that Building Lot Owner's private property, and, regardless of its classification as part of the Riparian Zone, shall not be open for ingress or egress by others except as permitted by such Owner or pursuant to the easements reserved in this Phase 5 Supplement.

Section 9.3 Limited Variance from Riparian Zone Restrictions. An Owner whose Building Lot is partially within either Riparian Zone may request a limited variance from the building and improvement restrictions stated above in section 9.2 upon the following conditions:

A. The request shall be delivered in writing to both the Architectural Committee and the Phase 5 Architectural Committee, shall state the reasons for the requested variance and shall be accompanied by any drawings, maps or other documents or informa-

tion the Owner has which explains the activity or project for which the variance is necessary.

B. All variances shall be restricted to the smallest amount of property within the Riparian Zone reasonably necessary to accomplish the Owner's purpose.

C. A variance request shall be acted upon by both the Architectural Committee and the Phase 5 Architectural Committee within sixty (60) days of its receipt by the Committees. A variance request shall be approved only by an affirmative vote of both Committees after both Committees find, in their sole and absolute discretion, that such variance would not be unreasonably detrimental to the fish and wildlife habitat in the Riparian Zone, that the variance is necessary to prevent an undue hardship, economic or otherwise, for the Owner seeking it or that the variance would be in the best interests of the Phase 5 Subdivision as a whole.

ARTICLE X

RESERVATION OF EASEMENTS

Section 10.1 Remedial Easement -- Loggers Creek Riparian Zone. The Grantor hereby reserves a perpetual easement for the benefit of the River Run Association and the Phase 5 Ascal Association, their contractors, agents, successors and assigns, over and across the Loggers Creek Riparian Zone for the purpose of carrying out any remedial protective or maintenance measures that such Association deems necessary from time to time.

Pursuant to this easement, either Association or its contractors, agents, successors and assigns shall have the right to enter upon any Building Lot subject to the easement in order to (1) prevent or remedy any situation that threatens or is injuring Loggers Creek's banks, water quality, riparian vegetation or fisheries or the Riparian Zone's suitability as wildlife habitat; (2) carry out any landscaping or other work that is required by the River Run Association, the Phase 5 Local Association or the Architectural Committee of either entity; or (3) take any action to remedy an Owner's failure to observe the restrictions described in this Section 10.1.

The Associations shall, to the extent reasonably possible, exercise their rights under this easement in such a manner as to cause the least possible intrusion onto a Building Lot or damage to any permitted improvements, including permitted landscaping which may be located upon the Loggers Creek Riparian Zone. Any damage which results to permitted improvements constructed within the Riparian Zone as a result of the exercise of this easement shall entitle the Owner whose property is damaged to reimbursement by whichever Association caused such damage.

Section 10.2 Remedial Easement -- Lake Heron Creek Riparian Zone. The Grantor hereby reserves a perpetual easement for the benefit of the River Run Association and the Phase 5 Local Association, their contractors, agents, successors and assigns, over and across the Lake Heron Creek Riparian Zone. In all other respects the restrictions, conditions and other provisions concerning this easement are identical to those contained in section 10.1 of this Phase 5 Supplement pertaining to the Loggers Creek Riparian Zone, which restrictions, conditions and provisions are incorporated herein by this reference.

Section 10.3 Lot 38 Easement. Grantor hereby reserves an easement over, under and upon Lot 38 of Block 1 of the Phase 5 Subdivision in favor of the Phase 4 Local Association for the purpose of maintaining and protecting the lot, its landscaping, sprinkling facilities, signage and other improvements. The Phase 4 Local Association is an Idaho non-profit corporation which Grantor has organized for a neighboring River Run subdivision. The Phase 4 Local Association shall be entitled to exercise this easement and undertake such maintenance and protection only if the River Run Association, the Owner of Lot 38 as Common Area, shall fail to do so in a timely manner. Any costs incurred by the Phase 4 Local Association in carrying out such maintenance and protection shall be borne by the River Run Association, which shall pay such costs within thirty (30) days after receiving written notice and an itemized statement of such costs from the Phase 4 Local Association.

Section 10.4 Access Corridor. Grantor hereby reserves and conveys to the River Run Association an easement for emergency access, turnaround and drainage ("Access Corridor") approximately twenty (20) feet wide through portions of Lots 45 and 46, Block 1, of the Phase 5 Subdivision as more particularly described on the plat attached as Exhibit A to this Phase 5 Supplement. This Access Corridor easement shall be landscaped and maintained in accordance with the covenants, conditions and restrictions applicable to such area, but any landscaping or other improvements within the Access Corridor shall not be of such a nature as to prohibit the passage of emergency vehicles.

ARTICLE XI

STREET LIGHT

The River Run Association shall install and maintain a McGraw-Edison Model CS18221 100W high pressure sodium luminaire street light, or its equivalent, at the northeast corner of River Run Drive and S. Pebblewood Lane, or at such other location as may be approved by the City of Boise.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Term. The covenants, conditions and restrictions of this Phase 5 Supplement shall run until December 31, 2020 unless amended as herein provided. After December 31, 2020, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless they are amended or extinguished by a written instrument executed by members holding at least three-fourths (3/4) of the voting power of the Phase 5 Local Association and such written instrument is recorded with the Ada County Recorder.

Section 12.2 Amendment.

A. By Grantor. Until the close of escrow for the sale of the first Building Lot in the Phase 5 Subdivision, the provisions of this Supplement may be amended, replaced or terminated by Grantor by recordation of a written instrument setting forth such amendment, replacement or termination. For the purposes of this Phase 5 Supplement, the close of escrow shall be deemed to be the date on which a deed granting a Building Lot is recorded in the Office of the Ada County Recorder.

B. By Owners. Except where a greater percentage is required by express provision in this Phase 5 Supplement, the provisions of this supplement, other than this article, may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Phase 5 Local Association certifying that such amendment has been approved by the vote or written consent of Owners owning at least fifty-one percent (51%) of the Building Lots located in the Phase 5 Subdivision, and such amendment shall be effective upon its recordation with the Ada County Recorder; provided, however, that any amendment to this Phase 5 Supplement which is inconsistent with the terms of the River Run Declaration, which attempts to modify the terms of the River Run Declaration or which attempts to exclude or deannex the Phase 5 Subdivision from the provisions of the River Run Declaration, shall be null and void.

IN WITNESS WHEREOF, the undersigned, being the Grantor herein, has hereunto set its hand and seal the day and year first set forth above.

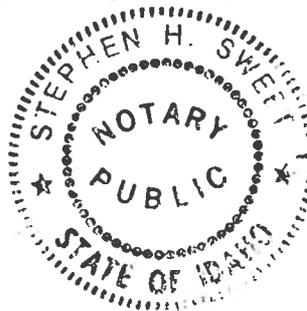
RIVER RUN DEVELOPMENT COMPANY,
an Idaho General Partnership

By Peter S. O'Neill
Peter S. O'Neill,
Designated Representative

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of May, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared PETER S. O'NEILL, known or identified to me to be the Designated Representative in the Partnership of RIVER RUN DEVELOPMENT COMPANY, an Idaho General Partnership, who acknowledged to me that he executed the within and foregoing instrument for and on behalf of said Partnership and in said Partnership's name.

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



Stephen H. Sweet
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 7/88

STATE OF IDAHO, COUNTY OF Ada
filed for record at the request of Peter S. O'Neill
25 Min. past 11 o'clock A. this 5 day of May 19 86
JOHN BASTIDA, Recorder
By John Bastida Deputy
2400