

0865-25

ST-94046587

97014352

When recorded return to:

A. Ennis Dale
Senior Vice President
Grossman Family Properties
118 South Main Street
Boise, Idaho 83702

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

ALLIANCE TITLE

97 FEB 24 PM 3 23

AT-94046587-JA

FEES \$5.00
RECORDED AT THE REQUEST OF

SPECIAL WARRANTY DEED

For Ten Dollars (\$ 10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grossman/Hidden Springs Development Company L.L.C., an Arizona limited liability company qualified to do business in Idaho whose principal business address is 118 South 5th Street, Boise, Idaho 83702 ("Grantor"), does hereby grant, bargain, sell and convey unto Hidden Springs Community L.L.C., an Idaho limited liability company whose principal business address is 118 South 5th Street, Boise, Idaho 83702 ("Grantee") the real property described on Schedule "A" attached hereto and by this reference incorporated hereto, together with all water rights, easements and hereditaments appurtenant thereto, subject however to the reservation unto Grantor and its successors and assigns of a conservation easement on the terms and conditions set forth in Schedule "B" attached hereto and by this reference incorporated herein over those portions of the real property described on Schedule A indicated in Schedule "B". In addition, the Grantor hereby transfers and assigns unto the Grantee all of the rights of consent and approval retained by Grantor with respect to that conveyance to Harold E. and Judith E. Huston by Deed recorded July 18, 1996 as Instrument No. 96060134 in the official Records of Ada County, Idaho.

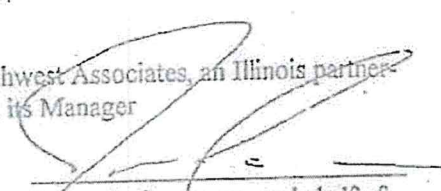
Grantor warrants title to the real property described on Schedule "A" attached hereto to the Grantee and its successors and assigns, as to Grantor's own acts and non other, subject to (i) those matters set forth on Schedule "C" attached hereto and by this reference incorporated herein and (ii) all matters that would be disclosed by an ALTA/ACSM survey and inspection of the property described on Schedule "A" attached hereto, including without limitation, the existence of any encroachments onto the real property described on Schedule "A" attached hereto and the

location of any fence lines with respect to the actual boundaries of the real property described on Schedule "A" attached hereto.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed by its authorized representative this 24th day of February, 1997.

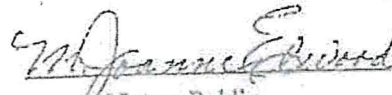
Grossman/Hidden Springs Development Company L.L.C.; an Arizona limited liability company qualified to do business in Idaho

By: Southwest Associates, an Illinois partnership, its Manager

By: 
James S. Grossman, on behalf of Solomon A. Weisgal, not individually, but solely as trustee of The Hickory Trust, its general partner

State of Idaho)
) ss.
County of Ada)

On this 24th day of February, 1997 before me Mr. James Edward the undersigned notary public personally appeared James S. Grossman, known or identified to me to be the person who signed the above instrument on behalf of Solomon A. Weisgal as trustee of the Hickory Trust as general partner of Southwest Associates, Manager of Grossman/Hidden Springs Development L.L.C., who acknowledged to me that he/she signed the same for the purposes therein stated on behalf of the trust as general partner of the partnership and manager of Grossman/Hidden Springs Development Company L.L.C..


Notary Public

My commission expires: 11/27/97



SCHEDULE "A"
TO
SPECIAL WARRANTY DEED

LEGAL DESCRIPTION

The following described real property located in Ada County, Idaho:

In Township 5 North, Range 2 East of the Boise Meridian:

In Section 28: The South Half of the Northwest Quarter, the West Half of the Southwest Quarter, and the Northeast Quarter of the Southwest Quarter, except that portion thereof lying East of centerline of the County Road.

In Section 29: The Southeast Quarter of the Northeast Quarter, the East Half of the Southeast Quarter, the Southwest Quarter of the Southeast Quarter, and the Southeast Quarter of the Southwest Quarter.

In Section 31: The Southeast Quarter, except that portion of the Northwest Quarter of the Southeast Quarter lying North and West of the existing centerline of Dry Creek Road conveyed to Harold E. and Judith E. Huston by Deed recorded July 18, 1996 as Instrument No. 96060134 in the official Records of Ada County.

In Section 32: The East Half, the East Half of the West Half, and the West Half of the Southwest Quarter.

In Section 33: The West Half of the West Half.

In Township 4 North, Range 2 East of the Boise Meridian:

In Section 4: The Northwest Half of Lot 4.

In Section 5: Lots 1, 2, 3 and 4 inclusive.

In Section 6: Lots 1 and 2; the South Half of the Northeast Quarter, and the West Half of the Southeast Quarter.

SCHEDULE "B"
TO
SPECIAL WARRANTY DEED

CONSERVATION EASEMENT

**DECLARATION
OF
CONSERVATION EASEMENT**

BY THIS DECLARATION OF CONSERVATION EASEMENT (this "Declaration") made and entered into this 24th day of February, 1997, Grossman/Hidden Springs Development L.L.C., an Arizona limited liability company qualified to do business in Idaho ("Grantor"), hereby declares:

I. Recitals

1.1 Property to be Developed. Grantor is the owner in fee simple of that real property described on Schedule "A" attached hereto and by this reference incorporated herein (the "Hidden Springs Property") and intends to convey that property to Hidden Springs Community L.L.C., an Idaho limited liability company ("Hidden Springs") formed for the purpose of developing that property in accordance with the Hidden Springs Application for a Planned Rural Community as approved by the Ada County Commissioners on December 18, 1996 (the "Hidden Springs Development").

1.2 Open Space Area. Pursuant to the provisions of Section 8-21A-5E 4 of the Hidden Springs Planned Community Zoning Ordinance not less than 810 acres of the Hidden Springs Property is to remain open and free from development other than wildlife habitat improvements, trails, and other recreational improvements, agriculture and agricultural operations and outbuildings and is generally depicted on the Hidden Springs Master Land Use Plan as Open Space Area.

1.3 Conservation Easement. Grantor, by the reservation of this conservation easement on, over and across the Open Space Area, desires to preserve and conserve the visual and open space values thereof for the benefit of the community at large and to prevent the use or development of the Open Space Area for any purpose or in any manner inconsistent with the terms of this Declaration (the "Conservation Easement").

1.4 Transfer of Easement. Although the Grantor is reserving the Conservation Easement unto itself for the benefit of the community at large, it is intended that this easement will be conveyed by the Grantor to either (i) a private tax-exempt, not-for-profit organization, as defined in Section 170 (h) of the Internal Revenue Code of 1986, among whose purposes is to preserve, protect, and enhance natural, open space, agricultural, scenic and water areas, or (ii) a public agency.

II. Reservation

Grantor does hereby absolutely and unconditionally declare and reserve unto itself and to its successors and assigns in perpetuity from the date hereof, a Conservation Easement in, on and over and a Declaration of Restrictive Covenants with respect to the Open Space Area on and subject to the terms and conditions set forth below for the exclusive purpose of preserving and protecting the scenic, historic, scientific, educational, natural, agricultural, open space and water resource values of the Open Space Area ("Conservation Purposes"). The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land and shall be binding upon all persons having or acquiring any right, title or interest in the Open Space Area.

III. Limitations of Reservation

3.1 Affirmative Rights. The affirmative rights reserved by the Declaration consist solely and exclusively of --

3.1.1 The right of the Grantor and the public at large to view (but not to enter upon except as otherwise provided herein) the Open Space Area.

3.1.2 The right of the Grantor to preserve and protect in perpetuity the present scenic and open space features and values of the Open Space Area as provided herein, including the right of the Grantor to enforce by proceedings at law or in equity, the covenants and restrictions hereinafter set forth, it being expressly understood that there shall be no waiver or forfeiture of the Grantor's

right to insure compliance with the covenants and conditions of this Declaration by reason of any prior failure to act.

3.1.3 The right of the duly authorized agents of the Grantor, upon prior notice to Hidden Springs, to enter the Open Space Area at reasonable times and at reasonable intervals for the sole purpose of inspecting the Open Space Area to determine if Hidden Springs is complying with the covenants and conditions of this Declaration. Such inspections shall be performed in a manner which will not interfere with the Open Space Area or Hidden Springs' use thereof and access shall be available at points reasonably acceptable to Hidden Springs. Any damage to the Open Space Area caused by the Grantor or its agents shall be promptly restored by the Grantor at its sole cost and expense to a condition as good as or better than that which existed prior to such damage.

3.2 Restrictions on Use. In furtherance of the foregoing affirmative rights, Grantor hereby declares and imposes the following covenants, conditions and restrictions on the Open Space Area which shall run with and bind the Open Space Area in perpetuity.

3.2.1 No commercial or industrial activities shall be conducted or permitted on the Open Space Area, except for the sale or distribution of agricultural products grown or produced on the Open Space Area and similar or related products as provided in Section 3.3 below.

3.2.2 No signs, billboards or outdoor advertising structures shall be placed, erected or maintained on the Open Space Area, other than a reasonable number of signs for the following purposes.

3.2.2.1 To state the name of the Open Space Area, or any portion thereof.

3.2.2.2 To advertise the sale or lease of the Open Space Area, or any portion thereof.

3.2.2.3 To advertise the development of the Hidden Springs Property (the "Development") and related improvements located adjacent to and contiguous with the Open Space Area and to direct customers thereto; provided, however, that (a) no more than six double-faced advertising signs shall be posted on the Open Space Area at any one time which advertise the Development, (b) the size of the face of each such sign shall not exceed one hundred and thirty square feet (per face used for graphics, excluding backgrounds, borders, frames or structural elements) and (c) such signs shall only be posted during the initial sellout of such Development.

3.2.2.4 To advertise any activity permitted under the provisions of this Declaration.

3.2.2.5 To post the Open Space Area against activities either prohibited or not specifically permitted under the provisions of this Declaration.

3.2.2.6 To state the name of streets or trails on the Open Space Area.

3.2.2.7 To post street signs and traffic safety signs.

3.2.3 No quarrying, excavation, mining, depositing or removal of rocks, minerals, gravel, sand, soil, or other similar materials from the Open Space Area shall occur, except in connection with an activity, use, construction, or placement of improvements otherwise permitted herein.

3.2.4 No dumping, placing or storing ashes, trash, garbage, vehicle bodies or parts or other unsightly or offensive material or debris on the Open Space Area shall occur, except in connection with an activity, use, construction, or placement of improvements otherwise permitted herein.

3.2.5 Hidden Spring may implement landscape improvements which may include the creation of berms, orchards and the planting, removal and relocation of trees and other vegetation on the Open Space Area (the "Initial Improvements"). To prevent soil erosion and to protect the scenic values of the Open Space Area, once the Initial Improvements have been implemented by Hidden Springs, the cutting or removal of trees from the Open Space Area shall be permitted to the extent authorized by any applicable governmental laws, ordinances and regulations, and only under the following conditions:

3.2.5.1 To protect the natural, scenic, open space and ecological values of the Open Space Area or to control or prevent imminent hazard, disease or fire.

3.2.5.2 To clear and maintain fire roads.

3.2.5.3 To clear an opening for the construction and maintenance of access drives.

3.2.5.4 To clear an opening for the construction or placement of Improvements permitted in Section 3.3 below.

3.2.5.5 To construct fields or otherwise improve the Open Space Area for farming and livestock activities and/or passive or active open space recreational use.

The restrictions contained within this Section 3.2.5 shall not limit the right of the Hidden Springs, without prior notice or consent of Grantor, to cut and remove ornamental, landscaped or shade trees around Existing or Permitted Improvements, as defined below, or to conduct and operate a tree farm, nursery or similar commercial tree stocking operations from the Open Space Area.

3.2.6 The operation of snowmobiles, dune buggies, motorcycles, all terrain vehicles or any other type of motorized vehicle (except for vehicles used in connection with the Improvements permitted in Section 3.3 below, vehicles used for agricultural purposes, emergency vehicles of Ada County or other appropriate governmental entities, security patrol vehicles, vehicles used in connection with normal maintenance procedures and wheelchairs or other similar vehicles used by disabled persons) shall not be permitted on the Open Space Area.

3.2.7 No building, structure, roadway or similar improvement (hereinafter referred to as an "Improvement"), shall be constructed or maintained on the Open Space Area, except for the Permitted Uses identified in Section 3.3 below.

3.2.8 No hunting shall occur, except as may be necessary or appropriate for conservation purposes.

3.3 Permitted Uses. The Grantor hereby declares and covenants that the following uses are hereby permitted on the Open Space Area, subject to the limitations contained herein, and shall apply forever to the use and enjoyment of the Open Space Area (the "Permitted Uses").

3.3.1 Subject to the restrictions contained herein, the Open Space Area may be used, without limitation, for (i) agricultural purposes, (ii) open-space recreational use, (iii) a public park or nature preserve and (iv) such other uses and purposes which are consistent with the open space and scenic values sought to be preserved by this Declaration.

3.3.2 Hidden Springs shall be permitted to repair, remodel, reconstruct, effect reasonable additions to and maintain the improvements now existing on the Open Space Area (the "Existing Improvements").

3.3.3 In addition to the Existing Improvements, Hidden Springs shall be permitted to construct, repair, remodel, reconstruct and maintain the following structures or improvements on the Open Space Area (the "Permitted Improvements"):

3.3.3.1 Up to three (3) residential structures whose primary purpose shall be to house persons who are engaged in the operation and maintenance of the Open Space Area or are otherwise engaged in the study of or research related to the Open Space Area.

3.3.3.2 Storage, maintenance and accessory structures, including but not limited to barns, garages, green houses, sheds and other customary out buildings used in the maintenance and operation of a farm.

3.3.3.3 Such additional structures as are reasonably necessary to conduct the retail sale of the fruits, vegetables and other produce and products grown or produced from the agricultural operations conducted from or on the Open Space Area.

3.3.3.4 Educational structures, including but not limited to a farm education center and nature center, which are operated to provide education and information with respect to the scenic, historic, scientific, natural, agricultural, open space and water resource values of the Open Space Area.

3.3.3.5 Pedestrian and equestrian trails.

3.3.3.6 Fences constructed in a manner which is consistent with the agricultural, open space or recreational use of the Open Space Area and which do not materially impair the scenic character of the Open Space Area from public roadways.

3.3.3.7 Facilities used in connection with the treatment, storage or distribution of wastewater or storm water runoff from either Permitted Uses of the Open Space Area or the Hidden Springs Development.

3.3.3.8 Such above ground and underground utility services as are required or are otherwise appropriate to serve the Permitted Improvements or the Hidden Springs Development.

3.3.3.9 Recreational improvements, maintenance structures and accessory structures customary for potential future open space recreational use of the Open Space Area, and ancillary parking areas related thereto.

3.3.3.10 Access drives to provide access to the improvements and structures otherwise permitted herein.

3.3.4 In the event all or a substantial portion of an Existing Improvement is damaged by fire or other casualty or is otherwise is of a condition that repair or restoration of the Existing Improvement is deemed by Hidden Springs to be impractical, Hidden Springs may raze the Existing Improvement and erect, within the same general location, a structure of comparable size, bulk, use and general design.

3.3.5 In order to preserve and protect the natural, aesthetic and open space values of the Open Space Area, Permitted Improvements shall not be located

in areas which are highly visible from public roadways or in environmentally sensitive areas.

3.4 Requirements for Grantor Approval of Improvements and Activities. Hidden Springs shall submit to Grantor a plan of any proposed Improvement permitted under Section 3.3 above for review and approval prior to the construction of such Improvement, provided, however, such approval not be unreasonably withheld or delayed. Such plan shall include, where applicable:

3.4.1 Architectural drawings and maps showing the proposed Improvement's location, height, dimensions, floor plan and floor space.

3.4.2 A written narrative description of the proposed improvements and the relationship of such proposed Improvements to the conservation purposes of the Open Space Area.

3.4.3 Existing elevation contours and any proposed changes in grade.

3.4.4 A landscape plan which, when implemented, will reduce the visual impact of such proposed Improvement; provided, however, that such landscaping measures need not completely conceal such improvements, but should serve to break up its visual impact.

IV. Miscellaneous.

4.1 Taxes and Maintenance. Hidden Springs and its successors and assigns shall pay all real estate taxes or assessments levied by competent authorities on the Open Space Area and agrees to relieve the Grantor from any responsibility for maintaining the Open Space Area, except in the event of damage thereto caused by the Grantor or its agents.

4.2 Transfer of Grantor's Interest. The Grantor may assign or transfer its interest in this Declaration, including its rights and obligations relating hereto, with or without consideration, in whole or in part to one or more assignees upon the following conditions:

4.2.1 Except for the initial assignment of this Declaration as referred to in Section 1.4 above, such assignee shall be acceptable to Hidden Springs, such acceptance to be evidenced by the prior written approval of Hidden Springs.

4.2.2 The transferee shall accept such transfer and assignment and the obligations of the Grantor hereunder and as a condition to such assignment shall be committed to protecting the Conservation Purposes of this Declaration and that the transferee will otherwise comply with the terms of this Declaration.

4.2.3 Each such transferee shall be either (i) a public entity or (ii) a tax exempt organization described in § 170(b) (1) (A) (vi) of the Internal Revenue Code.

Upon the addition or substitution of such additional Grantor(s), the term "Grantor" as used herein shall thereafter mean and refer to any and all entities currently acting in such capacity.

4.3 No Merger. Grantor agrees and covenants that should it, or any of its successors or assigns, acquire the fee simple interest in and to the Open Space Area, it shall not cause or permit the merger of such fee simple interest and the easement created by this Declaration.

4.4 Hidden Springs Duty to Notify. Hidden Springs, prior to performing or permitting any activity described in this Declaration which requires the prior written approval of the Grantor, shall submit to Grantor, for review and approval, the required information in writing. The Grantor agrees in such cases to review Hidden Springs' proposal and to acknowledge, execute and deliver to the Hidden Springs a written instrument granting approval or stating in reasonable detail the reason(s) for the denial of such approval within thirty (30) days of receipt of the written

request and the required information from Hidden Springs. In the event Grantor fails to respond to Hidden Springs' written request within such thirty (30) day period, Grantor shall be deemed to have approved such request for all purposes stated therein.

4.5 Notices. All notices, consents, approvals or demands to be given by one party to the other party under this Declaration shall be given in writing, shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service at the addresses indicated below or as otherwise indicated by notice hereunder. Notices shall be considered to have been given upon the earlier to occur of actual receipt of two (2) business days after posting in the United States Mail.

To Grantor: Grossman/Hidden Springs Development
% Grossman Family Properties
118 South 5th Street
Boise, Idaho 83702

To Hidden Springs: Hidden Springs Community
% Grossman Family Properties
118 South 5th Street
Boise, Idaho 83702

4.6 Reservation of Grantor's Rights. Except as expressly limited herein, there is reserved unto Hidden Springs all rights as owner of the Open Space Area (i) to use it in a manner not inconsistent with this Declaration, including, but not limited to, the right to use the Improvements for their intended purposes and the balance of the Open Space Area for agricultural and grazing purposes, (ii) to grant easements consistent with this Declaration, and (iii) for all other purposes not inconsistent with this Declaration.

4.7 Prohibition of Public Access. Nothing herein shall be construed as a grant to the general public, or to a person or persons other than the Grantor, the right to enter upon any part of the Open Space Area.

4.8 Default and Remedies. Notwithstanding anything contained herein to the contrary, the Grantor may not initiate any action or proceeding against Hidden Springs for failure to observe or perform any covenant, agreement or obligation to be performed under this Declaration until it has notified Hidden Springs of such failure in writing, and such failure shall continue for more than thirty (30) days after notice thereof (unless such failure requires work to be performed, acts to be done, or conditions to be removed which, by their nature, cannot reasonably be performed, done or removed, as the case may be, within such period, in which event, if Hidden Springs shall have commenced curing or correcting the same within such period and shall have diligently prosecuted such cure, or correction, such thirty day period shall be extended by such additional time period as may be reasonably required for Hidden Springs to cure or correct such failure).

4.9 Recovery of Enforcement Costs. In any action or proceeding initiated against the Grantor or Hidden Springs to enforce the terms hereof, the prevailing party shall be entitled to recover from the other party all reasonable cost, expenses and attorneys' fees that may be incurred by the prevailing party in initiating, prosecuting or defending against such action or proceedings.

4.10 Estoppel Certificate. The Grantor and Hidden Springs may from time to time, upon not less than fifteen (15) days' prior written notice, request the other to execute and deliver to the other a written certificate certifying that this Declaration is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Easement as modified is in full force and effect) and that the requesting party is in compliance with the covenants, terms, conditions and restrictions set forth in this Declaration (or if not in compliance, a statement in reasonable detail describing such non compliance), and such additional matters as may be reasonably requested, it being understood that such certificate may be relied upon by any prospective purchaser, mortgagee, or other persons having or acquiring an interest in the Open Space Area or this Declaration. If the non-requesting party fails to execute and deliver any such certificate within fifteen (15) days after request, the non-requesting party shall be deemed to have irrevocably appointed the requesting party as the non-requesting party's attorneys-in-fact to execute and deliver such certificate in the non-requesting party's name.

4.11 Conveyance by Grantor. In the event of a sale or conveyance or transfer by Hidden Springs of its interest in the Open Space Area, the same shall operate to release Hidden Springs from any obligations for the observance or performance of the covenants and obligations of Hidden Springs accruing under this Declaration subsequent to such sale, conveyance or transfer upon any of the covenants or conditions, express or implied, herein contained in favor of the Grantor, and in such event the Grantor agrees to look solely to the successor in interest of Hidden Springs for the performance of such covenants and obligations.

4.12 Indemnification. Hidden Springs shall indemnify, defend and hold harmless the Grantor and its members, directors, officers, employees, agents and contractor from and against all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgements, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injuries to any persons and damage to or theft or misappropriation or loss of property occurring in or about the Open Space Area regardless of cause, except as to those claims directly attributable to the negligence of the Grantor.

4.13 Limitation of Liability. Nothing contained in this Declaration shall be construed to entitle the Grantor to bring any action against Hidden Springs for injury to or change in the Open Space Area resulting from causes beyond the control of Hidden Springs, including, without limitation, fire, flood, storm and earth movement, or from any action taken by Hidden Springs under emergency conditions to prevent, abate or mitigate significant injury to the Open Space Area resulting from such causes.

4.14 Condemnation. In the event that all or any part of the Open Space Area shall be taken by condemnation, this Declaration shall terminate automatically as to property so taken, and the Grantor shall be entitled to a portion of the proceeds of any condemnation award in an amount equal to the proportionate value of this Declaration, in accordance with Treasury Regulations § 1.170A-14(G) (6)(ii) (or any successor provisions) and such proceeds shall be used in a manner consistent with conservation purposes set forth herein. This Declaration shall remain in full force and effect with respect to any portion of the Open Space Area not taken by such condemnation proceedings.

4.15 Extinguishment of Easement and Distribution of Proceeds. It is understood that this Declaration creates a real property interest, vested in the Grantor, with a fair market value that is equal to a portion of the value of the value of the Open Space Area as a whole at that time. If because of a change in conditions this Declaration is extinguished pursuant to the terms of Section 4.17, the Grantor (or any other holder of this Declaration), upon a subsequent sale, exchange or involuntary conversion of the Open Space Area, shall be entitled to a portion of the proceeds equal to that proportionate value of this Easement, in accordance with Treasury Regulations 1.170A-14(g)(6)(ii) (or any successor provision) and such proceeds shall be used in a manner consistent with the Conservation Purposes set forth herein. For purposes of this section (and the immediately preceding Section), proceeds shall not include an amount equal to the fair market value of any Improvements on the Open Space Area affected by a condemnation or judicial action, which were not included in the calculations by which the proportionate fair market value of the Easement was established.

4.16 Easement in Perpetuity. The easement herein declared shall be a burden upon and shall run with the title to the Open Space Area as a binding servitude in perpetuity and cannot be abrogated.

4.17 Applicable Tax Law: Change in Circumstances. Notwithstanding the immediately preceding section, it is understood that (a) if, upon the request of counsel for the Grantor, in the reasonable exercise of their discretion, determine that amendments to this Declaration are necessary to accomplish Grantor's purpose of qualifying this Declaration as a "Qualified Conservation Easement" pursuant to Section 170(h) of the Internal Revenue Code (or any successor provision) and related regulations, the parties shall negotiate in good faith and execute such amendments; or (b) if the easement arising from Declaration is terminated and extinguished in an appropriate judicial proceeding upon a judicial determination that a subsequent unexpected change in conditions with respect to the Open Space Area makes the continued use of the Open Space Area for the preservation or conservation purposes set forth herein impossible or impractical, in such event and upon the subsequent sale, exchange or involuntary conversion of the Open Space Area, the parties shall act in full accord with the appropriate requirements of the Internal Revenue Code and Treasury Regulations to the extent applicable with respect to allocation of any

sale or other disposition proceeds as provided in this Easement); and all proceeds of such sale, exchange or involuntary conversion of the Open Space Area, if any, allocable to the Grantor shall be used by the Grantor in a manner consistent with the preservation and conservation purposes set forth herein.

4.18 Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in § 170(H) of the Code, Grantor shall provide Hidden Springs with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in § 1.170A-13 of the Treasury Regulations) of the fair market value of this easement created by this Declaration.

4.19 Successors and Assigns; Subsequent Transfers. Except as otherwise specifically set forth herein, the covenants, terms, conditions and restrictions set forth in this Declaration shall extend to, bind and inure to the benefit of the Grantor and Hidden Springs and their respective successors and assigns; and all references herein to the Grantor and Hidden Springs shall be deemed to include such parties. Nothing in this Declaration shall preclude Hidden Springs or any subsequent transferee, heir or successor thereof from placing a mortgage against the Open Space Area, provided that such mortgage shall at all times be subordinate to this Declaration.

4.20 Boundary Changes. Notwithstanding anything herein to the contrary, upon completion of a survey of all or any portion of the Open Space Area, Hidden Springs and Grantor shall establish the legal description(s) of the Open Space Area as is appropriate in order to more precisely describe and locate, or reduce or augment with contiguous or non contiguous property, the boundaries of the Open Space Area; provided, however, that the overall area of the Open Space Area shall not be reduced to less than the area required by Section 8-21A-5A 4 of the Hidden Springs Planned Community Zoning Ordinance. Furthermore, each plat for the Hidden Springs Development shall indicate there on any portion of the Open Space Area included within that plat of the Hidden Springs Property.

4.21 Incorporation of Recitals. The recitals set forth in Section 1 above are hereby incorporated herein.

4.22 Amendment. This Declaration may be altered and amended by the written agreement of the Grantor and Hidden Springs and without the consent, concurrence or agreement of any third party or parties, including without limitation the owner of any subdivided lot or parcel of the Hidden Springs Property.

4.23 Third Party Beneficiaries. It is the intention of Grantor that no individual or entity, whether public or private, shall be a beneficiary of or have the right to enforce any of the terms and conditions of this Declaration.

4.24 Compliance with Laws. Grantor declares and acknowledges that nothing in this Declaration shall supersede the provisions of any applicable law, ordinance, or regulation or the terms and conditions of the Hidden Springs Planned Community Zoning Ordinance.

4.25 Severability. The invalidity or unenforceability of any provision of this Declaration shall not affect or impair any other provisions.

4.26 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Idaho without regard to the residence or domicile of the parties.

SCHEDULE A
TO
DECLARATION OF CONSERVATION EASEMENT

LEGAL DESCRIPTION

The following described real property located in Ada County, Idaho:

In Township 5 North, Range 2 East of the Boise Meridian:

In Section 28: The South Half of the Northwest Quarter; the West Half of the Southwest Quarter; and the Northeast Quarter of the Southwest, except that portion thereof lying East of centerline of the County Road.

In Section 29: The Southeast Quarter of the Northeast Quarter; the East Half of the Southeast Quarter; the Southwest Quarter of the Southeast Quarter; and the Southeast Quarter of the Southwest Quarter.

In Section 31: The Southeast Quarter, except that portion of the Northwest Quarter of the Southeast Quarter lying North and West of the existing centerline of Dry Creek Road conveyed to Harold E. and Judith E. Huston by Deed recorded July 18, 1996 as Instrument No. 96060134 in the official Records of Ada County.

In Section 32: The East Half; the East Half of the West Half; and the West Half of the Southwest Quarter.

In Section 33: The West Half of the West Half.

In Township 4 North, Range 2 East of the Boise Meridian:

In Section 4: The Northwest Half of Lot 4.

In Section 5: Lots 1, 2, 3 and 4 inclusive.

In Section 6: Lots 1 and 2; the South Half of the Northeast Quarter; and the West Half of the Southeast Quarter.

SCHEDULE "C"
TO
SPECIAL WARRANTY DEED

EXCEPTIONS TO TITLE

SCHEDULE "C"
TO
SPECIAL WARRANTY DEED

EXCEPTIONS TO TITLE

Rights or claims of parties in possession not shown by the public records.

Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.

Easements, or claims of easements, not shown by the public records.

Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

(a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

General Taxes for the year 1997, a Lien but not yet due and payable.

General Taxes for the year 1996, a Lien, the first half is paid and the second half is now due and payable.

Ditch, Road and Public Utility Easements as the same may exist over said premises.

Right-of-way for DRY CREEK and the Rights of Access thereto for Maintenance of said DRY CREEK.
(Affects Subject Properties in Sections 5, 31 and 32)

SCHEDULE "C" (CONTINUED)

Right-of-way for CURRANT CREEK and the Rights of Access thereto for Maintenance of said CURRANT CREEK.
(Affects Subject Properties in Sections 32 and 33)

Right-of-way for MCFARLAND CREEK and the Rights of Access thereto for Maintenance of said MCFARLAND CREEK.
(Affects Subject Properties in Sections 28 and 29)

Right-of-way for Seaman Gulch Road.
(Affects Subject Properties in Sections 6 and 31)

Right-of-way for Dry Creek Road.
(Affects Subject Properties in Sections 5, 31 and 32)

Right-of-way for Cartwright Road.
(Affects Subject Properties in Sections 5, 28, 32 and 33)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded APRIL 30, 1942
Book/Page No. 18/78
(Affects Subject Properties in Sections 31 and 32)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded APRIL 30, 1946
Book/Page No. 19/447
(Affects Subject Properties in Sections 5 and 32)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded MARCH 26, 1948
Book/Page No. 20/507
(Affects Subject Properties in Section 32)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded OCTOBER 7, 1965
Instrument No. 623010
(Affects Subject Properties in Section 29)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded OCTOBER 7, 1965
Instrument No. 623018
(Affects Subject Properties in Sections 5 and 33)

SCHEDULE "C" (CONTINUED)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded JULY 28, 1968
Instrument No. 617369
(Affects Subject Properties in Section 31)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY
Purpose POWER LINE AND INCIDENTAL PURPOSES
Recorded OCTOBER 27, 1966
Instrument No. 651191
(Affects Subject Properties in Section 33)

Reciprocal Grant of Easement, and the Terms and Conditions thereof:
In Favor of THE TERTELING COMPANY
Purpose INGRESS AND EGRESS
Recorded NOVEMBER 3, 1983
Instrument No. 8359350
(Affects Subject Properties in Sections 32 and 33)

Rights incidental to the exercise of reserved or conveyed mineral rights excepted from the description of the lands.

Unrecorded Leaseholds, if any, and the rights of vendors and holders of security interests in personal property of tenants to remove said personal property at the expiration of the term.

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY, a corporation
Purpose POWER LINES AND INCIDENTAL PURPOSES
Recorded FEBRUARY 7, 1996
Instrument No. 96010536
(Affects Subject Properties in Sections 5 and 32)

Easement, and the Terms and Conditions thereof:
In Favor of IDAHO POWER COMPANY, a corporation
Purpose POWER LINES AND INCIDENTAL PURPOSES
Recorded FEBRUARY 7, 1996
Instrument No. 96010537
(Affects Subject Properties in Sections 29, 32 and 33)