

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and between **Shenandoah West Neighborhood Association, Inc. ("SWNA")** and **Shiloh Homeowners Association, Inc. ("Shiloh")** (hereinafter collectively "the Parties"), in order to fully resolve certain ambiguities and/or legal issues, and to further memorialize the Parties' mutual intentions regarding future conduct, rights and obligations. The Parties agree to the following:

1. This MOU concerns certain two parcels of real property (the "Common Areas"), which are situated within the geographical limits of the Shenandoah West No. 1 Subdivision in Boise, filed in Book 51 of Plats at pages 4247 and 4248, Ada County, Idaho, more fully described as follows:

Lot 1, Block 4 of the Shenandoah West No. 1 Subdivision, as seen on the official plat recorded as Instrument No. 8135588 in the real property records of the Ada County Recorder's Office, Book 51, pages 4247-4248.

Lot 18, Block 4 of the Shenandoah West No. 1 Subdivision, as seen on the official plat recorded as Instrument No. 8135588 in the real property records of the Ada County Recorder's Office, Book 51, pages 4247-4248.

2. The Parties agree that the Common Areas were deeded to Shiloh on or about April, 1984, from Sherwood West Development, Inc., at which time Shiloh was an unincorporated nonprofit association. A true and correct copy of the Deed evidencing the 1984 conveyance is attached hereto as Exhibit A.

3. On or about May 4, 2001, Sherwood West Development, Inc. purported to convey by way of Quitclaim Deed, *inter alia*, the same Common Areas property to SWNA and Shiloh. Due to the previous conveyance, the Parties agree that the May 4, 2001 purported conveyance was ineffective as to Lots 1 and 18 of the Common Areas, as identified herein.

4. The Parties agree that Section 53-716 (Chapter 7, Title 53) of the Idaho Code applies to and governs the April, 1984 conveyance of the Common Areas to Shiloh.

5. For at least the past seventeen (17) years, uncertainty has existed and disputes have occasionally arisen with regard to the ownership, the responsibility for maintenance, and actual maintenance and the liability and liability insurance for the Common Areas. The parties hereby agree that the Common Areas are in fact owned by Shiloh, and that Shiloh shall be solely responsible for the management, maintenance, repair and maintenance of insurance for the Common Areas.

6. Shiloh agrees to keep and maintain the Common Areas in a manner consistent with the spirit and intent of all applicable Covenants, Conditions and Restrictions. Shiloh further agrees to keep, maintain and operate, or enforce its members to keep, maintain and operate, the Common Areas in full compliance with applicable laws, rules, regulations, ordinance and codes. Shiloh further agrees to continue to allow to the public and to members of SWNA free and open access over the access easement provided to the tennis courts that are bordered by Lot 1 of the Common Areas. Additionally, there shall be an easement (hereby confirmed) on and over the portions of Lot 1, Block 4, Shenandoah West No. 1 Subdivision, which are immediately adjacent to the tennis courts located on Lot 3, Block 4, Shenandoah West No. 1 Subdivision, to permit the doing of every act necessary and proper to the playing of tennis on the tennis courts by those legally entitled to use the tennis courts. These acts shall include but not be limited to the recovery of tennis balls from said Lot, the flight of tennis balls over and upon such Lot, the use of necessary and usual equipment upon such tennis courts, the usual and common noise level created by the playing of the game of tennis, together with all the other common and usual activity associated with the game of tennis and with all the normal and usual activities associated

with the operation of a tennis club, subject to such reasonable regulations as may be enacted by Shiloh from time to time.

7. Shiloh agrees to keep and maintain the Common Areas in neat, clean and good order, condition and repair. Shiloh further agrees to assume full responsibility for all costs associated with the maintenance, upkeep, repair, and/or care of the described Common Areas and any improvements currently located thereon, and releases SWNA from any future financial obligation or responsibility as pertaining to the described Common Areas.

8. Shiloh agrees to maintain a liability insurance policy for the Common Areas, in an amount sufficient to cover all foreseeable losses, claims, injuries, events and occurrences, and in any event no less than one million dollars (\$1,000,000.00).

9. SWNA agrees to waive any claim to and otherwise release Shiloh of any costs SWNA has incurred for the upkeep, maintenance, care, insurance premiums and/or other costs associated with the Common Areas up to and including the date of this MOU. In consideration of said release, Shiloh does hereby agree to indemnify and hold harmless SWNA and its directors, officers and agents (the "Indemnitees") from and against any claim, demand or liability asserted against the Indemnitees for any act or failure to act of Shiloh in maintaining (or failing to maintain) the Common Areas, or arising out of or resulting from modifications to any Common Area improvements made, affected or permitted by Shiloh subsequent to the date of this MOU.

10. The Parties agree that it is in their respective best interests that SWNA maintain control over the subdivision signage and lighting, and the landscaping immediately surrounding the signage and lighting, which is currently located on a small portion of Lot 1 of the Common Area at the Northeast corner of N. Five Mile Road and Edna Street. The Parties agree to

cooperate in the drafting and execution of a License Agreement which will allow SWNA to maintain control over the signage. SWNA agrees that said License Agreement will obligate them to maintain a suitable liability insurance policy over the subject area; to cover all costs related to the upkeep, maintenance and, if applicable, improvements to the subject area; and to indemnify and hold Shiloh harmless for any and all losses, injuries, damages, claims, events and/or occurrences arising from SWNA's use of the subject signage area. Shiloh agrees to license the subject signage area to SWNA at no cost. The Parties agree to cooperate with one another in the preparation and execution of a formal full and complete License Agreement that includes, but is not necessarily limited to, the terms set forth in this paragraph.

11. The Parties fully and completely release each other from any and all claims of every kind and nature, known or unknown, which could have been brought against the other relating to this dispute, and specifically forever and completely release each other from all claims for any monies due, or claimed to be due, by each party from the other as of the date of this MOU.

12. The Parties agree that the covenants, promises, and releases contained herein establish adequate consideration, and that this document is a valid, legal and binding contract, enforceable under the laws of the state of Idaho. If either party is required to file a lawsuit to enforce any of the terms of this MOU, or the terms of the intended License Agreement referenced in paragraph 10, above, the prevailing party in that lawsuit shall be awarded reasonable attorney fees and costs.

13. The Parties hereby agree to bear their own respective attorney fees and costs, if any, incurred in the achievement of this MOU.

14. The Parties agree to cooperate in the drafting and execution of any documents necessary to effectuate the agreements set forth herein.

15. This MOU may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

16. This MOU shall be binding upon the heirs, successors and assigns of the parties.

**\*\* SIGNATURES FOLLOW ON NEXT PAGE\*\***

EXECUTED THIS 18<sup>th</sup> day of November, 2011, at Boise, Idaho.

SHILOH HOMEOWNERS ASSOCIATION,  
INC.

SHENANDOAH WEST NEIGHBORHOOD  
ASSOCIATION, INC.

By   
William Sawyer, President

By   
Russ Mendenhall, President

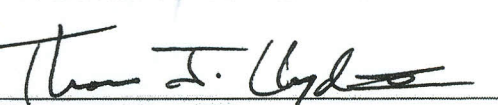
Approved as to Form and Content:

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Thomas J. Lloyd III

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Inc.

Attorneys for Shenandoah West Neighborhood  
Association, Inc.