



When recorded, return to:

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR
BADGER CREEK**
Bonnevill County, Idaho

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Badger Creek ("Declaration") is hereby adopted by Snowcrest Development, LLC. an Idaho corporation, their successors and assigns ("Declarant") and is made effective as of the date recorded in the Bonnevill County Recorder's Office. This Declaration, along with any future amendment(s), shall be the sole declaration for the Property.

This Declaration governs all Lots in Badger Creek Divisions 1, 2 and 3.

RECITALS:

(A) This Declaration affects and concerns the real property located in Bonnevill County, Idaho and more identified as the Lots in Divisions 1, 2 and 3 within **Exhibit "A"** attached hereto and incorporated herein by this reference ("Property").

(B) The Property remains within the declarant control period. Pursuant to Article 35 of the Enabling Declaration, Declarant retains full authority to adopt this Declaration. By signing below, the Declarant hereby certifies that the above described approval was obtained, approving and consenting to the recording of this Declaration, Bylaws and filing of the Articles.

(E) Declarant desires to subject the Property to the terms of this Declaration, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Property. Declarant intends to develop a residential community on the Property pursuant to the local ordinance and the Homeowner's Association Act.

(F) Declarant has deemed it desirable for the efficient preservation of the values and amenities of the Property to create an entity which possesses the powers to maintain and administer the Common Areas and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will file Articles of Incorporation for Badger Creek Homeowners Association, Inc. ("Articles") and cause to be registered with the Idaho Secretary of State Badger Creek Homeowners Association, Inc. ("Association"). Declarant shall also cause to be recorded the Bylaws for Badger Creek Homeowners Association, Inc. governing certain operations of the Association, which are attached hereto as **Exhibit "B"** ("Bylaws").

(G) No provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs

incidental to sales or construction which are in compliance with applicable County ordinances; (4) assignment of Declarant rights under this Declaration in whole or part; and (5) Declarant rights with respect to subsequent phases, annexation or de-annexation of the Property.

(H) These Recitals are made a part of this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS
ARTICLE I - DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms when used in the Governing Documents shall have the following meanings:

(A) "Act" shall mean the Homeowner's Association Act, Idaho Code § 55-3201 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee *if* created by Association. Declarant shall retain the authority to appoint the Board and correspondingly the ACC until Declarant no longer owns any property within the Property.

(C) "Articles" shall have the meaning set forth in the Recitals.

(D) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, lot-type assessment, special assessment, limited assessment, individual assessment, reserve assessment, capital improvement assessment, late fee, or other charge.

(E) "Association" shall mean Badger Creek Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board of Directors through its officers, directors, and managers.

(F) "Board" means the Board of Directors of the Association elected or appointed directors serving as the management body of the Association.

(G) "Bulk Service Contract" or "Bulk Service Provider" shall mean a service provider for items such as internet, television, cable, satellite, telephone, data, solar power, and similar utilities and services.

(H) "Bylaws" shall have the meaning set forth in the Recitals.

(I) "County" shall mean Bonneville County, Idaho and its appropriate departments, officials, and committees.

(J) "Common Area(s)" shall mean all property designated on the recorded Plat(s) or described in this Declaration as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Members, together with all Improvements thereon and all of the easements appurtenant thereto, which *may* include: open space, detention

basins, perimeter fencing (if any). Members enjoy corresponding rights of access along with Common Expense responsibilities for Common Areas.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for: (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) "Declarant" shall mean and refer to Snowcrest Development, LLC. and its successors and assigns.

1. "Declarant Related Entity or Entities" shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant's members for the purpose of owning, developing, constructing and/or selling Lots or Dwellings in the Property, including but not limited to Snowcrest Development.

(M) "Declaration" as defined in the Recitals.

(N) "Dwelling" shall mean the single-family residence built or to be built on any Lot, together with all Improvements located on or with respect to the Lot concerned that are used in connection with such residence. Pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling.

(O) "Governing Documents" shall mean this Declaration, Plat(s), Bylaws, Articles, Rules, Design Guidelines, Fee Schedule, and any other documents or agreements binding upon an Owner.

(P) "Improvement" shall mean all structures and appurtenances of every type and kind, including, but not limited to: facilities, amenities, Dwellings, garages, sheds, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the Lot.

(Q) "Lot" shall mean any numbered lot shown on any official and recorded Plats, including the Dwelling and all Improvement located thereon. Lot may also refer to or be interchangeable with Dwelling in certain contexts.

(R) "Manager" shall mean any entity or person engaged by the Board to manage the Property.

(S) "Member" or "Owner" shall mean and refer to the person who is the Owner of

record (in the office of the County Recorder of Bonneville County, Idaho) of a fee simple or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legally entity recognized by Idaho State law. Accordingly, such an Owner may designate a natural person of its selection as Owner's agent to serve and act in the Owner's place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time.

(T) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Idaho.

(U) "Plat(s)" shall mean an official and recorded plat of the Property, including all subsequent phases, if any, when recorded, as approved by County, and recorded in the office of the Bonneville Recorder, as it may be amended from time to time.

(V) "Rules" shall mean any instrument adopted by the Board for the regulation and management of the Property, which may include both activities, rights and easements in and to the Common Area and Lots.

(W) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements that are necessary to provide access and utility service to the Lots and including other construction work required to comply with any conditions of County to the approval of the Property or any Plat(s) thereof.

ARTICLE II - EASEMENTS & OTHER RIGHTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

(a) The Association shall be the trustee for all Owners with respect to easements, licenses, agreements, and conveyances of Common Areas, consistent with the Declaration and Idaho law.

2.2 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in

- a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
- (b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
 - (c) The right of County and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress.

2.3 Easements in Favor of Association. The Lots and Common Areas are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

- (a) For inspection during reasonable hours of the Lots and Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair, and replacement of portions of the Lots and Common Areas as required by the Declaration;
- (c) For correction of emergency conditions in the Property; and
- (d) Landscaping. The Association shall have an easement and related access rights in order to maintain the Common Area landscaping or any other landscaping that is the Association's responsibility.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property.

2.5 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.6 Amenity Creation. Declarant shall install those amenities in its sole discretion. This Declaration does not bind upon Declarant nor warrant to Owner any particular amenity that may or may not be built in the Common Areas.

2.7 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property, consistent with Idaho Code 50-1302 and the Plats and Governing Documents, and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the construction of Dwellings and improvement of the Common Area, and construction, installation

and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities.

2.8 Parking. The Association may adopt and enforce parking restrictions upon the roadways throughout the Project that are more restrictive than County ordinances upon Owners, occupants, and their guests, tenants, invitees.

2.9 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots so long as it owns the Lots.

2.10 Irrigation Facilities. If secondary irrigation facilities are provided to Lots, Lots shall be responsible to connect to the main line irrigation system and shall be responsible for all costs and payment of irrigation services. Owners shall also be subject to all easements of record, easements identified within the Plat, or otherwise established by Idaho law with regard to water, irrigation and related facilities, access, maintenance and costs.

2.11 Mailbox Cluster. Location and design of mailbox clusters may be determined by the United States Postal Service who will then notify the Board.

ARTICLE III - MEMBERSHIP, VOTING CLASSES & CONTROL PERIOD

3.1 Membership in the Association shall at all times consist exclusively of the Owners and the Declarant. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted membership rights as a Class "B" Member, as defined below.

3.2 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Unless otherwise stated herein, Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Only an Owner that is current on all Assessments and/or other fees thirty days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall

be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

- (b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive five hundred (500) votes for each recorded Lot, or Dwelling owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period

3.3 The Class "B" Control Period runs until the first occurs of the following:

- (a) One year after Declarant or Declarant Related Entities have sold 95% of the Lots in the Property (including annexed property); or
- (b) When, at its discretion, the Class B Member so determines.

3.4 Notwithstanding, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Property at its sole election and determination. In doing so as to a portion of the Property, it does not waive any reversionary or remaining control as to all other portions of the Association, the control of which is not expressly terminated by Declarant.

ARTICLE IV - ASSOCIATION & ASSESSMENTS

4.1 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity and the power to retain professional services and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Idaho law.

- (a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Property at all public meetings and legal proceedings.
- (b) The Association shall have the authority to initiate and compromise claims. In the event that the Association initiates legal action against an Owner, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Idaho law.

- (c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

4.2 Association Rules. The Board may adopt, amend, repeal and enforce Rules governing the Property. The Association's rulemaking authority may govern conduct and activities upon the Common Areas and Lots.

- (a) During the Class B Control Period, Declarant may adopt rules in its sole discretion.

4.3 Violation Deemed a Nuisance. Any violation of the Governing Documents that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

- (a) Any single or continuing violation of the Governing Documents may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.
- (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (c) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

4.4 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. Assessments shall be levied against all Lots in the Property, whether vacant or improved, as further set forth herein. Each Owner, by acquiring a Lot, shall be deemed to covenant and agree to pay Assessments, together with late payment fees, interest, and costs of collection (including reasonable attorney fees).

- (a) Assessments. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owners and their successors. No Owner may exempt themselves or their Lot from liability for payment of Assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees).
- (b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

- (c) **Individual Assessment.** The Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Property or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.
- (d) **Lot Type Assessment.** An assessment based upon a specific Lot or housing product, and the related costs and services provided for that Lot Type.
- (e) **Reserve Fund.** The Association may levy a reserve fund assessment, as set forth in this article.

4.5 **Budget.** The Board is authorized and required to adopt a budget annually. The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget. The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

4.6 **Reserve Fund Analysis.** The Board may cause a reserve analysis to be conducted from time to time to analyze the cost of repairing, replacing, or restoring Common Area. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

4.7 **Start-Up Development Assessment.** With the exception of Declarant and Declarant Related Entities, the first Owner of record of a completed Dwelling (following the Declarant and initial builder) of a Lot shall pay to the Association at closing an initial, start-up fee in an amount is adopted by the Board of Directors. This fee shall be a one-time, initial start-up fee, shall not be prorated for any time left in the calendar year following closing, and is in addition to the prorated Regular Assessment. The Association shall utilize this fee to assist in the administration, legal, operations, maintenance, and other expenses and costs related to Association for the management of the affairs of the Association and the Common Areas for the benefit of the Association and its members.

4.8 **Transfer Fee.** Pursuant to Idaho Code § 55-3102(4)(f), upon the sale or transfer of a Lot within the Association, a transfer fee in the amount established by the Board, which amount may be established from time to time by resolution, shall be paid to the Association at the time of conveyance or transfer. This transfer fee shall be for the benefit of the Association, its members and property and shall be utilized for purposes set forth in the Association's Governing Documents. Declarant may establish such other fees and charges for set up, issuance of estoppel certificates, and other charges as allowed by law. Declarant and Declarant Related Entities are exempt from the Transfer Fee.

4.9 Date of Commencement of Assessments. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant' members, for the purpose of constructing Dwellings on the Lot (collectively "Declarant' Related Entities") shall not commence until the completed Lot is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

4.10 Fines & Hearing Process. Following notice and procedure, as required by the Idaho Code §55-115(2), the Association shall have the power to assess a fine against an Owner and/or their Lot for a violation of the terms and conditions of the Governing Documents in an amount established by the Board. The Board may designate a manager or agent to assist in the violation, fine and hearing process. Further, the Board may independently take legal action, when needed, to correct or enjoin violations of the Declaration.

4.11 Mechanic's Lien Rights. No labor performed or services or materials furnished with the consent of or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against the Common Area or the Lot of any other Owner or against any part thereof, or against any other property of any other Owners, unless such other Owner has expressly consented to or requested in writing the performance of such labor or furnishing of such materials or services. Such express written consent shall be deemed to have been given by the Owner of any Lot in the case of emergency corrective action undertaken by the Association. Labor performed or services or materials furnished for the Property if duly authorized by the Association shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove their Lot from a lien against two or more Lots or any part thereof by payment of sums created by such lien, which is attributable to such Owner's Lot.

4.12 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Idaho law.

4.13 Due Date, Charges & Interest. The Board may adopt Rules and policies to provide further detail or that expressly modify this section. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge a late fee in an amount set by the Board, for each unpaid or late assessment. In addition to late fees, interest may accrue on all unpaid balances at 18% per annum. The Board may also impose other reasonable charges imposed by a manager related to collections.

4.14 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except liens that by law would be superior thereto.

4.15 Foreclosure Sale. The Association shall have all rights and power of foreclosure

granted by the law, including non-judicial foreclosure through power of sale in the same manner as a deed of trust. The Association may also bid for the Lot at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.16 Other Remedies. All rights and remedies of the Association shall be cumulative, and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner, including purchaser or seller, and other obligees. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

4.17 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot the amount of any assessment that is more than sixty (60) days past due.

4.18 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

4.19 Appointment of Trustee. Such lien may be foreclosed by appropriate action in court or through power of sale in the same manner as a deed of trust by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The Association hereby appoints Burt R. Willie, Esq., a licensed member of the Idaho State Bar, or subsequently designated and qualified individual, with power of sale, the Lot and all Improvements to the Lot for the purpose of securing payment of assessments and fees under the terms of this Declaration.

ARTICLE V - ARCHITECTURAL RESTRICTIONS

5.1 Landscaping. Declarant shall install the initial landscaping in the Common Areas.

5.2 Licensed Contractor. No Dwelling shall be erected on any Lot except by a licensed general and subcontractors duly qualified and licensed by the appropriate government authorities.

5.3 Approved Builder. During the Class B Control Period, only contractors approved

in advance by Declarant, in their sole discretion, may construct Improvement(s) upon the Lots.

5.4 Fencing. No fence, wall, hedge, or other dividing structure may be installed without the prior written consent of the Declarant, Board or ACC.

- (a) Fences: Lot perimeter fencing must be constructed of materials and colors approved by the Declarant. No wire fence shall be allowed.
- (b) Play Structures. Play structures, trampolines, pools, sports courts, and other similar equipment may be placed only in back yards. Such structures must be designed and constructed in a manner that is aesthetically compatible with the Dwelling and Lot.

5.5 Accessory Buildings. All Improvements on the Lot must be approved in advance in writing by the Association. Any detached accessory building erected on the Lots shall conform in design and materials with the primary residential Dwelling on the Lot and comply with all required setback and size and height restrictions.

5.6 Landscaping and Lot Care. Owners shall be responsible for the care and maintenance of their entire Lot unless otherwise agreed with the Association. No excavation for stone, gravel or earth shall be made on Lots, unless such excavation is made in connection with the erection of an Improvement or structure thereon.

5.7 Outdoor Lighting. Outdoor lighting shall be designed to aim downward and reasonably limit the field of light to the confines of the Lot on which it is installed.

5.8 Setbacks. Dwelling and Improvements shall follow County requirements. No Dwelling shall exceed two (2) stories in height, including split-level designs. No secondary building, such as a barn, shed, or other building, shall exceed twenty (20) feet in height.

5.9 Square Footage. As may be further set forth in the Design Guidelines, Lots shall be limited and restricted to no more than one (1) single-family Dwelling with a square footage for living space of a minimum of 1,300 square feet of living space for a single-level Dwelling, not counting garages, porches, patios, etc. For a two-story Dwelling, the main level must be at least 600 square feet and the overall Dwelling must have at least 1,500 square feet of living space, as qualified above. Further, the construction of any single-family Dwelling or any outbuilding must be completed no later than the expiration of a fifteen (15) month period from and after the commencement of construction of each individual Improvement.

5.10 Accessory Dwellings. The Association may adopt an accessory dwelling policy governing approval and requirements for any authorized accessory dwelling otherwise in compliance with state law. Any accessory dwelling shall not exceed one thousand (1,000) square feet and are not to exceed one story in height. The design must be architecturally consistent with the Dwelling, must be approved in advance by the Association, and must satisfy all required setbacks.

5.11 Exemption of Declarant. At any time during the Class B Control Period, Declarant

is exempt from this Article.

ARTICLE VI - COMMON AREA & LOT MAINTENANCE

6.1 Common Areas Maintained by the Association. All Common Areas shall be maintained by the Association.

6.2 Lot Maintenance & Appearance. All maintenance, repair and replacement of Lots, Dwellings and Improvements shall be the sole responsibility of the Owner. It is the obligation of each Owner to maintain their Lot, Dwelling and Improvements located thereon in a clean and sanitary condition and uncluttered at all times in order to preserve and enhance the enjoyment of the Property. The open storage of any building materials (except during construction of Improvements) and open storage or parking of construction equipment, or inoperable motor vehicles; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage (except as stored in tight containers in an enclosure such as garbage bins); lawn or garden furniture (except during the season of use); and the storage or accumulation of any other material, vehicles, or equipment on the Lot in any visually unappealing manner is prohibited. Further, no clothes lines, service yards, or storage yards shall be permitted.

6.3 Repairs by Association. In the event that an Owner permits their Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Idaho for the foreclosure of trust deeds. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

6.4 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as originally constructed. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board or ACC. Declarant shall be exempt from this provision.

6.5 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to

prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances permit. Unless delayed by County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE VII -USE LIMITATIONS & RESTRICTIONS

7.1 Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected upon any of the Lots other than one detached single-family Dwelling, as approved by Bonneville County and the ACC. Log homes shall not be permitted, manufactured homes and move on homes shall not be permitted. All homes must be stick built on the site.

7.2 Dwelling Size. Must be approved by the ACC.

7.3 Building Location. No building shall be located on any Lot line or nearer to the street line than the minimum building setback lines, as set forth in the zoning ordinances of Bonneville County. For the purpose of this covenant, said distances are to be measured from the foundation. Any exceptions must be approved through the ACC and Bonneville County building department.

7.4 Building Exteriors. Must be approved by the ACC.

7.5 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

7.6 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. No outbuildings may be constructed unless first approved by the ACC. Out buildings, storage, detached garages, must meet the side yard and rear yard setback as set forth by Bonneville County zoning.

7.7 Garage and Refuse Disposal. No rubbish, trash, garbage or other wastes shall be dumped on any vacant Lot. All such wastes shall be kept in clean, sanitary containers.

7.8 Livestock, Animals. No animals or livestock of any kind shall be raised , bred, or kept on any Lot except dogs, cats, other household pets or chickens may be kept in accordance to the following and in addition to Bonneville County ordinances, and provided that they are not bred or maintained for any commercial purposes; (a) Animals may be kept within the interior of a home so long as they do not disturb other Owners. Outdoor kennels or fenced areas cannot produce noxious odors or disturb neighboring Owners. (b) When pets are outside of the Owner's Lot they

must be supervised by the Owner of the pet, who shall immediately clean up after any pet that defecates or disturbs the grounds. (c) Owners failing to comply with this requirement shall be fined by the Association \$50 per occurrence. (d) Owners are allowed a maximum of 12 hens, roosters are prohibited. Coops and runs must be at least 25 feet away from any adjacent neighbors residence. If any pet becomes a nuisance to other Owners, the pet owner shall receive a written warning from the Committee, and if the problem persists the managing board of directors will meet with those involved to resolve the matter. The board of directors can require the pet owner to remove the pet from the Development upon written notice by the Management Committee or representative. If the pet owner fails to immediately remove the pet upon receipt of such written notice, in addition to other attempted remedies, including attorney's fees, the pet owner shall pay a \$50 penalty per day, payable to the Association.

7.9 Sidewalks. The Owner of each Lot shall be required to construct a five-foot sidewalk that complies with all applicable ordinances at the Lot Owner's expense not later than the time the residence is constructed or completed and ready for occupancy or shortly thereafter weather conditions being a consideration.

7.10 The Bonneville County (Green Strip). Maintenance between the street and the sidewalk located in the front of each parcel shall be an area that each parcel owner shall subsequently mow the grass, and otherwise care for and maintain, inclusive of watering the planting area in a neat, orderly and husbandry-like manner so as to provide a clean and attractive appearance. Grass ONLY will be required to grow and maintain in the Green Strip. Gravel, decorative rock or other types of landscape materials are NOT allowed. If Owners do not comply with the covenants requiring grass only in the green strip, the association may remove it and pass the cost on to the Owner per the guidelines within these covenants. Owners may plant trees in the green strip. The only species of tree allowed to be planted in the green strip shall be a Pacific Sunset Maple and the minimum diameter shall be 1".

7.11 Landscaping. The lawn and landscaping expenses relating to any Lot shall be at the Owner's expense and shall be completed within one year of the date the Certificate of Occupancy is issued. Landscape will require that a sprinkler system be installed including a timer control box. Kentucky blue grass or similar type grass should be planted in the easement, side yards and frontage of the Lot. Ten percent (10%) of the front yard will be required to be a flower bed or planter area. No more than thirty percent (30%) of the front yard can be planter areas or flower beds. Front yard, planters, front easement and side yards, should appear well manicured and maintained. If these areas are not maintained two letters of warning will be sent asking for compliance. If there is no compliance and these areas continue not to be maintained the Association or ACC may at its discretion hire the work to be done at the Owner's expense, including a \$150.00 fine. If legal action is required all legal cost incurred by the Association or ACC will be passed on to the Owner in non-compliance. NOTE: Any other change to the outlined above must be approved by the ACC.

7.12 Water Control. It is the Owner's responsibility to water their yards prudently to avoid puddling and flooding the neighbor's property. The Declarant shall not be held responsible for flooding or damage caused by flooding due to rain or snowmelt or irrigation water.

7.13 Fence. A 6' (six foot) WHITE vinyl fence is allowed. Chain-link, wood, vinyl fences of any color but white or other materials used to build fences are not allowed unless approved by the Architectural Committee in writing.

7.14 Easement Property & Fence. No Owner shall use the easement property in front of a parcel he does not own for vehicle parking. A parcel owner may, enclose the easement property directly behind their house and no closer to the street than the setback of the front of the home with a 6-foot-high vinyl fence.

7.15 RV Pads. Only concrete is permitted for the RV pad. No gravel nor grass pads are allowed. No gravel access to the RV pad through the green strip is allowed. Approach not to exceed County approach width limit. See local jurisdiction for exact measurements.

7.16 Antennas and Satellite Dishes. No large antennas or towers shall be allowed in any parcels, except that one or two satellite dishes less than 36 inches in diameter may be mounted on the rear or side of a building or on the rear or side of the roof.

7.17 Signs. No signs or advertisements shall be displayed on or from any parcel without the written approval from the ACC unless advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. Signs used to sell property should be no larger than 3 feet by 3 feet unless approved by the ACC.

7.18 Home Business and Offices. Home business and offices in residences are permitted as allowed by the County. Businesses that require foot or vehicular traffic or on street parking or increase the traffic in the neighborhood are not permitted unless approved by the ACC and local municipalities.

7.19 Energy Conservation Equipment. Submission to the ACC and prior approval, consistent with Idaho Code § 55-1154(4), shall be required for any solar energy equipment and devices.

7.20 No further Subdivision. An Owner may not subdivide any Lot or parcel into a smaller parcel.

7.21 Combination of Units. No Unit may be combined with another Unit without the consent of the Board.

ARTICLE VIII - INSURANCE

8.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

- 8.2 Property Insurance.
(a) Hazard Insurance.

- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas. Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (b) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

8.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association.

8.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy should include:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

8.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds coverage.

8.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association, as insurance trustee; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the

Lots. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

8.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.8 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE FOR THEIR LOT, DWELLING AND IMPROVEMENTS IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

ARTICLE IX - MISCELLANEOUS PROVISIONS

9.1 Condemnation. Whenever all of any part of the Common Areas shall be taken by condemnation (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

9.2 Damage & Destruction. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (a) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.
- (b) In the event that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in

that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

- (c) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

9.3 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Dwellings on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Lot, Declarant shall have the option, but not the obligation, to purchase such Lot on the following terms and conditions:

- (a) The purchase price shall be an amount equal to the sum of the following, less than any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:
 - (i) The purchase price paid by the original Owner of the Lot when originally purchased from Declarant;
 - (ii) The agreed upon value of any improvements made to the Lot by anyone other than Declarant; and
 - (iii) The Owner's reasonable moving costs.
- (b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant' intent to exercise the option herein.
- (c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.
- (d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Lot and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.
- (e) Declarant's option to repurchase granted herein with respect to any particular Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Lot including all applicable tolling periods.

9.4 Association Litigation.

(a) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant' contractors, or any other person or entity involved in the construction of the Lots unless and until all of the following requirements have been satisfied:

- (i) The Association has obtained a legal opinion from an attorney licensed to practice law in Idaho having at least ten (10) years of experience

in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget"); and

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(b) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(c) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(d) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

9.5 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

9.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant

easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.


9.7 No Representations and Warranties. Each Owner and occupant understand, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association, and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

9.8 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes in the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

9.9 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against their Lot, whether or not there is any reference to this Declaration in the instrument by which they acquire interest in any Lot.

9.10 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

Snowcrest Development, LLC. Declarant

By: 
Its: Authorized Representative

STATE OF Idaho)

: ss

COUNTY OF Bonneville

On this 29 day of May, 2026, personally appeared before me Levi Jarvis, who being by me duly sworn, did say that they are an authorized representative of Snowcrest Development, Inc., and that the within and foregoing instrument was signed on behalf of said corporation and duly acknowledged to me that they executed the same.



Notary Public

Residing at: Idaho, ID

My Commission Expires: 9/6/2030

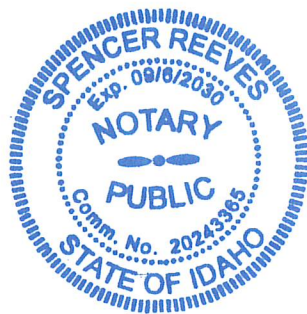


Exhibit "A"
Legal Description

Single-Family Lots: All lots in Divisions 1, 2 and 3

Exhibit "B"
Bylaws

**BYLAWS OF BADGER CREEK HOMEOWNERS
ASSOCIATION, INC.**

The following are the Bylaws of Badger Creek Homeowners Association, Inc. ("Bylaws"), an Idaho nonprofit corporation ("Association"). Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

ARTICLE I - DEFINITIONS

Section 1.1 Definitions. All terms used but not defined herein shall have the meanings given them under that certain Declaration of Covenants, Conditions & Restrictions for Badger Creek, recorded in the Official Records of the Bonneville County Recorder's Office, as amended ("Declaration").

ARTICLE II - MEETINGS OF MEMBERS

Section 2.1 Annual Meetings. An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board of Directors ("Board"). The Board may set the date, time, and location of the annual meeting in accordance with Section 2.3 below.

- (a) Declarant, compromising more than a majority of Owners, approves meetings held through available technology.

Section 2.2 Special Meetings. Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least fifty-one percent (51%) of all eligible votes. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association. During the Class B Control Period, only the Declarant may call Special Meetings.

Section 2.3 Notice of Meetings. Unless otherwise required by law, all notices shall be given via electronic communication, which may include but is not limited to: email, text, voicemail, or posted on the community website (if applicable). Notice shall be provided at least ten (10) days before a meeting, but no more than ninety (90) days, to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending email or electronic communication. Any notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day, and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

- (a) Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail. If no address is

- registered with the Association, an Owner's Lot address shall be deemed to be their registered address for purposes of notice.
- (b) The location of meetings may also occur virtually, telephonically, or through other available technology.

Section 2.4 Quorum. Unless otherwise specifically set forth in the Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

Section 2.5 Proxies. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide an additional requirement and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of the Lot. If conflicting proxy votes for an Owner or Lot exist, said proxy votes will not be counted.

Section 2.6 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association meeting, work session or similar event regardless of the location without the written consent of the Association.

Section 2.7 Action Taken Without a Meeting. Under the direction of the Board, any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners eligible to vote on the action were present and voted, unless a different approval percentage for the action is specifically set forth in the Declaration. The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

- (a) Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 120 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

Section 2.8 Voting. Only an Owner that is current on all assessments and charges due and owing

at least thirty (30) days prior a duly noticed meeting shall be deemed in good standing and eligible vote. The Association shall have two (2) classes of voting membership, Class "A" and Class "B," as set forth in the Declaration. The number of votes for each Lot/Acre shall be in accordance with the Declaration.

- (a) The votes appurtenant to any one Lot may not be divided and shall be voted in one block. If the vote of a majority of the Owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot. The Association shall honor the vote of: a duly authorized trustee or successor trustee of a trust that is an Owner; the duly authorized representative of a legal entity that is an Owner; and shall honor the vote of an individual that is a holder of a limited or general durable power of Attorney with respect to an Owner as though such vote were the vote of the Owner.

ARTICLE III - BOARD, SELECTION AND TERM OF OFFICE

Section 3.1 Number & Tenure. Except for the Board members appointed by Declarant during the Class B Control Period, which may delegate duties as set forth in the Articles and these Bylaws, the affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. At the first meeting of the Owners at which the election of Directors will take place following the Class B Control Period, the candidate who receives the most votes shall serve as a Director for three (3) years. The candidate that receives the second highest number of votes shall serve as a Director for two (2) years, and the third candidate who receives the third highest number of votes shall serve as Director for one (1) year. At each annual election, the successor to the Director whose term shall expire in that year shall be elected to hold office for the term of (3) years. Any change in the number of Directors may be made only by amendment of these Bylaws. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

Section 3.2 Advisory Board Member. During the Class B Control Period and prior to turnover of the Association to Owner control, the Declarant and/or Board may identify an owner(s) to be an advisory member of the Board and participate in Board meetings and activities and perform other duties at the discretion of the Board or Declarant.

Section 3.3 Eligibility. Following the Class B Control Period, all members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Lot. Notwithstanding, only one member of a single household can be a member of the Board at any one time. During the Class B Control Period, eligibility requirements shall not apply.

Section 3.4 Resignation & Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director, except during Class B Control Period, may be removed from the Board with or without cause by a majority vote, a quorum being present, at a special meeting called for such purpose. In the event of death, resignation or removal of a Director, their successor shall be selected by the remaining Directors and shall serve for the unexpired term of their predecessor.

Section 3.5 Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual and approved expenses incurred in the performance of their duties.

Section 3.6 No Estoppel or Reliance. No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

Section 3.7 Records Retention. The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

ARTICLE IV - NOMINATION AND ELECTION OF DIRECTORS

Section 4.1 Nomination. Following the Class B Control Period, Nomination for election to the Board may be made by the Board, Owners from the floor at the annual meeting, or pursuant to other written notice and procedures established by the Board

Section 4.2 Election. Following the Class B Control Period, the election of Directors may be by vote or written ballot, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized. The Association may utilize available technology for casting and counting votes.

ARTICLE V - MEETINGS OF THE BOARD

Section 5.1 Regular Meetings. Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days. During the Class B Control Period, board meetings shall not be required but may be held at the sole discretion of Declarant.

- (a) Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

Section 5.2 Special Meetings. When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) day notice for a regular meeting, a special meeting may be called by the President or by any two (2) Directors,

after not less than twenty-four (24) hours' notice to each Director. During the Class B Control Period, only the Declarant may call Special Meetings.

Section 5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Board meeting, work session or similar event regardless of the location without the written consent of the Association.

Section 5.5 Action Taken Without a Meeting. The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE VI - POWERS AND DUTIES OF THE BOARD

Section 6.1 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Idaho law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

ARTICLE VII - OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Officers. The officers of this Association shall be a president, secretary, and treasurer, or as otherwise designated by the Board. Notwithstanding, during the Class B Control Period, Declarant may manage the Association as set forth in the Articles.

Section 7.2 Election of Officers. The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

Section 7.3 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Appointed Officers may be removed by the Board with or without cause.

Section 7.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, their successor shall be selected by the Board and shall serve for the unexpired term of their predecessor.

Section 7.5 Duties. The Board may adopt policies and resolutions to define the respective duties of Directors and Officers.

Section 7.6 Committees. The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

ARTICLE VIII - MISCELLANEOUS

Section 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person attended the meeting and no objection to the particular procedural issue was made at the meeting;
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting; or
- (c) 180 days following the meeting.

Section 8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

Section 8.3 Irregularities that Cannot Be Waived. Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation the Governing Documents or Idaho law.

Section 8.4 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 8.5 Amendment. During the Class B Control Period, these Bylaws may be amended at any time by the Declarant. Following the Class B Control Period, these Bylaws may be amended by Owners holding at least sixty-seven percent (67%) of all eligible votes. An amendment to these Bylaws shall be effective immediately upon recordation in the Office of the Ada County Recorder, State of Idaho.


The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Bonneville County Recorder, State of Idaho. Pursuant to Idaho Code § 30-30-601(3) and the Articles, the Declarant Rockwell Homes, Inc. is authorized to execute these Bylaws and may act for the Board during the Class B Control Period.

ACKNOWLEDGMENT

In witness hereof and under penalty of perjury, I hereby acknowledge that I am authorized by the Articles to execute these Bylaws on behalf of the Association.

Dated: 5/29/2026

Snowcrest Development, LLC. Declarant


By (printed): Levi James
Its: _____