

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

SEP 17 2008

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1WATER RESOURCES
WESTERN REGIONName of Applicant Osprey Property Owners Association Phone 208-375-5389Post Office address 104 Falcon Drive, Boise ID 83716

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use☐ Change nature of use ☐ Change period of use ☐ Other _____2. Describe the reason for the proposed changes 1) Change the described permissible place of use (PPU) listed on the water rights from 60 acres to 215 acres, which reflects the area having access to the pressurized irrigation system within the subdivision plat boundary, and 2) adjust the GIS shape file for the water rights to more accurately illustrate PPU within the subdivision plat map.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
63-5332	7/23/1900	0.10 cfs/45.0 af	Irrigation	04/01 to 11/01
		0.10 cfs/14.6 af	Stockwater	01/01 to 12/31
63-5334	8/15/1889	1.94 cfs/207.0 af	Irrigation	03/15 to 11/15
		0.03 cfs/14.6 af	Stockwater	01/01 to 12/31

2. Total amount of water being transferred 2.14 cubic feet per second and/or 281.2 acre-feet per annum.Corral & Menneha CreeksMores Creek3. Source of water Mores Creek tributary to Boise River4. Point(s) of Diversion: N/C

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

5. Lands irrigated or place of use: Stockwater PPU same as irrigation listed below

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	4E	35										20	38	27			14		99
4N	4E	2	10 Lt 1	30 Lt 2	34 Lt 3	14	28 Lt 3												116

Total Acres 215

(When combined, rights 63-5332 & 63-5334 will not exceed 56.0 acres irrigation within the 215-acre PPU)

PART 1

6. General Information:

- a. Description of diversion system Weirs and gravity ditches for Menneha and Corral Creeks, pump station and buried pipes for Mores Creek.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
_____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
N/A. When Lot No. 7, Block 1 and Lot Nos. 2 and 14, Block 2 were developed, the owners drilled individual wells for their water supply and chose not to access the Association's pressurized irrigation system. These three lots were not developed as part of the new place of use approved on Transfer No. 69538.
- d. Remarks:
Approved Transfer No. 69538 allowed 56 acres combined irrigation within a 60-acre PPU. IDWR's resulting GIS shape file closely reflects the Osprey Subdivision boundary rather than 60 acres. This transfer seeks to adjust IDWR's shape file to more accurately illustrate the area within the subdivision boundary that has access to the Association's pressurized irrigation system and to increase the 60-acre PPU accordingly. Water appurtenant to the lands within the boundary are managed by Osprey Property Owners Association. A copy of the Association's Covenants, Conditions and Restrictions is included as Attachment D. A copy of the Water System Conveyance Agreement from the developer is included as Attachment E.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20_____.

For the Director

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED (See Attachments A & B for copies of Partial Decrees 63-5332 & 63-5334.

Answers to Part 2.A.2., 9. and 10. apply to both rights.)

1. Right as evidenced by: See Attached Partial Decree

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☒ Other See Attachments D & E. A subdivision plat map identifying current lot owners is included in Attachment C.

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above None

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

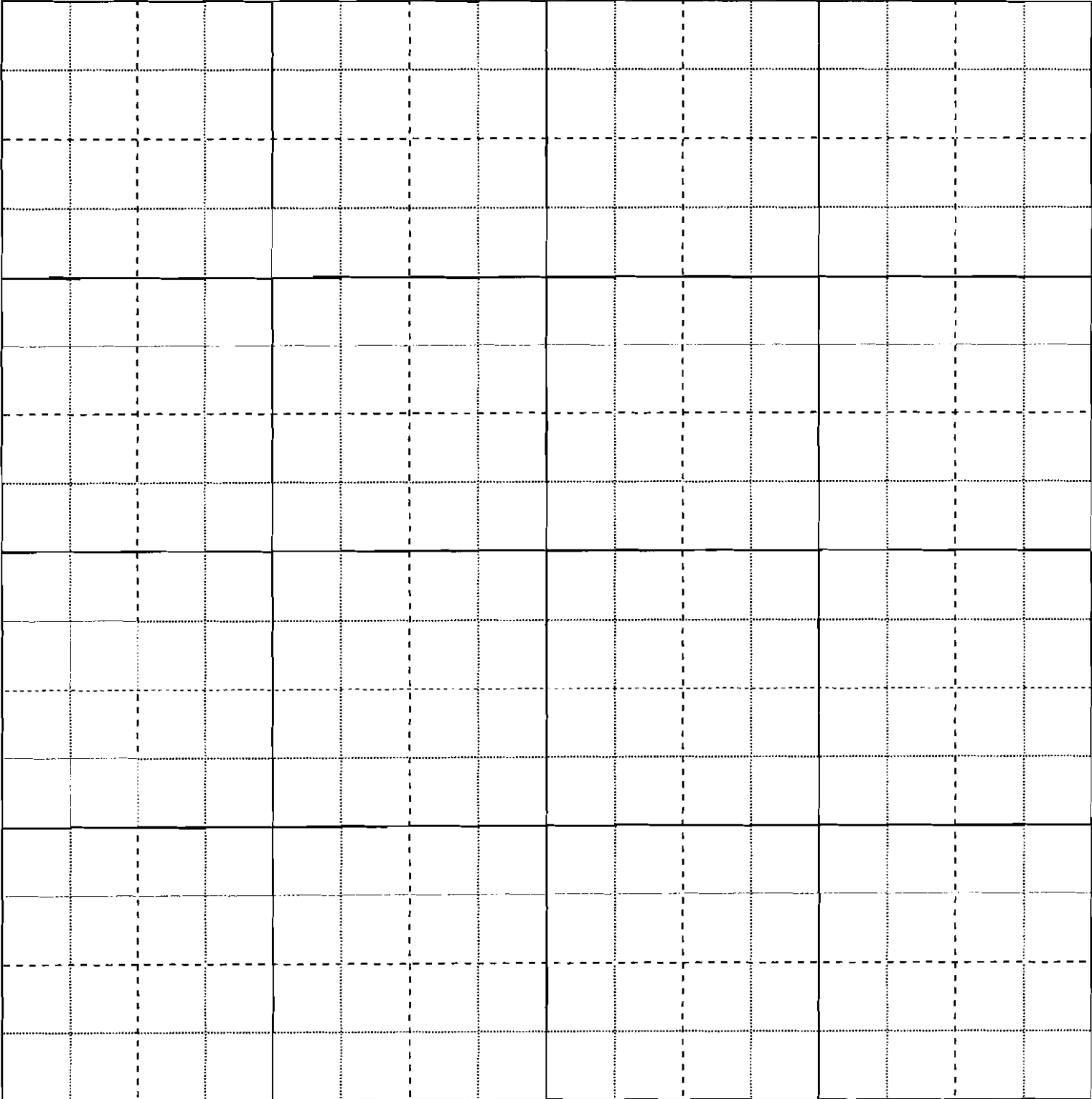
Total Acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.

(See Attachment C)



Scale: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

1.	<u>New Nature of Use</u>	<u>Amount(cfs/af-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

Quantity and quality of return flows and location of discharge: _____

2. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

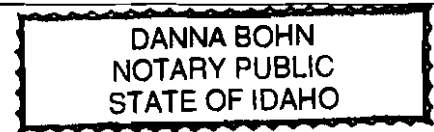
I understand that any willful misrepresentations made in this application may result in voiding its approval.

Julie J. Johnson Secretary of OPHA
(Signature of Applicant)

Subscribed and sworn to before me this 7 day of August, 20 08.

Danna Bohn
(Notary Public)

My commission expires May 8 2014

**FOR DEPARTMENT USE ONLY**

Transfer contains 6 pages and 45 attachments (A-E)

Received by DB Date 9-17-08 Protest filed by _____

Prelim. Check by VLW Fee \$330-

Receipted by DB / W036924 Date 9-17-08

Published in _____ Copies of protest forwarded by _____

Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

Copy of transfer sent to lien holder _____

ATTACHMENT A
PARTIAL DECREE NO. 63-5332

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-05332

2004 OCT 29 PM 4:46
DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED *jm*

NAME AND ADDRESS: OSPREY LAND CO
737 N 7TH ST
BOISE, ID 83702

SOURCE: CORRAL CREEK TRIBUTARY: MORES CREEK
MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.20 CFS
59.60 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

DIVERSION FROM MORES CREEK UNDER THIS RIGHT IS LIMITED TO THOSE
TIMES WATER IS AVAILABLE FOR DIVERSION UNDER THIS RIGHT AND
PRIORITY FROM CORRAL CREEK. AVAILABILITY OF WATER FROM CORRAL
CREEK SHALL BE DETERMINED BASED ON THE LESSER OF THE FLOW IN
CORRAL CREEK AT THE AUTHORIZED POINT OF DIVERSION OR AT THE
MOUTH OF CORRAL CREEK. THE TOTAL INSTANTANEOUS DIVERSION OF
WATER FROM ALL POINTS OF DIVERSION UNDER THIS RIGHT SHALL NOT
EXCEED 0.20 CFS.

THE TOTAL DIVERSION OF WATER FROM MORES CREEK UNDER RIGHTS
63-5332 AND 63-5334 SHALL NOT EXCEED 1.12 CFS.

THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO
MORE THAN 0.02 CFS PER ACRE NOR MORE THAN 4.5 AFA PER ACRE AT THE
FIELD HEADGATE FOR IRRIGATION OF THE LANDS.

THE TOTAL INSTANTANEOUS DIVERSION OF WATER FROM ALL POINTS OF
DIVERSION UNDER RIGHTS 63-5332 AND 63-5334 SHALL NOT EXCEED
2.14 CFS, NOR TOTAL COMBINED ANNUAL VOLUME OF 266.6 AF.

PRIORITY DATE: 07/23/1900

POINT OF DIVERSION: T04N R04E S02 SENE Within Boise County
T05N R04E S35 NWNESEW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.10 CFS 45.00 AFY
	Stockwater	01-01 TO 12-31	0.10 CFS 14.60 AFY

THE PERIOD OF USE FOR THE IRRIGATION DESCRIBED IN THIS
APPROVAL MAY BE EXTENDED TO A BEGINNING DATE OF 3/1 AND AN
ENDING DATE OF 11/15 PROVIDED THAT BENEFICIAL USE OF THE WATER
CAN BE SHOWN AND OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED.
THE USE OF WATER BEFORE 4/1 AND AFTER 11/1 IS SUBORDINATE TO ALL
WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION
USE AND A PRIORITY DATE EARLIER THAN THE DATE OF THIS APPROVAL.
DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO APRIL 1
AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY THE WATER
DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING RELEASED
FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY PEAK DAM
OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE MEMORANDUM OF
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY AND THE U.S.
DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL OPERATIONS OF THE
BOISE RIVER RESERVOIRS, DATED NOVEMBER 20, 1953, THE WATER
CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL 1985 AND
ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT TO
STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH USE

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PURPOSE AND PERIOD OF USE (continued)

OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL
BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK
RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576.

PLACE OF USE:	Irrigation		Within Boise County
	T04N R04E S02 LOT 2	(NWNE) 10.0	SWNE 10.0
		SENE 4.0	LOT 3 (NENW) 10.0
	T05N R04E S35	NWSW 5.0	SWSW 15.0
		SESW 5.0	SWSE 3.0
	60.0 Acres Total		

Stockwater	Within Boise County
Same as Irrigation	

USE OF THIS RIGHT WITH RIGHT NO. 63-5334 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 56 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

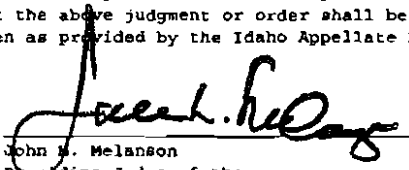
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

ATTACHMENT B

PARTIAL DECREE NO. 63-5334

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-05334

2004 OCT 29 PM 4:46
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 

NAME AND ADDRESS: OSPREY LAND CO
737 N 7TH ST
BOISE, ID 83702

SOURCE: MINNEHA CREEK TRIBUTARY: MORES CREEK
MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 1.94 CFS
221.60 AFY

DIVERSION FROM MORES CREEK UNDER THIS RIGHT IS LIMITED TO THOSE
TIMES WATER IS AVAILABLE FOR DIVERSION UNDER THIS RIGHT AND
PRIORITY FROM MINNEHA CREEK. AVAILABILITY OF WATER FROM
MINNEHA CREEK SHALL BE DETERMINED BASED ON THE LESSER OF THE FLOW
IN MINNEHA CREEK AT THE AUTHORIZED POINT OF DIVERSION OR AT THE
MOUTH OF MINNEHA CREEK. THE TOTAL INSTANTANEOUS DIVERSION OF
WATER FROM ALL POINTS OF DIVERSION UNDER THIS RIGHT SHALL NOT
EXCEED 1.94 CFS.

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO
MORE THAN 0.02 CRFS PER ACRE NOR MORE THAN 4.5 AFA PER ACRE AT
THE FIELD HEADGATE FOR IRRIGATION OF THE LANDS ABOVE.

THE TOTAL INSTANTANEOUS DIVERSION OF WATER FROM ALL POINTS OF
DIVERSION UNDER RIGHTS 63-5332 AND 63-5334 SHALL NOT EXCEED 2.14
CFS, NOR TOTAL COMBINED ANNUAL VOLUME OF 266.6 AF.

THE PORTION OF RIGHT 63-5334 USED FOR CONVEYANCE LOSSES LIMITED
TO DIVERSION FROM MINNEHA CREEK IS 1.02 CFS.

PRIORITY DATE: 08/15/1889

POINT OF DIVERSION: T05N R04E S35 NWNEW Within Boise County
S36 NWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.94 CFS 207.00 AFY
	Stockwater	01-01 TO 12-31	0.03 CFS 14.60 AFY

DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO
APRIL 1 AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY
THE WATER DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING
RELEASED FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY
PEAK DAM OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE
MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY
AND THE U.S. DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL
OPERATIONS OF THE BOISE RIVER RESERVOIRS DATED NOVEMBER 20, 1953,
THE WATER CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL
1985 AND ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT
TO STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH
USE OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31
SHALL BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK
RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576.

THE PERIOD OF USE FOR THE IRRIGATION DESCRIBED IN THIS
APPROVAL MAY BE EXTENDED TO A BEGINNING DATE OF 3/1 AND AN
ENDING DATE OF 11/15 PROVIDED THAT BENEFICIAL USE OF THE WATER
CAN BE SHOWN AND OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED.

PURPOSE AND PERIOD OF USE (continued)

THE USE OF WATER BEFORE 5/1 AND AFTER 10/1 IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE OF THIS APPROVAL.

PLACE OF USE:	Irrigation		Within Boise County
	T04N R04E S02 LOT 2	(NWNE) 10.0	SWNE 10.0
		SENE 4.0	LOT 3 (NEEN) 10.0
	T05N R04E S35	NWSW 5.0	SWSW 15.0
		SESW 5.0	SWSE 1.0
	60.0 Acres Total		

	Stockwater	Within Boise County
	Same as Irrigation	

USE OF THIS RIGHT WITH RIGHT NO 63-5332 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 56 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 46 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

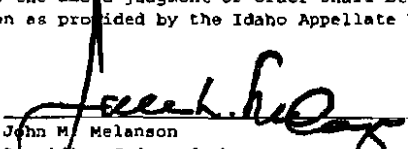
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

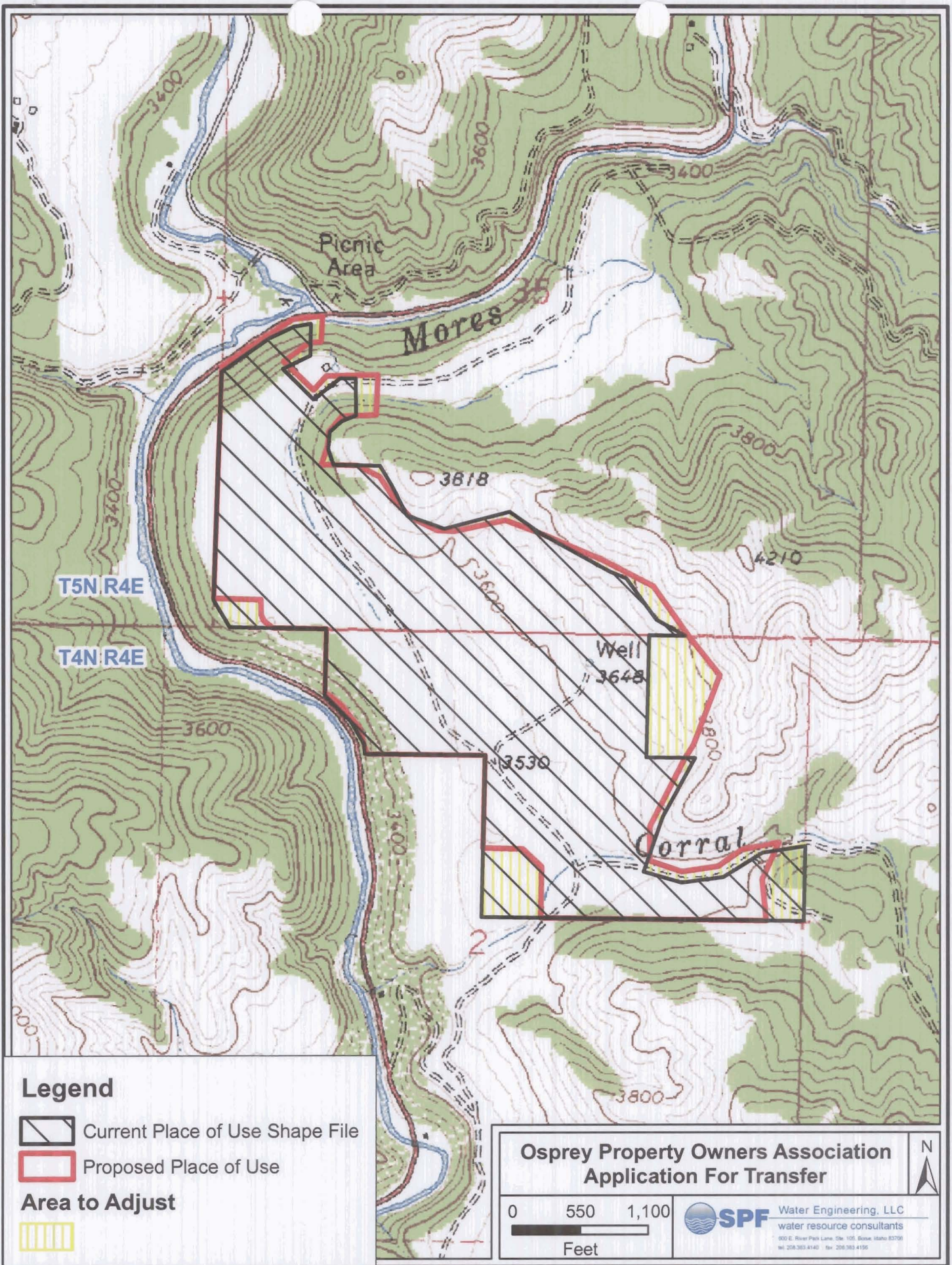
RULE 54(b) CERTIFICATE

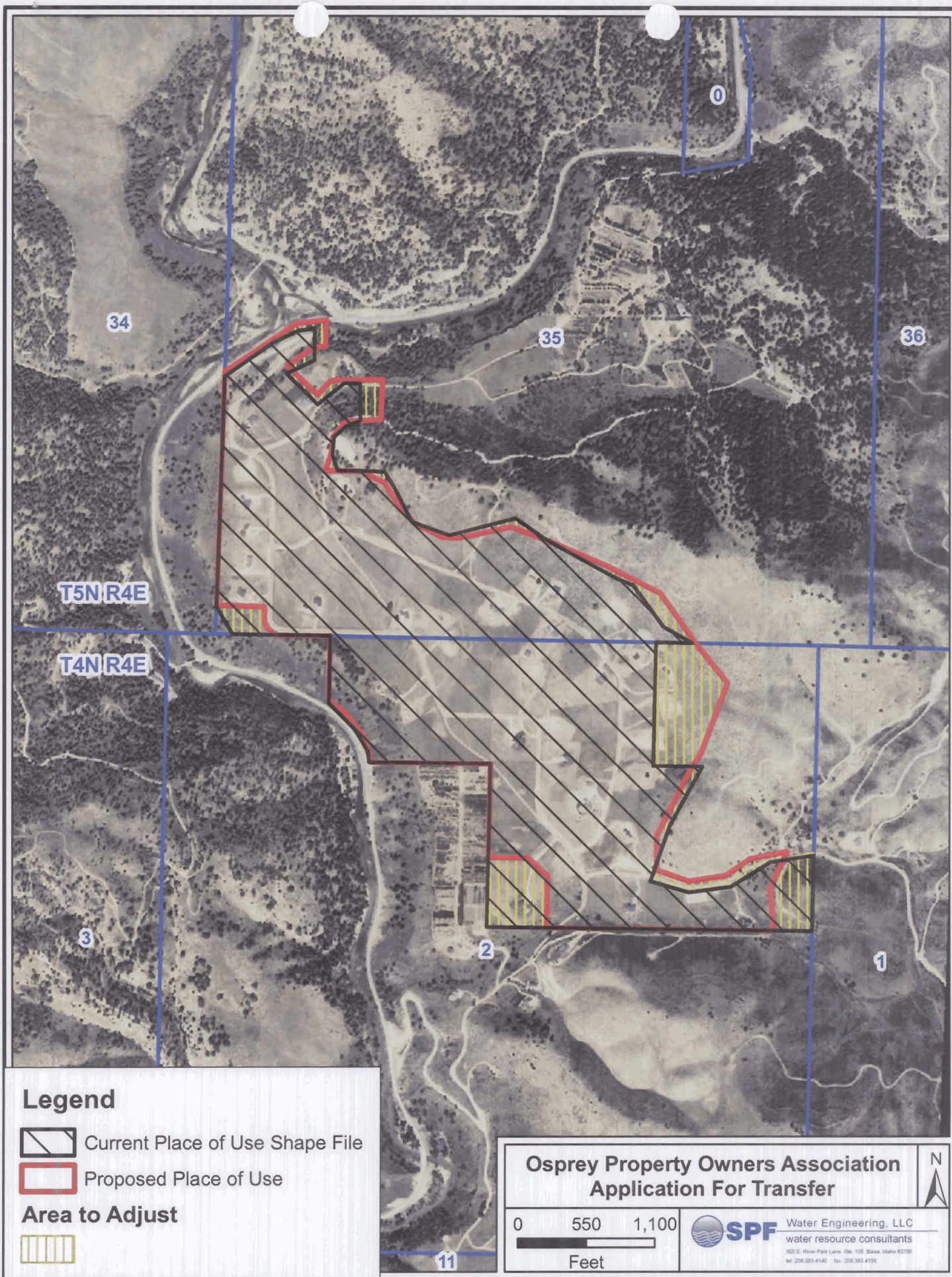
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

ATTACHMENT C

PLAT MAP, TOPO MAP AND 2006 AERIAL PHOTO





ATTACHMENT D

**COVENANTS, CONDITIONS & RESTRICTIONS
OSPREY PROPERTY OWNERS ASSOCIATION**

**THIRD AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

Instrument # 212857

IDAHO CITY, BOISE COUNTY, IDAHO

007-03-23 10:25:10 No. of Pages: 28

Recorded for : OSPREY PROPERTY OWNERS ASSOC

CONSTANCE SWEARINGEN

Fee: 84.00

Ex-Officio Recorder Deputy

Index to: MISCELLANEOUS

FOR

OSPREY SUBDIVISION

RECITALS

THIS THIRD AMENDED DECLARATION ("Declaration") is made on March 22, 2007, by Osprey Property Owners Association, an Idaho corporation ("Declarant"). This Declaration amends and restates, in its entirety, the Second Amended Declaration of Covenants, Conditions and Restrictions for Osprey Subdivision recorded in Boise County, Idaho as Instrument No. 186167.

WHEREAS, Declarant is the operating entity for the corporation, which encompasses Osprey Subdivision Phase One, Osprey Subdivision Phase Two and Osprey Subdivision Phase 3; and

WHEREAS, Declarant desires to amend the Second Amended Declaration of Covenants, Conditions and Restrictions for Osprey Subdivision dated June 18, 2002 and recorded in Boise County as Instrument No. 186167; and

WHEREAS, a majority of the property owners which encompass Osprey Subdivision Phase One, Osprey Subdivision Phase Two and Osprey Subdivision Phase 3 approved in a vote at the annual meeting held on June 24, 2006 said amendments; and

WHEREAS, Declarant desires to place covenants, conditions and restrictions on the Development, including any Annexed Property, to protect the value, attractiveness, compatibility and conformity of use for the various lots and common areas located therein; and

WHEREAS, this Third Amended Declaration completely restates the Covenants, Conditions and Restrictions on the Development, including any Annexed Property, to protect the value, attractiveness, compatibility and conformity of use for the various lots and common areas located therein;

NOW, THEREFORE, Declarant hereby declares that all of the occupation, use, improvement and conveyances of the Development and the lots located therein is and shall be 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 Development and shall be binding upon and shall inure to the benefit of and be

limitations upon Declarant, the Association and all Owners of lots located in the Development or any interest therein.

ARTICLE I. Definitions

1.1 "Annexed Property" shall mean any real property subjected to this Declaration pursuant to Article VI.

1.2 "Association" shall mean and refer to Osprey Property Owners Association, Inc., an Idaho non-profit corporation, its successors and assigns. "The Board" or the "Board of Directors" shall mean The Board of Directors of the Association. The "Articles" shall mean the Articles of Incorporation of the Association. The "Rules" shall mean the rules and regulations adopted by the Association.

1.3 "Architectural Control Committee" or "ACC" shall mean and refer to three individuals appointed by Declarant or appointed pursuant to Article VII, whose function shall be to review and approve or disapprove each application for the construction of a Residence and outbuildings on a Lot and to take those other actions authorized by this Declaration.

1.4 "Buyer" shall mean the person or persons who purchase a Lot or Lots from Declarant.

1.5 "Code" shall mean and refer to the County Code of Boise County as the same may be amended from time to time.

1.6 "Complete Plans and Specifications" shall mean and refer to the following plans and specification for any single family dwelling and outbuildings built on any Lot, which must be approved by the ACC prior to construction:

- (a) Plot plan showing location of all buildings and utilities;
- (b) Floor plans showing all rooms;
- (c) Elevations showing exterior materials and color schemes for all sides;
- (d) Grading plans showing all excavations and fills;
- (e) Landscape plans showing all landscaping;
- (f) Specifications of principle exterior materials and color schemes;
- (g) Utilities plans showing materials used for and configuration of the water and sewage systems;
- (h) Fencing plan showing location and materials.

The plans and specifications shall be submitted in such detail as the ACC requests.

1.7 "Common Area" shall mean all property, including improvements thereon owned by the Association or over which the Association holds an easement for the common use, enjoyment or benefit of all Owners. The Common Areas are designated on the Plat and include the roadways.

1.8 "Declarant" shall mean and refer to Osprey Land Company, an Idaho corporation and its successors and assigns, if such successors or assigns are expressly assigned by written agreement all rights of Declarant under the Articles and Bylaws of the Association and this Declaration.

1.9 "Denude" shall mean removing grass and vegetation below two inches above the surface of the ground.

1.10 "Development" shall mean and refer to Osprey Subdivision Phase One, the official plat of which is recorded in Boise County as Instrument No. 178682, Osprey Subdivision Phase Two, the official plat of which is recorded in Boise County as Instrument No. 183480, and any Annexed Property.

1.11 "Domestic Usage" shall mean the use of water inside the house.

1.12 "Equine Animal" shall mean a horse, mule, burro or llama.

1.13 "Easement Owners" shall mean and refer to any person or entity who owns the right to use the roadways within the Development for access to and from property adjacent to or in the vicinity of the Development.

1.14 "Irrigation Usage" shall mean the use of water outside the house on any Lot. This usage shall include stock watering, lawn sprinkling and the irrigation of gardens and pastures.

1.15 "Lot" shall mean and refer to any plot of land designated as a lot on any recorded subdivision map of the Development.

1.16 "Member" shall mean and refer to every person or entity who holds a membership in the Association as set forth in Section 4.2.

1.17 "Mortgage" shall mean and refer to any mortgage or deed of trust which encumbers land within the Development; "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.

1.18 "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 Development, including contract buyers, but excluding Mortgagees or those persons otherwise claiming an interest in a Lot as security for the performance of an obligation.

1.19 "Owner's Control" shall mean that the animal is secured by a rope, reins or leash held by the Owner or adult agent of the Owner or is secure within a vehicle or trailer.

1.20 "Permitted Animal" means: (a) a dog which is not known for its aggressive or vicious behavior and is not a member of a breed of dogs known for their aggressive or vicious

behavior; (b) a domestic cat; (c) a song bird; or (d) an equine animal. All other animals, including but not limited to cattle, swine, poultry, sheep, goats and pigeons, are not permitted.

1.21 "Permitted Outbuildings" shall mean and refer to those outbuildings that are permitted pursuant to Section 2.2 below.

1.22 "Plat" shall mean the plat or map of Osprey Subdivision Phase One, Osprey Subdivision Phase Two and Annexed Property, which is duly recorded in Boise County, Idaho.

1.23 "Residence" shall mean and refer to a single-family dwelling, a primary dwelling and one approved detached guesthouse if applicable. A "Guesthouse" shall mean and refer to an approved detached building with plumbing suitable for a dwelling that can be used by the Immediate Family on a long term basis and be used by family guests for short periods of time, not to exceed 60 days per year by any one guest. "Immediate Family" shall mean and refer to a Grandmother, Grandfather, Mother, Father, Daughter, Son, Granddaughter or Grandson by blood, marriage or adoption. "Outbuildings" shall mean and refer to any private garage, barn or other buildings incidental to the residential use of the lot. "Residential Purposes" shall mean the use of a lot for the purpose of residing on the lot.

1.24 "Refuse" shall mean and refer to equipment, vehicles, appliances, machinery, structures, parts, tools and other similar items which are not capable of currently productive use for the purpose they were intended, without repair or restoration. Refuse shall also mean garbage, waste, debris, ashes, trash and rubbish.

1.25 "Setback" shall mean and refer to the minimum distance between the lawful location of a Residence on a Lot from a given street or road, from a lot line, or easement as provided by the Plat or as otherwise required by applicable Code.

1.26 "Subdivision" shall mean the Development and Annexed Property as shown on the official subdivision map thereof duly recorded in Boise County.

ARTICLE II. General Restrictions

2.1 ***Land Use.*** Each Lot, except Lot 4, Block 6 and Lot 1, Block 2 and those lots designated for common areas or commercial use by Declarant, shall be used solely for residential purposes and shall not be used for the conduct of trade, business or professional activities, except as may be permitted as follows:

- (a) Declarant is authorized to construct a building or park a trailer or mobile office for use as a subdivision sales office or temporary office quarters for business activities pertaining to the Development and/or sales of Lots;
- (b) The construction trades shall be permitted to construct or use temporary facilities used solely for the purpose of aiding in the construction of a Residence on a Lot which use will be eliminated after the construction is

complete or the permitted construction period expires, whichever come first.

- (c) A Lot or portions thereof may be used for Common Areas pursuant to Article VIII.
- (d) Declarant may designate any Lot or Lots or portion thereof as additional Common Area to be utilized in any manner designated by Declarant so long as such area and the facilities located thereon are available for use by all Owners.
- (e) Declarant may designate up to two platted lots for commercial use and may utilize those lots for such purposes.
- (f) The Lot Owner may carry on legal business activity within his or her residence so long as such business activity does not involve the routine sales or delivery of merchandise or services on the Lot.

2.2 Residence Construction. Except as otherwise permitted in paragraph 2.1 above, platted Lots shall be restricted to one single family dwelling composed of one primary dwelling and one Approved Guesthouse, if applicable, and Permitted Outbuildings. 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 all of the following conditions have been met:

- (a) Prior to commencing any construction on the Lot the Owner shall first submit an application for construction authority to the Architectural Control Committee ("ACC") and receive from the ACC its written approval, according to the provisions of Article VII. It is the intent of the Declarant that architectural designs similar to that of other upscale communities in the Boise area are desired and will be utilized for construction of Residences within the Development. The application must be accompanied by a landscape plan and architectural building plans as required by the Uniform Building Code.
- (b) Each Residence constructed on a Lot shall be a "single-family" dwelling as defined by building codes applicable to Boise County. Every Residence on any Lot shall comply with the applicable setback requirements and the Uniform Building Code as adopted by Boise County. If Boise County has not adopted a building code, the residence must be constructed according to the Uniform Building Code designated by the ACC. Each residence must contain at least 1300 square feet of livable floor area on the main or ground level or floor and must have an appraised value, when completed, of at least \$130,000 excluding the Lot value. No more than one (1) garage and two (2) outbuildings shall be allowed on a Lot. Each outbuilding shall contain not less than 200 square feet not more than 1000 square feet of floor area measured from the outside walls. A guesthouse can contain no more than 1000 square feet of living space. If a residence includes a guesthouse, the guesthouse will count as one (1) of the two (2) allowed outbuildings. A guesthouse can be attached to a garage, either

beside or above the garage, and the structure will counts as one (1) garage and one (1) outbuilding.

- (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 all governmental agencies with jurisdiction over residential construction on a Lot, in addition to ACC approval. Once construction or reconstruction of any Residence has begun, the same shall be completed to an enclosed state giving a finished appearance to the exterior of the Residence within one (1) year from the start of construction ("Permitted Construction Period").
- (d) Each Residence and each outbuilding and garage on a Lot shall be constructed of the same materials in order to have the same exterior appearance. All exterior materials must have the prior written approval of the ACC. No buildings shall be constructed with metal or vinyl siding. If the primary Residence is of log construction, the outbuildings may have a different exterior appearance if approved by the ACC. All Residences shall have solid colored metal or tile roofs unless a different roofing material is approved by the ACC. Every roof on a Lot shall be of the same color.
- (e) All construction on any Lot shall strictly follow all of the covenants, condition and restrictions in this Declaration.

2.3 **Reconstruction.** In any case where it is necessary to reconstruct a Residence or make any improvement to a Residence, 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 the control of the Owner (other than financial causes) and only for such time as such cause continues. In any event, reconstruction must be completed within the Permitted Construction Period.

2.4 **Landscaping.** The following provisions shall govern the landscaping of all Lots except Common Areas:

- (a) At the time of construction of the residence, the Owner, at the Owner's sole cost, shall cause the Lot to be landscaped with grasses, plants and trees, according to a landscape plan which is approved by the ACC.
- (b) All landscaping which is disturbed by construction of any Residence shall be fully repaired and completed within the permitted construction period. All landscaping shall be maintained in good condition by the Lot Owner, so as to maximize the visual appearance of the Lot.
- (c) The Development is a winter range area for deer and elk and the deer and elk may eat or otherwise damage the landscaping on any Lot. Neither, the Declarant, the Association, the State of Idaho Department of Fish and Game or Boise County shall be liable or responsible for any damage to the landscaping

or building improvements from any animals or by fire or other cause. Each Owner shall enter into any agreement necessary to give further effect to this Section.

- (d) All stumps, slash, and building debris shall be removed from any Lot once a Residence is constructed thereon.

In the event an Owner shall fail to comply with these landscaping requirements, the Declarant and/or the Association may cause the landscaping to be completed or maintained at the Owner's cost and may file a lien for that cost and recover any cost advanced in the same fashion as is provided for non payment of assessments as set out in Article V.

2.5 **Fences.** No barbed wire fences shall be allowed in any Lot. Fences shall be constructed of natural color wood or white vinyl or shall be of other materials approved by the ACC. The ACC may impose height or other restrictions on the construction of fences within the development to minimize interference with deer and elk crossings.

2.6 **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, or Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Lot Owners. Each of the following activities and conditions shall constitute a nuisance:

- (a) Depositing or storing toxic or hazardous materials, as defined by applicable State or Federal law, within the Development.
- (b) Permitting a dog or other animal to bark, or otherwise causing or permitting a noise or permitting the emission of a noxious or offensive odor, which is: (a) disturbing to another Lot Owner; and (b) not abated 2 hours after delivery of a written request for abatement to the Lot from which the noise emanates.
- (c) Conducting an illegal activity within the Development or permitting an illegal activity to be conducted on any Lot or Common Area.
- (d) Causing or permitting foul or obscene language or behavior to be used on any Lot or Common Area if such language or behavior is heard or witnessed by two or more persons who determine that such language is obnoxious.
- (e) Physically assaulting or attempting to assault another person on any Lot or Common Area.
- (f) Causing, permitting or maintaining any activity or condition which is otherwise prohibited by the covenants, restrictions and conditions set forth in this Declaration after written notification from the Association that such activity or condition is prohibited.

2.7 **Signs.** Unless otherwise permitted by the ACC, 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 Lot for sale or rent, and except that signs may be used or placed by a builder or the Declarant to advertise the Development during a construction and sales period. Notwithstanding the foregoing, the name of the Owners or the name of the Residence may be displayed and illuminated by exterior lighting.

2.8 *Refuse Disposal and Storage of Materials.* No unused machinery, vehicles, appliances or debris or other items of refuse shall be thrown, dumped or stored on any Lot, whether above or below the surface, except as such items are temporarily stored for collection in approved garbage collection receptacles. Each Owner shall provide suitable receptacles for the temporary storage for collection of refuse from their Lot. All such receptacles shall be approved by the ACC and be screened from public view and protected from disturbance. Each Owner shall be responsible for the prompt removal and disposal of such refuse from the Lot. No building material of any kind shall be placed or stored upon a Lot until the Owner is ready to and able to commence construction, and then such materials shall be placed within the property line of the Lot upon which the structure is to be erected. The Owners of any Lot shall, irrespective of fault, be responsible for the prompt removal of all trash, waste, garbage and refuse from the Lot. The Owner shall cut and remove weeds and brush so that the risk of fire is minimized. The Declarant or the Association shall have the right to enter upon any Lot for the purpose of removing and disposing of any weeds, brush, growth, debris, garbage or refuse after 5 days prior written demand mailed to the Owner. An amount equal to twice the cost of such removal and disposal shall be collected as a delinquent assessment as provided in Article V hereof. Builders shall keep each job site clean of excess debris and refuse at all times.

2.9 *Parking.* Except in the event of any emergency, there shall be no parking on the streets within the Development. Owner shall not park or permit to be parked any vehicle or piece of operable equipment on any Lot unless the same is fully garaged, except that the following vehicles may be parked on a Lot outside of a garage:

- (a) Vehicles driven by the Owners guests and invitees;
- (b) Emergency vehicles;
- (c) One passenger vehicle.

Parking turnouts shall be provided by the Owner in accordance with the Boise County Road Standards Ordinance, at the time of construction of the residence.

2.10 *Permitted Use of Recreational Equipment.* Snowmobiles, ATVs, motorcycles and other recreational vehicles and equipment shall not exceed 20 miles per hour while operating in the Development. No snowmobiles, ATVs, motorcycles or other recreational vehicles shall be operated before 8:00 a.m. or after 10:00 p.m. All vehicles shall be operated so as to maintain the peace and quiet of the Development.

2.11 *Motor Homes and Recreational Vehicles.* Except for the purpose of loading or unloading, an Owner shall not park or store motor homes, RV's, boats, snowmobiles, trailers, motorcycles or other recreational equipment or vehicles on a Lot unless the same is fully garaged.

Notwithstanding the foregoing, a guest or invitee of an Owner shall be permitted to park motor homes, RV's, boats, snowmobiles, trailers, motorcycles or other recreational equipment or vehicles on the Owner's Lot for the duration of their visit or fourteen (14) days, whichever is less, without being fully garaged and an Owner may park his or her motor home on a concrete slab attached to the residence or garage.

2.12 **Hazardous Activities.** No activity shall be conducted on any 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 within or from said Development. No hunting or killing of game shall be allowed within or from the Development. No open fire shall be lighted or permitted on any Lot except in a self-contained barbecue unit while attended and in use for cooking purposes, or within a safe and operational fireplace, or pursuant to a burn permit issued by the local authority.

2.13 **Lights, Sound and Odor.** Generally No Owner shall install lights which emit an offensive glare. However, an Owner may install a motion sensor activated security light attached to the structure which can be operated 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.

2.14 **Animals.** No animal shall be kept, bred or maintained on a Lot for any commercial purpose. No animals of any species shall be kept or maintained on any Lot except for Permitted Animals. All Permitted Animals shall be kept on the Lot and shall not be permitted to go outside the Lot unless within the Owner's Control. The maximum number of equine animals permitted on any Lot is:

- (a) Three equine animals if the Lot is less than four acres in size; and
- (b) Four equine animals if the Lot is four acres or larger in size.

Animals maintained on a Lot shall not be allowed to graze in a manner that denudes the Lot of vegetation. The owner shall maintain the animal or animals in stalls and shall provide feed for such stalled animals, as may be necessary in order to prevent overgrazing of the Lot. Overgrazing occurs if grass and other vegetation is less than two inches tall.

2.15 **Private Roads.** All roads within the Development shall be private roads owned by the Association for the use and benefit of all Owners and their successors and assigns and other Permitted Users, and subject to the unrestricted right of use reserved by Declarant and Chapman Ranch, LLC and their successors and assigns. The right to use such roads shall be appurtenant to the Lots and shall run with the land. The Association may prohibit use of the roads or portions thereof by unauthorized persons. The Association retains the right to transfer title to the road improvements to Boise County or other public entity, subject to the rights of ingress and egress of all Owners and Easement Owners. Declarant and the Association shall have the right to grant non-exclusive easements or licenses for use of the roads or portion thereof to the Owners of the Annexed Property or to other persons owning property adjacent to or in the vicinity of the Development ("Permitted Users") under such cost sharing and use agreements as the Association determines appropriate, which easements may be appurtenant to the Annexed Property or such other property

as may be designated. If so granted, such easement shall be permanent and shall run with the land unless otherwise provided in the granting instrument. No Lot shall be used for access to adjoining property, unless such access is expressly granted by Declarant. If an access easement is provided across a Lot in the recorded plat, the right to use such easement shall be determined solely by Declarant. No Lot Owner, other than Declarant, shall grant to any other person an easement or right-of-way across any Lot for access to adjoining property. It will be the responsibility of the Association to maintain, plow, repair and resurface, when necessary, the private roadways in the Development for so long as the Association is the owner of the road improvements. All costs associated with or arising out of the Association's obligation to maintain, repair, plow or resurface the roadways, including all costs associated with transferring the roadway improvements to a public entity, shall be paid by the Association and assessed to each Owner of the Development or otherwise recovered from other Permitted Users. The Boise County Highway District and/or the Association will have no responsibility to maintain, repair, replace, install or plow any portion of an Owner's driveway. Any repair, installation, maintenance and upkeep of a driveway shall be the responsibility of the Lot Owner.

2.16 *Television Antennas.* No radio or television antennas, satellite dishes or other similar reception devices shall be allowed within the Development, except that: (a) a satellite dish not exceeding 18" in diameter may be attached to a Residence; (b) a local television antenna may be installed if fully enclosed within the roof structure; and (c) a probe not to exceed twenty (20) inches in length may be attached to a Residence other than on the front elevation facing the road.

2.17 *Storage Tanks.* Any storage tank, including propane tanks, installed on a Lot and any type of air conditioning or heating unit must be located above ground and concealed from view from neighboring Owners or otherwise attractively screened from view; except that an underground propane tank may be installed if approved by the State. The type, location and screening of any storage tank shall be approved by the ACC.

2.18 *Maintenance of Lots.* Each Lot and the improvements thereon shall be kept and maintained by the owner in a clean, safe, attractive and sightly condition and shall be maintained in good repair.

2.19 *Drainage.* Natural drainage patterns shall not be altered in a manner which will result on the diversion of additional water onto other Lots.

2.20 *Trees.* No live trees whose diameter exceeds 6 inches shall be cut or destroyed without prior written approval by the ACC.

2.21 *Re-subdivision.* Re-subdivision of any Lot is prohibited if such re-subdivision results in a decrease in the size of any Lot. Re-subdivision is not prohibited if it results in an increase in the size of the re-subdivided lot or lots.

2.22 *Guesthouses.* Certain restrictions apply to the use of an Approved Guesthouse.

- (a) A guesthouse can be used by Immediate Family members on a long-term basis, and be used by family guests for short periods of time; visitation use

by any one guest not to exceed 60 days per year. With approval of the Board of Directors, family members of the "Immediate Family Member" i.e. spouse can use the guesthouse on a long-term basis. Also, other exceptions related to health matters can be made by the Board of Directors. In such cases, the Board's decision will be final.

- (b) In no case, shall a guesthouse be rented for cash or barter. If the primary dwelling is rented, the use of the guesthouse extends to the renter under the same conditions and restrictions as set out in the Covenants. Neither structure may be rented separately from the other.
- (c) In no case can the Guesthouse alone be substituted for the Primary dwelling as satisfying the residential requirement under the "Permitted Construction Period" (Covenants 2.2 c). The guesthouse can be constructed in conjunction with the primary dwelling or subsequent to the primary dwelling. If constructed at the same time as the primary dwelling, the Guesthouse and the primary residence shall be completed to an enclosed state giving a finished appearance to the exterior within one (1) year from the start of construction. If construction of the Guesthouse is commenced following the completion of the primary residence, the Guesthouse must be completed to an enclosed state giving a finished appearance to the exterior within one (1) year from the start of construction.
- (d) Domestic water use shall not exceed the Lots allotment.

ARTICLE III. Utilities and Utility Easements

3.1 **Utility Services.** All Lots shall be served with underground utility lines for power and telephone services. Except as provided in Sections 3.7 and 3.8, all other utilities, including water, shall be provided by the Lot Owner at his or her expense. The costs of bringing electricity and telephone to the Owner's Lot will be paid by Declarant and Declarant is entitled to recover any and all connection fees or escrowed funds advanced by Declarant, if any, to bring these services to the Lots. Each Lot Owner shall pay for any additional costs for final hookups charged as a condition precedent to final connection as well as any other utility service not supplied by Declarant. Each dwelling must use a sanitary disposal system of a design and installation approved by any regulatory agency having jurisdiction for approval of a sanitary disposal system.

3.2 **Platted Easements.** Declarant declares, grants and establishes a right-of-way or easement as shown and noted on the Plat of the Subdivision for the purpose of constructing water mains, electric distribution lines, gas pipelines and such other public or private utilities as may from time to time be constructed. Nothing herein shall create an obligation on Declarant to install any utility to any Lot other than electricity and telephone. Transmission main and distribution piping may be located or placed in the same trench.

3.3 ***Spring Water and Corral Creek.*** There are springs located south of Lot 7, Block 1. Declarant reserves the exclusive ownership, control and use of the water flowing from these springs and the water in Corral Creek.

3.4 ***Sewage Disposal.*** All bathroom, sink and toilet facilities shall be connected by underground pipe to a private septic tank or to a central sewage treatment facility if one is constructed. Drainage from any septic tank shall be kept within the building limits of each Lot. The sewage disposal system must be designed, constructed and located as approved by the Idaho State Health and Welfare Department. On the following Lots the septic system shall include a treatment system for nutrient removal, as required and approved by the Idaho State Department of Health:

Lots 2, 4, 11 and 12 in Block 2;
Lot 1, Block 4.

On the following lots an approved nutrient removal system may be required depending on the measurement of high seasonal water during the spring of 2001:

Lots 5, 6 and 9 in Block 2;
Lots 1, 2, 6, 7 and 25 in Block 3.

Lot 7 of Block 2 may need a soil cap over the drainfield depending on the elevation of groundwater during the spring of 2001.

3.5 ***Water.*** Declarant is under no obligation to deliver domestic water or to furnish rights-of-way in connection with the delivery of domestic or irrigation water to any Lot. Wells shall be located a minimum distance of 100 feet from any sewage disposal facility and a minimum of ten feet from any Lot line. The location of wells on certain Lots may be restricted by the Idaho State Department of Health and Welfare. There shall be adequate separation between a potable water supply well and septic system installations in accordance with applicable Idaho State Department of Health and Welfare regulations (IDAPA 16.01.03). Each potable water well shall be sealed as follows:

The annular seal (composed of neat cement grout with 5% bentonite) shall be pumped, using a tremie pipe, from the bottom of the surface casing (at least 40 feet below ground surface) to ground surface to assure a positive seal.

3.6 ***Lot Repurchase.*** At the time of the original purchase of a Lot from Declarant, each Buyer shall have the option to include the following provision in his Lot Purchase Agreement:

“Seller shall repurchase the Lot, at Buyer’s option, if:

- (a) Buyer drills a well on the Lot within three years after the date of execution of this Agreement, which well upon completion is not capable

- of producing at least two gallons per minute after continuous pumping for at least three hours; and
- (b) The well is drilled to a depth of at least 400 feet by a licensed well driller in a location approved by Seller; and
 - (c) The well, as drilled, meets the requirements for a community water system well according to the regulations of the Idaho Department of Water Resources and Idaho Department of Health, if the Seller so requests and pays the costs attributed to the community water system well requirements which are in excess of the cost of such well were it drilled as a non-community water system well; and
 - (d) There is not sufficient water otherwise made available to the lot to satisfy the Buyer's ordinary domestic water requirement.

If the above conditions are satisfied and Buyer elects to compel such repurchase, Buyer shall be entitled to receive back all monies which he paid for the Lot and well.

Seller shall have the right, at Seller's option, to incorporate the well into a central water system if it produces more than ten gallons per minute after continuous pumping for at least three hours. If the well is incorporated into a central water system, Buyer's domestic water will be provided by the system and Buyer will be reimbursed for all monies which he paid for the well. The Buyer will pay the same amount for such water service as the other system users pay, including the Buyer's proportionate share of the initial capital cost of the system and the annual operating cost. If the well is incorporated into a central water system, the Buyer will convey the well and a sufficient well site and water line easement to satisfy regulatory requirements pertaining to the central water system, at no additional cost to the Seller. Any engineering or survey expense required to incorporate the well into the central system will be paid by Seller or the owner of the system. The conveyance of the well site and water line easement shall satisfy Buyer's obligation to pay his proportionate share of the initial capital cost of the water system."

3.7 Domestic Community Water System. Declarant may install a domestic water system for the purpose of providing potable water service to a part or all of the Development. If Declarant elects not to install such system, The Association may elect to install the domestic water system. If Declarant or the Association elects to provide domestic water service to a Lot, such service shall be the exclusive source of domestic water for that Lot. Such election shall designate the Lots and Annexed Property for which water service from the system is required. From and after the time of such election, said Lots and Annexed Property shall be served exclusively from the community water system and the Owner of each lot shall be prohibited from drilling a well on the Lot or otherwise obtaining domestic water service from any other source. The election made by Declarant or The Association to provide domestic water service shall be effective upon deposit of written notice in the United States Mail, as provided in Section 9.6. If Declarant installs such system ownership of such water system shall be transferred to the Association or a public utility upon installation and receipt of the necessary governmental approvals; and Declarant shall be reimbursed for its cost, including interest paid on money borrowed and used to pay for the system, as provided in Section 5.2.

3.8 *Irrigation Community Water System.* Declarant or the Association may install an irrigation water system for the purpose of providing water service to a part or all of the Development. If Declarant or the Association elects to provide irrigation water service to a Lot, such service shall be the exclusive source of irrigation water for that Lot. Such election shall designate the Lots and Annexed Property for which water service from the system is required. From and after the time of such election, said Lots shall be served exclusively from the community water system and the Owner shall be prohibited from drilling a well on the Lot or otherwise obtaining irrigation water service from any other source. The election made by Declarant or The Association election to provide irrigation water service shall be effective upon deposit of written notice in the United States Mail, as provided in Section 9.6. If Declarant installs such system ownership of the water system shall be transferred to the Association or a public utility upon installation and receipt of the necessary governmental approvals; and Declarant shall be reimbursed for its cost, including interest paid on money borrowed and used to pay for the system, as provided in Section 5.2.

3.9 *Restriction on Well Use and Conservation Measures.* In the event that an Owner drills a well on his Lot, prior to Declarant's election to provide domestic or irrigation water service, or both, Owner shall restrict his usage of the well as follows:

- (a) Production from the well shall be limited to 500 gallons per day for Domestic Use;
- (b) Production from the well for irrigation use shall be limited as provided by the State or 4,500 gallons per day if there is no State restriction.

Declarant or the Association may require the Owner to install such measuring and recording devices as it determines necessary in order to monitor the daily usage of water from any well in the Development. Either Declarant or the Association shall be entitled to enforce the provisions of this Paragraph by injunction, restraining order or any other remedy available and shall be entitled to recover their costs and attorneys fees incurred in the enforcement of these provisions. The Owner of such Lot may elect to be served by the Domestic Water System or by the Irrigation Water System or both if such service is approved by the Board of Directors of the Association. If it approves such service The Board may require the well located on said Lot to be transferred to the Association, or may require reimbursement to the Association for the Lot's proportionate share of the installation and construction cost of the system, or may impose such other conditions as the Board determines reasonably necessary in order to maintain the integrity of the system and fairness to all Members.

The Association may require all owners to install individual water storage tanks on their Lots, limit irrigation and domestic water use or take any other conservation measures if the Association determines that such measures are reasonably necessary to conserve water, protect the water supply source, or avoid excessive demand on the domestic and/or irrigation water systems. All conservation measures shall be applied to all Lots equally. Neither the Association nor the Declarant warrants the adequacy, longevity or availability of the source of water or aquifer from which the domestic or irrigation water is pumped.

ARTICLE IV.

Property Owners Association

4.1 **Organization of Association.** The 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, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. Declarant shall have exclusive authority to prepare and adopt the initial Articles of Incorporation and Bylaws for the Association. Said Articles of Incorporation shall be effective and binding on the Members upon execution by those incorporators designated by Declarant.

4.2 **Membership.** Each 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 as to the Lot owned, and each membership in the Association shall be appurtenant to ownership of the Lot. 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. Each member shall notify the Association of his or her current mailing address and each subsequent change of address.

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 Bylaws of the Association or 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). As to Class A Members, there shall be one vote for each Lot owned. When more than one person is an Owner, 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. In the event the Owners of any one Lot cannot agree as to how their vote should be cast, the Owners of that Lot shall not be entitled to vote and their Lot and vote shall not be included in the calculation to determine the necessary quorum or vote.
- (b) The sole Class B Member shall be the Declarant and Declarant shall be entitled to five votes for each Lot owned by Declarant. 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 the earlier of the following dates:
 - (i) The date after which seventy-five percent (75%) of the Lots have been conveyed by deed to Owners other than Declarant; or
 - (ii) December 31, 2015.

4.4 **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of not less than three nor more than seven Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and Bylaws. The initial Board of Directors of the Association shall be appointed by Declarant and shall hold office until a new Board of Directors shall be elected in accordance with the provisions set forth in the Articles and Bylaws of the Association.

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 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 it under this Declaration, the Articles of Incorporation and the Bylaws, 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 on the Owners of Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration and the Articles and Bylaws of the Association.
- (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, Bylaws, and duly adopted Rules, and to enforce all provisions thereof by mandatory injunction or otherwise and to pursue any other remedy available for such breach.

In the event that the Association exercises its right to restrain the construction or maintenance of any building or structure that has not been approved by the ACC, as required herein, or exercises its right to enforce the removal of such building or structure, it shall be entitled to recover from the Owner of the Lot on which such building or structure is located:

- (i) The reasonable attorney fees and costs incurred by the Association in enforcing its right to restrain or remove such unapproved structure; and
- (ii) Liquidated damages in the amount of \$5000 if: (a) suit is brought to enforce the Association's right; and (b) the Board of Directors approves the recovery of liquidated damages by a 2/3 majority vote.

In the event that the Association exercises its right to enforce the provisions of Sections 2.6 (a) through (e) or 2.8 it shall be entitled to recover from the Owner who violates such provisions:

- (i) The reasonable attorney fees and costs incurred by the Association in enforcing the right to restrain or correct the prohibited conduct; and
- (ii) Liquidated damages in the amount of \$5000 if: (a) suit is brought to enforce the Association's right; and (b) the Board of Directors approves the recovery of liquidated damages by a 2/3 majority vote.

The amounts owed to the Association pursuant to this Subsection 4.5b shall be collected as a delinquent assessment as provided in Article V. Said liquidated damages represents compensation to the Association for its time and effort in insuring that only approved buildings are constructed and maintained within the Development and insuring that each Owner's right to the quiet enjoyment of his or her Lot is protected and the value thereof preserved.

- (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 without notice; or when necessary, in connection with any operation, maintenance or construction for which the Association is responsible, after reasonable notice; or when necessary to correct a condition on the Lot which is in violation of this Declaration or the Association's Articles, Bylaws or Rules, after ten (10) days notice. 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 at its sole cost and expense unless the entry is occasioned by a violation of this Declaration, the Articles, Bylaws or Rules.
- (e) **Association Rules:** The Association shall have the power to adopt, amend and repeal, by majority vote of the Members, such rules and regulations as the Association deems reasonable. The Association Rules shall govern the use of the Common Areas, streets and water systems by the Owners, their family members, employees, agents, licensees, lessees, or contract purchasers or other invitees; provided, however the Association Rules, may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles of Incorporation or the By-laws. 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 adoption, said 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 any Association Rule and any provision of this Declaration or the Articles or Bylaws, the provisions of this Declaration, the Articles of Incorporation or the Bylaws shall prevail.

- (f) ***Licenses, Easements and Rights-of Way:*** The Association shall have the power to grant and convey to any third party such licenses, easements and rights-of-way in, on or across the Common Areas and streets as may be necessary or desirable in the judgment of the Association, or for the purpose of constructing, erecting, operating or maintaining:
 - (i) Utility lines, cables, wires, conduits, and other devices for the transmission of electricity for lighting, heating, power, telephone, and other purposes.
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes.
 - (iii) Snow removal or clean-up; and
 - (iv) Any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-or-way are hereby expressly reserved to the Association.

- (g) ***Interpretation.*** The Board of Directors of the Association shall have the power to interpret the provisions of this Declaration or the Bylaws of the Association or the Association Rules in order to resolve ambiguities or conflicting provisions. In the event of an ambiguity or conflicting provision, the interpretation of the Board of Directors shall be binding on all Lot Owners.

4.6 Duties of the Association. In addition to the other powers granted to it by the Articles and this Declaration, and without limiting the generality thereof, the Association or its agent shall conduct all general business affairs of common interest to all Owners including, without limitation, the following:

- (a) ***Operation and Maintenance of Common Area:*** Operate, maintain and otherwise manage or provide for the operation, maintenance and management of any Common Area (which shall include the roadways), including the improvement, repair and replacement of property damaged or destroyed by casualty loss, and all other property acquired by the Association.
- (b) ***Taxes and Assessments:*** Pay all real and personal property taxes and assessments separately levied against the Common Area owned and managed by the Association. Such taxes and assessments may be contested or compromised by the Association. In addition, the Association shall pay all other taxes, whether federal, state, or local, including income or corporate taxes levied against the Association.

- (c) **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 Lots, Common Area and other property owned or managed by it.
- (d) **Insurance:** Obtain policies of insurance from reputable insurance companies authorized to do business in the State of Idaho, and to maintain in effect the following types of policies of insurance to the extent available at a reasonable cost:
 - (i) Comprehensive public liability insurance insuring the Board of Directors, the Association, the Declarant, the individual owners, and the agents and employees of each of the foregoing, against any liability incident to the ownership and/or use of the Common Area or other property owned or managed by the Association.
 - (ii) Such other insurance, including Worker's Compensation Insurance to the extent necessary to comply with all applicable laws, directors and officers liability insurance and such indemnity, faithful performance, fidelity and other bonds as the Board of Directors shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty or any employee or other person charged with the management or possession of any Association funds or other property.
 - (iii) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the association.
- (e) **Snow Removal:** Provide for the plowing, sanding and removal of snow from the roadways as shown on the Plat.
- (f) **Public Water System:** Acquire, operate, improve, maintain, repair and replace the public water system or systems in the Development, if any, including sources of supply.
- (g) **Fire Protection:** Operate, maintain, repair and replace a water pump truck and buried water supply tank, for emergency fire fighting purposes. The Association is authorized to establish and implement a fire district encompassing the Development. Each Owner agrees to the establishment of such fire district.

4.7 **Personal Liability:** No member of the Board of Directors or Architectural Control Committee 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 Architectural Control 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 willful or intentional misconduct.

4.8 **Dissolution:** In the event the Association is dissolved, the assets of the Association shall be dedicated to a public body or conveyed to another non-profit organization with similar purposes. Dissolution shall require written approval of the Owners of two-thirds (2/3) of the Lots.

ARTICLE V.

Covenant for Assessments

5.1 **Agreement to Pay.** Each Owner covenants with the Association and Declarant that by accepting a deed from Declarant, and whether or not it is expressly stated in said deed, each Owner agrees to abide by the provision of this Declaration, the Association Rules, the Association Articles and Bylaws, and agrees to pay to the Association all regular assessments, special assessments, limited assessments and surcharges which are properly approved and imposed upon the Owner's Lot. The requirements for approval and imposition of a lien or surcharge shall be set forth in this Declaration and the Bylaws of the Association.

5.2 **Creation of Lien.** Each assessment and surcharge, which is properly approved and imposed on the Owner's Lot, together with interest accrued thereon and attorney fees and costs incurred by the Association in preparing the notice of lien claim and notification to the Owner, shall be a charge on each Owner's Lot and shall create a continuing lien upon each Owner's Lot against which each assessment or surcharge is made from and after the date the assessment or surcharge becomes delinquent. Each assessment and surcharge shall bear interest at such rate as the Board of Directors may determine, from and after the due date until fully paid. The date that the assessment or surcharge becomes due and payable shall be determined by the Board of Directors. The assessment or surcharge shall become delinquent thirty (30) days after it becomes due and payable.

5.3 **Personal Obligation and Enforcement.** The assessment or surcharge shall become delinquent 30 days after it becomes due and payable. Each assessment and accrued interest shall be the personal obligation of the Owner or Owners of the Lot against which the assessment or surcharge is imposed and may be collected by judicial action in the nature of a delinquent open account, or by foreclosure of the lien created against the Owner's Lot. Those remedies are cumulative and not exclusive. The personal obligation for an assessment that is delinquent at the time of conveyance shall not pass to an Owner's successor in title unless expressly assumed by the successor. The lien created to secure payment of the assessment shall remain on the Lot until the assessment is fully paid, and shall be enforceable by foreclosure, regardless of transfer of ownership. The lien shall be foreclosed by appropriate action in court.

5.4 Attorney Fees and Costs. In the event the Association initiates or defends any action, legal or otherwise for the collection of any assessment or surcharge due, the Association shall be entitled to recover from the assessed Owner its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on the commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

5.5 Notice of Lien. 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 Boise County Recorder's office. The Association shall send a copy to the delinquent Owner or Owners by certified mail. The cost of preparing, filing and mailing this notice, including a reasonable attorney fee incurred by the Association, shall be included as a part of any claim of lien and shall also become the personal obligation of the Owner or Owners of record at the time the assessment or surcharge becomes delinquent. The notice of lien claim shall state the amount owed to the Association, a description of the Lot, the per diem amount of interest accruing, the date the assessment or surcharge became delinquent and the name of the Lot's record owner. The claim of lien shall be approved by the Board and signed by the President or Vice President or other officer designated by the Board.

5.6 Initial Assessment. Each Lot sold by Declarant shall be subject to a one-time initial assessment of Two Hundred Fifty and no/100 Dollars (\$250.00), which shall be delivered to the Association upon its incorporation. If Declarant elects to provide a community water system, each Lot sold shall be subject to an additional one time charge of not less than \$6,000.00 nor more than \$10,000.00. Only those Lots which are served by a well located on the Lot and drilled prior to Declarant's or the Association's election, pursuant to Section 3.7 or 3.8, shall be exempt from this charge; subject to the Association's right to impose the charge upon subsequent service to the Lot as provided in the Bylaws. The purpose of this charge shall be to reimburse Declarant or the Association for its actual cost of constructing and installing the domestic and/or irrigation water system. This charge shall be paid directly to Declarant at the time of accepting a deed from Declarant or paid to Declarant in periodic installments, as provided in the contract for purchase of the Lot. If Declarant does not elect to provide the community water system but the Association does so elect, the cost of construction and installation shall be paid to the Association by regular or special assessment.

5.7 Regular Periodic Assessments. Each Lot Owner shall also be assessed and pay a regular periodic assessment, which regular assessments are to be used by the Association for the purpose of constructing, installing, maintaining, improving and operating the Common Area, and the community water system or systems, if any, including paying costs incurred for policies of insurance purchased by the Association and incurred with respect to 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 beginning assessment shall be \$50 per month for those Lots to which service from the community water system is available, and \$20 per month for those Lots to which water service is not available from the community water system. Such regular assessment shall begin with the calendar month following transfer of the water systems, streets and other Common Areas by Declarant to the Association.

This assessment shall be adjusted, from time to time, by the Association to reflect its actual operating costs, including financing costs incurred with respect to capital improvements. This periodic assessment can be increased by the Board of Directors of the Association by as much as 20% per calendar year beginning with the year commencing January 1, 2003. This periodic assessment may be increased by more than 20% per year by approval of the Owners of a majority of the Lots. In the event the Directors increase the periodic assessments, written notice of such increased assessment shall be sent to each Owner at least thirty (30) days before the effective date of such increased periodic assessment. Such periodic assessment shall be due and payable without further notice from the Directors. The due date and delinquency date for the periodic assessment shall be stated in the notice.

5.8 *Special Assessment for Repairs, Operations or Maintenance.* In addition to the regular periodic assessments, the Association, by the affirmative vote of its Members representing a majority of the Lots, at a meeting called for that purpose, may make any special assessment for a specific one-time cost or expense benefiting a water system, road or other Common Area or for some common interest or purpose benefiting all Members. Such special assessment may be made payable as a one-time assessment or over a period of assessments as determined by the Board. If the special assessment is for the improvement of a water system it need only be approved by the affirmative vote of those Members representing a majority of the Lots for which such water service is available and the special assessment that is approved shall be paid by the Lots for which such service is available. Written notice of the special assessment shall be sent to each Owner at least 30 days before the effective date of such assessment.

5.9 *Limited Assessments and Surcharges.* The Association may impose assessments on some but not all of the Lots ("The Class") to recover costs related to services or benefits which are provided by the Association to The Class but not to all of the Lots. Such assessments are referred to as "Limited Assessments" and shall be imposed by the Association in accordance with its Bylaws. The Association may impose an individual assessment on a Lot to recover costs incurred by the Association which result from the Owner or Owners' violation of this Declaration or the Association's Articles, Bylaws or Rules. Such assessments are referred to as "Surcharges" and shall be imposed by the Association in accordance with its Bylaws.

5.10 *Miscellaneous Assessment Information.* Except as otherwise provided with respect to Limited Assessments and Surcharges, all Assessments shall be made equally per lot for all Members. Limited Assessments shall be made equally per lot within the class of Lots entitled to receive the service or benefit for which the assessment is made. Surcharges shall be imposed as provided in this Declaration, the Bylaws and the Rules of the Association. The Association shall, upon request and for a reasonable charge, furnish a certificate signed by an authorized officer of the Association stating whether or not assessments on a Lot are current.

5.11 *Effect of Nonpayment of Assessments.* 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 established by the Board of Directors or 15% per annum if no rate is set by the Board. 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 or her Lot.

5.12 ***Subordination of Assessment Liens to Mortgages.*** The lien of any unpaid assessment shall be subordinate to any first mortgage or deed of trust which has been recorded against a Lot prior to recording the claim of lien. 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.

5.13 ***Declarant Lot Contributions.*** Notwithstanding any other provision of this Declaration, Lots owned by the Declarant shall be subject to assessments only as follows:

- (a) Until such time as Declarant has conveyed title to a Lot or has constructed a residence thereon, such Lot shall not be subject to assessment.
- (b) Until at least 30 Lots are subject to assessment, Declarant shall either, at Declarant's option; (i) pay to the Association an amount equal to the shortfall or difference between the dues that would be received by the Association if all Lots subject to assessments paid such assessments and the reasonable operating costs of the Association; or (ii) assume and pay the Association's operating costs, and provide the services and facilities the Association is required to provide, in which instance the Association shall pay to Declarant the assessments received by the Association attributable to the period of time such facilities are maintained and provided directly by the Declarant.

ARTICLE VI. Future Development

6.1 ***Annexation.*** Declarant may develop additional real property adjacent to or in the vicinity of the Development. Such real property may, at Declarant's sole discretion, be used and developed for any purpose allowed under zoning regulations as they now exist or may be amended or changed. No Owner shall object to such development. Such property may be brought within and subjected to the benefits and burdens of the provisions of this Declaration by Declarant or its successors or assigns at any time and from time to time, without the approval of any Owner or the Association.

6.2 ***Annexed Properties.*** All provisions, burdens and obligations contained in this Declaration shall apply to the Annexed Property in the same manner as if it were originally covered by this Declaration, subject to such modifications, changes, and deletions as may be specifically provided in any Supplemental Declaration as described in Section 6.3 below

6.3 ***Procedure for Development.*** The inclusion of Annexed Property shall be made by filing of record a Supplemental Declaration, or other similar instrument, particularly describing the Annexed Property, which instrument shall be executed by Declarant and state the intent that the general plan and scheme of this Declaration shall be extended to the Annexed Property subject to such changes, modifications, deletions, and additions as are applicable to such Annexed Property as set forth in the Supplemental Declaration. Such Supplemental Declaration may contain such additions or modifications of the covenants, conditions, restrictions, reservations of easements, and

equitable servitudes contained in this Declaration as may be deemed by the Declarant to be desirable to reflect the different character, if any, of the Annexed Property or as Declarant may deem appropriate in the development of the Annexed Property. The filing of record of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexed Property and, the Annexed Property shall become and constitute a part of the Development and shall become subject to this Declaration and the covenants, conditions, restrictions, grant of easements and equitable servitudes contained herein and as modified by such Supplemental Declaration for the Annexed Property, and further shall become subject to the functions, powers, and jurisdiction of the Association, and the Owners of Lots within the Annexed Property shall immediately become Members of the Association.

6.4 *Designation of Common Area.* Any Common Area and common facilities designated by Declarant as such on the Plat of the Annexed 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 subject to this Declaration.

ARTICLE VII. Architectural Control

7.0 *Appointment of Members.* In order to protect the quality and value of the homes built in the Development and for the continued protection of the Owners thereof, an Architectural Control Committee (ACC) is hereby established consisting of three members to be appointed by Declarant as long as Declarant owns Lots in the Development or until Declarant revokes such right by written notice to the Board of Directors of the Association. Thereafter, the ACC shall be appointed by the Board of Directors of the Association.

7.1 *Approvals Required.* No building or structure of any type shall be commenced, erected, constructed or maintained upon any Lot, nor shall any addition or change thereto be made, until the Complete Plans and Specifications shall have been submitted to, and approved in writing by, the ACC. The Owner shall furnish to the ACC a report prepared by a registered professional geotechnical engineer detailing any soils stabilization and erosion control requirements necessary to comply with Boise County's Hillside Ordinance in effect at the time of the residence and driveway construction. The ACC may consider such subjective criteria as compatibility with surrounding structure design as well as any other criteria including the quality and appearance of materials, engineering and Uniform Building Code compliance in making an approval or disapproval. Each building or other structure shall be constructed and maintained in strict compliance with the approved plans and specifications. The following specific criteria must also be followed unless the circumstances warrant a change, in the ACC's sole and absolute discretion:

- (a) The Owner's exterior paint and trim colors must be approved by the ACC.
- (b) The Owner's roofing material must be a solid colored tile or metal roof unless a different roofing material is approved by the Association on a case by case

basis and all roofs on such Lot shall be the same solid color, and such color shall be approved by the ACC.

- (c) The following materials are not allowed: vinyl siding or metal siding.
- (d) The surface materials, the roofing and the color scheme of all building improvements on a Lot shall be similar.
- (e) All Residences shall have a minimum of 1300 square feet on the ground floor.

If the ACC disapproves the Owner's plans and specifications, it shall specify the deficiencies which must be corrected in order to obtain approval. 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 it may require, the written approval will not be required. However, the construction requirements and restrictions contained in Sections 2.2 through 2.5 and 7.1 must be complied with.

7.2 Enforcement. The Association or Declarant may exercise all available legal and equitable remedies to prevent or remove any unauthorized or unapproved construction or improvements on any Lot or portion thereof.

7.3 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 plan, drawing, specifications, or matter subsequently submitted for approval.

7.4 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 decision, act, action, or lack thereof or conduct of the ACC or the respective members thereof, if the ACC or its individual members acted in good faith on the basis of information they then possessed.

ARTICLE VIII.

Common Areas

Declarant intends to establish several Common Areas for the mutual benefit of all Owners. These Common Areas are designated in the Plat and are to be used for a mail reception center, park, landscape buffers, Association equipment, storage, roads, pedestrian and equestrian access, snow storage, and open areas. The use, control, and maintenance of these Common Areas shall be as follows:

8.1 Common Rights. Each Lot Owner and the Association shall have the right to access and use the Common Areas in accordance with the provisions of this Declaration, the Association Rules, the Association Articles and its Bylaws. This right shall be in common with the

right of every other Lot Owner and the Association and shall be appurtenant to and run with the Owner's Lot.

8.2 ***Declarant's Conveyance.*** Declarant shall convey title or grant permanent easements to the Common Areas to the Association, which title shall be free and clear of any liens or encumbrances other than those indicated on the Plat and/or as set forth herein.

8.3 ***Association's Duty to Maintain.*** In addition to other duties required of the Association, the Association shall maintain all Common Areas. No individual liability shall be imposed on Declarant, the Association or any Owner for damages to a Common Area, except to the extent that their direct negligence is the cause of that damage.

8.4 ***Mortgage or Conveyance of Common Area.*** The Association shall place no mortgage on a Common Area nor shall the Association convey a Common Area without the written consent of the Owners of two-thirds (2/3) of all Lots. If a mortgage is placed on a Common Area, it shall be subject to and inferior to the use and easement rights granted to all Owners.

8.5 ***Easements for Improvements in a Common Area.*** Declarant declares, reserves and establishes an easement over the Common Areas to construct and establish improvements and landscaping as Declarant deems appropriate. Irrespective of this reservation, Declarant shall not be the owner of these improvements nor shall Declarant be required to maintain a Common Area. The responsibility to maintain the Common Areas shall be the responsibility of the Association. After conveyance to the Association, Declarant shall have no further obligations to repair, replace, improve or maintain the Common Area.

8.6 ***Improvements.*** Declarant has the sole discretion as to the nature and extent of any improvements or landscaping constructed on a Common Area to be transferred to the Association.

ARTICLE IX. General Provisions

9.1 ***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, the Association Rules, Articles and Bylaws. 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. In the event that suit is brought to enforce the provisions of this Declaration, the Association Rules, Articles or Bylaws the prevailing party shall be entitled to recover reasonable attorney fees in addition to allowable costs.

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

9.3 **Term.** The covenants and restrictions of this Declaration, as supplemented and amended, shall run with the land described herein and shall be binding upon the Owners and all successors in title to or interest in said property, or any part thereof, until January 1, 2030, at which time said covenants and restrictions, as supplemented and amended from time to time, shall be automatically extended for successive periods of ten (10) years, subject to Termination as provided in Section 9.4

9.4 **Amendment.** This Declaration may be supplemented, amended or terminated at any time by a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots. Any such amendment or termination shall be effective upon recording in Boise County, Idaho. Upon recording, such amendment or termination shall be binding on each Lot, regardless of whether the Owner or Owners of such Lot signed the instrument which contains the amendment or termination. Notwithstanding any other provision contained herein, no provision concerning the domestic water system shall be amended without the prior written approval of the Director or authorized agent of the Idaho Department of Environmental Quality if such approval is required by applicable statute or regulation.

9.5 **Interpretation.** In the event that there is a dispute regarding the provisions of this Declaration or the Association Rules the interpretation of the Board of Directors of the Association shall be presumed to be correct.

9.6 **Notice.** Written notice to an Owner shall be effective upon personal delivery to the Owner or by posting on the dwelling located on the Owners Lot or by deposit in the United States mail, postage prepaid, addressed to the Owner at his address as shown on the records of the Association.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Third Declaration of Covenants, Conditions, and Restrictions this 22nd day of March, 2007.

OSPREY PROPERTY OWNERS ASSOCIATION (Declarant)

By: 
Roy Ratliff, President

ATTEST: 
Leslie Fulkerson, Secretary

STATE OF IDAHO)
 : ss.
County of Ada)

On this 22nd day of March, 2007, before me, the undersigned, a Notary Public in and for said state, personally appeared Roy Ratliff and Leslie Fulkerson, known or identified to me to be the President and Secretary, respectively, of Osprey Property Owners Association, the persons who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that Osprey Property Owners Association executed the same.

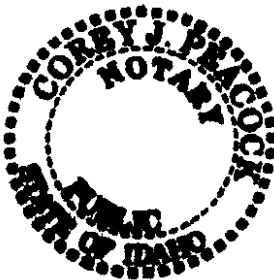
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Wm J. Pearson
Notary Public for Idaho

Residing at Canyon County, Idaho

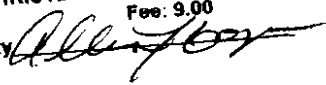
My Commission Expires: 2/8/2011

(SEAL)



ATTACHMENT E

WATER SYSTEM FACILITIES CONVEYANCE AGREEMENT

Instrument # 203884
IDAHO CITY, BOISE COUNTY, IDAHO
2005-08-17 09:26:32 No. of Pages: 3
Recorded for : MARCUS, CHRISTIAN & HARDEE
RORA A. CANODY Fee: 9.00
Ex-Officio Recorder Deputy 
Index to: AGREEMENT

WATER SYSTEM FACILITIES CONVEYANCE AGREEMENT

In consideration for the mutual terms contained herein, Osprey Land Company, LLC, an Idaho corporation ("Osprey"), hereby conveys, assigns and transfers to Osprey Property Owners Association, Inc., an Idaho nonprofit corporation ("The Association"), all of its right, title and interest in and to the domestic and irrigation water systems which serve Osprey Subdivisions 1, 2 and 3. A list of the components is attached hereto as Exhibit A. A map showing location of the systems is attached as Exhibit B. A list of the water rights utilized by the water systems is attached hereto as Exhibit C. A list of the Idaho Department of Environmental Quality approvals for the domestic water system is attached hereto as Exhibit D.

The Association shall indemnify and hold Osprey harmless with respect to any cost, damage or liability incurred by Osprey as a result of the use or operation of the water systems or as a result of the inability of the water systems to provide sufficient water because of diminution of supply, including that resulting from weather, geologic conditions, restrictions imposed by governmental regulations or restrictions on use which result from deliveries of water to serve prior water rights. The Association shall comply with all applicable state and federal regulations pertaining to its domestic and irrigation water service. The Association shall pay all

property taxes assessed with respect to the property conveyed to it over which an easement is granted by Osprey.

This Agreement shall bind and benefit the parties and their successors in interest.

This Agreement has been ratified and approved by the Boards of Directors of both parties.

Dated this 22 day of July 2005.

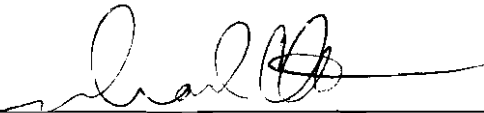
OSPREY LAND COMPANY

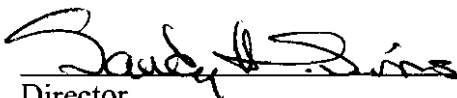
ATTEST:


Secretary

By 
Title President

OSPREY PROPERTY OWNERS ASSOCIATION, INC.


Director


Director


Director