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SECOND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION

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SECOND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION
ASSOCIATION TABLE OF CONTENTS

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (the "Declaration") is made as of this 12th day of July, 2022 by McCormick Ranch, LLC an Idaho Corporation ("Declarant")

RECITALS

A. Declarant is the Owner of certain real property in the County of Bannock, Idaho, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "Initial Property"), and is or may in the future be the Owner of other real property, more particularly described in Exhibit B attached hereto and by this reference incorporated herein (the "Annexable Area"), which may from time to time be annexed to the Initial Property, pursuant to this Declaration.

B. Consistent with Declarant's intent to establish a community accommodating residential and associated land uses, including open space, and to develop and convey all or a portion of the properties in the Project, pursuant to a general plan for maintenance, care, use and management of the Project, Declarant has deemed it desirable to establish certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, upon the Project, all of the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and enhancing the quality of life within the Project. All property within the Project shall be held and conveyed subject to such covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens, and charges.

C. In furtherance of its desire for efficient management and preservation of the values and amenities in the Project, Declarant has deemed it desirable to create a corporation to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements for its Members; administering and enforcing the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges; collecting and disbursing the assessments and charges hereinafter created; and performing such other acts as shall generally benefit the Project.

D. Trail Creek Homeowners Association, an Idaho nonprofit corporation, is incorporated wider the laws of the State of Idaho for the purpose of exercising the powers and functions stated above.

E. The primary components of the Common Elements, the expense of maintaining, which is to be shared by the Owners, are the parcels designated as "Common Elements" on the Plat and included in the Initial Property.

Now, THEREFORE, in consideration of the foregoing recitals, the provisions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that all property in the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Project, in furtherance of a general plan for the protection; maintenance, subdivision, improvement, sale and lease of the Project, or any portion thereof. The protective covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Project and shall be binding upon all Persons having any right, title or interest in the Project, or any part thereof, their heirs, successive Owners and assigns; shall inure to the benefit of every portion of the Project and any interest therein; and shall inure to the benefit of and be binding upon Declarant and its successor Owner and each Owner and his or her respective successors-in-interest; and may be enforced by any Owner, or by the Association.

ARTICLE I
DEFINITIONS

Unless otherwise expressly provided, when used in this Declaration, the words and phrases set forth in Exhibit C attached hereto and by this reference incorporated herein shall have the meanings specified therein.

ARTICLE II.
DEVELOPMENT OF THE PROJECT; ANNEXATION

2.1 PHASES OF DEVELOPMENT

Declarant hereby declares that the Phases of Development in the Initial Property are specified in Exhibit A.

2.2 MAXIMUM NUMBER OF LOTS. The Initial Property and Annexable Area will contain approximately ___ Lots, provided that the total number of Lots in the Project shall not exceed ___. Pursuant to Section 9.2(b) of this Declaration, Declarant reserves the right to purchase additional property and to add such Lots to the Annexable Area described in the final map.

2.3 A description of the boundaries of each Lot, including identifying number, is shown on the Final Map(s).

2.4 ANNEXATION OF ANNEXABLE AREA

(a) *Annexation.* Subject to Section 2.4(b), Declarant, unilaterally and in its sole discretion may, from time to time and at any time as long as Declarant owns any portion of the Project or Annexable Area, but shall in no way be required to, add all or any portion or portions of the Annexable Area to the Project covered by this Declaration. Annexation shall be accomplished by the Recording of a Notice of Annexation with respect to the Annexed Territory in the form attached hereto as Exhibit D and incorporated herein by this reference. Upon the Recording of a Notice of Annexation covering any portion of the Annexable Area, the covenants, conditions, restrictions and other matters contained in this Declaration shall apply to the Annexed Territory in the same manner as if such Annexed Territory were originally covered by this Declaration and constituted an original portion of the Project Nothing in this Declaration shall be deemed to be a representation by Declarant that all or any particular portion of the Annexable Area shall be annexed to the Project or be made subject to this Declaration.

(b) *Notice of Annexation.* The Notice of Annexation referred to in Section 2.4(a) of this Article shall contain: (i) the written and acknowledged consent of Declarant, for so long as Declarant shall own any property in the Project or the Annexable Area; (ii) a reference to this Declaration which shall state the date, county, and book and page of its Recordation, along with its instrument number or any other relevant Recording data; (iii) a statement that the provisions of this Declaration as set forth herein shall apply to the Annexed Territory; (iv) a legally sufficient legal description of the Annexed Territory; and (v) a designation by Declarant of Phase(s) of Development within the Annexed Territory. Each Notice of Annexation shall be signed by Declarant and by all other Persons owning a fee interest in the property being annexed. If required pursuant to Section 12.13, the approval of the FHA or VA shall be a condition to annexation hereunder.

ARTICLE III.

COMMON ELEMENTS.

PERMITTED USES AND RESTRICTIONS

3.1 COMMON ELEMENTS

The Common Elements shall be subject to the following:

- (a) The right of Declarant to designate additional Common Elements.
- (b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Elements; provided that any rules and regulations must (i) be reasonably related to the purpose for which they are adopted; (ii) be sufficiently explicit in their prohibition, direction or limitation to inform a Member, or any Person deriving such rights from any Member, of any action or omission required for compliance; (iii) not be adopted to evade any obligation of the Association under this Declaration, the Articles and Bylaws or applicable law; (iv) be consistent with this Declaration, the Articles and Bylaws and must not arbitrarily restrict conduct or require the construction of any capital Improvement by a Member that is not required by this Declaration, the Articles and Bylaws and (v) be uniformly enforced under the same or similar circumstances against all Members, and Persons deriving such rights from any Member. Any rule or regulation that is not uniformly enforced against all Members may not be enforced against any Member. The Association shall furnish a written copy of each such rule or regulation and any amendments to each rule or regulation to all Members, but failure to furnish such copy shall not be deemed to invalidate such rules or regulations to any extent.
- (c) The right of the Association to (i) convey the Common Elements, subject to the provisions of Sections 12.3 and 12.13 and subject to any approval of Members required by the Act, (ii) borrow money for the purpose of improving the Common Elements, and (iii) subject to the provisions of Sections 12.3 and 12.13 and subject to any approval of Members required by the Act, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- (d) The right of the Association to suspend the voting rights and other rights of any Member, and the Persons deriving such rights from any Member, (i) for any period during which any assessment against such Member's Lot remains unpaid and delinquent; (ii) for a period not to exceed 60 days for any violation of the Restrictions, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; provided that any suspension of the rights of a Member, or a Person deriving such rights from any Member to use the Common Elements, may not prohibit such Member or Person from using any particular or pedestrian ingress or egress to go to or from the Member's Lot, including any area used for parking. Any suspension of voting rights shall be made only after Notice and Hearing as provided in the Bylaws.

(e) Subject to the provisions of Sections 12.3 and 12.13, the right of the Association to transfer a license or other interest in all or any portion of the Common Elements to any public agency, authority, utility or any other Person for such purposes and subject to such conditions as may be agreed to by the Association. No such transfer shall be effective unless any approval required by the Act is obtained. A certificate signifying any such approval shall be executed by two officers of the Association and Recorded. Recordation of such certificate shall constitute *prima facie* evidence that such approval has been given.

(f) The right, but not the obligation, of Declarant or, subject to approval of any Capital Improvement Assessments necessary to pay the cost of the same pursuant to Section 6.8, the Association, to construct new or additional Improvements on the Common Elements at any time and from time to time for the Improvement and enhancement thereof and for the benefit of the Association. Declarant shall convey or transfer such Improvements to the Association and the Association shall be obligated to accept title to, care for, and maintain the same.

(g) The right of Declarant (and its agents, employees, prospective customers, guests, invitees, licensees and representatives) to the non-exclusive use of the Common Elements and the facilities thereon, without charge, for sales, display, signs, sales office, access, ingress, egress, exhibits and other purposes deemed useful by Declarant and its representatives in advertising and promoting the Project, so long as Declarant owns any property in the Project or Annexable Area. Such use shall not unreasonably interfere with the rights of enjoyment of the Members as provided herein.

(h) The right of the Association to maintain, replace, redesign, refurbish, reconstruct or repair any Improvement, trees or other vegetation on Common Elements and to plant trees, shrubs, ground cover and other vegetation thereon, and the right of the Association to close or limit the use of such Common Elements, or portions thereof, while maintaining and repairing the same.

(i) The right of the Association to regulate the use of the Common Elements and to prohibit access to the Common Elements, or portions thereof

(j) The rights of Declarant specified in Section 9.2(g) and (h).

3.2 RIGHTS OF DECLARANT INCIDENT TO CONSTRUCTION

A license is reserved by and granted to Declarant for access, ingress, and egress over, in, upon, under, and across the Common Elements, including, but not limited to, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and development of the Project; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner to or of that Owner's Lot. The license created pursuant to this Section 3.2 shall exist so long as Declarant shall own any portion of the Project or the Annexable Area.

3.3 WAIVER OF USE.

No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, or release the Lot owned by such Owner from the liens and charges thereof, by abandonment of that Owner's Lot.

3.4 CONVEYANCE OF COMMON ELEMENTS TO ASSOCIATION

(a) Declarant shall have the right, but not the obligation, from time to time to convey or cause to be conveyed to the Association as Common Elements all or any portion of the property located in the Project or the Annexable Area. All such conveyances of

Common Elements shall be free and clear of all monetary encumbrances and liens, but otherwise "As-Is" and subject to all other rights, reservations, interests, obligations, easements, covenants, restrictions and conditions then of record and those reserved, authorized or otherwise provided for in this Declaration. All such Common Elements shall be accepted by the Association upon transfer and thereafter, subject to Section 9.2(h) hereof, shall be maintained by the Association at Association expense for the benefit of the Owners.

(b) If the Project is developed in Phases and the Declarant is constructing Common Elements that will be added to the Association's Common Elements after the date upon which the Owners, other than Declarant, may elect a majority of the members of the Board of Directors, Declarant who is constructing such additional Common Elements is responsible for: (a) paying all expenses related to the additional Common Elements which are incurred before the conveyance of the additional Common Elements to the Association; and (b) except as otherwise provided in Idaho Code, delivering to the Association Declarant's share of the amount specified in the study of the reserves completed pursuant to paragraph (c) below.

(c) Before conveying the additional Common Elements to the Association, the Declarant who constructed the additional Common Elements may, in the Declarant's sole discretion, deliver to the Association a study of the reserves for the additional Common Elements.

3.5 VIOLATION OF RESTRICTIONS

If any Member or such Member's Family, guests, licensees, lessees, or invitees violates the Restrictions, the Board of Directors may, in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner for each violation. The Board of Directors may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess as a Special Assessment against an Owner for failure of a resident of, or visitor to, such Owner's Lot to comply with any provision of the Restrictions. No fine or penalty may be levied against a Member, or any Person deriving such rights from any Member, unless (i) the Person alleged to have violated the rule or regulation has received notice of the alleged violation and has been given the opportunity to request a Hearing on the alleged violation, and (ii) at least 30 days before the alleged violation, the Person alleged to have violated the rule or regulation was given written Notice of such rule or regulation or of any amendment thereto. The amount of such fines or penalties must be commensurate with the severity of the violation. Such fines or penalties may only be assessed by the Board of Directors after Notice and Hearing.

If a fine or penalty is imposed and the violation is not cured within 14 days or such longer period as may be established by the Board of Directors, the violation shall be deemed a continuing violation. Thereafter the Board of Directors may impose an additional fine or penalty for the violation for each seven-day period or portion thereof that the violation is not cured. Any additional fine or penalty may be imposed without Notice and Hearing.

ARTICLE IV.

COMMUNITY ASSOCIATION

4.1 ORGANIZATION

The Association shall be organized as a non-profit corporation under the Idaho Code no later than the date the first Lot is conveyed to a Person other than Declarant. The Association shall have the duties; powers and rights prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or the Bylaws, then such provision shall be construed, to the extent possible, consistent with the provisions of this Declaration.

4.2 BOARD OF DIRECTORS AND OFFICERS

(a) The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of Directors shall be composed of at least three and no more than five directors (each a "Director"). The initial Board of Directors consists of three Directors, all of whom have been appointed by Declarant.

(b) Subject to Sections 4.2(c) and (d), Declarant (or Persons designated by Declarant) shall solely be entitled to appoint and remove the officers of the Association and members of the Board of Directors until the earlier of ("Control Termination Date"): (i) 60 days after conveyance of 75% of the Approved Units to Owners other than Declarant; (ii) five years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) five years after any right to annex the Annexable Area was last exercised, Declarant may voluntarily surrender the right to appoint and remove all or a portion of the officers of the Association and all or a portion of the members of the Board of Directors before the Control Termination Date, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Unless and until Declarant conveys by written deed, ownership to each and every unit of the Property there shall be no duty to create an Association, and all authority, decisions, assessments, restrictions and powers reserved to the Association herein shall be held, maintained and administered solely by Declarant. All restrictions, limitations and conditions described herein shall be in full force and effect regardless of whether Declarant has conveyed by written deed, the ownership to each unit of the Property. Upon the conveyance by the Declarant of all units, or at some other time as determined by Declarant in Declarant's sole discretion, the Trail Creek Homeowner's Association shall be created pursuant to Idaho Code 53-701 et seq., or the then existing Uniform Unincorporated Nonprofit Association Act as adopted by the State of Idaho.

(a) Not later than the Control Termination Date, the Owners shall elect a Board of Directors of at least three members, at least a majority of whom must be Owners. The Board of Directors shall elect the officers. The officers and members of the Board of Directors shall take office upon election. Within 30 days after the Control Termination Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant.

(b) The Owners, by a 2/3 vote of all Persons present and entitled to vote at any meeting of the Owners at which a Quorum is present, may remove any members of the Board of Directors with or without cause, other than a member appointed by Declarant.

(c) Any individual Owner, an officer, employee, agent or director of a corporate Owner, a member, manager, employee or agent of a limited liability company Owner, a trustee or designated Beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot, or any officer, employee, agent, designated appointee, member or Manager of Declarant may be an officer or member of the Board of Directors. In all events where the Person serving or offering to serve as an officer or member of the Board of Directors is not a Record Owner, such Person shall file proof of authority in the records of the Association.

(d) Subject to this Section 4.2, the number, term, election, and qualifications of the Board of Directors shall be fixed in the Articles and/or Bylaws. The Association; through the Board of Directors, except to the extent specifically provided otherwise herein or by the Articles, Bylaws or applicable law, shall have (i) the power, authority and right of enforcement

of all the Restrictions, (ii) the power, authority and right and be responsible for the proper and efficient management and operation of the Common Elements, including those powers and duties specifically listed in Article V hereof and elsewhere in this Declaration, and (iii) the power, authority and right in all instances to act on behalf of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, Manager, agent or employee without a vote of the Members, except as otherwise specifically provided in the Articles, Bylaws or this Declaration:

4.2 MEMBERSHIP RIGHTS

Members of the Association shall be (a) Declarant (irrespective of whether Declarant is the Owner of a Lot), for so long as Declarant shall own any property in the Project or the Annexable Area, and (b) each Owner (including Declarant) of one or more Lots. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership in the Association, which Membership shall be appurtenant to the Lot. Such Membership shall automatically pass with fee simple title to the Lot. Ownership of a Lot shall be the sole qualification for Membership. Declarant shall hold a separate Membership for each Lot owned by Declarant. Except for Declarant's Membership, Membership shall not be assigned, transferred, pledged, or alienated in any way separate and apart from the transfer of fee simple title to a Lot. In the event the Project is terminated as a common-interest community, Members shall be all Owners of former Lots entitled to distributions of proceeds under the Act, or their heirs, successors, or assigns. Transfer of Declarant's Membership shall be evidenced by a Recorded assignment thereof. Any attempt to make a prohibited Membership transfer shall be void and will not be reflected on the books of the Association. If any Owner fails or refuses to transfer the Membership registered in the Owner's name to the purchaser of such Owner's Lot upon transfer of fee title thereto, the Board of Directors shall, nonetheless, have the right to record the transfer upon the books of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be added to the Common Assessment chargeable to such new Owner) to reimburse the Association for the administrative costs of transferring, on the records of the Association, the Memberships to the new Owners.

4.3 VOTING RIGHTS

(a) *Vote Distribution*

(i) All voting rights shall be subject to the Restrictions. No votes allocated to a Lot owned by the Association may be cast.

(ii) When more than one Person holds an interest or interests in any Lot for which a vote may be cast ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. If only one of several co-owners is present at a meeting of the Association, that co-owner is entitled to cast the vote allocated to that Lot. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a *unit*. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as mutually agreed upon by the majority of the co-owners of the Lot. Unless the Person presiding over the Members' meeting receives a written objection from a non-voting co-owner at the meeting and before the time the votes of all Members on each subject are counted, it shall be conclusively presumed that the voting co-owner is acting with the consent of the other co-owners and the vote on such subject shall be final. No vote shall be cast for any Lot where the majority of the co-owners; present in person or by proxy, owning the majority interests in such Lot cannot agree to said vote or other action. All co-owners shall be jointly and severally responsible for all of the obligations imposed

upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors, and assigns.

(iii) Any Mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

(b) *Proxies.* Except as otherwise provided herein, votes allocated to a Lot may be cast pursuant to a proxy executed by the Owner thereof. An Owner may give his proxy only to a member of his immediate family, a tenant of the Owner who resides in the Project, or another Owner who resides in the Project. If a Lot is owned by co-owners, each co-owner may vote or register protest to the casting of votes by the other co-owners through an executed proxy. An Owner may revoke a proxy given pursuant to this Section 4.4(c) only by actual notice of revocation to the Person presiding over a meeting of the Association, which notice shall be given before the time the votes of all Members on such subject are counted. Before a vote may be cast pursuant to proxy: (i) the proxy must be dated; (ii) the proxy must not purport to be revocable without notice; (iii) the proxy must not purport to be revocable without notice; (iv) the proxy must designate the meeting for which it is executed; (v) the proxy must designate each specific item on the agenda of the meeting for which the Owner has executed the proxy, except that the Owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the Owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the Owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the Owner were present but not voting on that particular item. The holder of a proxy may not cast a vote on behalf of the Owner who executed the proxy in a manner that is contrary to the proxy. A proxy is void if the proxy or the holder of the proxy violates any of the foregoing. The duration of a proxy may be for a period not to exceed 3 years, unless further limited by the granting Owner. A vote may not be cast pursuant to a proxy for the election of a member of the Board of Directors.

ARTICLE V.

POWERS AND DUTIES OF THE ASSOCIATION

The Association shall have all of the powers of an Idaho nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions and applicable law. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association may act through its Board of Directors and shall specifically have:

(a) *Assessments.* The power and duty to levy assessments against the Owners of Lots in which assessments have commenced, and to enforce payment of such assessments in accordance with the provisions of Article VI hereof.

(b) *Repair, Maintenance and Replacement of Common Elements.* The power and duty to paint, plant, maintain, repair and replace in a neat and attractive condition and in accordance with standards adopted therefore by the Architectural Review Committee, all Common Elements and all Improvements thereon, and to obtain and pay for utilities, gardening and other necessary services for the Common Elements.

(c) *Taxes.* The power and, except to the extent Declarant shall be required to pay such taxes by the Act, the duty to pay all taxes and assessments levied upon the Common Elements, if any, and all other taxes and assessments payable by the Association.

(d) *Utility Service.* The power and duty to obtain, for the benefit of the Common Elements, all commonly metered water, gas, and electric services.

(e) *Licenses.* Subject to any applicable requirements of the Act, the power but not the duty to grant and convey to any Person, licenses in the Common Elements for public or quasi-public Improvements or facilities. This Section 5.1(e) shall not be construed to limit the right or power of the Association under Section 3.1(e).

(f) *Manager.* The power and duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association and shall have the power but not the duty to delegate its powers to committees, officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of two years, auto renewed in successive two-year terms, subject to cancellation by the Association for cause at any time upon not more than 30 days written notice, and without cause (and without penalty to or the payment of a termination fee by the Association) at any time at least 60 days written notice prior to the end of the then current term, which termination shall take effect upon expiration of that term. Manager shall be the exclusive agent to rent, lease, or not owner occupy any Residence within the Project. The management agreement shall include a provision that all owners who desire to rent, lease, or not owner occupy their property will be required to contract with Manager for their services. Owners' management contracts shall be written with matching terms to the Association with discounted rates based on the volume of the exclusive portfolio as a whole.

(g) *Rights of Entry and Enforcement.* The power but not the duty, after Notice and Hearing, to enter upon any Lot, without being liable to any Owner except for damage caused by the Association's entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot if for any reason whatsoever the Owner thereof fails to maintain and repair any such area as required by the Restrictions. The cost of any such maintenance and repair which is the responsibility of the Owner shall be assessed against such Owner as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Residence without the prior consent of the Owner thereof. Any damage caused by an entry upon any Lot shall be repaired by the entering party, except in an emergency when such entry was believed to be reasonably necessary to protect persons or property. Subject to Section 12.7, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all the provisions of the Restrictions. The Association shall be entitled to recover from any Owner, as a Special Assessment, all costs of enforcement of the Restrictions against such Owner, including without limitation attorneys' fees, whether or not an action is brought by the Association to enforce the Restrictions. If an action is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the court.

(h) *Other Services.* The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration.

(i) *Employees, Agents and Consultants.* The power, but not the duty, if deemed appropriate by the Board of Directors, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in

connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(j) *Construction on Common Elements.* The power but not the duty, by action of the Board of Directors, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance, repair, or replacement of existing Improvements).

(k) *Budget, Records and Accounting.* The power and the duty to keep, or cause to be kept, true and correct books and records of account in accordance with generally accepted accounting principles and the Act. The annual Budget for each fiscal year shall be prepared and distributed as set forth in Section 6.4.

(l) *Inspection of Books and Records.* The power and the duty to authorize the verification of Membership, books of account, records, and minutes of meetings of the Members and of the Board of Directors, and other papers of the Association, including but not limited to all contracts to which the Association is a party and all records filed with a court relating to a civil or criminal action to which the Association is a party by making them available for inspection, examination, photocopying and audit by any Member, or by the Member's duly appointed representative, at such Member's sole cost and expense, and at any reasonable time and for a purpose reasonably related to the Member's interest as a Member (but excluding any commercial or other purpose not related to the Member's interest as a Member), at the office of the Association or at such other place within the Project as the Board of Directors may prescribe.

The provisions of the paragraph above do not apply to the personnel records of the employees of the Association, except for those records relating to the owner of hours worked and the salaries and benefits of those employees; the records of the Association relating to another Member, except as set forth below; and a contract between the Association and an attorney.

The Board of Directors shall maintain a general record concerning each violation of the Association's governing documents, other than a violation involving a failure to pay an assessment for which the Board of Directors has imposed a fine, a construction penalty or other sanction. This general record must contain a general description of the nature of the violation and the type of sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty. This general record must be maintained in an organized and convenient filing system or data system that allows a Member to search and review the general records concerning violations of the governing documents.

The books, records and other papers of the Association must be maintained for at least 7 years. This requirement does not apply to the minutes of meetings of the Board of Directors or the Association.

The Board of Directors shall not require a Member to pay an amount in excess of \$25 per hour to review any books, records, contracts, or other papers of the Association.

ARTICLE VI.

FUNDS AND ASSESSMENTS

6.1 PERSONAL OBLIGATION AND LIEN FOR ASSESSMENTS

Each Owner of a Lot subject to assessment hereby covenants and agrees, by acceptance of a deed or other conveyance of any property within the Project, to pay to the Association (a) Common Assessments for Common Expenses, (b) Capital Improvement Assessments, and (c)

Special Assessments, which assessments shall be established and collected as hereinafter provided. All assessments, together with interest thereon at a rate established by the Board of Directors, but not more than 18% per annum, late charges, costs, lien fees and reasonable attorneys' fees for the collection or enforcement thereof and the enforcement of the Restrictions, shall be a charge on and continuing lien upon the Lot against which such assessment is made, which lien, except as provided herein, shall run with such Lot. All assessments also shall be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for assessments shall not pass to the successors-in-title of any Owner unless expressly assumed by such successors.

6.2 PURPOSE OF ASSESSMENTS

All amounts received as Common Assessments *must* be used and disbursed solely for purposes authorized by this Declaration and to the common benefit of all Owners.

6.3 COMMON ASSESSMENTS

(a) A sum sufficient to pay Common Expenses and to establish reserves shall be assessed at least annually as Common Assessments against the Owners of Lots within the Association consistent with the Budget. The Board of Directors shall establish the number of Common Assessments for each Assessment Year concurrent with the preparation of the Budget pursuant to Section 6.4.

(b) Common Assessments shall be assessed against each Owner in accordance with the number of Assessment Units attributable to such Owner. The Owner of each Single-Family Residential Lot shall be charged with one Assessment Unit for each such Lot. With respect to any Lots owned by Declarant which have not been subdivided into parcels which are intended to be conveyed to home buyers, Declarant shall be charged with one Assessment Unit for each of the maximum number of Single-Family Residential Lots which are permitted on such Lot until such time as the Lot has been so subdivided. Each Owner's proportionate share of the Common Assessments shall be a fraction, the numerator of which shall be the number of Assessment Units charged to such Owner and the denominator of which shall be the total number of Assessment Units charged to all Lots in the Project which are subject to assessment.

(c) All installments of Common Assessments shall be collected in advance on an annual basis by the Board of Directors, on such due dates as the Board of Directors shall determine from time to time in its sole and absolute discretion. At the end of any Assessment Year of the Association, the Board of Directors may determine that excess funds remaining in the operating fund, over and above the amounts used for the operation of the Project and appropriate reserves, may be retained by the Association for use in reducing the following year's Common Assessment.

6.4 BUDGET AND ACCOUNTS.

(a) Not less than 30 nor more than 60 days before the beginning of each Assessment Year, the Board of Directors shall prepare and distribute to each Member a copy of the Budget of the estimated Common Expenses to be incurred during the coming Assessment Year. Budget must include: (1) the budget for the daily operation of the Association. This budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve account of the Association; and (2) the budget to maintain an adequate reserve for the repair, replacement and restoration of the major components. Common Elements. This budget must include, without limitation: (i) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements; (ii) as of the end of the Assessment Year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside to repair,

replace or restore the major components of the Common Elements; (iii) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component of the Common Elements or to provide adequate reserves for that purpose; and (iv) a general statement describing the procedures used for the estimation and accumulation of cash reserves set forth in (ii). The Budget also shall contain a statement disclosing any "in-kind" contributions by Declarant and any subsidies by the Declarant. In lieu of distributing copies of the complete Budgets of the Association, the Board may distribute to each Member a summary of those Budgets, accompanied by a written notice that the Budgets are available for review at the business office of the Association or other suitable location and that copies of the Budgets will be provided upon request.

(b) Upon a vote of a simple majority or more of the Board of a proposed Budget presented to them by Manager, a proposed Budget shall become effective. Within 30 days after approval by the Board of Directors of the annual Budget, the Board shall provide a summary of the Budget, as approved, and the amount of the approved Common Assessments to all Owners. The Board of Directors shall set a date for a meeting of the Owners to present the approved Budget not less than 14 nor more than 30 days after mailing of the summary. If the proposed Budget is rejected by the Board, the Budget last ratified by the Board must be continued until such time as the Board approves a subsequent Budget proposed by the Board of Directors or the Manager.

(c) The Board of Directors shall (i) cause to be conducted at least once every 5 years a study of the reserves required to repair, replace and restore the major components of the Common Elements; (ii) review the results of that study at least annually to determine if those reserves are sufficient; and (iii) make any adjustments it deems necessary to maintain the required reserves (the "Reserves Study"). The Reserves Study must be conducted by a Person qualified in training and experience to conduct such a study, including a member of the Board or property Manager of the Association who is so qualified. The Reserves Study must include; (1) a summary of an inspection of the major components of the Common Elements the Association is obligated to repair, replace and restore; (2) identification of the major components of the Common Elements that the Association is obligated to repair, replace and restore which have a remaining useful life of less than 30 years; (3) an estimate of the cost of repair, replacement, and restoration of each major component of the Common Elements identified in (2) above; (4) an estimate of the cost of repair, replacement and restoration of each major component of the Common Elements identified in (2) above during and at the end of its useful life; and (5) an estimate of the total annual assessment that may be required to cover the cost of repairing, replacing or restoring the major components identified pursuant to (2) above, after subtracting the reserves of the Association as of the date of the Reserves Study.

(d) The results of the Reserves Study must be submitted to the Commission for Common Interest Communities not later than 45 days after the date that the Board of Directors adopts the Reserves Study.

(e) Money in the reserve account of the Association for the repair, replacement or restoration of major components of the Common Elements may not be withdrawn without the signatures of at least two members of the Board of Directors or the signatures of at least one member of the Board and one officer who is not a member of the Board.

(f) The Board of Directors shall maintain and make reasonably available for inspection, examination, review, photocopying and audit by any Member at the Association's business office, or some other suitable location, the financial statement of the Association, the budgets required to be prepared as set forth above, and the Reserves Study.

6.5 DATE OF COMMENCEMENT OF COMMON ASSESSMENTS Common

Assessments on all Lots shall commence on the later of (a) the first day of the month following the month in which such Lot shall be made subject to this Declaration, or (b) the month in which the Board of Directors first levies Common Assessments pursuant to this Declaration. The Common Assessments for the then current Assessment Year for each Lot shall be pro-rated based on the owner of months in such Assessment Year remaining from the date of commencement of such assessments to the end of such Assessment Year.

6.6 CAPITALIZATION OF ASSOCIATION

Provided Common Assessments have commenced, upon acquisition of a fee title of Record to a Lot from Declarant, the Owner of such Lot shall make a contribution to the capital of the Association in an amount equal to two months of the purchaser's monthly assessment fees for common expense, which amount equates to approximately 17% of the then applicable annual Common Assessment for such Lot. Such capital contribution shall be (a) deposited by the Owner into the purchase and sale escrow and disbursed therefrom to the Association, and (b) in addition to, and not in lieu of, annual Common Assessments.

6.7 CAPITAL IMPROVEMENT ASSESSMENTS

The Board of Directors, with the vote of the majority of votes cast at a meeting of the Members at which a Quorum shall be present, may levy in any fiscal year a Capital Improvement Assessment, for the purpose of defraying, in whole or in part, the cost of any construction of a new Capital Improvement or material alteration of an existing Capital Improvement upon the Common Elements, including fixtures and personal property related thereto. All Members shall be given at least 21 days prior written notice of the meeting at which a Capital Improvement Assessment is to be considered. All Capital Improvement Assessments must be fixed at a uniform rate for all Lots in the same proportion as Common Assessments are levied, and they may be collected in the manner and frequency as determined from time to time by the Board of Directors. To cover costs incurred in bringing the Lot into compliance with or to enforce the Restrictions, and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

6.8 SPECIAL ASSESSMENTS

The Board of Directors may assess a Special Assessment against a particular Owner and the Owner's Lot for all or any of the following:

- (a) To cover costs incurred in bringing the Lot into compliance with or to enforce the Restrictions, and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests;
- (b) To pay late charges and interest for late payment of any assessment;
- (c) Subject to the limitations in Section 3.5, to pay reasonable charges assessed by the Board of Directors against an Owner *as* a fine or penalty for non-compliance with the Restrictions; provided, however, that such fines or penalties may only be assessed after Notice and Hearing;
- (d) To pay or cover all costs for any maintenance, repairs, or replacements to or within the Common Elements arising from or caused by the willful or negligent act or omission of any Owner or their Family, guests, agents, contractors, employees, licenses or invitees;
- (e) To pay or cover any other cost or amount that may be assessed as a Special Assessment under any other provisions of this Declaration; and

(f) All costs and expenses, including attorneys' fees, incurred in connection with Sections 6.8 (a), (b), (c), (d) and (e), whether or not an action or proceeding to enforce the Restrictions has been commenced.

6.9 EXEMPT PROPERTY

The following property subject to this Declaration shall be exempt from all assessments:

(a) Those portions of the Project dedicated to and accepted by, the United States, the State of Idaho, Bannock County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for as long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) All Common Elements.

6.10 REMEDIES OF THE ASSOCIATION

Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or other amount due to the Association hereunder not paid within 30 days after the due date shall bear interest from the due date of such installment at the rate established by the Board of Directors, not to exceed 18% per annum, as well as a late charge, as determined by the Board of Directors, to compensate the Association for bookkeeping, billing, administrative costs and any other appropriate charges. No such interest or late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within 30 days after it is due, the Association may foreclose or otherwise enforce the lien against such Owner's Lot in accordance herewith and with applicable law and/or exercise any other remedies against the Owner or such Owner's Lot as may be available hereunder or at law or equity. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot. All interest, late charges and all other costs and expenses incurred in enforcing the Restrictions, including attorneys' fees, shall be payable as a Special Assessment by the Owner against whom enforcement is sought. No action shall be brought to enforce any assessment lien herein unless notice shall be given in accordance with applicable law. The Association or other Person conducting the sale shall also mail a copy of such notice (a) not more than ten days after the notice is Recorded, by first-class mail to any Mortgagee who has notified the Association in writing at least 30 days before the Recordation of the notice of the existence of the Mortgage, (b) to a purchaser of the Lot, if the Owner has notified the Association in writing at least 30 days before Recordation of such notice that the Lot is subject of a contract of sale, and (c) not more than ten days after the notice is Recorded, by first class mail to all others required to be given notice by applicable law. The Association, through its authorized agents, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage or convey the same. While a Lot is owned by the Association following foreclosure (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged in addition to its usual assessment, its pro rata share of the assessment that would have been charged such foreclosed Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The Association may not foreclose a lien by sale for the assessment of any fines or penalties imposed in accordance with Section 3.05 unless the violation for which the fine is assessed is of a type that threatens the health and welfare of the Project.

6.11 CURING OF DEFAULT

Upon the timely curing of any default for which a notice was Recorded by the Association, the officers thereof shall Record an appropriate release of lien, upon payment by the

defaulting Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of processing, preparing and Recording such release.

6.12 CUMULATIVE REMEDIES

The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including, without limitation, a suit to recover a money judgment for unpaid assessments and/or the taking of a deed in lieu of foreclosure.

6.13 STATEMENT OF UNPAID ASSESSMENTS

The Association upon written request and upon payment of a reasonable fee therefore shall furnish to an Owner or Mortgagee a statement setting forth the amount of unpaid assessments, which statement shall be in Recordable form. Such statement must be furnished within ten business days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner.

6.14 MORTGAGEE PROTECTION

Notwithstanding any other provisions hereof, except for the Priority Lien described in Section 6.15, no lien created under this Article VI, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Mortgage encumbering a Single Family Residential Lot, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Single Family Residential Lot by a judicial foreclosure, other foreclosure, or exercise of power of sale, such Single Family Residential Lot shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of the prior Owner's personal obligation for the payment of such unpaid assessments.

6.15 PRIORITY OF ASSESSMENT LIEN

The Association has a lien on a Lot for any assessment levied against the Owner from the time the assessment or fine becomes due. Recording of this Declaration constitutes Record notice and perfection of the lien. The assessment lien shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances Recorded before the Recordation of this Declaration, except for the Priority Lien, a First Security Interest on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. The assessment lien is also prior to all First Security Interests on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent to the extent of Common Assessments based on the Budget adopted by the Association which would have become due in the absence of acceleration during the six months immediately preceding institution of action to enforce the lien ("Priority Lien"). The above provisions of this Section 6.15 shall not affect the priority of mechanic's or materialman's liens or the priority of liens for other assessments by the Association. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full number of assessments becomes due. The sale or transfer of any Lot shall not affect or extinguish an assessment lien, except for sale or transfer pursuant to judicial or non-judicial foreclosure of a First Mortgage, which shall, except for the Priority Lien, extinguish the lien for all assessments coming due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Lot obtains title pursuant to a judicial or non-judicial foreclosure or "deed in lieu thereof," the Person who obtains title

and such Person's successors and assigns shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all Lots, including the Lot belonging to such Person and such Person's successors and assigns.

6.16 DECLARANT'S OBLIGATION FOR COMMON EXPENSES AND ASSESSMENTS

Until the Association commences Common Assessments as provided in Section 6.5, the Declarant shall pay all Common Expenses. After Common Assessments commence, the Declarant shall be entitled to credit against and deduct from any assessments payable by Declarant the reasonable value of "in-kind" contributions to the Association, including, without limitation, materials and management, accounting, administrative, maintenance of the Common Elements and other services. After Common Assessments commence, Declarant shall be entitled, but shall not be obligated, from time to time to pay all or any portion of the Common Expenses as a subsidy, which at Declarant's election, may be treated as a loan or an advance against future assessments payable by Declarant. The amount of any such subsidy shall be disclosed in the Budget.

ARTICLE VII.

ARCHITECTURAL REVIEW COMMITTEE

7.1 ORGANIZATION, POWER OF APPOINTMENT AND REMOVAL OF MEMBERS

An Architectural Review Committee ("ARC") shall be organized and shall consist of three members. None of the members shall be required to be an architect or to meet any other qualifications for membership. Unless the members of the ARC have resigned or been removed, their term of office shall be for a period of one year, or until the appointment of their respective successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed. The right to appoint and remove all members of the ARC, at any time, shall be and is hereby vested solely in Declarant, for so long as Declarant owns any property in the Project or Annexable Area. When Declarant no longer owns any property in the Project or Annexable Area, the Board of Directors shall have the power to appoint, remove and/or replace such members. Unless and until such members are appointed by the Board of Directors, the Board of Directors shall function as the ARC. The Board of Directors may but need not appoint members to serve on the ARC. Any member of the ARC may at any time resign from the ARC by giving written notice thereof to the other members. Vacancies on the ARC, however caused, shall be filled by Declarant, for so long as Declarant owns any property in the Project or Annexable Area and thereafter by majority vote of the Owners. A vacancy or vacancies on the ARC shall be deemed to exist in the case of death, resignation, or removal of any member

7.2 DUTIES

It shall be the duty of the ARC to consider and act upon any proposals or plans submitted to it pursuant to the terms hereof, to adopt ARC Rules and to carry out all other duties imposed upon it by this Declaration. Any decision of the ARC may be reviewed and overruled by the Board of Directors. The Board of Directors may, at its discretion, review any action of the ARC, and if it deems necessary, overrule, or reverse the ARC's action. At a minimum, all plans must include specifications for 1,200 square feet of livable space on the ground floor of any proposed Residence.

7.3 MEETINGS AND COMPENSATION

The ARC shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two members, at a meeting or otherwise, shall constitute the act of the ARC. The ARC shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the ARC shall not be entitled to compensation for their services.

7.4 ARC RULES

(a) The ARC may, from time to time and in its sole and absolute discretion, adopt, amend, and repeal, by written consent, rules, and regulations, to be known as "ARC Rules". The ARC Rules shall interpret and implement this Declaration by setting forth the standards and procedures for ARC review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features which are recommended for use within the Project.

(b) As part of the ARC Rules, as a condition to the approval of an Owner's request, the ARC may adopt a schedule that the Association requires an Owner to adhere to for: (a) the completion of the design of a Unit or the design of an Improvement to a Unit; (b) the commencement of the construction of a Unit or the construction of an Improvement to a Unit; (c) the completion of the construction of a Unit or the construction of an Improvement; or (d) the issuance of a permit which is necessary for the occupancy of a Unit or for the use of an Improvement to the Unit.

The Association may impose and enforce a construction penalty against an Owner who fails to adhere to the schedule required by the ARC so long as the maximum amount of the construction penalty and the required schedule are set forth in either this Declaration, another document related to the Project that is recorded before the date on which the Owner acquired title to the Unit; or a contract between the Owner and the Association; and the Owner receives notice of the alleged violation which informs the Owner that he has a right to a hearing on the alleged violation. For the purposes of any provision of Idaho Code, the above-referenced construction penalty is not a fine.

(c) Under no circumstances may the Association or the ARC: 1) unreasonably restrict, prohibit or otherwise impede the lawful rights of an Owner to have reasonable access to his Unit; 2) unreasonably restrict, prohibit or withhold approval for an Owner to add to a Unit: (i) improvements such as ramps, railings or elevators that are necessary to improve access to the Unit for any Owner or occupant who has a disability; (ii) additional locks to improve the security of a Unit; or (iii) shutters to improve the security of the Unit or to aid in reducing the- costs of energy for the Unit.

(d) Neither the ARC nor the Association, with regard to approving or disapproving any alteration or improvement made to any Unit, shall act in violation of any state or federal law.

(e) Any improvement or alteration made pursuant to subsection (c) above that is visible from any other portion of the Project must be installed, constructed or added in accordance with the procedures set forth in the ARC Rules and must be selected and designed to the maximum extent practicable to be compatible with the style of the Project

7.5 WAIVER

The approval by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the ARC under this Declaration, shall not constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

7.6 LIABILITY

Neither the ARC nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Project, or (d) the execution and Recording of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of an ARC member, such member has acted in good faith on the basis of such information as may be possessed by such member. Without in any way limiting the generality of any of the foregoing provisions of this Section 7.6, the ARC, or any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ARC.

7.7 TIME FOR APPROVAL

In the event the ARC fails to approve or disapprove any matter requiring its review under this Declaration or the ARC Rules within 45 days after all relevant plans, drawings, specifications and other materials requested by the ARC in connection therewith have been submitted to it, approval will not be required.

ARTICLE VIII.

DAMAGE, DESTRUCTION, OR CONDEMNATION

OF COMMON ELEMENTS

Damage to, and destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner:

8.1 DAMAGE BY MEMBER

To the extent permitted by law, each Member shall be liable to the Association and the Association may, after Notice and Hearing, assess a Special Assessment, for any damage to Common Elements not fully reimbursed to the Association by insurance; provided, the damage is sustained as a result of the negligence, willful misconduct or unauthorized or improper use, installation or maintenance of any Improvement by the Member, the Member's Family, guests, - tenants or invitees, or any other Persons deriving their right to the use and enjoyment of the Common Elements from the Member, or such Member's respective Family and guests.

8.2 REPAIR OR REPLACEMENT OF DAMAGES OR DESTROYED PORTION OF THE PROJECT

(a) Any portion of Project which the Association is required to insure, and which is damaged or destroyed shall be repaired or replaced promptly by the Association unless:

(i) The Project is terminated as a common interest community (as defined in the Act);

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(iii) The approval not to rebuild is obtained within 90 days after the loss from 80% of the Owners.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

(b) If the entire Project is not repaired or replaced, (i) the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, (ii) the proceeds attributable to Residences that

are not rebuilt must be distributed to Owners of those Residences, and (iii) the remainder of the proceeds must be distributed in proportion to the liabilities of all Lots for Common Expenses.

8.3 CONDEMNATION

If at any time, all or any portion of Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

ARTICLE IX.

INTEREST, SPECIAL RIGHTS AND EXEMPTION OF DECLARANT

9.1 INTEREST OF DECLARANT

Declarant has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, the covenants, conditions, Restrictions, reservations, and other matters contained in this Declaration along with any amendments thereto. Consequently, until the later of such time as Declarant no longer owns any real property in the Project or the Annexable Area, the following actions, before being undertaken by the Members or by the Association, shall first be approved in writing by Declarant:

- (a) Any amendment of this Declaration;
- (b) The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Common Elements;
- (c) Any significant reduction of Association maintenance or other services;
- (d) Any termination or change of a Manager.

9.2 SPECIAL RIGHTS OF DECLARANT

Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner (except Declarant), or the Association or other Person shall do anything to interfere with, the right of Declarant to exercise any Developmental Rights or to develop all or any portion of the Project, including, without limitation the right to subdivide or re subdivide any portion of the Project or the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project for so long as any property in the Project or in the Annexable Area is owned by Declarant.

(b) Declarant shall, in its sole discretion, have the right to purchase additional property and to add such Lots to the Annexable Area described in Exhibit B of the Declaration, thereby causing the additional Lots to be governed by the Declaration and the Owners of such Lots to be included in the Association.

(c) This Declaration shall in no way limit the right of Declarant to (i) grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others as may from time to time be reasonably necessary to the proper development and disposal of Lots; (ii) use all or any portion of the Common Elements or Lots owned by Declarant for sales facilities, model homes, offices, signs, special promotions, marketing, advertising and for such other use as is, in Declarant's sole

discretion, necessary, appropriate, convenient or incidental to the development, construction, sale or management of the Project or any part thereof; and (iii) access the Common Elements for the purpose of making Improvements therein or in the Project or Annexable Area..

(d) Declarant need not seek or obtain Architectural Review Committee approval of any Improvement constructed or placed in any part of the Project by Declarant.

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) Notwithstanding any other provision of this Declaration, the prior approval of Declarant, as developer of the Project, will be required before any amendment to this Article IX shall be effective.

(g) Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article IX. Declarant and its prospective purchasers of Lots shall be entitled to the nonexclusive use of the Common Elements without further cost for access, ingress, egress, use or enjoyment, in order to show the Project to its prospective purchasers, to dispose of the Lots, and to develop and sell Lots in any Phase of Development.

(h) Declarant shall, at its option, have the right to maintain and improve the Common Elements in accordance with the standards set forth herein. Declarant may assign the right and obligation to maintain the Common Elements to the Association and the Association shall assume the right and obligation to maintain the Common Elements by mutual execution of an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit E and by this reference incorporated herein ("Assignment and Assumption Agreement").

(i) The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration; provided, however, that Declarant shall be provided with such notices and other documents without making written request therefor.

(j) The rights and reservations of Declarant referred to in this Section 9.2 shall terminate on the earlier of (i) the date Declarant shall no longer own any property in the Project or the Annexable Area or (ii) with respect to Declarant's rights and reservations, the date Declarant shall voluntarily terminate in writing its rights hereunder (which termination shall be effective only as to the specific rights so terminated).

ARTICLE X.

INSURANCE

10.1 DUTY TO OBTAIN INSURANCE; TYPES

Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Board of Directors shall cause to be obtained and maintained (a) adequate blanket public liability insurance (including medical payments), *with* such limits as the Board of Directors in its discretion considers prudent covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and (b) to the extent the Common Elements are insurable, fire and casualty insurance with extended coverage, insuring against all risks of direct physical loss commonly insured against, without deduction for depreciation, in an amount not less than 80% (or such higher percentage as FNMA, VA, FHA, FHLMC or GNMA may require) of the actual cash value of the Common Element Improvements at

the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from fire and casualty policies. However, the Board of Directors shall not be required to obtain such casualty insurance if there are no material Improvements constructed on the Common Elements. If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Such insurance shall, to the extent reasonably available, provide that each Owner is an insured Person under such policy with respect to liability arising out of such Owner's interest in the Common Elements or Membership in the Association. The Board of Directors may purchase such other insurance as it shall deem necessary or appropriate, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks shall customarily or reasonably be covered with respect to projects similar in construction, location, and use. Fidelity bond coverage shall be obtained to cover such persons and in such amounts as the Board of Directors shall require, Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FHA, VA, FBLMC, FNMA, GNMA or any similar entity, so long as any of them is an Owner of a Lot or holder or insurer of a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the FHA, VA, FBLMC, FNMA, GNMA or such other similar entity, as applicable. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request.

10.2 WAIVER OF CLAIMS AGAINST ASSOCIATION

As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such Persons, except as may be provided elsewhere in this Declaration.

10.3 NOTICE OF EXPIRATION REQUIREMENT

If available, all of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not expire or be canceled, terminated, or materially modified without 30 days prior written notice to the Board of Directors, Declarant, Owners and those holders or insurers of First Mortgages who have filed a written request with the carrier for such notice, and every other Person in interest who requires such notice of the insurer.

10.4 INSURANCE PREMIUMS

The cost of fidelity bonds and insurance premiums for any insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense.

10.5 TRUSTEE FOR POLICIES

The Association, acting through its Board of Directors, is hereby appointed, and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under the policies provided for in Section 10.1 shall be paid to the Board of Directors as trustee and not to any Mortgagee. The

Board of Directors shall hold any proceeds in trust for the Association, Owners and Mortgagee as their interests may appear. The Board of Directors shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Subject to the provisions of Article VIII, insurance proceeds shall first be used by the Association for the repair or replacement of the property for which the insurance was carried and the Association, Owners and Mortgagee shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated as a common interest community, as defined in the Act. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board of Directors, including a trustee or any successor to such trustee, with whom the Association may enter into an insurance trust agreement, who shall have such authority as is delegated by the Board of Directors to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

10.6 ACTIONS FOR TRUSTEE

Except as otherwise specifically provided in this Declaration, the Board of Directors, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a claim and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

10.7 ANNUAL INSURANCE REVIEW

The Board of Directors shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount and type of the insurance to be carried pursuant to Section 10.1 and, to the extent and at the times deemed necessary by the Board of Directors, shall obtain an evaluation or appraisal of the insured property.

10.8 REQUIRED WAIVER

All policies of insurance shall provide, to the extent reasonably available, for waiver of the following rights to the extent that the respective insurers would have the rights without such waivers: (a) subrogation of claims against the Owners, the Owner's Family and tenants of the Owners; (b) any defense or limitation of coverage based upon co-insurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity, other adverse effect or defense as a result of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of the insurer to repair, rebuild, or replace, and, if the Improvement is not repaired, rebuilt, or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (f) notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Lot; (g) any right to require any assignment of any Mortgage to the insurer; and (h) any right to void the policy or condition recovery under the policy due to an act or omission by any Owner unless such Owner was acting within the scope of the Owner's authority on behalf of the Association.

10.9 OWNER'S INSURANCE

The Association shall have no obligation to maintain any insurance other than the insurance required to be maintained by the Association pursuant to Section 10.1. By accepting title to such Owner's Lot, each Owner (other than Declarant) covenants and agrees to maintain property insurance for the full replacement cost of all insurable Improvements on such Owner's Lot, with a reasonable deductible thereon, and liability insurance covering all risks to Persons or property on such Owner's Lot. All insurance other than the insurance required to be maintained by the Association hereunder shall be the responsibility of the Owner of the property or interest to be insured. To the extent reasonably available, policies maintained by the Association shall provide that if at any time of a loss under such policies, there is other insurance in the name of an Owner covering the same risk covered by such policy, the Association's policy provides primary insurance. Each Owner further covenants and agrees that in the event of damage to or destruction of Improvements on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Review Committee. Alternatively, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

10.10 INSURANCE RATES

Nothing shall be done or kept in the Project which will increase the rate of insurance on any Lot, or other portion of the Project without the approval of the Board of Directors, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any Lot, or other portion of the Project or which would be in violation of any law.

ARTICLE XI.

GENERAL RESTRICTIONS AND EASEMENTS

Subject to and except for the exemptions and special rights of Declarant as set forth herein and without limiting any other provision of this Declaration, all real property within the Project shall be held, used and enjoyed subject to the following easements, limitations and Restrictions:

11.1 SINGLE FAMILY RESIDENTIAL USE

Except for the Common Elements, all of the Project shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade, or other non-residential use shall be conducted on any of the Project. Nothing herein shall be deemed to prevent the leasing of a Lot from time to time by the Owner thereof subject to all of the provisions of this Declaration. No structure whatsoever, other than one private Single-Family Residence, together with a private garage, whether attached or "casita"-style detached (as constructed by Declarant) shall be erected, placed, or permitted to remain on any Single-Family Residential Lot. Lots owned by Declarant may be used as model homes for sales and construction offices for the purpose of enabling Declarant to sell Lots, until such time as all of the Lots owned by Declarant have been sold to public purchasers.

11.2 UTILITY SERVICE

No lines, wires, or other devices for the transmission of electric current or power, including, without limitation, telephone, shall be erected placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved

by the ARC. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ARC.

11.3 IMPROVEMENTS AND ALTERATIONS

No Improvements, alterations, repairs, painting, excavation or other work which in any way alters the exterior appearance of any Lot or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed or transferred by Declarant to a public purchaser shall be made or done without the prior approval of the ARC, except as otherwise expressly provided in this Declaration. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the ARC. Pursuant to its rule making power, the ARC shall establish a procedure for the preparation, submission, and determination of applications for any such alteration or Improvement. The ARC shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the budding or other structure as planned on the outlook from the adjacent or neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARC. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARC. All decisions of the ARC shall be final, and no Owner or other parties shall have recourse against the ARC or any of its members, for or with respect to any decisions made in good faith. Notwithstanding anything contained in the Restrictions and unless otherwise permitted by applicable law, there shall be no covenant, restriction or condition that prohibits or unreasonably restricts any Owner from using a system for obtaining solar energy. "Unreasonably restricting the use of a system for obtaining solar energy" shall mean placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and comparable efficiency and performance.

11.4 OVERHANGS

No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or to otherwise encroach upon any other Lot.

11.5 UTILITY EASEMENTS

There is hereby created a blanket easement upon, across and under the Project for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines or systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Project and subject to Section 11.2, to affix and maintain wires, circuits, and conduits in the Project. Notwithstanding anything to the contrary contained in this Section 11.5, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Project except as initially developed and approved by Declarant or thereafter approved by the ARC. This easement shall in no way affect any other Recorded easements on the Project. This easement shall be limited to Improvements as originally constructed.

11.6 NUISANCES

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any Lot. The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. The discharge of firearms, including without limitation, "B-B" guns and pellet guns, is prohibited. On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. All basketball hoops, bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on Lots so as to be visible from adjacent property when not in use. Barbeques are not to be visible from common area line-of-sight. Reflective window coverings are prohibited. Blinds and drapes shall be subject to regulation of the Association and ARC. No blankets or cardboard may be displayed in any window that is visible from the street or adjacent Lots.

11.7 DISEASES AND INSECTS

No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

11.8 PARTY WALLS AND FENCE

The rights and duties of Owners with respect to party walls or party fences, which are constructed as part of initial construction, shall be as follows:

(a) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment by the other Owner.

(b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, or any of its agents or guests or members of its Family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Owner or Owners.

(c) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, its agents, guests or Family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the ARC, the decision of which shall be binding.

(f) Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter its Lot for the purpose of repairing or maintaining a party

wall or party fence or for the purpose of performing installation, alterations or repairs to the property of such adjoining Owners, provided that requests for entry are at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section 11.8(f) shall not be deemed guilty of trespass by reason of such entry.

(g) Surfaces of party walls or party fences on property which are generally accessible or viewable from only the adjoining property may be planted against, painted, maintained, and used by the adjoining Owners. If such surfaces are viewable from public streets, the color scheme shall not be changed without the prior written consent of the ARC.

(h) In the event that any of the Project perimeter fencing on a Lot is damaged or destroyed, it shall be the obligation of the Owner of such Lot to rebuild and/or repair such perimeter fence so that the exterior surface will match in material and color the surface of the perimeter fence of the Project. The right to and obligation for contribution for costs among Owners shall run with the land.

11.9 DRAINAGE EASEMENT

There is hereby created a blanket easement for drainage of ground water on, over and across the Project. No Owner shall obstruct, divert, alter, or interfere in any way with the drainage of water upon, across or over any portion of the Project. Each Owner shall, at its own expense, maintain the drainage ways and channels on his Lot in proper condition free from obstruction.

11.10 EASEMENT FOR SUBSEQUENT CONSTRUCTION

There is hereby created an easement running in favor of Declarant and its agents, employees, or independent contractors, to enter upon any portion of the Project for the purpose of constructing or installing Improvements.

11.11 DECLARANT'S EXEMPTION

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of Improvements or signs necessary or convenient to the development or sale of Lots.

11.12 ANTENNAS

Antennas located within the Project shall be limited and restricted as set forth in the ARC Rules

11.13 VARIANCES

The ARC shall have the authority to grant variances from the Restrictions in this Article XI as is reasonably necessary for the health, safety, and welfare of the Owners.

11.14 MAINTENANCE

Each Owner shall, at such Owner's expense, keep his Lot and its landscaping, Improvements and appurtenances in good, clean, attractive, and sanitary order and condition, except for any Common Elements which are to be maintained by Declarant and/or the Association pursuant hereto.

11.15 DISPLAY OF FLAG

Notwithstanding any provision of the Articles, Bylaws or this Declaration to the contrary, and except as otherwise provided in this section, an Owner is entitled to display the flag of the United States in a manner consistent with the Federal Flag Code from or on: (a) a flagpole

or staff which is located on exterior property within the boundaries of the Unit or which is attached to an exterior Limited Common Element that forms a part of the boundaries of the Unit; or (b) a window, ledge, sill, railing, patio, terrace or balcony of the Unit or an exterior Limited Common Element that forms a part of the boundaries of the Unit, whether or not the flag is displayed from a flagpole or staff.

The Association may adopt rules that prohibit the display of the flag of the United States in a manner inconsistent with the Federal Flag Code. The Association also may adopt rules that prohibit the display of the flag of the United States if the flag exceeds 4 feet in its vertical dimension or 6 feet in its horizontal dimension. For the purposes of this provision, the horizontal dimension of the flag is the dimension that is parallel with the horizontal stripes of the flag, regardless of the position in which the flag is displayed. The Association may establish a maximum number of flags of the United States that may be displayed from, on or around the exterior of a Unit. The maximum number may be one. The Association may adopt rules that prohibit the display of the flag of the United States from a flagpole or staff that exceeds 25 feet in height. The Association also may adopt rules that prohibit the display of the flag of the United States in a manner that poses a real and substantial danger to health or safety.

As used in this section, "Federal Flag Code" means the rules and customs pertaining to the display and use of the flag of the United States which are codified in 4 U.S.C. sections 5 through 10 inclusive, as altered, modified, or repealed by the President of the United States pursuant to 4 U.S.C. section 10, and any additional rules pertaining to the display and use of the flag of the United States which are prescribed by the President pursuant to 4 U.S.C. section 10.

As used in this section, "flag of the United States" does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component or material. As used in this section, a "flag of the United States" must be made of cloth, fabric, or paper.

11.16 PARKING AND VEHICULAR RESTRICTIONS

Owners shall use their garage for primary parking purposes. To the extent that parking for a second licensed, registered, and operable standard vehicle and to the extent that the driveway is at least twenty (20) feet in length or more, the vehicle may be parked on the Owner's driveway. For the purposes of this section, "operable standard vehicle" shall mean any passenger car, motorcycle, or truck of up to three quarter (3/4) tons used for everyday transportation, subject to the approval of the Board of Directors. No Owner shall park, store, or keep within the Project any inoperable, unlicensed, or unregistered vehicle, or any commercial vehicle, unless such inoperable, unlicensed, unregistered, or commercial vehicle is stored in Owner's garage. For the purposes of the foregoing, a "commercial vehicle" shall include any vehicle with a sign displayed on any part of the vehicle; any vehicle upon which a rack is mounted, or a ladder, tools or other materials are visible; any vehicle used as a dump truck, cement mixer truck, oil or gas truck or delivery truck; any vehicle with body type normally employed as a commercial vehicle, whether or not a sign is displayed thereon; any truck greater than one ton capacity; any van other than one used solely as a family passenger vehicle. A commercial vehicle may be defined as such without regard to whether such vehicle has a commercial license plate.

Garage doors shall not be kept open. On-street parking shall be restricted to those areas where the street is 37 feet or more in width.

No Owner shall park, store or keep on his Lot any recreational vehicle, including, but not limited to, any camper, motor home, bus, trailer, boat, and any vehicle deemed by

the Board of Directors to be a recreational vehicle ("Recreational Vehicle"). The definition of Recreational Vehicle excludes trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday transportation purposes, subject to the approval of the Board of Directors. There is no recreational vehicle parking area in the Project.

The foregoing notwithstanding, no Owner shall park, store, or keep anywhere within the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors. The Board of Directors shall have the power to enforce all parking and vehicle use restrictions applicable to the Project, including but not limited to removing vehicles which violate the provisions of this section and levying fines as may be appropriate.

No Owner shall repair his vehicle anywhere, at any time, within the Project, except inside Owner's garage, with the garage door closed at all times.

11.17 PETS AND ANIMALS

Each and every Owner shall keep all pets and animals inside Owner's Unit unless such pet or animal is on a leash and supervised by Owner at all times. Owners may not keep any animal for any farm or commercial purpose within the Unit or the Project at any time. Owner shall not permit any pet or animal to urinate or defecate anywhere within the Project. Each and every Owner shall control noise caused by all pets and animals residing with Owner.

11.18 EXTERIOR IMPROVEMENTS

Owner must submit plans and specifications and obtain prior written approval from the ARC for the installation of any exterior Improvement, including but not limited to swimming pools, spas and patio covers. Amongst other requirements, Owner shall cause adjacent and impacted neighbors to be notified of such submission to ARC and submit a "Home Improvement Form", which includes an "Impacted Neighbor Notification Form" to the ARC before the installation of any exterior Improvement. ARC may impose such conditions as it deems necessary and appropriate to assure that the construction of any such exterior Improvement shall not adversely impact the Project or neighboring and adjacent Owners.

ARTICLE XII.

MISCELLANEOUS

12.1 TERM

The provisions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, successors and assigns, for a term of 50 years from the date of Recordation of this Declaration, after which time such provisions shall be automatically extended for successive periods of ten years unless a declaration of termination meeting the requirements of an amendment to this Declaration as set forth in Section 12.2 of this Article has been Recorded.

12.2 AMENDMENTS

(a) *By Declarant.* Prior to the transfer of all Lots to Owners other than Declarant the provisions of this Declaration may be amended or terminated unilaterally by Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination.

(b) *By Members.* After the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration, with the written consent of Declarant so long as Declarant owns any property in the Project or the Annexable Area, may be amended by the Recordation of a certificate, signed and acknowledged by the Declarant (if Declarant's consent is required) and

the president and secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by 67% of the voting power of the Association and the requisite percentage of holders and insurers of First Mortgages required hereunder, if any.

(c) *Approval of First Mortgages.* Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by the Record holders and insurers of the First Mortgages requesting in writing notice of amendments, based upon one vote for each Mortgage owned or insured:

(i) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to holders, insurers and guarantors of First Mortgages as provided herein;

(ii) Any amendment which would necessitate an encumbrance, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;

(iii) Any amendment which would or could result in an encumbrance being canceled by forfeiture or in the individual Lot not being separately assessed for tax purposes;

(iv) Any amendment relating to the insurance provisions or to the application of insurance proceeds as set out in Article X hereof or to the disposition of any money received in any taking under condemnation proceedings;

(v) Any amendment which would or could result in partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration;

(vi) Any amendment concerning voting rights, the method of allocation of interests in Common Elements, rights to use the Common Elements, responsibility for maintenance, repair, and replacement of the Common Elements, the right of annexation to the Project, boundaries of any Lot, the conversion of Lots into Common Elements or Common Elements into Lots, leasing of Lots and the establishment of self-management by the Association where professional management has been required by any institutional holder or insurer of a First Mortgage;

(vii) Any amendment resulting in an increase of more than 25% of the Common Assessment over the prior Assessment Year and any amendment affecting assessment liens or the priority thereof; and

(viii) Any amendment imposing Restrictions on the leasing of or right to sell or transfer Lots.

(d) *Other Amendments.*

(i) Anything in this Article XII to the contrary notwithstanding. Declarant reserves the right at any time to amend all or any part of this Declaration to such an extent and with such language (1) as may be requested by the FHA or the VA, (2) requested by any other federal, state or local governmental or public agencies which request such amendments as a condition precedent to such agency's approval of this Declaration, and (3) to bring any provision hereof into compliance with applicable law. Any provision contained in this Declaration, the Articles or Bylaws, or other governing document of the Association that violates any provision of Idaho Code shall be deemed to conform with that provision of Idaho Code by operation of law, and such document is not required to be amended to conform to that provision. Any such amendment shall be effectuated by the Recordation, by Declarant, of a certificate of amendment duly signed by an authorized agent or authorized officer of Declarant, as applicable, with

the signatures acknowledged, specifying the reason for such amendment and setting forth the amendment. Recordation of such a certificate shall be binding upon all of the Project and all Persons having an interest therein.

(ii) It is the desire of Declarant to retain certain controls over the Association and its activities during the anticipated period of planning and development of the Project. If any amendment requested pursuant to the provisions of this Section 12.2(d) deletes, diminishes, or alters such controls, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other, and different control provisions.

(iii) In the event this Declaration is Recorded or used for any purpose prior to having been approved by the FHA, the VA or any governmental or public agency with jurisdiction, Declarant shall have the absolute right to amend the provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly Recorded.

(e) Any action to challenge the validity of any amendment of the Declaration must be brought or filed within one year after the date of Recordation of such amendment or such amendment shall be conclusively presumed to have been validly made.

12.3 MORTGAGEE PROTECTION

Notwithstanding any other provision of this Declaration, except for the Priority Lien provided in Section 6.15, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any First Mortgage upon a Lot made in good faith and for value, and Recorded prior to the Recordation of such amendment, provided that after the foreclosure of any such First Mortgage such Lot shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce the FHA and the VA to participate in the financing of the sale of Single Family Residential Lots within the Project, the following provisions shall apply (and to the extent the provisions of this Section 12.3 shall conflict with any other provisions of this Declaration or any other of the Restrictions, the provisions of this Section 12.3 shall control):

(a) Each holder, insurer and guarantor of a First Mortgage encumbering any Lot, upon filing a written request for notification with the Board of Directors, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles or Bylaws, if such default is not cured within 30 days after the Association learns of such defaults.

(b) Except for the Priority Lien described in Section 6.15, each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to either judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges pursuant to this Declaration against such Lot which accrued prior to the acquisition of title by the First Mortgagee to such Lot.

(c) When professional management has been previously required by a holder, insurer or guarantor of a First Mortgage, any decision to undertake self-management by the Association shall require the prior approval of a majority of votes cast at a meeting of Members at which a Quorum is present and the holders of 51% of the First Mortgages on Lots that have filed a written request for notice with the Board of Directors.

(d) Unless at least 51% of the First Mortgagees that have filed a written request for notice with the Board of Directors have given their prior written approval, neither the Association nor the Owners shall:

- (i) Subject to any provisions of the Idaho non-profit corporation law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or the improvements thereon which are owned, directly or indirectly, by the Association (the granting of licenses to a governmental entity or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause);
 - (ii) Change the method of allocating distributions of hazard insurance proceeds or condemnation awards;
 - (iii) Fail to maintain fire and extended coverage insurance on insurable Common Elements in the amount set forth in Section 10.1;
 - (iv) Terminate the Project as a common interest community (as defined in the Act) for any reason; or
 - (v) Amend this Declaration or the Articles or Bylaws in such a manner that the rights of any First Mortgagee will be adversely affected.
- (e) All holders, insurers and guarantors of First Mortgages on Lots, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours, (ii) require from the Association the submission of an annual financial statement within 120 days after the end of each fiscal year (without expense to the holder, insurer or guarantor requesting such statement) and other financial data concerning the Association, (iii) receive written notice of all meetings of the Members, and (iv) designate in writing a non-voting representative to attend all such meetings.
- (f) All holders, insurers and guarantors of First Mortgages of Lots who have a written request on file with the Association shall be given (i) 30 days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Project following a decision of the Owners to assume self-management of the Project; and (ii) immediate written notice as soon as the Board of Directors receives notice or otherwise learns of any damage to the Common Elements where the cost of reconstruction exceeds \$75,000, and as soon as the Board of Directors receives notice or otherwise learns of any condemnation or eminent domain proceedings for acquisition of any portion of the Project.
- (g) Any First Mortgagee may, jointly or singly, pay taxes or other charges which are in default, and which may or have become a charge against any Common Elements and may pay any overdue premiums on hand insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and the First Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.
- (h) Any agreement between the Association and its professional Manager, or any agreement providing for services by Declarant to the Association, shall provide that the contract may be terminated for cause on not more than 30 days written notice, and may not be terminated without cause except upon 60 days written notice prior to the end of the then current two-year term, and shall become effective upon expiration of that term.
- (i) If required by any holder, insurer or guarantor of a First Mortgage on a Lot, the Board of Directors shall secure and cause to be maintained in force at all times a fidelity bond for any Person or entity handling funds of the Association, including but not limited to, employees of any professional Manager.

(j) Any agreement for the leasing or rental of a Lot shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws; All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Declaration, the Articles and Bylaws shall be a default under the agreement.

(k) In addition to the foregoing, the Board of Directors may, in its sole discretion, enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHA, VA, FHLMC, FNMA, GNMA or any similar entity so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of First Mortgages encumbering Lots with Residences thereon. Each Owner hereby agrees that it will benefit the Association and the Membership of the Association as a class of potential Mortgage borrowers and potential sellers of their respective Lots if such agencies approve the Project as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board of Directors concerning the status of any Mortgage encumbering a Lot.

(l) Any termination of the Project as a "common interest community" (as defined in the Act) shall require the approval of (i) Declarant, so long as Declarant owns any portion of the Project or Annexable Area, and (ii) 67% of the total voting power of the Association.

12.4 MORTGAGEE APPROVAL

Notwithstanding anything to the contrary herein, any approval of any Mortgagee or any other holder, insurer or guarantor of any Mortgage required under this Declaration (excluding approval by the FHA or VA) shall be deemed given if no written notice of disapproval is received by the Association within 30 days following written request for approval by the Association to such Mortgagee or other holder, insurer or guarantor of a Mortgage, which request shall be sent by certified mail.

12.5 NOTICES

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally, by mail or by telecopy. For the purposes of this provision, personal delivery shall include service by a reputable overnight carrier which provides a receipt indicating date and time of delivery, location of delivery and person to whom transmitted. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. If delivery is made by telecopy, it shall be deemed to have been delivered when sent. Any notice sent by telecopy must be confirmed within 48 hours by letter mailed or personally delivered in accordance with the foregoing. Notwithstanding anything to the contrary herein, each Person entitled to notice under this Declaration shall be entitled to specify only one address, telecopy number or combination thereof at which to receive notice, which address and number shall be located in the United States.

12.6 ENFORCEMENT AND NON-WAIVER

(a) *Right of Enforcement.* Except as otherwise expressly provided herein, the Association, any Owner and Declarant (so long as Declarant shall own any portion of the Project or the Annexable Area), shall have the right to enforce any or all of the provisions of the Restrictions against any property within the Project and the Owners thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of the Restrictions. Each Owner and Declarant (so long as Declarant shall own any portion of the Project or the

Annexable Area) shall have a right of action against the Association for its failure to comply with the Restrictions.

(b) *Violations and Nuisance.* Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Person entitled to enforce the Restrictions.

(c) *Violation of Law.* Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

(d) *Remedies Cumulative.* Each remedy provided herein and by the Restrictions is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien, bring a suit at law to enforce each assessment obligation.

(e) *Non-Waiver.* The failure of the Association to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions.

(f) *Attorneys' Fees.* Any judgment rendered in any action, arbitration or proceeding in connection with this Declaration shall include a sum for attorneys' fees in such amount as the court or arbitrator may deem reasonable, in favor of the prevailing party, as well as the amount of delinquent payment (if applicable), interest thereon, late charges (if any) and court or arbitration costs.

12.7 MANDATORY DISPUTE RESOLUTION

Notwithstanding anything to the contrary herein, prior to bringing any action or proceeding relating to *this* Declaration or the Association to which Idaho Code Title 9 Chapter 8 applies, the Association and all Owners shall comply in all respects with the requirements of Idaho Code 9-801 *et seq.*

12.8 INTERPRETATION

(a) *Restrictions Construed Together.* All of the provisions of this Declaration shall be independent and several and shall be liberally construed with the other provisions herein to promote and effectuate the fundamental concepts of the Project as set forth in this Declaration. This Declaration shall be construed and governed by the laws of the State of Idaho. The inclusion in this Declaration, the Articles, the Bylaws, or any other governing document of the Association of a provision that violates any provision of Idaho Code does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions of the governing document can be given effect in accordance with their original intent and the provisions of Idaho Code.

(b) *Singular Includes Plural; Gender Specification.* Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) *Captions.* All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

(d) *Scope.* All references to sections, schedules and exhibits are to sections, schedules, and exhibits in or to this Declaration unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when

used in this Declaration shall refer to this Declaration as a whole and not to any particular provision of this Declaration.

12.9 NO PUBLIC DEDICATION

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project to the public, or for any public use.

12.10 CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, Restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Project, or any portion thereof.

12.11 NO PRESENTATIONS OR WARRANTIES

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Project or any portion of the Project, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance or taxes, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Agency or with any other governmental or public authority having jurisdiction thereof. Nothing in this Declaration shall obligate the Declarant to develop any portion of the Project or the Annexable Area as currently planned or to annex all or any portion of the Annexable Area.

12.12 NON-LIABILITY AND INDEMNIFICATION

Except as specifically provided in the Restrictions or provided by law, no right, power, or responsibility conferred on the Board of Directors or the Architectural Review Committee by this Declaration, the Articles or Bylaws shall be construed as a duty, obligation or disability charged upon the Board of Directors, the Architectural Review Committee, any member of the Board of Directors or of the Architectural Review Committee, or any other officer, employee, consultant or agent of the Association. No such Person shall be liable to any party for injuries or damage resulting from such Person's acts or omissions, either within what such Person reasonably believes to be the scope of his Association duties, or actually within the scope of such duties, except to the extent that such injuries or damage result from such Person's willful or wanton misfeasance or gross negligence. The Association shall indemnify and hold harmless any such Person for all losses, claims, damages, obligations, fines and penalties, and pay all costs of defense, arising from such Person's acts or omissions either when acting within what such Person reasonably believed to be within the scope of his Association duties, or when actually acting with the scope of such duties, unless and until it is proven in a court of appropriate jurisdiction that such Person acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association shall no longer be liable for the cost of defense and may recover from such Person costs previously expended by Association on such Person's behalf. The Declarant, the Association, the members of the Board of Directors and the members of the Architectural Review Committee and all other officers, employees, consultants and agents of any of them are not liable to the victims of crimes occurring on or about the Project. Punitive damages may not be recovered against the Association, but may be recovered from Persons who caused such damages to the extent provided by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

12.13 FHA/VA APPROVAL

In the event Declarant obtains VA or FHA approval of the Project, for so long as Declarant has effective control of the Association, the following actions will require the prior approval of the FHA and the VA, as applicable: (a) annexation of any Annexable Area that is intended to include Lots encumbered by Mortgages insured or guaranteed by the FHA or VA, (b) dedication, conveyance or Mortgage of Common Elements; (c) any amendment of this Declaration materially affecting or impairing the interests of the FHA or VA, and (d) any merger, consolidation or dissolution of the Association.

12.14 PRIORITIES AND INCONSISTENCIES

If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

12.15 INTERPRETATION OF RESTRICTIONS

All questions or interpretation of the Restrictions, shall be resolved by Declarant, for so long as Declarant owns any property in the Project or Annexable Area, and thereafter by the Board of Directors, and their decision shall be final, binding and conclusive on all the parties affected.

12.16 SEVERABILITY

Invalidation of any provision in this Declaration by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Brian Ball has executed the foregoing Notice as of the date and year first written above.

By: *Brian Ball*
McCORMICK RANCH, LLC

STATE OF IDAHO

COUNTY OF BANNOCK } ss.

On this 23rd day of August, in the year 2022 before me, *Patrick Davis*, a Notary Public in and for said State, personally appeared *Brian Ball* known or identified to me to be the Managing Member of the Limited Liability Company known as McCORMICK RANCH, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name

Patrick Davis
NOTARY PUBLIC



EXHIBIT A
LEGAL DESCRIPTION OF THE
INITIAL PROPERTY



LEGAL DESCRIPTION – TRAIL CREEK ESTATES HOMEOWNER'S ASSOCIATION

TRAIL CREEK ESTATES – DIVISION 1-4 AND ADDITIONAL LANDS LOCATED IN THE SOUTHEAST QUARTER OF NORTHEAST QUARTER (SE1/4 OF NE1/4) AND THE SOUTHEAST QUARTER (SE1/4) OF SECTION 28, AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW 1/4 OF NW 1/4) AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW 1/4 OF SW 1/4) OF SECTION 27, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BEING A BANNOCK COUNTY BRASS CAP MONUMENT AS DESCRIBED IN CORNER PERPETUATION RECORDED AS INSTRUMENT NO. 92000840 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY;

THENCE SOUTH 0°58'30" WEST (BASIS OF BEARINGS PER CENTRAL MERIDIAN OF EAST ZONE OF THE IDAHO STATE PLANE COORDINATE SYSTEM) ALONG THE EAST LINE OF SAID SECTION 28, A DISTANCE OF 1316.53 FEET TO THE NORTH 1/16 CORNER ON THE EAST LINE OF SAID SECTION 28; THENCE SOUTH 0°16'41" WEST, CONTINUING ALONG THE EAST LINE OF SECTION 28, A DISTANCE OF 200.40 FEET; THENCE SOUTH 89°42'21" WEST A DISTANCE OF 56.17 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 32°49'54" WEST A DISTANCE OF 193.99 FEET;

THENCE SOUTH 7°28'51" EAST A DISTANCE OF 183.74 FEET;

THENCE SOUTH 14°55'56" EAST A DISTANCE OF 316.33 FEET TO AN ANGLE POINT ON THE EAST BOUNDARY LINE OF TRAIL CREEK ESTATES – DIVISION 3, A SUBDIVISION RECORDED UNDER INSTRUMENT NO. 22010374;

THENCE SOUTH 40°09'12" EAST, ALONG SAID BOUNDARY LINE, A DISTANCE OF 125.62 FEET TO AN ANGLE POINT ON THE NORTH BOUNDARY LINE OF TRAIL CREEK ESTATES – DIVISION 1, A SUBDIVISION RECORDED UNDER INSTRUMENT NO. 20817671;

THENCE FOLLOWING ALONG THE NORTH, EAST AND SOUTH BOUNDARY LINES OF TRAIL CREEK ESTATES – DIVISION 1 OVER THE FOLLOWING TEN (10) COURSES:

1. NORTH 47°27'11" EAST A DISTANCE OF 107.29 FEET;
2. NORTH 58°56'12" EAST A DISTANCE OF 169.09 FEET;

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3. SOUTH 35°05'48" EAST A DISTANCE OF 1032.77 FEET;
4. SOUTH 54°57'35" WEST A DISTANCE OF 349.67 FEET TO A POINT OF TANGENCY WITH A 954.96 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 35°02'25" WEST;
5. FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11°18'22" FOR AN ARC LENGTH OF 188.44 FEET (THE CHORD OF SAID CURVE BEARS SOUTH 60°36'46" WEST A DISTANCE OF 188.13 FEET) TO A POINT OF TANGENCY;
6. SOUTH 66°15'57" WEST A DISTANCE OF 316.66 FEET;
7. NORTH 23°44'03" WEST A DISTANCE OF 33.00 FEET;
8. NORTH 24°41'27" EAST A DISTANCE OF 26.54 FEET TO A POINT OF NON-TANGENCY WITH A 130.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 73°06'56" EAST;
9. THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 34°24'09" FOR AN ARC LENGTH OF 78.06 FEET (THE CHORD OF SAID CURVE BEARS NORTH 0°19'01" EAST A DISTANCE OF 76.89 FEET) TO A POINT OF TANGENCY;
10. NORTH 17°31'05" EAST A DISTANCE OF 41.86 FEET TO A POINT ON THE SOUTH BOUNDARY LINE OF TRAIL CREEK ESTATES – DIVISION 2, A SUBDIVISION RECORDED UNDER INSTRUMENT NO. 21913215;

THENCE FOLLOWING ALONG THE SOUTHEASTERLY AND SOUTHWESTERLY BOUNDARY LINES OF SAID SUBDIVISION OVER THE FOLLOWING FOUR (4) COURSES:

1. SOUTH 60°40'49" WEST A DISTANCE OF 760.81 FEET;
2. NORTH 34°51'13" WEST A DISTANCE OF 223.40 FEET;
3. SOUTH 54°56'24" WEST A DISTANCE OF 11.64 FEET;
4. NORTH 36°34'32" WEST A DISTANCE OF 283.04 FEET;

THENCE NORTH 44°02'30" WEST A DISTANCE OF 2.01 FEET;

THENCE SOUTH 68°40'55" WEST A DISTANCE OF 22.52 FEET;

THENCE NORTH 8°58'41" WEST A DISTANCE OF 436.03 FEET;

THENCE SOUTH 68°39'40" WEST A DISTANCE OF 138.76 FEET;

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THENCE NORTH 23°44'07" EAST A DISTANCE OF 205.88 FEET;

THENCE NORTH 10°16'03" WEST A DISTANCE OF 10.13 FEET;

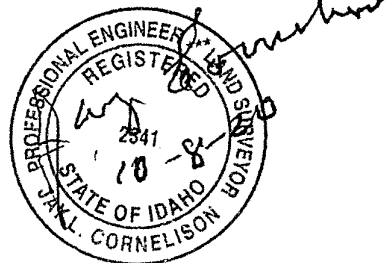
THENCE NORTH 51°39'30" EAST A DISTANCE OF 12.10 FEET;

THENCE NORTH 23°44'07" EAST A DISTANCE OF 274.32 FEET TO A POINT ON THE PRESENT CITY OF POCATELLO CITY LIMITS AS DESCRIBED IN ORDINANCE NO. 2789 AND RECORDED UNDER INSTRUMENT NO. 20614097;

THENCE FOLLOWING ALONG SAID CITY LIMITS OVER THE FOLLOWING FOUR (4) COURSES:

1. NORTH 7°10'36" EAST A DISTANCE OF 436.35 FEET;
2. NORTH 37°11'39" EAST A DISTANCE OF 241.70 FEET;
3. NORTH 54°09'17" EAST A DISTANCE OF 328.33 FEET, MORE OR LESS;
4. NORTH 89°42'21" EAST A DISTANCE OF 351.46 FEET, MORE OR LESS, TO THE **POINT OF BEGINNING.**

SAID PARCEL CONTAINS 49.66 ACRES, MORE OR LESS.



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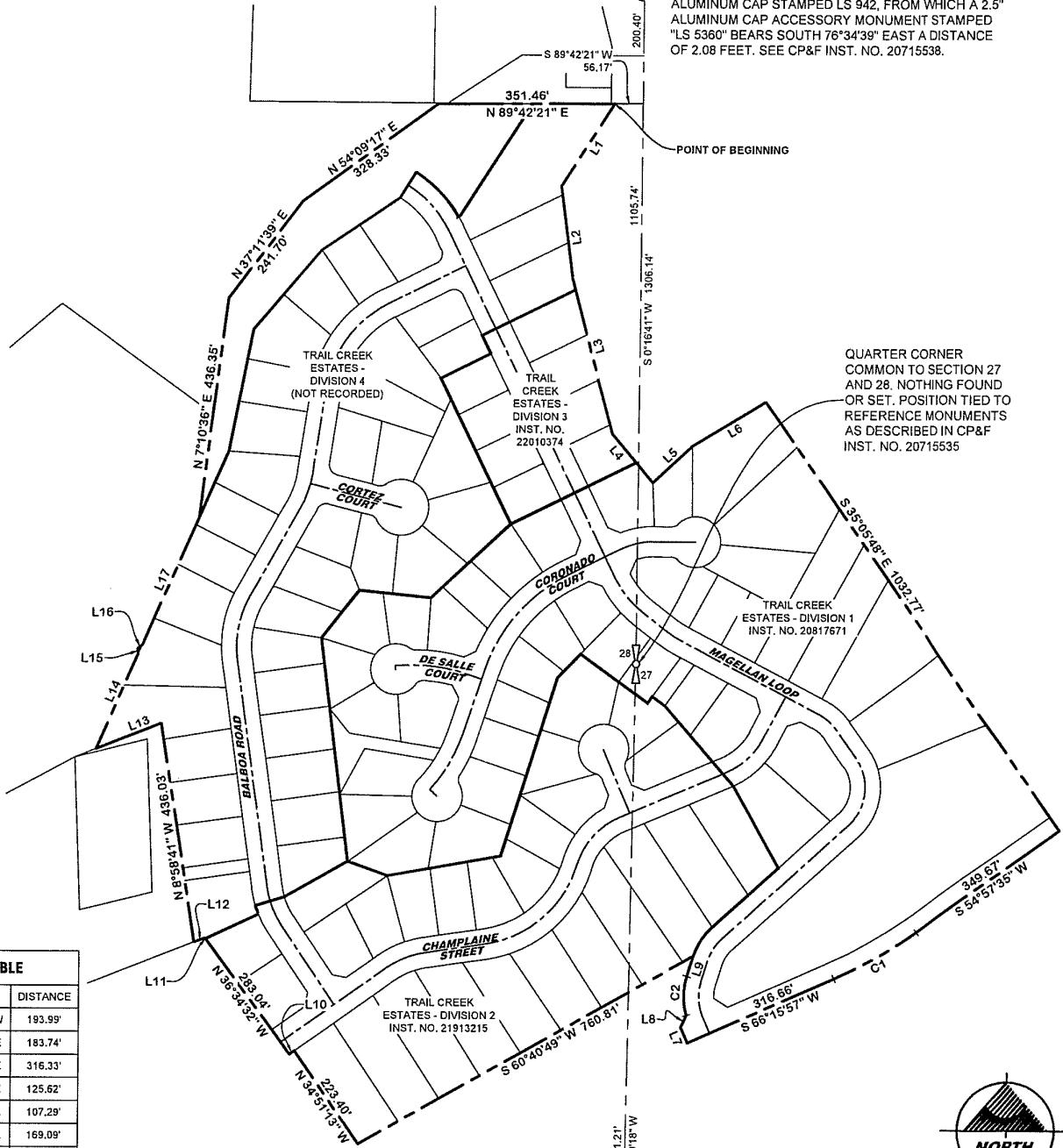
DISPLAY MAP FOR:

TRAIL CREEK ESTATES HOME OWNER'S ASSOCIATION

TRAIL CREEK ESTATES - DIVISIONS 1-4 AND ADDITIONAL LANDS LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4 OF NE 1/4) AND THE SOUTHEAST QUARTER (SE1/4) OF SECTION 28, AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4 OF NW1/4) AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW1/4 OF SW1/4) OF SECTION 27, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO

NORTHEAST CORNER OF SECTION 28. FOUND BANNOCK COUNTY BRASS CAP MONUMENT PER CP&F INST. NO. 92000840

NORTH 1/16 CORNER ON THE WEST LINE OF SECTION 27. FOUND 2" CITY OF POCATELLO ALUMINUM CAP STAMPED LS 942, FROM WHICH A 2.5" ALUMINUM CAP ACCESSORY MONUMENT STAMPED "LS 5360" BEARS SOUTH 76°34'39" EAST A DISTANCE OF 2.08 FEET. SEE CP&F INST. NO. 20715538.

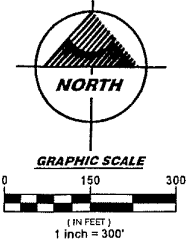


QUARTER CORNER COMMON TO SECTION 27 AND 28. NOTHING FOUND OR SET. POSITION TIED TO REFERENCE MONUMENTS AS DESCRIBED IN CP&F INST. NO. 20715535

LINE TABLE		
#	BEARING	DISTANCE
L1	S 32°49'54" W	193.99'
L2	S 07°28'51" E	183.74'
L3	S 14°55'56" E	316.33'
L4	S 40°09'12" E	125.62'
L5	N 47°27'11" E	107.29'
L6	N 58°56'12" E	169.09'
L7	N 23°44'03" W	33.00'
L8	N 24°41'27" E	26.54'
L9	N 17°31'05" E	41.86'
L10	S 54°56'24" W	11.64'
L11	N 44°02'30" W	2.01'
L12	S 68°40'55" W	22.52'
L13	S 68°39'40" W	138.76'
L14	N 23°44'07" E	205.88'
L15	N 10°16'03" W	10.13'
L16	N 51°39'30" E	12.10'
L17	N 23°44'07" E	274.32'

CURVE TABLE						
#	RADIUS	Δ	ARC LENGTH	TANGENT	CHORD BEARING	CHORD DISTANCE
C1	954.93'	11°18'22"	188.44'	94.52'	S 60°36'46" W	188.13'
C2	130.00'	34°24'09"	78.06'	40.24'	N 00°19'01" E	76.89'

SOUTHEAST CORNER OF SECTION 28. FOUND CITY OF POCATELLO ALUMINUM MONUMENT SET FLUSH WITH DRIVING SURFACE AS DESCRIBED IN CP&F INST. NO. 20715537



RMES
Engineers • Surveyors • Planners
301 58th St. W. #138 • Williston, ND 58801 • (701) 572-0110
600 E. Oak St. • Pocatello, ID 83201 • (208) 234-0110
www.RMES.biz

DRAWN BY: SEAN O'BRIEN
FILE LOCATION: R:\19\BALL, BRIAN\TRAIL CREEK ESTATES DIV. 4 - 19088\SURVCAD\10-06-20 TRAIL CREEK OVERALL LEGAL.DWG

EXHIBIT B
LEGAL DESCRIPTION OF THE
ANNEXABLE AREA

Parcel: RPR3853020702

Legal Description: S21-T6S-R34E TR SW4SE4 TAX 232 18.28 AC
Deed: 21709377 Old Deed: 20608851
Approximate (GIS) calculated acreage: 18.30

Parcel: RPRPCPP148100

Legal Description: S21-T6S-R34E TR SW4SE4 TAX 231 12.62 AC COUNT PROP IN POCA
Deed: 21709377 Old Deed: 20608851
Approximate (GIS) calculated acreage: 12.65

Parcel: RPRPCPP045717

Legal Description: S21-T6S-R34E TR NE4SE4 TAX 241 16.38 AC TR SE4SE4 TAX 240
6.14 AC TR SW4SE4 TAX 238 2.90 AC COUNT PROP IN POCA
Deed: 21709377 Old Deed: 20608851
Approximate (GIS) calculated acreage: 25.51

Parcel: RPRPRTC000600

Legal Description: S21-T6S-R34E LOT 6 22.97 AC BLOCK 1 THE RIDGES AT TRAIL
CREEK
Deed: 22206785 Old Deed: 22121689
Approximate (GIS) calculated acreage: 22.97

Parcel: RPRPCPP045715

Legal Description: S21-T6S-R34E TR SE4SE4 TAX 237 3.40 AC COUNT PROP IN POCA
Deed: 21709377 Old Deed: 20608851
Approximate (GIS) calculated acreage: 3.40

Parcel: RPRPCPP148200

Legal Description: S28-T6S-R34E TR NE4NW4 TAX 98 18.42 AC NW4NE4 40.00
AC COUNT PROP IN POCA
Deed: 21709377 Old Deed: 20608851
Approximate (GIS) calculated acreage: 58.74

Parcel: RPR3853028016

Legal Description: S28-6S-R34E TR SEC 28 TAX 97 57.91 AC
Deed: 22006192 Old Deed: 21719144
Approximate (GIS) calculated acreage: 54.17

Parcel: RPR3853028008

Legal Description: S28-T6S-R34E TR E2SE4 TAX 60 0.25 AC TR E2SE4 TAX 61 3.70 AC
Deed: 22006192 Old Deed: 21719144
Approximate (GIS) calculated acreage: 3.46

Parcel: RPRPCPP093214

Legal Description: S28-T6S-R34E TR E2SE4 TAX 93 4.05 AC COUNT PROP IN POCA
Deed: 21801605 Old Deed: 21719144
Approximate (GIS) calculated acreage: 4.07

Parcel: RPR3853028909

Legal Description: S28-T6S-R34E TR SE4NE4 TAX 67 1.30 AC
Deed: 22006192 Old Deed: 21719144
Approximate (GIS) calculated acreage: 1.38

EXHIBIT C
DEFINITIONS

Act means only those sections of the Idaho Code to which the Project is subject.

Agency shall mean the Idaho Real Estate Commission, or any other such governmental agency which administers the sale of subdivided lands pursuant to Idaho Code or common interest communities pursuant to the Act, or any similar statutes or ordinances hereinafter enacted.

Annexable Area shall mean the real property described in Exhibit B, all, or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article II.

Annexed Territory shall mean portions of the Annexable Area from time to time added to the Initial Property covered by this Declaration.

Approved Units shall mean the Single-Family Residential Lots created by the map and more particularly described on Exhibits A and final map(s)

Architectural Review Committee or ARC shall mean the Architectural Review Committee created pursuant to Section 7.1

ARC Rules shall have the meaning ascribed to such term in Section 7.4.

Articles shall mean the Articles of Incorporation of the Association to be filed in the Office of the Secretary of State of the State of Idaho, as such Articles may from time to time be amended,

Assessment Unit shall mean the Assessment Unit allocated to each Lot in accordance with Section 6.3.

Assessment Year shall mean the calendar year, or such other 12 consecutive calendar month period selected by the Board of Directors for the levying, determining, and assessing of Common Assessments under this Declaration.

Assignment and Assumption Agreement shall have the meaning set forth in Section 9.2(h) and in Exhibit E.

Association shall mean Trail CREEK ESTATES Homeowners Association, an Idaho non-profit corporation, formed under the laws of the State of Idaho, its successors, and assigns.

Beneficiary shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust and the assignees of such Mortgagee or Beneficiary.

Board of Directors shall mean the Board of Directors of the Association, elected in accordance with the Articles and the Bylaws of the Association and this Declaration.

Budget shall mean the annual budget for the Association for each Assessment Year, as prepared pursuant to Section 6.4.

Bylaws shall mean the Bylaws of the Association as such Bylaws may from time to time be amended.

Capital Improvement Assessment shall mean a charge against each Owner and each Owner's Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize pursuant to the provisions of this Declaration.

Common Assessment shall mean an annual charge to fund Common Expenses, including without limitation, all costs of administering and enforcing this Declaration (excluding Special Assessments assessed against and paid by particular Owners), all costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements and all costs of operating, managing, and administering the Association.

Common Elements shall mean all the real property, together with the Improvements located thereon and personal property located within the Project now or hereafter owned by the Association, or with respect to which the Association has an easement, license or other right or obligation for the use, care or maintenance thereof, held for the common benefit, use and enjoyment of all of the Owners, as further provided in Article III. The Common Elements shall include those areas designated as such on the Final Map.

Common Expenses shall include, without limitation, the actual and estimated costs of

(a) Maintenance, management, operation, repair, reconstruction, and replacement of the Common Elements;

(b) Unpaid Special Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment, together with all costs incurred in connection with enforcement thereof,

(c) Management and administration of the Association, including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys, and other employees;

(d) All utilities, water and sewer service, gardening, trash pick-up and disposal, and other services benefiting the Common Elements or the Association;

(e) Fire, casualty and liability insurance, workers' compensation insurance, and other insurance, including fidelity bonds;

(f) any other insurance obtained by the Association;

(g) bonding the members of the management body, any professional managing agent or any other Person handling the funds of the Association;

(h) taxes paid by the Association;

(i) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements, or portions thereof;

(j) prudent reserves;

(k) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Project, whether or not conveyed to the Association as part of the Common Elements;

(l) subject to applicable law and the Restrictions, judgments against and payable by the Association;

(m) any other item or items designated by the Association for any reason whatsoever in connection with the Common Elements, the Association, or this Declaration.

Control Termination Date shall mean the date of termination of the period in which Declarant is entitled to appoint all or a majority of the members of the Board of Directors as provided in Section 4.2(b).

Declarant shall mean McCormick Ranch, LLC, an Idaho limited liability company, its successors, or other Person to which it shall have assigned any Declarant rights hereunder by an express written and Recorded assignment as provided herein. Any such assignment may include all or only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion.

Declaration shall mean this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Trail CREEK ESTATES Homeowners Association, as amended, or supplemented from time to time.

Developmental Rights shall mean any right or combination of rights reserved by Declarant under this Declaration to (a) add real property to the Project, (b) create Lots or Common Elements within the Project, (c) subdivide Lots or convert Lots into Common Elements, or (d) withdraw real property from the Project.

Family shall mean (a) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural Persons not all so related, who maintain a common household in a Residence on a Lot.

FHA shall mean the Federal Housing Administration.

FHLMC shall mean the Federal Home Loan Mortgage Corporation.

FNMA shall mean the Federal National Mortgage Association.

Final Map shall mean, collectively, those Maps recorded in the Official Records of Bannock County, in the Office of the County Recorder of Bannock County, Idaho, recorded on August 7, 2008, September 2, 2019, June 19, 2020, and January 26, 2022, respectively, as Instrument Nos. 20817671, 21913215, 22010374, and 22201533, respectively, which describes therein the Lots, Common Elements and any easements encumbering the Project.

First Mortgage shall mean a Mortgage or Deed of Trust with first priority over other Mortgages or Deeds of Trust on a Single-Family Residential Lot.

First Mortgagee shall mean the holder of a First Mortgage.

First Security Interest shall mean a first priority interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation, including a lien created by a Mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title as security for an obligation.

GNMA shall mean the Government National Mortgage Association.

I.C. or Idaho Code shall mean the Idaho Statutes.

Improvements shall mean all original and later changes to buildings, Improvements, structures, equipment, fixtures, and appurtenances thereto of every type and kind placed in the Project. including but not limited to buildings, outbuildings, walkways, sprinkler pipes, grading, excavation, demolition, garages, swimming pools jacuzzi spas and other recreational facilities, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment and other exterior equipment, fixtures and apparatus.

Initial Property shall mean the real property described in Exhibit A to this Declaration.

Lot shall mean any Lot or parcel of land shown upon the Recorded final subdivision map of the Project, together with the Improvements, if any, thereon, including without limitation, a Single-Family Residential Lot. If two or more Lots are merged, they shall remain as two or more Lots for the purposes of Articles IV and VI.

Manager shall mean the Person, whether an employee or independent contractor, employed by the Association pursuant to the Bylaws, and delegated the authority to implement the duties, powers, or functions of the Association as the same may be limited by the Restrictions.

Member shall mean every Person holding a Membership in the Association pursuant to Section 4.3 hereof.

Membership shall mean a Membership in the Association pursuant to Section 4.3.

Mortgage shall mean any unreleased mortgage or deed of trust or other similar Recorded instrument, given voluntarily by the Owner of a Single Family Residential Lot, encumbering the Single Family Residential Lot to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage." "Mortgage" shall also mean any executory land sales contract, whether or not Recorded, in which the FHA, the VA, or the Secretary of the VA is identified as the seller, whether such contract is owned by or has been assigned by the FHA, the VA, or the Secretary of the VA. "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien or other similarly involuntary lien or encumbrance on a Single Family Residential Lot.

Mortgagee shall mean a Person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. The term "Beneficiary, shall be synonymous with the term "Mortgagee."

Mortgagor shall mean a Person who mortgages such Person's property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Notice of Annexation shall mean a Notice of Annexation as described in Section 2.4(b).

Notice of Lien shall mean a Notice of Lien as described in Article VI.

Notice and Hearing shall mean written notice and a hearing before the Board of Directors, a committee appointed by the Board of Directors, the Architectural Review Committee, or a committee appointed by the Architectural Review Committee, as applicable, at which the Owner concerned shall have an opportunity to be heard in person, or, at the expense of the Owner, by counsel, in the manner further provided in the Bylaws.

Owner shall mean the Person(s), including Declarant, holding (a) a fee simple interest to a Lot, or (b) a long-term ground leasehold interest of Record to a Lot, which is a part of the Project, excluding those Persons holding title as security for the performance of an obligation other than sellers under executory contracts of sale. For purposes of this Declaration, a "long-term ground leasehold interest" shall mean a leasehold interest having a term at the time of creation of such interest of 20 or more years.

Person shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Phase of Development shall mean (a) the Phases of Development in the Initial Property described in Exhibit A; and (b) as determined or approved in writing by Declarant in its sole and absolute discretion, each portion of the Project designated as a Phase of Development in a Notice of Annexation Recorded pursuant to Section 2.4. The Phases of Development described

in the documents referenced in (a) and (b) in this definition may be changed or amended from time to time by Declarant.

Priority Lien shall have the meaning provided in Section 6.15.

Project shall mean the Initial Property, together with such portions of the Annexable Area annexed to the property subject to this Declaration and to the jurisdiction of the Association pursuant to Article II.

Quorum shall mean (a) the presence in person or by proxy at the beginning of any meeting of the Members (whether or not such Members remain present throughout the meeting) of Persons entitled to cast at least 20% of the total votes, in person or by proxy, or (b) the presence at the beginning of any meeting of the Board of Directors (whether or not such members of the Board of Directors remain present throughout the meeting) of Persons entitled to cast at least 50% of the votes of the Board of Directors.

Record. Recorded. Filed and Recordation shall mean the Recordation or Filing of any document in the Office of the County Recorder of the County of Bannock, State of Idaho.

Residence shall mean a dwelling on a Single-Family Residential Lot, intended for use and occupancy by a single Family.

Restrictions shall mean this Declaration, the Articles, the Bylaws, the ARC Rules, the rules, and regulations adopted by the Association and any agreement referred to herein or incorporated herein by reference.

Single Family Residential Lot shall mean a Lot containing or intended to contain a single Residence, together with the Improvements, if any, thereon.

Special Assessment shall mean the Assessments described in Section 6.8.

VA shall mean the U.S. Department of Veterans Affairs of the United States of America and any department or agency of the United States that succeeds to the VA's functions of issuing guaranties of notes secured by Mortgages on residential property.

EXHIBIT D
FORM OF NOTICE OF ANNEXATION

Recording Requested By,
And When Recorded Return To:

ECHO HAWK & OLSEN, PLLC
Attn: Patrick J. Davis, Esq.
505 Pershing Avenue, Ste. 100
Pocatello, ID 83205

NOTICE OF ANNEXATION

This Notice of Annexation ("Notice") is made on this ___ day of 20__, by
_____ ("_____") with reference to the following facts:

RECITALS

A. _____ is the Owner of the following real property located in the County
of Bannock, State of Idaho:

described herein as the "Annexed Territory."

B. On ___, 20__, a Declaration of Covenants, Conditions Restrictions and
Reservation of Easements for _____ (the "Declaration") was Recorded in the office of

the Recorder of Bannock County, Idaho, as Instrument No. _____ in Book _____, covering certain real property described therein and referred to herein as the "Project".

C. Article II of the Declaration provides for the annexation of the Annexed Territory to the Project.

Now, THEREFORE, _____ hereby declares that the Annexed Territory shall be held, sold, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the provisions, covenants, conditions, restrictions, reservations and limitations contained in the Declaration and this Notice (collectively, the "CC&Rs"), all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Annexed Territory and every part and portion thereof, as follows:

1. Establishment of Restrictions and Enforcement All of the CC&Rs in the Declaration and this Notice are hereby established and imposed upon the Annexed Territory for the benefit of the Annexed Territory and each and every portion thereof and each and every Owner of an interest of any kind or character therein. Each and all of the CC&Rs shall run with the land in the Annexed Territory and shall be binding on all parties (whether Owners, occupants or otherwise) having or acquiring a right, title or interest in the Annexed Territory or any part thereof. Every Person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Annexed Territory is and shall be conclusively deemed to have consented and agreed to each and all of the CC&Rs, whether or not any reference to the CC&Rs or this Notice is contained in the instrument by which such Person acquired an interest in the Annexed Territory. Each and all of said CC&Rs shall be enforceable by _____, any Owner, and the Association, as provided in the Declaration.

2. Construction of Instruments The provisions of the Declaration and this Notice shall be liberally construed to effectuate the purposes contained herein. To the extent that any provision of this Notice conflicts with the provisions of the Declaration, the latter shall control. Any capitalized term used herein not otherwise defined herein shall have the meaning assigned thereto in the Declaration.

3. Phase of Development _____ hereby declares that the above-described Annexed Territory constitutes a separate Phase of Development (as defined in the Declaration).

(this portion of this page intentionally left blank)

4. Consent. _____ hereby consents to this Notice and the annexation of the above-described Annexed Territory.

IN WITNESS THEREOF, _____ has executed the foregoing Notice as of the date and year first written above.

COMPANY:

By: _____

STATE OF IDAHO
COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By,
And When Recorded Return To:

ECHO HAWK & OLSEN, PLLC
Attn: Patrick J. Davis, Esq.
505 Pershing Avenue, Ste. 100
Pocatello, ID 83205

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is entered into as of this ___ day of ___, 20___, by and between _____ an Idaho LLC/corporation ("Assignor"), and _____ Homeowners Association, an Idaho non-profit corporation ("Assignee").

RECITALS

WHEREAS, Assignor is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Elsinore recorded _____, 20___, in Book as Instrument No. _____, in the Official Records of Bannock County, Idaho ("Declaration"); and

WHEREAS, the Declaration provides for, among other things, the right of Declarant to assign the Maintenance Obligations (as hereinafter defined) in connection with the Common Elements (as defined in the Declaration) to the Assignee and the obligation of the Assignee to assume the Maintenance Obligations.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby irrevocably assigns, sets over, transfers and conveys to Assignee all of Assignor's rights and obligations to maintain the Common Elements as set forth in the Declaration (collectively, the "Maintenance Obligations") and Assignee hereby accepts this assignment and expressly assumes the Maintenance Obligations. Furthermore, Assignee agrees to keep, perform and fulfill all of the Maintenance Obligations which are required to be kept, performed and fulfilled thereunder, effective from and after the date hereof.

2. This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which when so executed, shall be deemed an original but all such counterparts shall constitute one and the same instrument.

3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

4. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

ASSIGNOR:

_____ an Idaho LLC/corporation

By: _____

ASSIGNEE:

_____ HOMEOWNERS ASSOCIATION
An Idaho non-profit corporation

By: _____

STATE OF IDAHO }
COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

STATE OF IDAHO
COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

EXHIBIT F

**ARTICLES OF INCORPORATION FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION**



Instrument # 22214046

08/23/2022 03:29:10 PM Page 57 of 59



0004828023



STATE OF IDAHO

Office of the secretary of state, Lawrence Denney

ARTICLES OF INCORPORATION (NONPROFIT)

Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301
Filing Fee: \$30.00

For Office Use Only
-FILED-
File #: 0004828023
Date Filed: 8/17/2022 9:41:19 PM

B0734-1672 08/17/2022 9:41 PM Received by ID Secretary of State Lawrence Denney

Articles of Incorporation (Nonprofit)
Select one: Standard, Expedited or Same Day Service (see descriptions below) Standard (filing fee \$30)
Article 1: Corporation Name Entity name Trail Creek Estates Homeowners Association, Inc.
Article 2: Effective Date The corporation shall be effective when filed with the Secretary of State.
Article 3: Purpose The purpose for which the corporation is organized is: Homeowners Association
Article 4: Voting Members: The corporation has voting members.
Article 5: Asset Distribution on Dissolution Upon dissolution the assets shall be distributed: the residual assets of the Corporation (after all creditors of the Corporation have been paid), shall be distributed to the members prorated in accordance with their respective membership interests.
Article 6: IRS Designation Is this nonprofit a 501(c)3? No
Article 7: The mailing address of the corporation shall be: Mailing Address ROD FURNISS 346 N 4456 E RIGBY, ID 83442-4954
Article 8: Registered Agent Name and Address Registered Agent Registered Agent Rod Furniss Physical Address: 346 N 4456 E RIGBY, ID 83442 Mailing Address: 346 N 4456 E RIGBY, ID 83442-4954
[X] I affirm that the registered agent appointed has consented to serve as registered agent for this entity.
Article 9: Incorporator Name(s) and Address(es)
Table with 2 columns: Name, Incorporator Address
Rod Furniss | ROD FURNISS 346 N 4456 E RIGBY, ID 83442
Article 10: Director Name(s) and Address(es)
Table with 3 columns: Name, Title, Director Address



B0734-1673 08/17/2022 9:41 PM Received by ID Secretary of State Lawrence Denney

Rod Furniss	Director	346 N 4456 E RIGBY, ID 83442
Brian Ball	Director	547 PARTRIDGE LANE REXBURG, ID 83440
Dannis Adamson	Director	158 S MAIN ST POCATELOO, ID 83204

The Articles of Incorporation must be signed by at least one Incorporator.

<u>Rod Furniss</u>	<u>08/17/2022</u>
Rod Furniss	Date

EXHIBIT G
BYLAWS FOR
TRAIL CREEK ESTATES HOMEOWNERS ASSOCIATION