



## NOTICE

**THE FOLLOWING IS A VERY IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL BUYER AND OWNER OF PROPERTY WITHIN THE HACKBERRY RANCH SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND PROHIBITIONS IMPOSED UPON ALL PROPERTY OWNERS AND OCCUPANTS.**

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HACKBERRY RANCH SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HACKBERRY RANCH SUBDIVISION (this "Declaration") is made effective as of the 19 day of MARCH, 2014, by Hackberry Ranch Corporation, an Idaho corporation ("Grantor" and "Class B Member").

### ARTICLE I: RECITALS

1.1 Property Covered. The property subject to this Declaration is the property legally described in Exhibit A, attached hereto and made a part hereof (the "Property").

1.2 Purpose of Declaration. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that will apply to the use of any and all portions of the Property. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; to ensure a well-integrated, high quality development; and to guarantee adequate maintenance of the Common Area, including any Improvements located thereon, in a cost effective and administratively efficient manner.

## ARTICLE II: DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms and Restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, any grantee or grantee's successors, any Owner or Owner's successors, or by the Association.

## ARTICLE III: DEFINITIONS

3.1 "Abandoned or Inoperable Vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of seven (7) days or longer.

3.2 "Articles" shall mean the Articles of Incorporation of the Association.

3.3 "Assessments" shall mean those payments required of Owners who are Association Members, including Regular, Special and Limited Assessments.

3.4 "Association" shall mean the homeowner association organized to administer the Property in accordance with this Declaration.

3.5 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property, including, without limitation, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.

3.6 "Boise City Code" shall mean the statutes, ordinances, rules, and regulations adopted by the City of Boise which govern the zoning, use, improvement or operation of the Property, including without limitation, Boise City Wildland Urban Interface Code, as may be amended from time to time.

3.7 "Board" shall mean the Board of Directors of the Association.

3.8 "Building Lot" shall mean a lot within the Property as specified or shown on the Plat upon which Improvements may be constructed. For voting, membership and Assessment purposes herein, "Building Lot" shall mean each single-family detached residential dwelling. Building Lot shall not include any Common Area.

3.9 "Bylaws" shall mean the Bylaws of the Association.

3.10 "Common Area" shall mean any or all parcels or portions of the Property that are designated as private (i.e., not publicly dedicated) roads, streets, drives, parking areas or drives, and common open space. Common Area may be established from time to time by Grantor on any portion of the Property by describing such area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration. Common Area may include easement and/or license rights. Without limiting the foregoing, the following are Common Area: Lot 2, Block 1; Lot 19, Block 1; Lot 23, Block 1; Lot 28, Block 1; N. Mountainside Lane, and the Storm Water Drain System.

3.11 "Design Committee" shall mean the body created under Section 14.1 of this Declaration, which shall review, study, and either approve or reject any and all proposed Improvements on the Property, in accordance with Article XIV of this Declaration, all in compliance with the Declaration and any Association Rules.

3.12 "First Mortgage" shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

3.13 "Grantor" shall mean Hackberry Ranch Corporation, an Idaho corporation, or its successors in interest, or any Person to whom the rights under this Declaration are expressly transferred, in whole or in part, other than a transfer to individual Building Lot Owners, by Hackberry Ranch Corporation or its successors.

3.14 "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, residential structures, accessory buildings, fences, streets, drives, driveways, parking areas, sidewalks, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, , living and/or dead vegetation, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, plantings, and landscaping, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

3.15 "Limited Assessment" shall mean a charge against a particular Owner, and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association in connection with corrective action performed pursuant to the provisions of this Declaration.

3.16 "Member" shall mean each Owner holding a membership in the Association, including Grantor.

3.17 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

3.18 "Occupant" shall mean any resident or occupant of a Building Lot other than the Owner, including, without limitation, family members, guests, invitees and tenants.

3.19 "Oversized Vehicles" shall be defined as vehicles which are too high or too wide to clear the entrance of a standard residential garage door opening.

3.20 "Owner" shall mean the record owner, whether one or more Persons, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

3.21 "N. Mountainside Lane" shall have the meaning described in Section 7.8 of this Declaration.

3.22 "Person(s)" shall mean any individual, partnership, corporation, limited liability company, trust, estate or other legal entity, including Grantor.

3.23 "Plat" shall mean any subdivision plat covering any portion of the Property as recorded in the Ada County Recorder's Office as the same may be amended by duly recorded amendments thereof.

3.24 "Project Documents" shall mean the basic documents creating and governing the Property including, without limitation, this Declaration, and the Articles and Bylaws of the Association, any Association Rules.

3.25 "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Building Lot of each Owner by the Association pursuant to the terms of this Declaration.

3.26 "Retaining Wall" shall mean structures that constructed or designed to resist the lateral pressure of soil when there is a desired change in ground elevation that exceeds the angle of repose of the soil.

3.27 "Storm Water Drain System" shall have the meaning set forth in that certain Master Perpetual Storm Water Drainage Easement, recorded as Instrument No. 109025612, as the name may be amended, modified, supplemented and/or restated from time to time (the "ACHD Easement"),

3.28 "Special Assessment" shall mean that portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized to be paid to the Association pursuant to the provisions of this Declaration.

#### ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

4.1 Improvements; Restrictions. All Improvements are to be designed, constructed and used in such a manner as to promote compatibility between the types of uses contemplated by this Declaration. The general instructions set forth in this Declaration shall govern the right of an Owner, excluding Grantor, to construct, reconstruct, refinish, remove, add, alter or maintain any Improvement upon, under or above the Property, and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on, under or over the Property, including, without limitation, any Building Lot. The following restrictions shall be applicable to the Building Lots:

4.1.1 All Improvements by any Owner, excluding Grantor, must be pre-approved in writing by the Design Committee prior to their construction or reconstruction. All Improvements by any Owner shall comply with Boise City Code.

4.1.2 All Building Lots shall be used exclusively for residential purposes. No Building Lot shall be improved except with residential structures and related accessory structures.

4.1.3 For each Building Lot, the primary residential dwelling Improvement must be at least 2,500 square feet of interior, improved dwelling space in size.

4.1.4 For each Building Lot, any garage constructed must be attached to the primary residential dwelling Improvement and be a minimum 2 car garage.

4.1.5 For each Building Lot, only one additional enclosed structure other than the primary residential dwelling Improvement (an "Outbuilding") shall be permitted. An Outbuilding must be designed and constructed in similar style and color to the primary residential dwelling Improvement on the Building Lot. All Outbuildings must pre-approved in writing by the Design Committee prior to their construction or reconstruction.

4.1.6 Fencing on all Building Lots, other than Lot 1, Block 1 and Lot 22, Block 1, shall be limited to the back yards, and shall not extend past the rear corners of the primary residential dwelling Declaration - 4

Improvement. Fencing on all Building Lots, other than Lot 1, Block 1 and Lot 22, Block 1, shall be made of wrought iron material in earth tones, shall not exceed four feet in height, shall not have any protruding points along fence top to be wildlife-friendly, and shall otherwise comply with Boise City Code.

4.2 Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining his or her Building Lot, the Association upon thirty (30) days' prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

4.3 Height Restrictions. The Building Lots set forth below shall be subject to the following height restrictions:

4.3.1 Twenty Foot Height Restriction. No trees, landscaping, primary residential dwelling Improvement, Outbuilding or other Improvements shall exceed a maximum height of twenty (20) feet on the following Building Lots: Lot 3, Block 1; Lot 4, Block 1; Lot 5, Block 1; Lot 6, Block 1; Lot 7, Block 1; and Lot 27, Block 1.

4.3.2 Twenty Four Foot Height Restriction. No trees, landscaping, primary residential dwelling Improvement, Outbuilding or other Improvements shall exceed a maximum height of twenty four (24) feet on the following Building Lots: Lot 17, Block 1; Lot 18, Block 1; Lot 20, Block 1; and Lot 21, Block 1.

4.3.3 Measurement for Height Restriction. For purposes of the height restrictions in this Declaration, roof height calculation shall be measured from the top of curb height at the exact center of a Building Lot's street frontage.

4.4 Landscaping. Each Owner shall cause his or her Building Lot to be improved with a minimum of four (4) trees of no less than three inch (3") caliper size, with at least two (2) of such trees to be in the front yard of the Building Lot. All trees and other landscaping must not exceed the applicable height restrictions set forth in this Declaration and the Boise City Code. A tree may be placed in a Building Lot that is subject to height restrictions, even if such tree is expected to grow in excess of such height restriction; provided, however, such tree must be trimmed to not exceed the applicable height restrictions. The Design Committee may adopt guidelines regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such guidelines, or shall allow such Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the applicable Local Association of which such Owner is a Member (or the Master Association if the applicable Association fails to act or if no applicable Association exists), upon thirty (30) days' prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the applicable Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs

incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

Private property owners are required to plant the rear slopes, side slopes and slopes between lots with a long growing fescue grass kept irrigated, green and weed free.

Any and all landscaping done by a homeowner shall comply with the Hackberry Ranch Fire Safety Plan a copy of which is kept by the HOA president.

The following items are intended to provide the landscaping guidelines for the contractor, landscaper and / or homeowner to establish and maintain a minimum of 30-feet or more defensible space between a building and the un-disturbed native vegetation. The defensible space shall include a landscape plan and a description of maintenance responsibilities for the property providing the defensible space.

(1) **Landscape Requirements.** Landscaping within defensible space shall have the following fire-resistive vegetation and characteristics:

- (a) Growth with little or no accumulation of dead vegetation. Either on the ground or standing upright
- (b) Non-resinous plants, such as willow, poplar or tulip trees
- (c) Low volume of total vegetation. For example, a grass area as opposed to a forest or shrub-covered land
- (d) Plants with high live fuel moisture. Plants that contain a large amount of water in comparison to their dry weight
- (e) Drought tolerant plants, such as deeply rooted plants with thick, heavy leaves
- (f) Stands without ladder fuels. Plants without small, fine branches and limbs between the ground and the canopy of overtopping shrubs and trees
- (g) Plants requiring little maintenance. Slow-growing plants that, when maintained, require little care.
- (h) Plants with woody stems and branches that require prolonged heating to ignite.

(2) **Maintenance.** Non fire-resistive vegetation or growth shall be kept clear of buildings or structures, in such a manner as to provide a clear, defensible area for fire suppression operations.

(a) Persons owning, leasing, controlling, operating or maintaining buildings or structures requiring defensible spaces are responsible for modifying or removing non fire-resistive vegetation on the property owned, leased or controlled by said person.

(b) Trees. Tree crowns extending to within 10 feet of any structure shall be pruned to maintain a minimum horizontal clearance of 10 feet. Tree crowns within the defensible space shall be pruned to remove limbs located less than 6 feet above the ground surface adjacent to the trees.

(c) Chimney clearance. Portions of tree crowns that extend to within 10 feet of the outlet of a chimney shall be pruned to maintain a minimum horizontal clearance of 10 feet.

(d) Deadwood removed. Deadwood and litter shall be regularly removed from trees, and from within the defensible area.

No pressurized irrigation is provided to the subdivision. There is no irrigation water rights associated with Hackberry Ranch Subdivision. Homeowners must irrigate with their own domestic water source such as the city water supply.

4.5 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No business or home occupation, no noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity or to its occupants or residents, as determined by the Association, in its reasonable judgment, or in violation of any state or local law or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Design Committee), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Design Committee. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant ways, metals, bulk material, and scrap shall be kept at all times in such containers and in areas approved by the Design Committee.

4.6 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements shall be constructed on any Property which are or might be unsafe or hazardous to any Person or property.

4.7 Insurance Rates. Nothing shall be done or kept on any Building Lot which will increase the rate of, or cancel any insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance on any portion of the Property owned or managed by any Association or which would be in violation of any law.

4.8 Vehicles and Equipment. The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to any of the Project Documents which prohibit or limit the use thereof within the Property. Without limiting the foregoing, the following specific restrictions apply: 1) all on-street parking shall be limited to those specific areas where on-street parking is not expressly prohibited; 2) vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, or pedestrian path unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Project Documents; 3) no motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, Abandoned or Inoperable Vehicles, Oversized Vehicles, dilapidated or unrepared and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and all other unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, parking areas and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Design Committee; and 4) the use of any electronic, gas or other fuel operated gardening, yard or snow removal equipment shall only be allowed from 8:00 a.m. to 8:00 p.m.

4.9 Animals/Pets. No animals of any kind shall be raised, bred, or kept in or about the Common Area except in accordance with the rules and regulations governing pets that may be adopted by the Board from time to time. Any approved pet shall be confined, leashed or otherwise controlled at all times when outside any Unit, and pets shall not be left alone in the Common Area. No Owner shall permit any pet to be a nuisance, which includes but is not limited to excessive barking, biting or growling, and an Owner shall immediately remove such Owner's pet waste from public or private property including the Common Area. The Board may adopt, amend or repeal the Association Rules from time to time governing pets or animals as provided in this Declaration.

4.10 No Mobile Homes or Temporary Structures. No house trailer, mobile home, tent (other than for short term recreational use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property.

4.11 Drainage. The Property is subject to the terms of the terms of the ACHD Easement. The Association shall perform such maintenance as required under the terms of the ACHD Easement. There shall be no interference with the established drainage pattern or the Storm Water Drainage System over any portion of the Property, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, which may include drainage from Common Area over any Building Lot in the Property. The Association shall provide for the improvement, protection, maintenance, repair, management and operation of N. Mountainside Lane and the Storm Water Drain System serving N. Mountainside Lane, with the costs and expenses for such shared by and among the N. Mountainside Lane Building Lots and no other Building Lots. Such costs and expenses shall be shared equally among the N. Mountainside Lane Building Lots, shall include a portion to a reserve account for the reasonable foreseeable expense of replacing and/or resurfacing N. Mountainside Lane, and shall be billed by the Association in the same manner and subject to the same rules as other Assessments. All ongoing maintenance of this system shall be done in accordance with the Boise City approved Storm Drainage Operation and Maintenance Manual prepared by Riveridge Engineering.

4.12 Grading. The Owner of any Building Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of the Boise City Code, shall maintain and repair all graded surfaces and erosion prevention devices, Retaining Walls (to the extent permitted pursuant to this Declaration), drainage structures, means or devices which are not the responsibility of any public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided for herein. All lots 3 through 13 shall be graded as flat building lots.

4.13 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Building Lot to the Boise City Sewer system and pay all charges assessed thereon.

4.14 Signs. No signs of any kind, including, without limitation, "for sale" signs, shall be displayed on or from any portion of the Property except in accordance with the rules and regulations governing pets that may be adopted by the Board from time to time, or signs required by law.

4.15 No Further Subdivision. No Building Lot may be further subdivided unless expressly approved in writing by Grantor and consistent with all applicable city and state laws and ordinances.

4.16 Leasing. The Owner of a Building Lot shall have the right to lease such Building Lot and residential dwelling thereon, subject to the following conditions: 1) all leases shall be in writing; 2) the lease shall be specifically subject to the Project Documents, and any failure of a tenant to comply with the Project Documents shall be a default under the Lease; and 3) the Owner shall be liable for any violation of the Project Documents committed by the tenants of the Owner, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

4.17 Grantor's Right of Development. Nothing contained herein shall limit the right of Grantor to grant licenses, to reserve rights-of-ways and easements for utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the



Property so long as any Building Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales, lease or otherwise. Grantor may use any structures owned by Grantor on the Property as model home complexes or real estate sales or leasing offices. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property, by an express written assignment recorded in the Ada County Recorder's Office.

No provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property, including any subdivision or resubdivision of the Property, or to construct Improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing.

4.18 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

## ARTICLE V: ASSOCIATION

5.1 Organization of Association. The Association shall be initially organized by Grantor as an Idaho non-profit corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Each Owner shall abide by and benefit from the provisions, covenants, conditions and restrictions contained in the Project Documents.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association. Memberships in the Association shall be appurtenant to the Building Lot owned by such Owner. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

5.3 Voting . The Association will have two (2) classes of memberships:

5.3.1 Class A Members. Class A Members shall be the Owners, other than Grantor. Each Class A Member shall be entitled to one (1) vote for each Building Lot owned by such member.

5.3.2 Class B Member. Grantor, and its successors and assigns, shall be the Class B Member, and shall be entitled to twenty-five (25) votes for each Building Lot owned by Grantor.

When more than one (1) person holds such interest in any Building Lot, all such persons shall be Members, but all such persons shall be entitled to a single vote with respect to such Building Lot and in no event shall the vote cast with respect to any Building Lot be split. The vote for each Building Lot shall be exercised as the Owners thereof among themselves determine. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusive for all purposes that such Owner was acting with authority and consent of all joint Owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser

of the Building Lot concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the proposed owner, subject to any assignment of the right to vote to a lessee, mortgagee, beneficiary or contract purchaser as provided herein.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

5.5 Power and Duties of the Association.

5.5.1 Powers. The Association shall have all the powers of a non-profit corporation organized under the non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under the Project Documents, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area, and the performance of the other responsibilities herein assigned, including without limitation:

5.5.1.1 Assessments. The power to levy Assessments on any Owner and Association Member, or any portion of the Property as pursuant to the restrictions enunciated in this Declaration, and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

5.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Project Documents, and to enforce by injunction or otherwise, all provisions hereof.

5.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any Common Area shall be for a term not exceeding one (1) year, and shall be subject to review by the Board.

5.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Area by the Owners, their families, invitees, licensees, lessees or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event such Association Rules are inconsistent with or less restrictive than any other provisions of this Declaration, or the Articles and Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, and the Articles and Bylaws to the extent of any such inconsistency.

5.5.1.5 Emergency Powers. The power, exercised by the Association or by any Person authorized by it, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

5.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the same, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

5.5.1.6.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

5.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-five (25) years after the death of the issue of the individuals executing this Declaration on behalf of Grantor who are in being as of the date hereof.

5.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by the Project Documents, without limiting the generality thereof, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

5.5.2.1 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss.

The homeowners association is responsible to maintain non combustible native materials that exist on all common lots. Any revegetation must be planted with similar materials as native.

5.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Area.

5.5.2.3 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Area. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state and/or local taxes, including income or corporate taxes levied against the Association is denied the status of a tax exempt corporation.

5.5.2.4 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area.

5.5.2.5 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance:

5.5.2.5.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Area;

5.5.2.5.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor, and the individual grantees, tenants, agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of the Common Area. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage;

5.5.2.5.3 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000);

5.5.2.5.4 Such insurance as required by Section 17.3(n) herein;

5.5.2.5.5 Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other Person charged with the management or possession of any Association funds or other property;

5.5.2.9.6 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and

5.5.2.9.7 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

5.5.2.6 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable;

5.5.2.7 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to Association Members, the cost of which shall be included in Regular Assessments;

5.5.2.8 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Project Documents and any and all laws, ordinances, rules and regulations of the City of Boise City and Ada County. Also including, without limitation, the recordation of any claim of lien with the Ada County Recorder's Office, as more fully provided herein.

5.6 Meetings. The Association shall hold an annual meeting each year and the first annual meeting shall be held within the first six (6) months following the close of the first sale of a Building Lot. Subsequent regular annual meetings of the Association shall be held as provided in the Bylaws. Special meetings may be called as provided for in the Bylaws. Notice of annual or special meetings of the Association shall be delivered as provided in the Bylaws.

5.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Association as follows:

5.7.1 A pro forma operating statement or budget for the Association, for each fiscal year shall be available for distribution not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

5.7.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available for delivery to each Owner, a balance sheet as of the last day of the Association's fiscal year for the Association and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year. Copies of the balance sheet and operating statement shall be available for distribution to each Member within ninety (90) days after the end of each fiscal year.

5.8 Manager. The Association may employ or contract for the services of a professional manager or management company, provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association with or without cause and without payment of a termination fee; provided thirty (30) days or less prior notice is given. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.

5.9 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officer of the Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any officer, committee, or other representative or employee of the Association or , Grantor, provided that such Person, upon the basis of such information as may be possessed by such Person, has acted in good faith without willful or intentional misconduct.

## ARTICLE VI: RIGHTS TO COMMON AREAS

6.1 Use of Common Area. Every Owner shall have a right to use each parcel of the Common Area, which right shall be appurtenant to and shall pass with the title to every Building Lot subject to the following provisions:

6.1.1 The right of the Association to levy and increase Assessments for the construction, protection, maintenance, repair, management and operation of Improvements on the Common Area, including the right to Special Assessments;

6.1.2 The right of the Association to suspend the voting rights and rights of use, or interest in, the Common Area by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association Rules;

6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or other Person for such purposes and subject to such conditions as may be permitted by the Project Documents; provided however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by 2/3rds of votes of the members;

6.1.4 Common Areas may be used by the public as established from time to time by Grantor on any portion of the Property by describing such area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration;

6.1.5 The Common Area cannot be mortgaged or conveyed without the approval of the Owners, excluding the Grantor, of at least two-thirds (2/3) of the total voting power in the Association. If ingress or egress to any Building Lot is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to an easement of the Owners of such Building Lots for the purpose of ingress and egress.

6.2 Designation of Common Area. Grantor shall designate and reserve Common Area in this Declaration, and/or recorded Plats, deeds or other instruments. Without limiting the foregoing, the parcels set forth in Section 3.10 of this Declaration are hereby designated as Common Area.

6.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment to the Common Area or the Local Common Area, to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot. Only Grantor or the Association shall have the right to delegate the right of enjoyment to the Common Area or the Local Common Area, to the general public, and such delegation to the general public shall be for a fee set by Grantor or the Association.

6.4 Damages. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Building Lot the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments.

## ARTICLE VII: ASSESSMENTS

7.1 Covenant to Pay Assessments. By acceptance of a deed to any Building Lot, each Owner of such Building Lot thereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable Project Document.

7.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

7.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonably attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he or she remains an Owner.

7.2 Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for each type of Building Lot, subject to the provisions of Section 7.8 for additional assessments to Private Paddock Lane Building Lots.

7.3 Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

**7.3.1 Purpose of Regular Assessments.** The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all Improvements located on such areas owned and/or managed and maintained by the Association (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement of those elements of the Common Area or other property of the Association that must be replaced and maintained on a regular basis ("Repair Expenses"). The Operating Expenses and the Repair Expenses are collectively referred to herein as the "Expenses."

**7.3.2 Computation of Regular Assessments.** The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Building Lot occurs for the purposes of the Association's, Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year.

**7.3.3 Amounts Paid by Owners.** The Board can require, in its discretion or as provided in the Project Documents, payment of Regular Assessments to the Association in monthly, quarterly, semi-annual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its sole discretion. Notwithstanding the foregoing, for three (3) years following the date Assessments are assessed against the Owners of Building Lots, Grantor shall not be assessed any Regular Assessments for each Building Lot of which Grantor is an Owner. However, during such three (3) year period, Grantor shall pay an amount equal to the Operating Expenses shortfall of the Association (the "Shortfall Payment"), which Shortfall Payment shall be an amount less than or equal to the Regular Assessments multiplied by the total number of Building Lots owned by Grantor on the date Regular Assessments are assessed against the Owners of Building Lots. Grantor's Shortfall Payment in connection with such Phase shall end three (3) years after the date Assessments begin. Thereafter, Grantor shall be assessed Regular Assessments for each Building Lot of which Grantor is an Owner.

#### **7.4 Special Assessments.**

**7.4.1 Purpose and Procedure.** In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the Building Lots which shall be computed in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

**7.4.2 Consistent Basis of Assessment.** Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for such Association.

**7.5 Limited Assessments.** Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the Project Documents or for damage caused by the Owner, or any of his or her family, representatives or invitees, to any Common Area or any other portion of the Property.

7.6 Notice and Assessment Due Date. The Association shall determine if payments for all Assessments shall be due monthly, quarterly, semi-annually or annually. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There may accrue, solely at the Board's discretion, with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days may accrue, at the Board's uniform discretion, interest at eighteen percent (18%) per annum calculated the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may be exempt from such liability by a waiver of the use and enjoyment of the Common Area, or by lease or abandonment of such Owner's Building Lot.

7.7 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Article VII may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

7.8 Additional Assessments for Maintenance of N. Mountainside Lane. Lot 23, Block 1 is a private roadway ( "N. Mountainside Lane"), constituting a part of the Common Area, which provides access to and from the following Building Lots: Lot 16, Block 1; Lot 17, Block 1; Lot 18, Block 1; Lot 20, Block 1; Lot 21, Block 1; Lot 22, Block 1; Lot 24, Block 1; Lot 25, Block 1; Lot 26, Block 1; and Lot 27, Block 1 (each, a "N. Mountainside Lane Building Lot" and collectively, the "N. Mountainside Lane Building Lots"). The Association shall provide for the improvement, protection, maintenance, repair, management and operation of N. Mountainside Lane and the Storm Water Drain System serving N. Mountainside Lane, with the costs and expenses for such shared by and among the N. Mountainside Lane Building Lots and no other Building Lots. Such costs and expenses shall be shared equally among the N. Mountainside Lane Building Lots, shall include a portion to a reserve account for the reasonable foreseeable expense of replacing and/or resurfacing N. Mountainside Lane, and shall be billed by the Association in the same manner and subject to the same rules as other Assessments. All ongoing maintenance of this system shall be done in accordance with the Boise City approved Storm Drainage Operation and Maintenance Manual prepared by Riveridge Engineering.

#### ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS

8.1 Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.



## 8.2 Assessment Liens.

8.2.1 Creation. There is hereby created a claim of lien on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Ada County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

8.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Ada County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

8.3 Method of Foreclosure. Such lien shall be foreclosed by appropriate action in court.

8.4 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article VIII, with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

8.5 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the beneficiary under any deed of trust or a mortgage upon a Building 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 deed of trust such Building Lot shall remain subject to this Declaration as amended.

## ARTICLE IX: INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

9.1 Member's Right of Inspection. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Member of the Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board shall prescribe. No Member or any other Person shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of the Association.

9.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to: notice to be given to the custodians of the records by the Persons desiring to make the inspection; hours and days of the week when such an inspection may be made; and payment of the cost of reproducing copies of documents requested pursuant to this Article IX.

9.3 Director's Rights of Inspection. Every director of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of such Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

## ARTICLE X: EASEMENTS

10.1 Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Building Lot, subject to the easements set forth in this Declaration, as supplemented and amended from time to time.

10.2 Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment in the Common Area, to such Owner's tenants, employees, family, guests or invitees.

10.3 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Declaration, as supplemented and amended from time to time.

10.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area, or as between adjacent Building Lots, due to the unwillful placement or settling or shifting of the Improvements including, without limitation, structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Building Lot agree that minor encroachments within and over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Section 10.4.

10.6 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots and Common Areas resulting from the normal use of adjoining Building Lots, Common Areas, and for necessary maintenance and repair of any Improvement including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area.

10.7 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property, including, without limitation, the ACHD Easement. In addition,

Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property.

**10.7.1 Improvement of Drainage and Utility Easement Areas.** The Owners of Building Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage or utility easement areas as shown on the Plat(s) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose; provided, however that any Owner, Association, designated Person or the Grantor having an interest in the landscaping easement described in this Article X, shall be entitled to install and maintain landscaping on such easement areas, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided further, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Building Lot where Improvements were so damaged, or in the event the easement area where Improvements were so damaged is located in a Common Area, the Association shall be responsible for the damage sustained and may impose a Special Assessment therefore.

**10.8 Rights and Duties Concerning Utility Easements.** The rights and duties of the Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

**10.8.1** Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary; and

**10.8.2** Whenever utility house connections are installed within the Property, which connections serve more than one Building Lot the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Building Lot.

**10.9 N. Mountainside Lane Easement.** The Owners of the N. Mountainside Lane Building Lots shall be entitled to full use and enjoyment of N. Mountainside Lane as required to access such Owner's Building Lot, and the Association, and its contractors, employees, and agents, shall be entitled to access to N. Mountainside Lane or to repair, replace and maintain N. Mountainside Lane.

**10.10 Disputes as to Sharing of Costs.** In the event of a dispute between Owners with respect to the repair, replacement or maintenance of any Improvement, utility connections or driveways, or with respect to the sharing of the cost therefor, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

**10.11 General Landscape and Storm Water Drain System Easement.** An easement is hereby reserved to the Association, its contractors, employees, and agents, to enter those portions of Building Lots, for the purpose of installing, maintaining, replacing and restoring elements of the Storm Water Drain System, exterior landscaping, and natural vegetation and habitat. Activity permitted pursuant to this easement includes, by way of illustration and not of limitation, mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time.

10.12 Grantor's Rights Incident to Construction. Grantor, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Grantor; provided, however, that no such rights shall be exercised by Grantor in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Building Lot by that Owner or such Owner's family, tenants, employees, guests, or invitees.

10.13 Easements Deemed Created. All conveyances of Building Lots made after the date of the recording of the Declaration, as amended and supplemented from time to time whether by Grantor or otherwise, shall be construed to grant and reserve the easements contained in this Article X, even though no specific reference to such easements or to this Article X appears in the instrument for such conveyance.

10.14 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

10.15 Maintenance Easement. An easement is hereby reserved to Grantor, the Association, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Building Lots and a right to make such use of the Building Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Project Documents, including the right to enter upon any Building Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Building Lot as required by the Project Documents.

10.16 Association's Responsibility. The Association shall maintain and keep the Common Area, in good repair, such maintenance to be funded as provided herein. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements situated within the Common Area.

#### ARTICLE XI: DAMAGE OR DESTRUCTION

11.1 Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in this Article XI or a complete or partial taking as provided in Article XII below. Acceptance by any grantee of a deed or other instrument of conveyance from Grantor or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted herein to the Association as attorney-in-fact.

11.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction to any part of the Common Area, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article XI shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

11.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Declaration - 20

Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during any period of insurance adjustments and repair and reconstruction.

11.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may assess in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further assessments may be made in like manner if the amounts collected prove insufficient to complete such repair and reconstruction.

11.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Article XI, or, if no Special Assessments were made, then in equal shares per Building Lot, first to the mortgagees of a First Mortgage and then to the Owners, as their interests appear.

11.6 Decision Not to Rebuild. If Owners representing at least sixty seven percent (67%) of the total votes of Association, and sixty seven percent (67%) of the mortgagees of a First Mortgage (based upon one vote for each mortgage owned) of the Building Lots agree in writing not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Building Lot, first to the mortgagees of a First Mortgage and then to the Owners, as their interests appear.

11.7 Damage or Destruction Affecting Building Lots. In the event of damage or destruction to the Improvements located on any of the Building Lots, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine of not less than fifty dollars (\$50) per day on the Owner of the Building Lot until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

## ARTICLE XII: CONDEMNATION

12.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation, the Board acting as attorney-in-fact for all Owners, shall notify each Owner of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

12.2 Condemnation; Distribution of Award; Reconstruction. The award made for such partial or complete taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Grantor and Owners representing at least sixty seven percent (67%) of the votes of the Association shall otherwise agree, the Association

shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in Article XI regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Building Lot, first to the mortgagees of any First Mortgage and then to the Owners, as their interests appear.

#### ARTICLE XIII: RESOLUTION OF DISPUTES

13.1 If any dispute or question arises between Members or between Members and the Association relating to the interpretation, performance or nonperformance, violation, or enforcement of the Project Documents, such dispute or violation may, at the Board's discretion, be submitted to the Board for resolution pursuant to rules of procedure established and adopted by the Board.

#### ARTICLE XIV: DESIGN COMMITTEE

14.1 Creation; Grantor's Right of Appointment. Within thirty (30) days of the date on which Grantor first conveys a Building Lot to an Owner, Grantor shall appoint no less than three (3) and no more than five (5) Persons to serve on the Design Committee. Thereafter, at any time, and from time to time, until such time as the Class B Membership is terminated, Grantor shall have the exclusive right, in Grantor's sole discretion, to appoint, remove and replace all members of the Design Committee. At all other times, the Board shall have the right to appoint, remove and replace all members of the Design Committee. If a vacancy on the Design Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting Member to serve for a specified temporary period not to exceed one (1) year. A member of the Design Committee need not be an Owner. Members of the Design Committee may be removed by the person appointing them at any time without cause. Pursuant to Section 14.3 below, the Design Committee shall review, study, and either approve or reject the proposed Improvements on the Property, all in compliance with the Declaration and any Association Rules. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of the proposed Improvements on the Property, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

14.2 Appointment of Design Committee Representative. The Design Committee may appoint in writing one (1) of its members to act as its designated representative (the "Committee Representative"). The Committee Representative may be delegated all duties and obligations of the Design Committee. In the event a Committee Representative is appointed, it is intended that the Design Committee shall look to the Committee Representative to perform all functions of the Design Committee; provided however, the Design Committee shall make all final determinations and decisions regarding all Design Committee duties and obligations. Any action or decision made by a majority of the members of the Design Committee shall be a binding decision of the entire Design Committee.

14.3 Improvements Generally. The Design Committee may draft the Design Guidelines for the construction and reconstruction of all Improvements on the Property. No Improvements on any portion of the Property shall be constructed, reconstructed, placed or removed from the Property without prior written consent of the Design Committee, and without being in compliance with the Project Documents and the Design Guidelines. The Design Guidelines shall be used and drafted by the Design Committee to ensure that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and all aesthetic considerations, including guidelines designed to protect the special qualities of the Property, and to encourage creative design, by providing general architectural, design and construction guidelines, landscape guidelines (including a

description of existing, natural conditions and vegetation), submittal and review procedures, and fees and charges for review. The Design Guidelines shall be drafted to conform to this Declaration, the Articles and Bylaws, and must be approved by the Board prior to implementation. In the event of a conflict between the Design Guidelines and this Declaration, the Articles and the Bylaws, this Declaration, the Articles or Bylaws, as the case may be, shall govern. The content of the Design Guidelines may be modified and amended from time to time as provided in the Design Guidelines, and in all events can be modified and changed by a majority vote of the Board. Nothing contained in this Article XIV limits any Owner's obligation and duty to ensure that his or her Building Lot development is in compliance with this Declaration, the Design Guidelines, any other Project Documents or applicable city and state laws.

14.4 Expenses. All expenses of the Design Committee shall be paid by the Association. The Design Committee shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the Design Committee from time to time and such fees shall be collected by the Design Committee and remitted to the Association to help defray the expenses of the Design Committee's operation, including reasonable payment to each member of the Design Committee for their services as provided herein. The Design Committee fee shall be not less than \$250.00 and not more than \$2,500.00; provided however, that in the event the Design Committee is reviewing maintenance or remodeling Improvements to any Building Lot, the Design Committee shall be able to reduce the Design Committee review fee to a reasonable amount.

14.5 Non-Liability of Design Committee Members. Approval by the Design Committee does not assure approval of the Improvements by any appropriate governmental or quasi-governmental agency, board or commission. Notwithstanding that the Design Committee has approved Improvements, plans and specifications, neither the Design Committee nor any of its members shall be responsible or liable to any Association or to any Person, Owner, or Grantor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the Improvements, unless due to the willful misconduct or bad faith of the Design Committee. Neither the Board, Design Committee or any agent thereof nor Grantor or any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Project Documents, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the Design Committee shall be defended, indemnified and held harmless by the Association in any such suit or proceeding which may arise by reason of the Design Committee's decision. The Association, however, shall not be obligated to defend, indemnify and hold harmless any member of the Design Committee to the extent any such member of the Design Committee shall be adjudged to be liable for willful misconduct or bad faith in the performance of such member's duty as a member of the Design Committee, unless and only to the extent that the court in which such action or suit may be brought shall determine that, despite the adjudication of liability, but in view of all circumstances of the case, such member is fairly and reasonably entitled to indemnification and defense for such expense if such court shall deem it proper.

14.6 Variances. The Design Committee may authorize variances from compliance with any of the Design Guidelines, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Design Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration, or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his or her use of the Property, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

14.7 Grantor's Exemption. Any and all Improvements constructed by Grantor on or to the Property are not subject to review and approval by the Design Committee.

14.8 Landscape plan approval. Property owners must receive approval of complete landscaping plans from the Architectural Control Committee prior to installation of landscaping. Landscape plans must avoid the use of highly combustible landscape materials that would put structure and adjacent structures at risk. All landscape plans must meet the Boise City Fire Dept Wildland Urban Interface Ordinance. The burden is on the homeowner to make sure the plan meets all requirements of the WUI ordinance, as the ACC or the HOA will not be responsible in any way for this.

Private property owners are required to plant the rear slopes, side slopes and slopes between lots with a long growing fescue grass kept irrigated, green and weed free. Per section 4.4 of this document.

#### ARTICLE XV: MISCELLANEOUS

15.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2043, unless amended as herein provided. After December 31, 2043, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by Members holding at least a majority of the voting power of the Association and such written instrument is recorded with the Ada County Recorder's Office.

#### 15.2 Amendment.

15.2.1 By Grantor. Except as provided in Section 15.3, until the recordation of the first deed to a Building Lot, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively "amendment") by Grantor by recordation of a written instrument setting forth such amendment. In addition, Grantor, regardless of whether it has conveyed any Building Lot(s) to an Owner, shall have the exclusive right, power and authority to amend this Declaration or any of the Project Documents, at any time and at its sole discretion, to comply with any and all requirements and conditions of FNMA, GNMA, FHA, VA and FHLMC as those terms are defined in Section 15.3.

15.2.2 By Owners. Except as provided in Sections 15.1 and 15.3, after the recordation of the first deed to a Building Lot, any amendment to any provision of this Declaration, other than to this Article XV, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Members representing more than two-thirds (2/3) of the total voting power in the Association, except where a greater percentage is required by express provision in this Declaration, and such amendment shall be effective upon its recordation with the Ada County Recorder's Office. Any amendment to this Article XV shall require the vote or written consent of Members holding seventy-five percent (75%) of the voting power of the Association.

15.2.3 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

15.2.4 City Covenants. Notwithstanding the foregoing, the covenants required by the City of Boise for approval of the project shall not be amended without the express written consent of the City of Boise City.



15.3 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first Mortgage upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first Mortgage, such Building Lot shall remain subject to this Declaration, as amended. In order to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal Housing Administration ("FHA"), the Veterans Administration ("VA") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Building Lots within the Properties, the following provisions are added hereto (and to the extent those added provisions, pertaining to the rights of mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration, these added restrictions shall control):

(a) Each first Mortgage encumbering any Building Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the mortgagor of such Building Lot in the performance of such mortgagor's obligations under the Project Documents, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Every Owner, including every first mortgagee of a Mortgage encumbering any Building Lot, which obtains title to such Building Lot, pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

(c) Each holder of a first Mortgage who comes into possession of the Building Lot by virtue of foreclosure of the Mortgage or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take title to such Building Lot free of any claims for unpaid assessments and charges against the Building Lot, which accrue prior to the time such holder comes into possession of the Building Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Building Lots including the mortgaged Building Lot.

(d) Unless all of the first mortgagees have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Improvements thereon which are owned, directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association, or the transfer of the Common Area or Improvements to an unincorporated association of the Owners in accordance with the Articles of Incorporation of the Association, shall not be deemed a transfer within the meaning of this clause);

(2) change the ratio of Assessments or method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner, or the method of allocating distributions or hazard insurance proceeds or condemnation awards;

(e) Unless otherwise specified below, at least fifty-one percent (51%) of the first mortgagees (based upon one vote for each Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units on the Building Lots, the exterior maintenance of the dwelling units on the Building Lots or the upkeep of the lawns and planting on the Properties;

(2) fail to maintain Fire and Extended Coverage on insurable Common Area on a current Declaration - 25

replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(3) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction or such Improvements;

(4) abandon or terminate the covenants, conditions, and restrictions of this Declaration, or terminate the legal status of the project after substantial destruction or condemnation has occurred (termination of the project for reasons other than substantial destruction or condemnation requires a sixty-seven percent (67%) vote of first mortgagees);

(5) make any material amendment to the Project Documents (material amendment herein shall mean those amendments classified as material in the FNMA Project Standards applicable to Property);

(f) First mortgagees, upon written request, shall have the right to (1) examine the Project Documents and books and records of the Association during normal business hours, (2) require from the Association audited annual financial reports and other financial data be available no later than 120 days from the Association's fiscal year-end, (3) receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend all such meetings.

(g) All first mortgagees shall be given immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Area or any Building Lot whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Board receives notices or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

(h) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies, for such property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(i) The Board may contract for professional management of the Properties with a bondable professional manager. The agreement between the Association and its agent for such professional management shall provide that the management contract may be terminated for cause on not more than thirty (30) days' written notice, and the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

(j) The Board 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 the professional manager.

(k) Any agreement for the leasing or rental of a Building Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Project Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Project Documents shall be a default under the agreement.

(l) All taxes on the Common Areas must be assessable against those Common Areas only and the Association owning such Common Areas are solely responsible for payment of such taxes.

(m) Any provision in this Declaration which requires Owners to indemnify the Association, other Owners, or the board of any Association against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance, the indemnitor is relieved of Declaration - 26

liability to the extent of insurance coverage.

(n) Notwithstanding any other provisions 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 for planned unit development projects established by FNMA and/or GNMA, so long as either is a mortgagee or owner of a Building Lot within the project, except to the extent such coverage is not available or has been waived in writing by FNMA and/or GNMA.

In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the 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 Building Lots with dwelling units 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 residential Building Lots, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering.

15.4 Notices. Any notices permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, by fax or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, first class, 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 or to the address of such Person as contained in the Ada County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Association.

15.5 Enforcement and Non-Waiver.

15.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner, the Association or Grantor shall have the right to enforce any or all of the provisions hereof against any property within the Property and against the Owners thereof.

15.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Project Documents, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both.

15.5.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

15.5.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

15.5.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

15.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

15.6.1 Restrictions Construed Together. All of the provisions hereof shall be liberally construed

Declaration - 27

together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

15.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Subsection 15.6.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

15.6.3 Singular Includes Plural. 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.

15.6.4 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.

15.7 Successors and Assigns. All references herein to Grantor, Owners, Members, the Association or Person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Members, the Association or Person.

#### ARTICLE XVI: STORM WATER FACILITIES (reference O&M Manual prepared by RiveRidge Engineering)

16.1 Operation and maintenance of the storm water facilities at Hackberry Ranch Subdivision shall be governed by the operation and maintenance manual of storm drainage system in Hackberry Ranch Subdivision, which manual may only be modified at the direction of the Board of the Association, with written approval by ACHD.

16.2 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee and the Ada County Highway District ("ACHD"). For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Architectural Committee and/or ACHD, which may include drainage from Common Area over, any Building Lot in the Property.

16.3 ACHD Storm Water Drainage System. LOTS 2 and 28, BLOCK 1, are servient to and contain the Ada County Highway District ("ACHD") storm water drainage system. These Lots are encumbered by that certain Master Perpetual Storm Water Drainage Easement recorded on May 8, 2009 AS INSTRUMENT NO. 109053259 official records of Ada County, and incorporated herein by this reference as if set forth in full (the "Master Easement"). The Master Easement and the storm water drainage system are dedicated to ACHD pursuant to Section 40-2302 Idaho Code. The Master Easement is for the operation and maintenance of the storm water drainage system. Said easement shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect the operation and maintenance of the storm drainage facilities.

16.4 ACHD Right to Inspect and Maintain. ACHD shall have the right at all times to inspect the storm water drainage system, and perform any required maintenance and repairs.

16.5 ACHD Approval of Amendments. Any amendment of this Declaration, the covenants, conditions and restrictions contained herein, or the Manual for Light Maintenance of Storm Water Facilities dated January 24, 2014, prepared by RiveRidge Engineering, having any direct impact or affect on the ACHD storm water drainage system shall be subject to prior review and approval by ACHD.

6.6 ACHD Assessment and Lien Rights. ACHD shall be entitled to levy assessments to the Association for the reasonable costs of all required maintenance and repairs to the storm water drainage system. ACHD shall be entitled to a continuing lien all lots for such unpaid assessments for maintenance and repair to the storm water drainage system.

6.7 Grading. The owner of any Building Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of Boise City Code or by the Association, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Ada county Highway District, or other public agency, and plantings and ground cover installed or completed thereon.

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration this 19 day of MARCH, 2014.

HACKBERRY RANCH CORPORATION,  
an Idaho corporation

By: \_\_\_\_\_

Scott G. Kimball, President

STATE OF IDAHO )

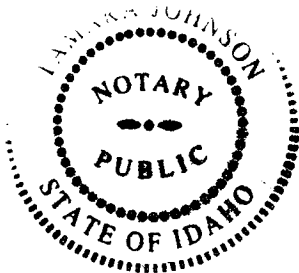
)

ss.

County of Ada )

On this 19<sup>th</sup> day of March, 2014, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Scott G. Kimball, known or identified to me to be the President of Hackberry Ranch Corporation, an Idaho corporation, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



\_\_\_\_\_  
Notary Public for Idaho

Residing at Boise ID

My commission expires: 2/19/2020



**T-O ENGINEERS**

**PROJECT:** 120116  
**DATE:** December 2, 2013  
**PAGE:** 1 of 3

**EXHIBIT "A"**  
**LAND DESCRIPTION OF**  
**HACKBERRY RANCH SUBDIVISION**

A parcel of land situated in the NW1/4 of the SW1/4 and the W1/2 of the NW1/4 of Section 26, Township 4 North, Range 2 East, Boise Meridian, Ada County, Idaho, being Parcel 1 and a portion of Parcel 2A of Record of Survey No. 6276, Records of Ada County, Idaho, more particularly described as follows:

**BEGINNING** at the W1/4 corner of said Section 26, from which the northwest corner of said Section bears N.00°07'57"W., 2640.00 feet; thence, along the westerly line of said NW1/4,

- 1) N.00°27'11" E., 2640.00 feet to the northwest corner of said Section 26; thence, along the northerly line of the W1/2 of the NW1/4 of said Section 26,
- 2) S.88°49'05"E., 606.02 feet to the centerline of North Bogus Basin Road; thence, along said centerline the following courses:
- 3) S.55°45'08"E., 238.24 feet to the beginning of a tangent curve; thence,
- 4) Southeasterly along said curve to the right having a radius of 330.00 feet, an arc length of 393.30 feet, through a central angle of 68°17'09", and a chord bearing and distance of S.21°36'33"E., 370.43 feet; thence, tangent from said curve,
- 5) S.12°32'02"W., 355.31 feet to the beginning of a tangent curve; thence,
- 6) Southwesterly along said curve to the left having a radius of 350.00 feet, an arc length of 92.42 feet, through a central angle of 15°07'45", and a chord bearing and distance of S.04°58'09"W., 92.15 feet; thence, tangent from said curve,
- 7) S.02°35'43"E., 98.50 feet to the beginning of a tangent curve; thence,
- 8) Southeasterly along said curve to the left having a radius of 1000.00 feet, an arc length of 122.28 feet, through a central angle of 07°00'21", and a chord bearing and distance of S.06°05'54"E., 122.20 feet to a parcel of land described in Right-of-Way Dedication Deed Instrument No. 101001817; thence, leaving said road centerline, non-tangent from said curve,



**T.O. ENGINEERS**

**PROJECT:** 120016  
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- 9) S.80°23'56"W., 33.00 feet to the beginning of a non-tangent curve on the westerly right-of-way line of said N. Bogus Basin Road; thence, along the westerly right-of-way line of N. Bogus Basin Road as described in said deed instrument, the following courses:
- 10) Southeasterly along said curve to the left having a radius of 1033.00 feet, an arc length of 142.70 feet, through a central angle of 07°54'54", and a chord bearing and distance of S.13°33'32"E., 142.59 feet; thence, tangent from said curve,
- 11) S.17°30'59"E., 124.20 feet to the beginning of a tangent curve; thence,
- 12) Southeasterly along said curve to the right having a radius of 317.00 feet, an arc length of 30.36 feet, through a central angle of 05°29'17", and a chord bearing and distance of S.14°46'20"E., 30.35 feet; thence, tangent from said curve,
- 13) S.12°01'41"E., 88.81 feet to the beginning of a tangent curve; thence,
- 14) Southwesterly along said curve to the right having a radius of 997.00 feet, an arc length of 512.43 feet, through a central angle of 29°26'55", and a chord bearing and distance of S.02°41'46"W., 506.81 feet; thence, tangent from said curve,
- 15) S.17°25'14"W., 730.64 feet to the beginning of a tangent curve; thence,
- 16) Southwesterly along said curve to the right having a radius of 834.00 feet, an arc length of 121.83 feet, through a central angle of 8°22'10", and a chord bearing and distance of S.21°36'19"W., 121.72 feet; thence, tangent from said curve,
- 17) S.25°47'24"W., 36.59 feet; thence,
- 18) S.64°12'36"E., 33.00 feet to the centerline of said North Bogus Basin Road and the beginning of a non-tangent curve; thence, leaving said right-of-way dedication deed line, along said centerline the following courses:



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- 19) Southwesterly along said curve to the right having a radius of 1145.92 feet, an arc length of 235.79 feet, through a central angle of  $11^{\circ}47'22''$ , and a chord bearing and distance of  $S.31^{\circ}41'06''W.$ , 235.37 feet; thence, tangent from said curve,
- 20)  $S.37^{\circ}34'47''W.$ , 762.81 feet to the beginning of a tangent curve; thence,
- 21) Southwesterly along said curve to the right having a radius of 1432.40 feet, an arc length of 157.58 feet, through a central angle of  $6^{\circ}18'11''$ , and a chord bearing and distance of  $S.40^{\circ}43'53''W.$ , 157.50 feet to the westerly line of said NW1/4 of the SW1/4; thence, leaving said centerline, along said westerly line,
- 22)  $N.00^{\circ}24'02''E.$ , 1176.42 feet to the **POINT OF BEGINNING**.

**CONTAINING** 65.20 acres, more or less.

**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**RECORD OF SURVEY No. 6276**, Instrument No. 103160580 on file with the Ada County Recorder, and by this reference, made a part hereof.

