

**COVENANTS
CONDITIONS
AND
RESTRICTIONS
FOR
WHITESTONE
ESTATES
SUBDIVISION**

SUBDIVISION: Whitestone Estates Subdivision
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WHITESTONE ESTATES SUBDIVISION

THIS DECLARATION is made on the last date hereinbelow set forth, by Whitestone Development Company, L.L.C., an Idaho Limited Liability company, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the Owner of certain real property in the County of Ada, State of Idaho, hereinafter referred to as the "property," more particularly described as follows:

Lots 1 through 21, Block 1;

Lots 1 and 2, Block 2;

Lots 1 through 8, Block 3;

Lots 1 through 6, Block 4;

Lots 1 and 2, Block 5.

SUBJECT to all existing easements and road rights-of-way of record or otherwise appearing on the official plat of Whitestone Estate Subdivision, records of Ada County, Idaho.

WHEREAS, Declarant desires to place Covenants, Conditions and Restrictions on the property to protect value, attractiveness, compatibility, and conformity of the use of the various lots and Common Areas;

NOW, THEREFORE, Declarant hereby declares that all of said property is and shall be held and conveyed upon and subject to the easements, conditions, covenants, restrictions, and reservations hereinafter set forth. Said easements, covenants, restrictions, conditions, and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them, and shall inure to the benefit of and be limitations upon all future owners of

said property or any interest therein.

ARTICLE ONE

Definitions

- 1.1 **Association** shall mean and refer to Whitestone Homeowner's Association, Inc., an Idaho non-profit corporation, its successors and assigns.
- 1.2 **Declarant** shall mean and refer to Whitestone Development Company, L.L.C., an Idaho Limited Liability company, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.
- 1.3 **Lot** shall mean and refer to any plot of land shown upon any recorded subdivision map of the property.
- 1.4 **Common Area** shall refer to Lot 1 of Block 1, Lot 1 of Block 2, Lot 21 of Block 1, Lot 11 of Block 1, and Lot 17 of Block 1, according to the official recorded plat of Whitestone Estates Subdivision.
- 1.5 **Member** shall mean and refer to every person or entity who holds membership in the Association.
- 1.6 **Mortgage** shall mean and refer to any mortgage or deed of trust, and "mortgagee" shall mean and refer to the mortgagee under a mortgage or the beneficiary under a deed of trust, and "mortgagor" shall mean and refer to the mortgagor of a mortgage or the grantor of a deed of trust.
- 1.7 **Owner** shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.8 **Plat** shall mean the recorded plat of Whitestone Estates Subdivision, which is Instrument No. 96079381, official records of Ada County, Idaho.
- 1.9 **Setback** shall mean and refer to the minimum distance between the location of a residence on a lot and a given street or road or lot line as provided by the plat of Whitestone Estates Subdivision or by law.
- 1.10 **Architectural Control Committee** shall mean a designated unincorporated association of three members, appointed by the Declarant, whose function shall be to review and approve or disapprove each application for the construction and landscaping of a residence on a lot and to take those other actions authorized by this Declaration.

1.1 **Front Yard** shall mean a yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.

1.12 **Pressurized Irrigation System** shall mean that urban irrigation system established by contract between Declarant and Nampa and Meridian Irrigation District recorded as Instrument No. 96044971, records of Ada County, Idaho as authorized by Idaho Code §§ 43-330- (a) *et seq.*, for the purpose of benefiting all lots in the Whitestone Estates Subdivision with a system to distribute water solely for urban irrigation purposes.

1.13 **Water District** shall mean Nampa and Meridian Irrigation District, who shall supply urban irrigation water and related services through a pressurized water system, according to Article Six, and that certain agreement between Nampa and Meridian Irrigation District and Declarant, recorded as Instrument No. 96044971, records of Ada County, Idaho.

ARTICLE TWO

General Restrictions

2.1 **Land Use.** No lot shall be used except for residential purposes, nor shall any lot or any part thereof be used for the conduct of any trade or business or professional activity.

2.2 **Residence Construction.** Each Owner, including any contractor, builder, or agent for an Owner, intending to construct a residence or improve an existing residence on any lot shall do so only if the following conditions have been met:

- a. An application for construction authority has been submitted to the Architectural Committee (“ACC”) and the ACC has given its written approval, according to the provisions of Article Seven. Construction authority shall require all roofs to have a minimum pitch of 5 in 12 and shall be shingled with 25 year “architectural style” shingles or better. The ACC shall require the residence to have some exterior feature of stucco, stone, or brick in addition as a part of its approval and may impose other aesthetic or technical requirements as a part of approval.
- b. Each residence constructed on a lot shall be a “single-family” dwelling (as defined by the Meridian City Building Code) and shall be at least 1,400 square feet in size, excluding the square footage for a garage, and shall have a garage with at least two (2) bays for vehicle storage.
- c. A residence shall only be constructed if the Owner, including any contractor, builder, or agent acting on behalf of the Owners, has obtained a building permit from the City of Meridian and any other governmental agency with jurisdiction over residential construction on a lot, in addition

to ACC approval.

- d. A residence shall not be constructed unless the adjusted fair market value of that residence upon completion, including the value of the lot and amenities, has a value greater than \$110,000.00 adjusted to fair market value standards as of September 1, 1996. A proforma determination of adjusted fair market value of a proposed residence shall be prepared by an Idaho licensed appraiser at the Owner's sole cost and shall be submitted to the ACC whenever a minimum residence value is determined to be an issue by the ACC.
- e. All residential construction, including support systems, outbuildings, and all other residential accommodations, shall strictly follow all of the Covenants, Conditions and Restrictions in this Declaration.

2.3 Setbacks and Utility Corridors. Each dwelling shall be constructed within the minimum setback regulations as established by the City of Meridian and/or those that are described on the plat as corridors for utility access. An Owner shall not place any permanent obstruction in a utility corridor identified on the plat.

2.4 Landscaping. The following provisions shall govern the landscaping of all lots in Whitestone Estates Subdivision:

- a. The Owner shall first prepare a landscape plan and submit the same to the ACC as provided in Article 7. The ACC shall approve the landscape plan prior to the installation and/or construction of any landscape improvements on a lot. Landscaping of a lot shall be in accordance with the ACC approved plan.
- b. All landscaping, including connections to the pressurized irrigation system, shall be fully installed and completed within thirty (30) days after substantial completion of the residence on the lot, with a reasonable extension for weather conditions. Substantial completion of the residence shall mean that degree sufficient for the Owner to obtain a certificate of occupancy.
- c. The initial landscaping shall include, as a minimum, sod in the front and side yards, and sod or grass seeded lawns in the rear yards; two (2) flowering trees of at least two inch (2") caliper or one (1) pine tree of at least six feet (6') in height and one (1) flowering tree of at least a two inch (2") in the front yard; three (3) five-gallon (5 gallon) plants and five (5) one-gallon (1 gallon) shrubs in the front yard. The use of berms and sculptured planting areas is encouraged.

- d. In the event an Owner shall fail to provide minimum landscaping, the Declarant and/or the Association may cause the minimum landscaping to be completed at the Owner's cost and may file a lien for that value and recover any cost advanced in the same fashion as is provided for on payment of assessments as set out in Article Five.

2.5 Fences. Declarant will construct a full or partial perimeter fence for the Whitestone Estates Subdivision as required by the City of Meridian. An Owner may construct a perimeter yard fence according to all of the requirements of the City of Meridian for side and rear yards but the Owner shall not be permitted to construct a fence in a front yard nor along a street side yard.

2.6 Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

2.7 Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder or the Declarant to advertise the property during the construction and sales period. The names of resident Owners may be displayed on a name and address plaque or sign.

2.8 Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

2.9 Water Supply. No well or other individual water supply system for consumptive or irrigation purposes shall be permitted on any lot other than the use of the pressurized irrigation system operated and maintained by the Water District.

2.10 Permitted Use of Vehicles. An Owner shall not park any business or commercial vehicle greater in size than three-quarters (3/4) of a ton unless the same is fully garaged. An Owner shall not park on any lot or adjacent street a vehicle which is not operable or which is non-working or unsightly. An Owner shall not park a vehicle with a "for sale" sign on any lot or adjacent street.

2.11 Motor Homes and Recreational Vehicles And Equipment. An Owner shall not park boats, snowmobiles, trailers, motorcycles, motor homes, "RV's," trucks with campers, or other like kind equipment on a lot or adjacent street unless the same is fully garaged. A visitor or any Owner shall be permitted to park a motor home at the Owner's lot or dwelling for a period not to exceed four (4) days.

2.12 Garage Doors. Garage doors shall remain closed except when open for a temporary purpose.

2.13 **Hazardous Activities.** No activity shall be conducted on or in any unit, lot, or Common Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearm shall be discharged upon said property, and no open fire shall be lighted or permitted on any property except in a self-contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed interior fireplace.

2.14 **Lights and Sound, Generally.** Each residence, upon completion, shall be equipped with a yard or security light which shall be continuously operated by the Owner from one hour after dusk to one hour before dawn. No sound shall be emitted from any lot which is unreasonably loud or annoying, and no odors shall be emitted on any lot which are noxious or offensive to others.

2.15 **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose and provided that the keeper of such pets complies with all city and county laws, rules, and regulations. All dogs, cats, or household pets shall be properly fed and cared for. Dogs shall not be allowed to run at large, and no dog, cat, or other household pet may be kept which unreasonably bothers or constitutes a nuisance to other Owners of lots. No dog runs or kennels shall be permitted on any lot.

2.16 **Reconstruction.** In any case where it is necessary to reconstruct a residence or make any improvement to a residence on a lot, that reconstruction or improvement shall be prosecuted diligently, continuously and without delay from time of commencement thereof until such structure is fully completed, unless prevented by cause beyond control and only for such time as such cause continues.

ARTICLE THREE Easements

3.1 **Electrical and Telephone Service.** All lots shall be served by underground electrical and telephone lines. The services shall be installed in street or easement rights-of-way as platted. Each Owner agrees to pay for costs and hook-up charges as established by the applicable electrical, telephone and water utility companies as a condition precedent to connecting thereto. Declarant shall not be liable for the cost thereof but may recover funds advanced, if any, to obtain preliminary installation.

3.2 **Platted Easements.** Declarant reserves such easements as shown and noted on the plat for the subdivision for the purpose of constructing water mains, electric distribution lines, sewer lines, gas pipelines, and such other public utilities as may be necessary, convenient, and desirable for the Owners of lots within the subdivision.

ARTICLE FOUR Homeowners Association

4.1 Organization of Association. The Whitestone Homeowner's Association, Inc. ("Association") shall be organized by Declarant as an Idaho corporation under the provisions of 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 of Incorporation, By-laws, and this Declaration. Neither the Articles of Incorporation nor the By-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Membership. Each lot Owner (including Declarant), by virtue of being such an Owner and for so long as such ownership is maintained, shall be a member of the Association. Membership in the Association shall not be assignable except to the successor in interest of an Owner, and each membership in the Association shall be appurtenant to the lot owned by such Owner. Membership in the Association shall not be transferred, pledged, or alienated in any way except upon the transfer of title to said lot, and then only to the transferee of title to said lot. Any attempt to make a prohibited transfer of membership shall be void and will not be reflected on the records of the Association.

4.3 Classes of Voting Members. The Association shall have two classes of voting membership however, all votes shall be equal and counted as such, except where voting by separate classes may otherwise be provided in the Articles and By-laws of the Association of this Declaration.

- a. Class A members shall be Owners with the exception of the Declarant (during the period when the Declarant is a Class B Member). Each Class A member shall be entitled to one vote for each lot owned. When more than one person is an Owner of a Lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.
- b. The sole Class B member shall be the Declarant, who shall be entitled to three votes for each lot owned. Class B membership shall cease and be converted automatically to Class A membership (one Class A membership for each lot owned) upon the happening of either of the following events, whichever occurs earlier:
 - (i) When seventy-five percent (75%) of the lots have been conveyed by deed to Owners other than Declarant; or
 - (ii) On January 15, 2005.

4.4 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of three Directors and such officers as the directors may elect or appoint, in accordance with the Articles of Incorporation and By-laws. The initial Board of Directors of the Association shall be appointed by the Declarant as the incorporator and shall hold office until the first annual

meeting, at which time a new Board of Directors shall be elected in accordance with the provisions set forth in the By-laws.

4.5 Powers of the Association. The Association shall have all the powers of a non-profit 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 of Incorporation, the By-laws, 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 it under this Declaration, the Articles of Incorporation, and the By-laws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the proper management, and operation of and the performance of the other responsibilities herein assigned, including without limitation:

- a. **Assessments:** The power to levy assessments, (monthly, special, and limited) on the Owners of lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.
- b. **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 or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles of Incorporation or By-laws, including the Association rules adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise all provisions hereof.
- c. **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. Neither the Association nor the members of the Board of Directors shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.
- d. **Emergency Powers:** The Association or any person authorized by it may enter upon any lot 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 is practicable, and any damage caused thereby shall be repaired by the Association and at its sole cost and expense.

4.6 Duties of the Association. In addition to the powers delegated to it by the Articles of Incorporation and by this Declaration, and without limiting the generality thereof, the Association or its agent, if any, may conduct all general business affairs of common interest to all Owners.

4.7 Personal Liability. No member of the Board of Directors or any committee of the Association, nor any officer of the Association, nor the manager if any, nor the Declarant, shall be personally liable to any Owner or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board of Directors, the manager, if any, or any other representative or employee of the Association, the committee, or any other committee, or any officer of the Association, or the Declarant, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without wilful or intentional misconduct.

ARTICLE FIVE

Covenant for Assessments

5.1 Creation of Lien and Personal Obligation for Assessments. The Declarant hereby covenants with each lot Owner within the property that by acceptance of a deed from Declarant, and whether or not it is expressly stated in said deed, that each lot Owner shall agree to pay to the Association, the following:

- a. All regular assessments for specified services and maintenance as set forth in 5.3; and
- b. All special assessments for specified services and maintenance as set forth in 5.4

Each assessment, together with interest accrued thereon shall be a charge on the lot Owner's land and shall create a continuing lien upon the Owner's lot against which each assessment is made from and after the date the assessment is due. Each assessment shall bear interest at the rate of thirteen (13%) percent per annum to accrue after the due date until fully paid. Additionally, each assessment and accrued interest shall be the personal obligation of the Owner of the lot assessed at the date of assessment and may be collected by judicial action on the nature of a delinquent open account, which action may be in lieu of or in addition to the foreclosure of the lien created against the Owner's lot. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by the successor.

Any collection action, whether it be by lien foreclosure and/or by action on a delinquent account shall require the Owner of the lot assessed to also pay reasonable attorney fees and court costs to be included as a part of the debt to the Association.

Prior to bringing an action to foreclose the continuing assessment lien granted by this Article, the Association shall cause a notice of lien claim to be prepared and filed of record with the Ada County Recorder's Office and shall send a copy by certified mail to the delinquent lot Owner. The cost of preparing, filing and mailing this claim of lien, including a reasonable attorney fee incurred by the Association, shall also be the cost of the delinquent lot Owner and shall be recovered from the lot Owner.

5.2 Initial Assessment. Upon the initial purchase of each lot from Declarant, an Owner shall, in addition to assessments to be paid to the Association, be required to pay a one-time assessment of \$150 per lot to the Declarant, which payment shall be made at closing. This initial assessment represents a per Lot assessment intended to reimburse the Declarant for its advancement of legal fees and costs of creating the Association, establishing a corporate Association, bank account, purchasing a policy of casualty and/or liability insurance for Common Areas and/or an errors and omissions policy for directors, and/or other related expenses not normally considered development costs. This one time assessment may be waived by the Declarant. However, nothing contained herein shall require the Declarant to purchase insurance policies.

5.3 Regular Periodic Assessments. Each lot Owner shall also be assessed and pay a regular periodic assessment to begin at the closing of the lot purchase from Declarant, which regular assessments are to be used by the Association for the purpose of maintenance of the Common Area lots, paying costs incurred for policies of insurance purchased by the Association, paying for cost associated with the operation of and maintenance of a sewer lift station, the maintenance of Common Area lots, and/or providing for any other regular business activities of the Association. The Association may elect to collect these periodic assessments on a monthly, quarterly, semi-annual, or annual basis, as it deems appropriate. The lot purchaser shall prepay these periodic assessments to December 31, 1996, at the closing of the lot purchase based upon a prorated 1996 ownership. The beginning assessment annualized for the year 1996 shall be \$150.00, based upon an estimate made by the Declarant for the cost of services anticipated. This periodic assessment can be automatically increased by the Directors of the Association by as much as 20% per year beginning with the year commencing January 1, 1998. It may be increased by more than 20% by a majority vote of the members at a meeting called for that purpose by the Directors.

5.4 Special Assessment for Repairs, Operations, or Maintenance. In addition to the regular monthly assessments, the Association, by the majority vote of its members at a meeting called for that purpose, may make any special assessment for a specific one-time cost or expense benefiting the common lot areas on the common interest of all members.

5.5 Notice Action Authorized under Section 5.3 and 5.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 and/or 5.4 of this Declaration shall be sent to all members not more than fifty (50) days nor less than ten (10) days in advance of the meeting.

5.6 Miscellaneous Assessment Information. The directors shall annually re-establish the amount of the regular assessment per lot each November of each year and shall send written notice of that assessment to each Owner thirty (30) days before the effective date of the re-established regular monthly assessment.

The Association shall, upon request and for a reasonable charge, furnish a certificate signed by officers of the Association stating whether or not assessments by the requesting Owner are current.

5.7 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed to be delinquent and shall bear interest from the due date at the rate of thirteen (13%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment or may record and foreclose a lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

5.8 Subordination of Assessment Liens to Mortgages. The lien of any unpaid assessment shall be subordinate to any first mortgage or deed of trust against a lot. No mortgagee of a mortgage or beneficiary of a deed of trust shall be required to collect any unpaid assessment. The failure of a lot Owner to pay assessments shall not constitute a default under a mortgage or deed of trust. Sale or transfer of a lot shall not affect the assessment lien, nor shall the transferee in such sale or transfer be relieved from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE SIX Pressurized Irrigation System

6.1 Pressurized Irrigation System and Assessments. Each Owner understands that the Declarant entered into an agreement with the Nampa and Meridian Irrigation District, whereby the water district has agreed to provide pressurized water service to each lot in the subdivision, and each lot will receive an assessment from the water district for that service whether or not the water is actually used.

Additionally, the Water District is obligated to operate, maintain, and repair the pressurized system and may also levy and collect additional annual assessments against each lot served by the system (all Lots) to defray the cost and expense of such operation, maintenance, repair or replacement in a manner specified in the agreement. This agreement is recorded as Instrument No. 96044971, records of Ada County, Idaho, and is incorporated in this Declaration by reference.

6.2 Prohibitions. Lot Owners are prohibited from making any cross connection or tie in between the irrigation water system and their domestic water system. **WATER FROM THE IRRIGATION WATER SYSTEM IS NOT DRINKABLE; EACH LOT OWNER SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF HIS/HER/THEIR LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES.**

Lot Owners shall not construct any ditch, drain, well or water system upon any lot or Common Area.

6.3 Use and Rules. The Association, through its Directors, shall establish and serve on each lot Owner a set of rules establishing the use of this irrigation water including time of use and duration, recognizing that the system will not permit all lots to use the irrigation water simultaneously. The Association may also elect or contract for hire a water master to designate a rotation schedule.

ARTICLE SEVEN Architectural Control

In order to protect the quality and value of the homes built in the project and for the continued protection of the Owners thereof, an Architectural Committee (ACC) is hereby established consisting of three members to be appointed by Declarant as long as Declarant owns lots in the project. Thereafter, the Architectural Committee shall be appointed by the Board of Directors of the Association, to succeed the prior committee membership upon such appointment.

7.1 Approvals Required. No building, fence, wall, patio cover, other structure, or landscaping improvements of any type shall be commenced, erected, or installed upon any lot or Common Area nor shall any exterior addition to or change or alteration of existing improvements be made until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location of the same and such other detail as the ACC may require (including but not limited to any electrical, heating, or cooling system), shall have been submitted to and approved in writing by the ACC as to harmony of external design and location in relation to surrounding structure and topography and as to conformity with the requirements of this Declaration. In the event the ACC fails to approve, disapprove, or specify the deficiency in such plans, specification and location within thirty (30) days after submission to the ACC in such form as they may require, approval will not be required and this Article will be deemed to have been fully complied with.

7.2 Rules and Regulations. The ACC is authorized to adopt rules to govern its procedures including such rules as the Committee deems appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties due to be heard on any matter before the Committee, the Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration including matters of design, materials, and aesthetic interest.

7.3 Fees. The ACC may establish by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications to the committee for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the ACC for the cost of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

7.4 Enforcement. The ACC may in its own name or on behalf of the Association, exercise all available legal and equitable remedies available to prevent or remove any unauthorized or

unapproved construction or improvements on any lot or property or any portion thereof. In the event the ACC exercises its right to remove or restrain the violation of any rules, the ACC shall recover liquidated damages of not to exceed \$400.00 in addition to its attorney fees and court costs as a means to reimburse those ACC members for their time and effort.

7.5 **Waivers.** The approval of any plans, drawings, or specifications for any plans, improvements, or construction, or for any matter requiring the approval of the ACC shall not be deemed a waiver of any right to withhold approval of any similar plans, drawing, specifications, or matter subsequently for approval.

7.6 **Liability.** Neither the ACC nor any member thereof shall be liable to the Association, to any Owner, or to any other party for any damage suffered or claimed on account of any act, action, or lack thereof, or conduct of the ACC or the respective members thereof, acted in good faith on the basis of information they then possessed.

ARTICLE EIGHT

Common Areas

Declarant intends to establish several Common Areas created for the mutual benefit of all Owners. These Common Area are designated on the final plat of Whitestone Estates Subdivision as follows: Lot 1, Block 1; Lot 11, Block 1; Lot 11, Block 1; Lot 21, Block 1; and Lot 1, Block 2.

8.1 **Purpose/Use** of Lot 1, Block 1 and Lot 1, Block 2, is for a landscaped berm along Linder Road. The purpose/use of Lot 21, Block 1 is for the location of a sewer lift station. The purpose/use of Lot 11, Block 1, is for a pedestrian bridge and pathway to be located in a property adjacent to the Whitestone Estates Subdivision if the Owner of that adjacent property will consent to a bridge and pathway located on its property. The purpose/use of Lot 17, Block 1, is to locate a storm drainage area as required by Ada County Highway Department.

8.2 **Title and Control.** Title to Common Area lots will be conveyed by Declarant to the Association free and the control and responsibility for maintenance, operations, and stated purpose shall be solely vested in the Association, upon conveyance by the Declarant. Conveyance of title shall be free and clear of all liens and encumbrances, except those noted on the plat, and shall be made before HUD insures any mortgage on any lot.

8.3 **Common Rights.** Each lot Owner shall have an in common and perpetual access easement and right of use to Common Areas, with all other Owners for the purposes set forth above, which easement and use shall run with and be appurtenant to each Owner's lot.

8.4 **Association's Duty to Maintain.** In addition to other duties required of the Association, the Association shall maintain all Common Area lots. No individual liability shall be imposed on Declarant or any Owner for damages to a Common Area, except to the extent that his direct

negligence is the cause of that damage.

8.5 Mortgage on Common Area. No mortgage shall be placed on a Common Area lot without the written consent of two-thirds (2/3) of all lot Owners, excluding the consent of Class B member-owners. If a mortgage is placed on a Common Area lot, it shall be subject to and inferior to the use and easement rights granted to all Owners.

ARTICLE NINE

Future Development and Annexation

9.1 Whitestone Phases. Each Owner recognizes that the Declarant intends to subdivide, develop, and annex adjacent land as additional phases of Whitestone Estates to be known as Whitestone Estates subdivisions #2, #3, and #4. The Declarant may annex these additional lands according to the procedure described.

9.2 Additional land may be annexed by Declarant in Declarant's sole discretion without the consent of Members at any site within twenty (20) years of the date of this instrument. Thereafter upon approval of majority vote of the Members, and further provided that if any homes are to be financed by HUD/VA, the annexation of additional parcels shall also require approval by HUD/VA, if there are still Class B members. Annexation shall cause an amendment of this Declaration to include such additional property, and to subject such additional property to the rights, privileges, restrictions, covenants, and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the Common Area and common facilities thereof. The Supplemental Declaration may expressly modify the terms and conditions of this Declaration as they apply to such additional property. However, except for such express modifications, upon the recordation of the Supplemental Declaration, the additional property described therein shall be subject to the terms and provisions of this Declaration as though included originally in the Declaration and the definitions of property, Common Area, and common facilities shall automatically be amended to conform to such supplement or supplements, as shall all the other definitions herein, including the definitions of lot and Owner. All Owners of lots located within the expanded project shall be subject to all easements, restrictions, and reservations set forth in this Declaration and shall have the privileges of use of Common Area and common facilities, except as otherwise provided herein and subject to the restrictions, reservations, and modifications set forth in the Declaration as amended and supplemented from time to time.

Designation of Common Area. Any Common Area and common facilities designated by Declarant as such on the plat of the newly annexed additional property or in the Supplemental Declaration applicable thereto, or which may be acquired by or conveyed to the Association by Declarant, shall be subject to the same easements or other rights for the use and enjoyment of the Owners as for the other Owners of lots subject to this Declaration.

ARTICLE TEN

General Provisions

10.1 Enforcement. The Association, as well as any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision thereof, and all other provisions of this Declaration shall remain in full force and effect.

10.3 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is filed of record. After completion of the initial term of twenty (20) years, this Declaration shall be automatically extended for successive periods of ten (10) years.

10.4 Amendment. This Declaration may be amended only with the written approval of two-thirds (2/3) of the Owners.

SIGNATURES:

Larry Van Hees, Managing Partner

98003285

FIRST SUPPLEMENT AND AMENDMENT TO THE

MASTER

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AMERICAN LAND TITLE CO.

FOR

'98 JAN 14 PM 4 07

WHITESTONE ESTATES SUBDIVISION NO.

FEE 600 DEP [Signature]
RECORDED AT THE REQUEST OF

The first supplement and amendment to the Master Declaration of Covenants, Conditions, Restrictions for Whitestone Estates No. 2 supplementing and amending Instrument No. 96082905, Records of Ada County (hereinafter "First Supplement") is made this 14th day of January, 1998, by Whitestone Homeowners Association, Inc., an Idaho non-profit corporation, hereinafter sometimes referred to as "Grantor" or "Declarant."

ARTICLE 1 - RECITALS

Section 1.1 First Supplement and Amendment to Whitestone Estates Master Declaration. This "First Supplement" is a Supplement and Amendment to that certain Master Declaration of Covenants, Conditions, Restrictions for Whitestone Estates Subdivision (hereinafter called "Master Declaration") which was recorded at the Office of the Ada County Recorder, Ada County, Idaho as Instrument No. 96082905 on October 3, 1996, and does supplement and amend covered hereby, and the covenants, conditions, restrictions contained herein are in addition to those set forth in the Master Declaration, except insofar as the provisions of the Master Declaration are hereinafter expressly modified.

Section 1.2 Property Covered. The property which is covered and annexed by the First Supplement is described below (Whitestone Estates Subdivision No. 2):

Lots 9-23 of Block 3; Lots 7-12 of Block 4; Lots 3-7 of Block 5; Lots 1-7 of Block 6; Lots 1-4 of Block 7, Whitestone Estates Subdivision No. 2, according to the official plat on file in the records of Ada County, Idaho, Book 75 Pages 7742 and 7743.

Section 1.3 Purpose. The purpose of this First Supplement to the Master Declaration is to annex Whitestone Estates Subdivision No. 2 to the property covered by the Master Declaration, and to set forth other terms, covenants, restrictions which are unique to Whitestone Estates Subdivision No. 2, if any.

ARTICLE 2 - DECLARATION

Grantor hereby declares that Whitestone Estates Subdivision No. 2 and all the property, lots, parcels and portions thereof is hereby annexed to the property covered by the Master Declaration and is hereby subject to all of the covenants, conditions, restrictions, easements and

all provisions including definitions, of the Master Declaration and, in addition thereto, is subject to further conditions, covenants, restrictions, easements and provisions hereinafter provided.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 11th day of January, 1998.

Whitestone Estates Homeowners Association, Inc.
an Idaho non-profit corporation

BY: [Signature]
Larry Van Hees, Its President

Whitestone Development Company, L.L.C.

BY: [Signature]
Larry Van Hees, Managing Member

State of Idaho)
) ss.
County of Ada)

On this 11th day of January, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Larry Van Hees, known and identified to me to be the President of Whitestone Estates Homeowners Association, Inc., an Idaho corporation, and Managing Member of Whitestone Development Company, L.L.C., that executed the within and foregoing instrument, and acknowledged to me that such corporation and company executed the same.

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

Kimberlie S. Carter
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 4/22/2001

