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**Instrument # 413855**

VALLEY COUNTY, CASCADE, IDAHO

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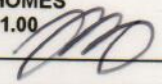
Recorded for : BROKEN RIDGE TOWNHOMES

DOUGLAS A. MILLER

Fee: 121.00

Ex-Officio Recorder Deputy

Index to: ORDINANCES



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**MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BROKEN RIDGE COMMONS TOWNHOMES SUBDIVISION**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BROKEN RIDGE COMMONS TOWNHOMES SUBDIVISION (“**Master Declaration**”) is made effective as of the 16<sup>th</sup> day of May, 2018 by Synergy Development, LLC, an Idaho limited liability company (“**Declarant**”).

**RECITALS**

**WHEREAS**, the Declarant is the developer of and owns the entirety of the real property located in Valley County, Idaho, described more particularly in Exhibit A and known as the Broken Ridge Commons Townhomes (hereafter “**Subdivision**”); and

**WHEREAS**, the Subdivision is a residential development, which Declarant intends to develop in accordance with existing development approval obtained from the City of McCall, Idaho or any other future development plans for which Declarant may, from time to time, obtain approval in the future. The Subdivision may contain parcels for common use and enjoyment, including but not limited to open space, pathways, park areas, landscaping, private streets, drives and other amenities and facilities. Any development plans for the Property in existence prior to or following the effective date of this Master Declaration are subject to change at any time by Declarant, and impose no obligation on Declarant as to how the property is to be developed or improved; and

**WHEREAS**, the Declarant desires to subject the Subdivision to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth in this Master Declaration to (i) ensure the enhancement and preservation of property values, (ii) provide for proper design, development, improvement and use of the Subdivision by the Declarant and all



other persons or entities who may subsequently acquire an interest in the Subdivision, and (iii) provided for high quality residential townhouse development; and

**WHEREAS**, due to the configuration of the townhouses, common exterior maintenance of all improvements, landscaping and buildings will benefit all of the owners within the Subdivision, provide economies of scale and ensure consistent maintenance and appearance throughout the Subdivision; and

**WHEREAS**, Declarant desires to ensure that the value of the individual lots within the Subdivision, and the interests of each owner in their individual lots and buildings are protected and maintained, and in order to achieve the objectives and desires of the Declarant, this Master Declaration will control the management and government of the Subdivision and the Association to be created and operated as set forth herein and imposing upon the Association certain duties and obligations regarding the maintenance and insurance of all Lots and Buildings located within the Subdivision. In order to achieve the foregoing objectives and desires of the Declarants, the Declarants will control the management and government of the Property and the Association, until such time as the Owners take over the management and government in accordance with this Master Declaration.

## **ARTICLE 1 DECLARATION**

**NOW, THEREFORE**, the Declarant hereby declares that as the date of recording of this Declaration, the Subdivision, and each lot, parcel or portion thereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "**Covenants 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 Subdivision or any Lot therein, and to enhance the value desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Subdivision or any Lot therein; shall inure to the benefit of every Lot in the Subdivision and any interest therein; and shall inure to the benefit of and be binding upon the Declarant and each Owner, and each successor in interest of each, and may be enforced by the Declarant, by any Owner, or by the Association, as hereafter provided. Notwithstanding the foregoing, no provision of this Master Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Subdivision in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable



provision(s) of this Master Declaration may be granted by the Association provided that such waiver shall be for a reasonable period of time and shall not violate the ordinances of the City of McCall, Idaho, as are applicable to the Subdivision. Any such waiver need not be recorded and shall not constitute an amendment of this Master Declaration. In the event of a conflict between the provisions of this Master Declaration and the requirements of the ordinances of the City of McCall, Idaho, the more restrictive shall control.

## **ARTICLE 2 DEFINITIONS**

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

**Annexation:** The process by which additional tracts or parcels of land not initially a part of the Subdivision are made subject to this Master Declaration by recording of a Supplemental Declaration.

**Architectural Control Committee or "ACC:** Shall mean and refer to a designated association of not less than one and not more than three individuals whose primary function is to review all construction plans submitted by a Lot Owner and to enforce the construction standards as required by this Master Declaration.

**Assessment:** Any amount levied against any Lot by the Association, including Regular, Special or Limited Assessments as provided in this Master Declaration.

**Association:** Broken Ridge Commons Townhomes Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors and assigns.

**Board:** The duly elected and qualified board of directors of the Association.

**Building:** A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

**Bylaws:** The corporate bylaws of the Association.

**Common Maintenance Areas:** All real property and improvements within the Subdivision that are located on a Lot and owned by an Owner, but which are maintained, repaired, replaced and insured by the Association due to the fact that such either provide a common benefit or facility for one or more Owners, or for which common maintenance and insurance are necessary within the Subdivision to ensure that the value of all Lots, Buildings and Improvements within the Subdivision are preserved. Common Maintenance Areas shall include, but not be limited to the structural portion of common walls separating Dwelling Units and the Dwelling Units' corresponding garages; all exterior portions of a Building, including but not limited to the foundations, walls, roofs, siding; and the Roads. For purposes of this Declaration the windows,



exterior doors, and garage doors, located on each Lot are specifically not Common Maintenance Areas.

**Common Maintenance Obligations:** The obligation of the Association to maintain, repair, replace and insure the Common Areas and Common Maintenance Areas, regardless of whether such are owned by the Owners, in the case of Common Maintenance Areas, or the Association, in the case of Common Area. The Common Maintenance Obligations are set forth in Article 6.

**Common Area:** All real property, including easements or other interests therein, located within or outside of the boundaries of the Subdivision in which the Association owns any interest in or controls or is obligated to maintain, repair, replace or insure (except the Common Maintenance Areas), including, but not limited to, off-site drainage facilities, landscaping easements and the easements for the common irrigation system within the Subdivision as shown on the Plat, together with all personal property, fixtures or equipment which provide a common benefit to the Lots in the Subdivision, including but not limited to all irrigation systems owned by the Association, and which are owned, held controlled or maintained for the betterment of the Owners and Occupants of the Subdivision.

**Dwelling Unit:** Shall mean and refer to the residential Building to be constructed on each Lot.

**Improvement:** 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 Subdivision, including, without limitation, Dwelling Units, fences, streets, roads, 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, waterways, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, landscaping, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing in the Subdivision on the date hereof and all later changes and Improvements.

**Limited Assessment:** Any Assessment levied by the Association against any Lot or Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited; to cure an Owner's breach; or to take such action on behalf of the Owner as otherwise permitted hereunder.

**Lot:** A portion of the Subdivision which is a legally described tract or parcel of land within the Subdivision or which is designated as a lot on any recorded subdivision plat relating the Subdivision.

**Manager:** The person or entity appointed to manage the affairs of the Association.

**Member:** Any person(s) who is an Owner of a Lot within the Subdivision.



**Mortgage:** Any mortgage or deed of trust or other hypothecation of land located in the Subdivision to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a “**Mortgage**” in this Declaration shall be limited to a “**first Mortgage**,” including a “**first deed of trust**,” on a Lot within the Subdivision.

**Mortgagee:** The holder of a Mortgage or the beneficiary under a deed of trust, including an assignee(s) thereof, which Mortgage or deed of trust encumbers a Lot within the Subdivision owned by an Owner. Unless otherwise specifically provided, the reference to a “**Mortgagee**” in the Declaration shall be limited to a holder of a first Mortgage, including beneficiary under a first deed of trust on a Lot.

**Occupant:** Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such a right is exercised, including their heirs, personal representatives, successors and assigns.

**Owner:** A person or persons or other legal entity or entities, including the Declarant, holding fee simple title to a Lot within a Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Plat:** The final subdivision plat for “Broken Ridge Commons Townhomes” as recorded in the office of the Country Recorder, Valley County, Idaho, as Instrument No. 413855 \_\_\_\_\_, as the same may be amended by duly recorded amendments thereto.

**Regular Assessment:** Any Assessment levied by the Association against any Lot to provide funds to pay the ordinary estimated expenses of the Association.

**Roads:** The private streets located within the Subdivision, owned, maintained and controlled by the Association for the benefit of each Lot and Owner, and providing access to public streets.

**Special Assessment:** Any assessment levied by the Association against any Lot other than a Regular or Limited Assessment.

**Storm Water/ Snow Removal Management Operation and Maintenance (O&M) Manual:** The procedural manual for the operation and maintenance of the storm water retention and snow removal areas. These areas are considered storm water and snow removal management facilities and must therefore be adequately inspected and maintained, by the Association as described specifically in Exhibit B.

### ARTICLE 3 PURPOSE

The Subdivision is hereby made subject to the Covenants and Restrictions contained in this Master Declaration, all of which shall be deemed to be imposed upon and run with the land and



each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to ensure proper design, development, improvement, use and maintenance of the Subdivision for the purpose of:

(a) Ensuring quality design, development, improvement, use and maintenance to protect and enhance the investment and use of all Lots and Improvements.

(b) Preventing Improvements of improper design, construction with improper or unsuitable materials, or of inferior quality.

(c) Encouraging and ensuring quality and attractive Improvements appropriately located within the Subdivision to assure visual quality and harmonious appearance and function.

(d) Securing and maintaining the proper set-backs from streets and open areas with the Subdivision and adequate free spaces between Improvements.

(e) The integration of development of the different Lots by setting common general standards to ensure the harmonious construction and maintenance of all Lots and Improvements.

(f) Ensuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

### 3.2

## ARTICLE 4 PERMITTED USES AND PERFORMANCE STANDARDS

**4.1 Use.** Lots shall be used only for residential purposes and such uses as are customarily incidental thereto. All Buildings shall comply with all applicable governmental rules, ordinances, laws, statutes and regulations.

**4.2 Buildings.** Except as allowed by the zoning ordinance applicable to the Lot, no Lot shall be improved except with (1) Dwelling Unit. Each Dwelling Unit shall have a fully enclosed garage adequate for one (1) standard size automobile.

**4.3 Approval of Use and Plans and Specifications.** No Improvements shall be built, constructed, erected, placed or materially altered within the Subdivision unless and until the plans and specifications, therefor have been reviewed in advance and approved by the ACC in accordance with the provisions set forth herein. Because the Townhomes developed in this Project are attached single family dwelling units developed with a common theme and design, the ACC shall have the ability to require all Improvements built, constructed, erected, placed or materially altered within the Subdivision to conform to the theme, design and standards imposed by the ACC.



**4.4 Prohibited Buildings/ Prohibited Uses.** No trailer or other vehicle, tent, shack or garage shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot or on the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Subdivision by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid, waste, smoke or noise.

**4.5 Common Walls.** Common walls have been constructed and created as set forth herein subject to all easements and obligations set forth herein. The common walls are deemed Common Maintenance Areas for purposes of the Common Maintenance Obligations.

**4.6 Antennae and Satellite Dishes.** No radio and/or television antennae shall be erected on any Lot without the written consent and approval of placement from the Association, which may require them to be screened from the street view. Satellite dishes or receivers that are larger than one meter in diameter are prohibited and smaller than one meter in diameter shall require review and approval by the ACC. Any Owner installing an antenna or satellite dish shall install it in such a manner that it is wholly within that Owner's Lot and shall indemnify and hold harmless all other Owners and the Association from any damage, injury or expense arising from the Owner's installation of an antenna or satellite dish, including but not limited to, any structural or property damage.

**4.7 Lighting.** To the extent required by the Association, each Owner shall install, and maintain in an operative condition such exterior lighting as initially installed and constructed on each Owner's Lot. Exterior lighting shall be down lighted and lighted so as to not cause a nuisance to neighboring Owners.

**4.8 Animals.** No animals, including, but not limited to, poultry, swine, cows, horses, birds, insects or rabbits, or any kind shall be raised, bred, or kept on any Lot, except two (2) domesticated dogs or two (2) domesticated cats in any combination provided the total of such domesticated dogs and domesticated cats shall in no event exceed two. Such household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owners' Lot. Failure to adhere to the requirements of this Section shall subject the Owner or Occupant to such Lot where the animal is located to the remedies set forth herein. Notwithstanding the foregoing, where required by the Federal Fair Housing Act or other applicable federal, state or local laws, an Owner may keep a service animal on the Owner's Lot.

**4.9 Septic Tanks/Cesspools.** No septic tanks and/or cesspools shall be allowed within the Subdivision.

**4.10 Grading and Drainage.** The Owner of any Lot within the Subdivision in which grading or other work has been performed shall maintain and repair all graded surfaces, drainage structures, means or devices which are not the responsibility of the Association or any governmental entity. The Association, shall be responsible for the maintenance, repair or



replacement of the drainage swales and/or (open space), if any, located within the Common Areas and any public rights-of-way within the Subdivision.

After the initial construction on a Lot, an Owner shall not change or alter any grading on a Lot or construct or alter any berms or swales on a Lot (including the drainage swales, if any, located in the public right-of-way adjacent to such Lot), which will affect or change the drainage on a Lot or any other Lot within the Subdivision, without the prior written approval of the ACC. Such approval by the ACC, shall not however, constitute any representation or warranty by the ACC as to the condition of the soil, the suitability of the grading or any other condition regarding the property or proposed modifications.

**4.11 Commercial Use Prohibited.** No Lot shall be used at any time for commercial or business activity, provided, however, that the Declarant or persons authorized by the Declarant may use a Lot(s) for development and sales activities relating to the Subdivision, model homes or real estate sales. Notwithstanding the foregoing, assuming all governmental laws, rules, regulations, and ordinances are complied with, home occupations may be conducted from the interior of Dwelling Units provided such home occupations do not increase the burdens on the Roads or Common Area or increases any Common Maintenance Obligation. The Declarant or Manager determines, in its sole and absolute discretion, whether a home occupation is increasing the burden on the Roads or Common Area or increases any Common Maintenance Obligation. The Declarant or Manager shall have the right to terminate any Owner's ability to conduct a home business as a home occupation from his or her Dwelling Unit in the event the Declarant or Manager determines there is an increase in the burdens on the Roads or Common Area or increases any Common Maintenance Obligation. As used herein, "commercial or business activity" shall not include the rental by an Owner of a Lot and the Improvements thereon for residential purposes. Declarant may conduct any business operation it sees fit from any portion of the Property owned by it, regardless of the impact on the Common Area Easement or exterior maintenance requirements.

**4.12 Owner Maintenance.** The following provisions shall govern the maintenance of Lots and all Improvements thereon by each Owner to the extent that such maintenance is not included as a Common Maintenance Obligation for the Common Maintenance Areas that are the Association's obligation to maintain hereunder.

(a) Each Owner shall be responsible for maintaining and keeping the interior of the Owner's Dwelling Unit in good order and repair, including the interior of any garage, and any driveway, sidewalk, patio, deck or balcony located on the Owner's Lot. Each Owner shall also be responsible to maintain and shall maintain the heating, ventilating and air conditioning equipment and systems, and the plumbing and electrical equipment, systems and facilities serving the Dwelling Unit located on the Owner's Lot

(b) Each Owner of a Lot shall maintain all Improvement located thereon, except to the extent that such maintenance is included in the Common Maintenance Obligations of the Association. Notwithstanding the Common Maintenance Obligations of the Association, each Owner shall be responsible for the removal of snow and ice that have accumulated on the sidewalks



located on each Owner's Lot. Each Owner shall immediately notify the Association upon said Owner becoming aware of (a) any condition of the Common Area or Common Maintenance Areas that are the Association's obligation to maintain hereunder, and (b) any claim or potential claim arising from the condition or maintenance of the Common Easement Area or Common Maintenance Areas.

(c) All damage to any Improvements shall be repaired as promptly as is reasonably possible.

(d) A Building, which is vacant for any reason, shall be kept locked and the windows glazed (unbroken glass and replaced if necessary) in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Master Declaration.

(e) All structures, facilities, equipment, objects and conditions determined by the Association, in its sole discretion, to be offensive, shall be enclosed within and approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container within the Owner's garage except on the days when garbage pickup occurs. Garbage containers shall be placed curbside for pickup on the appropriate day for garbage pick up and shall be removed from curbside and returned to the Owner's garage once garbage pickup has occurred.

(f) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.

(g) Any event or condition on a Lot or adjacent to a Lot if under the control of the Owner, which, in the sole discretion of the Association, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration. If the Owner does not promptly correct such event or condition, the Association shall have the right to correct the same.

(h) In the event that any Owner shall permit any Improvement, including any 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, the Declarant or the Association upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any Building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the Lot in violation shall be personally liable, and such Owner's Lot may be subject to a lien for all the costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due as set forth herein, 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 levied as a Limited



Assessment against said Lot and shall be enforceable in the same manner as set forth in this Declaration.

(i) Any repair or replacement work (distinguished from maintenance) that is required for a driveway, landscaping or a particular Building exterior (including its Private Yard and underground sprinkler system) as a result of accident, negligence or Act of God shall be the responsibility of the Owner of same, unless such damage was caused by an act or omission of the Association or its agents or employees.

**4.13 Association Maintenance.** Except as set forth in this Declaration, the Association shall:

(a) **Common Maintenance Obligations.** Perform all Common Maintenance Obligations set forth herein regardless of whether the Common Maintenance Obligations are located upon any Owner's lot within Common Maintenance Areas; provided, however, that in the event an Owner intentionally or negligently damages the Common Area, the Common Maintenance Areas, any Improvements or any Lot within the Subdivision, that Owner shall be solely responsible to repair such damage, whether on that Owner's Lot or another Lot and shall indemnify, defend and hold harmless any other Owner and the Association for, from and against any injury or damage that such may have incurred or suffered as a result of the Owner's intentional or negligent conduct. The failure of an Owner to do so under such circumstances shall permit the Association to undertake such necessary repairs and levy a Special Assessment solely against the Owner.

(b) **Exterior Maintenance.** The Association shall maintain or provide for the maintenance of the exterior of all Buildings on any Lot including both paint and roofing, and any other exterior maintenance element which is designated as part of the Common Maintenance Obligations of the Association, the modification or replacement of which shall be with materials and styles approved in advance by the Association and harmonious with the original materials and colors utilized in the Subdivision. Exterior maintenance by the Association is described in more detail in Article 6 below.

**4.14 Personal Expression.** Mailbox coverings, flags, attachments to the exterior building, holiday decorations, shall not be allowed without prior approval by the Association. No exterior holiday lighting is allowed except what the Association selects in accordance within its projected budget.

**4.15 Mining and Drilling.** No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Association may, by permit, grant; license or easement, allow the drilling for and the extraction of water for use on the Lot.

**4.16 Storage of Vehicles, Equipment and Automobiles; Limitations on Parking.** The Parking of all automobiles, other vehicles, or equipment and visitor parking shall be subject to the following limitations:



(a) Trailers, mobile homes, trucks larger than standard-size pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, including, but not limited to, motorcycles or other motorized means of conveyance (hereinafter “**Vehicles**” or “**Equipment**”), when not in actual use, shall be stored in the Owner’s garage or front driveway. At no time shall any Vehicles or Equipment be parked or stored on the Roads.

(b) The primary purpose and design of each Dwelling Unit on each Lot is for the parking and storage of operative automobile or standard sized or smaller pickup (hereinafter collectively referred to as “**Automobiles**”) as follows: one (1) Automobile in the garage and (1) Automobile on the private driveway. No other use of the garage which prohibits or limits the use of the garage for the parking or storage of the number of Automobiles for which it is designed, shall be permitted, including the long-term storage of any personal property, equipment or other items that would preclude the utilization of the garage for the parking or storage of Automobiles. Owners shall not park any Automobiles on the Roads.

(c) Visitors may park Automobiles on the Roads, provides that said parking does not obstruct access to or from any Lot within the Subdivision.

(d) No other parking, whether visitor or otherwise, shall occur within the Subdivision except as in conformance with this Declaration. No Automobile shall be parked anywhere within the Subdivision for more than forty-eight (48) consecutive hours other than in exclusively in a private driveway. No Owner shall permit parking of vehicles on its Lot in such a manner, either through the location of vehicles or the number of vehicles that interferes with the use and enjoyment of any Shared Driveway by any other Owner or Occupant and their licensees or invitees.

**4.17 Garage Doors.** Garage doors shall be closed except when open for a temporary use. The Association shall be responsible to maintain (which does not include replacement) and paint the exterior of the garage doors for uniformity of the Subdivision.

**4.18 Exterior Energy Devices.** No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the Association, except for heat pumps or similar appliances shown on the plans and specifications approved by the Association.

**4.19 Mailboxes.** No free-standing mailbox shall be constructed or installed on any Lot, it being the requirement of the US Postmaster at the date of this Master Declaration that all mailboxes must be clustered.

**4.20 Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for rent or for sale by displaying a single, neat reasonably sized vacancy sign or “For Sale” sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing lights are prohibited. Any directional or identification sign for open houses shall be permitted,



provided the same as approved by the Association. Notwithstanding the foregoing, Declarant may display any sign it sees fit on any portion of Property owned by the Declarant.

**4.21 Subdividing.** No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the Association; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Building Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the Association therefor

**4.22 Fences.** No fence or wall of any kind shall be constructed on any Lot without the prior written approval of the Association. The perimeter fencing constructed by Declarant shall be maintained by the Association. Any fences and/ or walls constructed on a Lot shall be subject to the following restrictions:

(a) No fence or wall, shall be permitted to be constructed or installed on Common Area unless approved by the Association. If the Declarant constructs or installs a fence on Common Area, the Association may allow fences on the adjacent Lot(s) to be attached thereto so long as such attachment does not (i) impede the maintenance, repair or replacement of the Common Area, (ii) alter the visual theme established by the fence constructed or installed by the Declarant, and (iii) does not project above the top of the fence constructed or installed by the Declarant.

(b) Fences and walls shall be constructed and installed in accordance with the ordinances of the City of McCall, Idaho.

(c) Except for perimeter fences, all fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within reasonable time after said damage occurs.

(d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Master Declaration or shown on the recorded Plat(s) of the Subdivision.

(e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the Association, in the Association's sole and absolute discretion. Notwithstanding the foregoing, this subsection (e) shall not be construed or applied in any way to create or to reserve any view easement on or across any Lot ("Affected Lot") in favor of any Lot, which is adjacent to or in the vicinity of the Affected Lot.

**4.23 Landscaping.** Any material changes to landscaping on any Lot following initial construction shall be approved by the Association. For purposes of this section, the term "material change" shall mean any change in the grading of landscaped areas, the planting of trees or shrubs



or the configuration of any planting beds; provided, however, that the term “material change” shall not include the planting or replanting of any perennial or annual plant in any planting bed or placement of landscaping feature that can be readily moved or relocated.

(a) An Owner shall maintain all landscaping on its Lot that is not within a Common Maintenance Area and is not a Common Maintenance Obligation of the Association. Private Yards shall be maintained solely by the Owners.

(b) Pots may be placed by the Declarant and/or Lot Owner on the exterior of the Lots, which shall be the responsibility of the Lot Owner to plant and maintain, requiring approval by the ACC for recommended plant types, prior to installation.

**4.24 Irrigation Water.** The Declarant has or will construct within the Subdivision an irrigation system (hereafter “Irrigation Water”) to provide water to each Lot, the Common Area and Common Maintenance Area for irrigation of the landscaping located thereon.

**4.25 Exemption of Declarant.** Nothing herein contained shall limit the right of the Declarant to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Subdivision owned or controlled by the Declarant, or to alter the foregoing and its development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of development of the Subdivision. This Master Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights of way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain Association approval of any Improvements constructed or placed within the Subdivision by the Declarant in connection with the Development of the Subdivision. The Declarant shall be entitled to the non-exclusive use, without charge, of any Common Area within the Subdivision in connection with the marketing of the Lots therein. In addition, the Declarant shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas on and the Lot(s) owned by the Declarant for such a period of time as is reasonably deemed by the Declarant to be necessary.

## **ARTICLE 5 EASEMENTS**

**5.1 Easements.** Declarant hereby reserves for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Subdivision, the following easements. **Plat and other Recorded Easements.** All easements as depicted and created on the recorded Plat for the Subdivision and all other easements or instruments of record created and recorded as a result of conditions of approval imposed by any governmental entity, including, but not limited to the City of McCall.



**5.1.2 Maintenance.** There is hereby reserved to the Declarant and the Association, their respective contractors, employees and agents, an easement to enter upon the Lots for the purpose of accomplishing all maintenance, repair and replacement provided for under this Declaration, including the performance of any work necessitated by the failure of any Owner or Occupant to fulfill its obligations as set forth in Article 6 below and performance of all Common Maintenance Obligations.

**5.1.3 Public Utilities.** For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, so designated on the Plat.

**5.1.4 Water.** For water drainage, irrigation, retention, recreation and amenity.

**5.1.5 Access to Common Area and Common Maintenance Areas.** For the purposes of permitting the Declarant or the Association, their contractors and agents, and any third party possessing any interest in the irrigations system, to enter on those portions of Lots contiguous to any Common Area or upon which any on which any Common Maintenance Areas is located, to maintain, repair, replace and restore landscaping and other improvements within the Common Area or Common Maintenance Areas, including but not limited to, a sprinkler irrigation system which may be installed to irrigate any landscaping located on the Common Area.

**5.1.6 Encroachment.** Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall an easement for encroachment be created or granted due to willful act or acts of an Owner.

**5.1.7 Access and Maintenance for Common Maintenance Obligations.** For the performance of all Common Maintenance Obligations regardless of whether such are located on Common Area, Common Maintenance Areas, or any Lot. This easement is further addressed in Article 6 below.

**5.1.8 Roads.** For common ingress and egress over and across all Roads providing common access within the Subdivision to the public streets, as depicted on the Plat. The Owners of all of the Lots served by or to be served by the Roads shall be entitled to the full use and enjoyment of the Roads and no Owner shall obstruct or inconvenience the free use thereof by any other Owner or said Owner's invitees or licensees.

**5.1.9 Common Wall Easement.** To the extent that common walls exist as set forth herein, there is hereby created a common reciprocal easement for the location and maintenance of such common walls as set forth herein.



**5.1.10 Landscape Buffer Easement.** For a landscape buffer, encumbering as depicted and described on the Plat, for landscaping to benefit all of the Lots within the Subdivision.

The easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated, except to the extent that such are Common Maintenance Areas, maintained as part of the Common Maintenance Obligations of the Association or as set forth in Article 6.

No improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

## **ARTICLE 6 BROKEN RIDGE COMMONS TOWNHOMES INC.**

**6.1 Organization of Association.** Broken Ridge Commons Townhomes Inc. shall be organized by the Declarant as an Idaho non-profit corporation and shall be charged with the duties and vested in the powers prescribed by law and as set forth in its Articles of Incorporation, its By-Laws and this Master Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration. The Association may not be dissolved without the express consent of the City of McCall, Idaho.

**6.2 Members.** Each Owner (including the Declarant) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association. No Owner shall have more than one membership in the Association but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot.

**6.3 Classes of Membership.** The Association shall have two (2) classes of membership:

**CLASS A.** Class A Members shall be all Owners of Lots within the Subdivision, with the exception of the Declarant and its successor(s) in title to any Lot, provided that any successor(s) in title hold such Lots in an unimproved condition. The Class A Members shall be non-voting Members of the Association until such time as voting rights of the Class B Member(s) expire, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall



be Class A Members but the vote for such Lot shall be exercised as they determine, but in non event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member(s).

**CLASS B.** Class B Members shall be the Declarant and its successor(s) in title to any Lot, provided that any successor(s) in title hold such Lots in an unimproved condition for resale to a builder or other person for the purpose of constructing a Dwelling Unit thereon. The Class B Members shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when, and if, Declarant (or its successors in title to any Lot which remains in an unimproved condition) no longer owns a Lot within the Subdivision.

**6.4 Board and Officers.** The affairs of the Association shall be conducted by a Board and such officers as the Directors may elect or appoint, in accordance with the Articles and By Laws, as the same may be amended from time to time.

**6.5 Powers of Association.** The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho, subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Master Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles By-Laws or this Master Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Master Declaration, including but not limited to, the following:

**6.5.1 Assessments.** The power to determine the amount of and levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Master Declaration.

**6.5.2 Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of an Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, or Declaration, and to enforce by mandatory injunction or otherwise, all provisions thereof.

**6.5.3 Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager (“**Manager**”), and to pay to such manager such compensation as shall be reasonable.

**6.5.4 Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the Association, provided that said Board Member, officer, manager or other



person has, upon basis of such information as was available, acted in good faith without willful or intentional misconduct.

**6.5.5 Association Rules.** The Association has the power to adopt, amend, and repeal such rules and regulations as the Association deems necessary. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration.

**6.5.6 Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot 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 it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.

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

(a) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.

(b) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.

(c) Any similar public or quasi-public improvements or facilities.

**6.5.8 Fiscal or Calendar Year.** The Manager shall have the right to elect a fiscal or calendar year for the Association for budget, Assessment and accounting purposes.

**6.5.9 Establishment of Reserve Fund.** The Association shall have the authority to levy such Assessments as are reasonably necessary to develop adequate financial reserves to fund all Common Maintenance Obligations, including, but not limited the reserve fund for the maintenance of the Roads and any drainage facilities as required by the City of McCall, in advance of actually being obliged to undertake such. The reserve funds shall be collected as part of the Regular Assessment. The reserve funds shall be maintained in a separate segregated account.



**6.6 Duties of Association.** In addition to the powers delegated to it by the Articles, By-Laws and this Master Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

**6.6.1 Operation and Maintenance of Common Area.** Perform, or provide for the performance of, the operation, maintenance and management of the Common Area, if any, owned or controlled by the Association, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant, and the maintenance, management, repair or replacement all other property owned or controlled by the Association.

**6.6.2 Common Maintenance Obligations.** The Association shall perform or provide for the performance of all Common Maintenance Obligations, including the operation, maintenance and management of the Common Maintenance Areas as set forth herein, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, and the maintenance, repair and replacement of any facilities, if any, installed by the Declarant. The maintenance, repair and replacement of the Common Maintenance Areas shall utilize materials and colors harmonious with the original materials and colors found in the Subdivision. The Association shall determine the frequency and need for replacement or repair of the Common Maintenance Areas. In making such determinations, the Association shall act reasonably to ensure that the structural integrity and value of the Buildings within the Subdivision are maintained.

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

**6.6.4 Utilities.** Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area, if any, owned or controlled by the Association, and for the performance of the Common Maintenance Obligations.

**6.6.5 Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance set forth in Article 10.

**6.6.6 Roads.** The Association shall have the responsibility to maintain, repair and reconstruct the Roads, including, but not limited to, all curbing, inlets, storm drains and underground pipes and seepage beds as shown on the Plat. The Roads shall be maintained with



asphalt, concrete or block pavers surface or other all-weather hard surface in good repair. All driveway costs shall be allocated equally among the Owners, regardless of distance of a Lot from the public road, unless the Association shall determine, at its reasonable discretion, that the maintenance, repair or reconstruction is related to a particular Lot or Lots, in which case the cost shall be allocated proportionately among the Lots to which it is related. Each Lot Owner shall be responsible to maintain, replace concrete and repair their private driveway as originally provided by the Declarant, and pursuant to approval by the ACC.

Additionally, and in accordance with the ordinances and requirements of the City of McCall, the Association shall plan and schedule for the future repair and maintenance of the Roads and create a reserve fund for said repair and maintenance.

**6.6.7 Landscaping.** The Association shall have the responsibility to maintain, repair and reconstruct all landscaped areas on the Common Area (“**Landscaped Areas**”). Landscaped Areas shall include all outdoor areas of the Common Area, excepting only those areas on a Lot which are fenced, on the patio, or otherwise delineated as under the exclusive control of the Lot Owner (“**Private Yard**”). Landscaped Area shall include under-ground pressurized irrigation and associated elements such as sprinklers and timers on the Common Area. Under-ground pressurized irrigation and associated elements such as sprinklers and timers on Private Yards shall be the responsibility of the Lot Owner. Association maintenance of the Landscaped Areas (excluding Private Yards) shall include, among other things, maintaining, repairing and replacing grass, sod, trees, shrubs and other plantings, in a neat, clean and attractive condition. The decision as to the nature and extent of maintenance that is required for Landscaped Areas both within and outside of Private Yards, and the timing of such maintenance, shall be solely within the discretion of the Association, and may be set by rule or regulation from time to time.

**6.6.8 Sewer & Water Services.** The Declarant has connected each Lot to the public sewer and water lines. The Association shall maintain, repair and reconstruct the lines from the main water and sewer lines to the edge of each Lot.

**6.6.9 Storm Water Drainage/ Snow Removal Retention Area.** The Association shall maintain a “Storm Water/ Snow Removal Retention Area Facility Operation and Maintenance (O&M) Manual containing a stamped and approved construction plan for the Subdivision showing the location of all Storm Water/ Snow Removal Retention Areas, a copy of the final plat, and engineering drawings showing the detail of each Storm Water/Snow Removal Retention Area. The Association shall be responsible for maintaining a written description of the maintenance required by the Association, an itemized estimate of the annual operating and maintenance costs of the Association along with a statement describing the primary purpose of each facility to control storm water.

**6.6.10 Administration Fees- Costs.** Pay to the Declarant, so long as the Declarant manages the Association, all actual out-of-pocket costs paid or incurred by the Declarant in the management and administration of the affairs of the Association plus an administrative fee equal to ten percent (10%) of the total income received by the Association, which administrative fee shall be compensation to the Declarant for the services provided to the Association.



**6.6.11 Utilities.** Acquire, provide and/or pay for water, electrical for pressurized irrigation and landscaping maintenance by the Association.

**6.6.12 Identification Signs.** Maintain, repair and replace all permanent entry and special identification signs for the Subdivision, whether the same is located within or without the boundaries of the Subdivision.

**6.6.13 Cluster Mailboxes.** Maintain, repair and replace, if required, the cluster mailboxes located within the Subdivision.

**6.6.14 Rule Making.** Make, establish, promulgate, amend and repeal Association rules.

**6.6.15 Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration and the Association rules.

**6.6.16 Budgets and Financial Statements.** Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (3) days after the beginning of each fiscal year.

(b) Within ninety (90) days after the close of each fiscal or calendar year, the Association, or it's agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Associations fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

**6.7 Effective Date.** The provisions of this Article 6, shall become operative upon the creation by the Declarant of the Association and the conveyance to said Association of fee simple title to the Common Area within the Subdivision. Until the creation and organization of the Association and conveyance of the Common Area, the Declarant shall have the right to exercise all the powers of the Association set forth in this Master Declaration.

**6.8 Transition Date.** Notwithstanding anything in this Master Declaration to the contrary, the Declarant, for a period of five (5) year following the recordation of the Plat which date shall be known hereafter as the "**Transitions Date**" shall have the exclusive right, power and authority to appoint and elect the Board and otherwise manage the affairs of the Association so long as the Declarant owns a Lot in the Subdivision. From and after the Transition Date, Declarant shall have the rights afforded it as the Class B Member. The Declarant shall have the right but not the obligation, to record a notice of transition in the official records of the county where the Subdivision is located evidencing the Declarant's transfer of control to the Association and Owners.



**ARTICLE 7**  
**ASSOCIATION PROPERTIES**

**7.1 Use.** Each Owner of a Lot or Occupant, and their family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties, subject to the following:

(a) **Governing Instruments.** The provisions of the Articles and By Laws of the Association, this Master Declaration and applicable Supplemental Declaration and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.

(b) **Suspension of Rights.** The right of the Association to suspend the rights to use the Common Area (except the Private Streets providing access to and from Lots to and from adjacent public streets and other means of access by an Owner) for (i) any period during which any Assessment against that Owner's Building Lot remains unpaid; (ii) any violation of this Declaration; or (iii) for any infraction or published rules and regulations of the Association. The suspension of rights to use the Common Area shall include the exclusion of any Owner and Occupant from any common recreational amenity provided within the Subdivision.

(c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Association, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision.

**7.2 Conveyance of Common Area.** Except as provided in subsection (c), above, no portion of the Common Area shall be conveyed by the Association unless the Association determines that such conveyance is in the best interests of the Subdivision, which determination shall be made following a regular or special meeting of the Members of the Association at which meeting the proposed conveyance is presented by the Association and the Members have the opportunity to present testimony in support of or against such proposed conveyance.

**7.3 Mortgage of Common Area.** After the Class A Members become entitled to voting rights, no portion of the Common Area shall be mortgaged by the Association without the prior approval of at least two thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose.

**7.4 Liability for Damage.** In the event that any maintenance, repair or replacement of all or any portion of any Improvements located on a Common Area, Common Maintenance Areas, the clustered mailboxes or any other Improvement, property or facility required by this Master Declaration to be maintained, repaired or replaced by the Association, is performed by the Association as a result of the willful or negligent act of an Owner or Occupant, or a family member, guest or invitee of an Owner or Occupant, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost



of the same against said Owner and the Owner's Building Lot as a Limited Assessment, as provided in this Master Declaration and may be collected as provided herein.

**7.5 Damage and Destruction.** In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the Association shall thereafter determine what repair or reconstruction shall be undertaken.

**7.6 Condemnation.** If at any time any part of a Common Area or other property owned by the Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association. The Association shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

## **ARTICLE 8 ASSESSMENTS**

**8.1 Covenant to Pay Assessments.** Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association. All such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use or abandonment of his Lot or Common Area.

**8.2 Regular Assessments.** Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Association. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the Maintenance Obligations and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance with the Association is required or permitted to maintain hereunder, driveway, building exterior, landscaping and care of grounds, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

**8.3 Special Assessments.** In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Association may deem appropriate for the following purposes:

(a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a Common Area or any



facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Master Declaration.

(b) To cure a deficit in the common or ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

At the closing of the sale of each Lot by the Declarant, whether to a homebuilder or directly to a homebuyer, a setup fee of \$400.00 shall be collected from the initial purchaser of the Lot as payment to the Association for the set-up costs and the performance of the Common Maintenance Obligations of the Association. Upon any subsequent transfer of ownership of a Lot by an Owner to a third party, a transfer fee in the amount of \$400.00 shall be payable by the Owner to the Association, provide, that no transfer fee shall be payable if the Lot was purchased by a builder from the Declarant and within one (1) year thereafter sold to a third party. The above setup and transfer fee, may be increased as market changes or at the discretion of the Association.

**8.4 Limited Assessments.** In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

**8.4.1 Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of the Common Maintenance Areas on any Lot, is such maintenance and repair is necessary, in the opinion of the Manager, to protect the common value and common interest of all Owners. If the Owner of said Lot has failed or refused to perform maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Association to said Owner. The Association shall perform all such work specified in the written notice provided to the Owner of the Lot and shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and other cost or expense, including attorney's fees, arising out of or incident to such maintenance and repair and the Assessment therefor, provided however, that the assessment of a Limited Assessment shall not absolve or relieve any Owner of its duty and obligation to pay Regular Assessments to pay for Common Maintenance Obligations.

**8.4.2 Correction of Violations.** In addition to maintenance and repair, the Association shall have the power to correct any violation of this Master Declaration on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorney's fees shall be assessed and collected as set for in this Declaration.

**8.4.3 Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose, which the Association believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to Limited Assessment.



**8.5 Commencement of Regular Assessments.** Regular Assessments of the Association against each Lot shall commence the date of the closing of the first sale of a Lot to an Owner.

**8.6 Uniform Rate of Assessment.** Except as expressly provided to the contrary in this Master Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

**8.7 Assessment Due Date.** The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Association. An Assessment, any installment thereof, shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Association from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

**8.8 Interest and Penalties.** Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Manager from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Association may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Association to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Association in the event of non-payment of an Assessment.

**8.9 Estoppel Certificate.** The Association, upon not less than twenty (2) 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 Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by an prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

**8.9.1 Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment or a Limited Assessment, shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of sixty (60%) of the Owners who have voting rights in the Association, either in person or proxy, shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Manager for a date not later than sixty (60) days after the date of initial meeting and at the reschedule meeting the presence of ten percent (30%) of the Owners who have voting rights in the Association, either in person or by proxy, shall constitute a quorum. No written notice of the



rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Manager may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

## **ARTICLE 9 ENFORCEMENT OF ASSESSMENTS**

**9.1 Right to Enforce.** The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Master Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

**9.2 Creation of Assessment Liens.** There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any Assessments levied against any and all Lots within the Subdivision pursuant to this Master Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage duly recorded in Valley County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

**9.3 Notice of Assessment Lien.** If an Owner fails to pay an Assessment within thirty (30) days of the Owner's receipt of notice of the Assessment, then the Association may prepare a written Notice of Assessment Lien. The Notice of Assessment Lien shall include

- (a) A true statement of the amount due for the unpaid Assessment after deducting all credits and offsets;
- (b) The name of the Owner, or reputed Owner, if known;
- (c) The name and address of the Association; and
- (d) A description of the Lot to be charged with the lien pursuant to the Notice of Assessment Lien.



The Notice of Lien shall be verified by the oath of an officer of the Association having knowledge of the facts underlying the notice of assessment, acknowledged by a Notary Public and recorded in the office of the Valley County Recorder. Within twenty-four (24) hours after recording the Notice of Assessment Lien against the Lot, the Association shall serve, by personal delivery to the Owner or reputed Owner of the Lot, or by certified mail to the last known address to the Owner or reputed Owner of the Lot a true and correct copy of the recorded Notice of Assessment Lien. At such time as a delinquent Assessment, which is described in the Notice, is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

**9.4 Enforcement.** Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in deeds of trust or by other manner in which the Association may elect. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale and or other legal sale and to acquire and therefor hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

**9.5 Notice Required.** Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclosure the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

**9.6 Notice to Mortgagees.** The Association shall have no obligation to provide a Mortgagee with a copy of a Notice of Default served on an Owner, unless and until Mortgagee furnishes to the Association written notice of a Mortgage that shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision.
- (c) The name and address of the Owner.
- (d) The date the lien of the Mortgage was filed of record in Valley County, Idaho, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;



(f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first deed of trust;

(g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to be notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent, a reasonable fee established by the Board, for such notification and such charge shall be a cost of collection deemed to be an Assessment and secured by the Assessment lien described above. The charge for such notification shall be subject to change by the Manager.

**9.7 Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity, including but not limited to pursuit of legal action for costs and damages incurred by the Declarant or the Association as a result of the Owner's non performance, seeking injunctive relief as may be appropriate, and undertaking commercially reasonable collection measures.

## **ARTICLE 10 INSURANCE, INDEMNITY AND CASUALTY**

**10.1 Insurance and Indemnity Obligations of Association.** So as to ensure that the value of the Subdivision and the interests of each Owner in their Lots and Buildings are protected and maintained, the Association shall obtain and keep, in full force and effect at all times, the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Section shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time. In the event of damage or destruction to any portion of the Subdivision as set forth herein, the Associations actions shall be governed hereby.

**10.2 Casualty Insurance.** Each Lot, the Common Area and all Improvements constructed thereon shall at all times be insured for the full replacement thereof in the event of damage or destruction, including fire and extended coverage, which policy or policies shall be purchased by the Association and show the Association and Mortgagees as named insureds as their interest may appear. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" as provisions as, in the Association's opinion, are consistent with good business practice. No individual Owner shall be excused from Assessments attributable to such policy for any reason, except upon the approval of the vote of two-thirds (2/3) of Members who are entitled to vote at a meeting duly called for this purpose. In the event that the Members elect to relieve the Association of the obligation of insuring each Lot, Building constructed thereon, and Improvements constructed thereon then the individual Owners of each Lot shall be solely responsible for insuring their individual Lots and shall indemnify all other Owners and the Association as set forth herein. In such event, the Association shall continue to insure the Common Area. The Association may also elect to insure the fixtures, interior finishes,



betterments and improvements located within the Building on any Lot against casualty, loss or theft prior to such time as such Building is owned and occupied by an Owner other than Declarant or the general contractor construction the Subdivision. The Association shall have no obligation, however, to insure each once and Owner occupies any Building and any Lot.

**10.3 Public Liability and Property Damage Insurance.** The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for the personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Subdivision and the Association's performance of its obligations hereunder, including performance of the Common Maintenance Obligations.

**10.4 Workers Compensation and Employer's Liability Insurance.** The Association shall purchase workmen's compensation and employer's liability insurance, and all other similar insurance, in respect of employees of the Association in the amounts and in the forms now or hereafter required by law for any employees of the Association.

**10.5 Directors and Officers Insurance/ Fidelity Insurance.** The Association may purchase, in such amounts and in such forms as it shall deem appropriate, directors and officers coverage as well as coverage for the actions and against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

**10.6 Other Insurance Coverages.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature as it shall deem appropriate with respect to the Subdivision, including any personal property of the Association located thereon.

**10.7 Form.** Casualty insurance shall be carried in a form or forms naming the Association as the insured, as trustee for the Owners, which policy or policies shall provide a standard loss payable clause providing for payments of insurance proceeds to the Association, as trustee for the Owners, and for the respective first Mortgagee which from time to time shall give notice to the Association of such first Mortgagees, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice is first given to each Owner and to each first Mortgagee. The Association shall furnish to each Owner and to Declarant a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy, as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Public liability and property damage insurance shall name the



Association as the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association, its agents and employees, in connection with the ownership, operation, maintenance or other use of the Subdivision

**10.8 Insurance and Indemnity Obligations of Owners.** Each Owner shall insure the contents, personal property, fixtures, interior finishes, betterments and improvements located within the Building on their Lot against casualty, loss or theft. Each Owner shall at all times provide and maintain or cause to be provided and maintained liability insurance insuring such Owner against claims for bodily injury or death, property damage or destruction, and personal injury occurring in or arising out of the use or occupancy of its Lot, the use or occupancy of the interior of any building constructed on such Lot, or its failure to perform any duty or obligation set forth herein. **The Association can request a copy of the homeowner's insurance coverage to ensure the interior is covered under a homeowner's individual policy.** Each insurance policy required by this Section shall be written with a financially responsible insurance company licensed to do business in the state of Idaho. The Association shall be named as an additional insured on all policies of insurance represented by such certificates shall not be cancelled, materially changed or renewed without the giving of thirty (30) days' prior written notice to the insured, any additional insured, and to the holders of such certificates. Notwithstanding the provisions of this Section, each Owner may obtain insurance at his own expense providing coverage upon his Lot, Building, and Improvements constructed thereon, in addition to that maintained by the Association, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies with the Association obtains pursuant to this Section. All such insurance shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, in such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation. In the event that the Members elect to relieve the Association of the obligation of insuring each Lot, Building constructed thereon, and Improvements constructed thereon as set forth above, then each Owner shall be solely responsible for insuring their Lot, Building, Improvements and personal property. Additionally, in the event an Owner damages the Common Easement Areas, the Common Maintenance Areas, any Building, any Improvements or any Lot within the Subdivision, or causes any personal injury to any person, whether such is the result of intentional or negligent action by an Owner, said Owner shall be solely responsible to repair such property damage, whether on that Owner's Lot or another Lot and shall indemnify, defend and hold harmless every other Owner and the Association for, from and against any injury or damage that such may have incurred or suffered as a result of the Owner's intentional or negligent conduct.

**10.9 Application and Allocation of Insurance Proceeds Upon Damage or Destruction; Reconstruction and Repair.** The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained by the Association pursuant to this Section. All Owners and the Mortgagees of such Lots shall be bound by the apportionments of damage and of all insurance proceeds made by the Association pursuant thereto.

**10.9.1 Association as Agent.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the



purpose of dealing with the insurance process payable under a policy of insurance maintained by the Association upon damage or destruction to any portion of the Subdivision, Lots, Common Area, and Common Maintenance Areas as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

**10.9.2 General Authority of Association.** As attorney in fact, the Association shall have a full and complete authorization, right and power to make, execute and deliver any contract or other instrument with respect to the interest of an Owner, which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements as used in the succeeding sections mean restoring the Subdivision to substantially the same condition in which it existed prior to damage, with each dwelling Lot, Building and Improvements having substantially the same configuration as prior to the damage or destruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair and reconstruction unless the Owners and all first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth hereinafter.

**10.9.3 Estimate of Costs.** As soon as practicable after an event causing damage to, or destruction of, any part of the Subdivision, the Association shall obtain estimates that it deems reliable and complete of any costs of repair or reconstruction of that part of the Subdivision damaged or destroyed.

**10.9.4 Repair or Reconstruction.** The Association shall diligently pursue to complete the repair or reconstruction of that part of the Subdivision damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent to other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Subdivision.

**10.9.5 Funds for Reconstruction.** The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, may levy in advance a Special Assessment of repair or reconstruction. Such Special Assessment shall be allocated and collected as provided herein, Further Special Assessments may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

**10.9.6 Disbursement of Funds for Repair for Reconstruction.** The insurance proceeds held by the Association and the amounts received from the assessments provided for herein constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association herein.



**10.10 Obligations of Owners and Association in the Event the Association is Unable to Obtain Insurance Policies or Owner Fails to Obtain Such.** If the Association is unable to obtain any of the insurance policies or coverages specifically set forth herein, then it shall be the duty and obligation of each Owner to individually obtain the coverages the Association is obliged to obtain hereunder for the Owner's Lot, the Improvements constructed thereon, and its Building consistent with the provisions of this Article, in such amounts as necessary to provide for the full replacement thereof in the event of damage or destruction, including fire and extended coverage. Under such circumstances, each Owner shall deliver proof of such coverage to the Association and shall name the Association as an additional insured on any policy obtained by the Owner. If (i) the Association is unable to procure the insurance policies and coverages set forth herein and an Owner fails to obtain such coverage and the Owner fails to deliver proof that it has obtained such coverage to the Association or (ii) the Owner fails to obtain any other coverage required of it hereunder, then the Association shall have the right, but not the obligation, to procure such insurance policies and coverages required hereunder for the benefit of the Owner, designating both the Owner and the Association as named insureds, as their interests may appear, and the Association shall levy a Special Assessment against the Lot of such Owner in the amount of the premium for all such insurance policies and coverages that the Association has procured for the Owner's benefit. The policies of such insurance required by this Section shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or non-renewed without the giving of thirty (3) days' prior written notice to the insured, any additional insured, and to the holders of such certificates. Provided, however, that this Section shall be of no force or effect if the Members elect to relieve the Association of the obligation of insuring each Lot, Building constructed thereon, and Improvements constructed thereon as upon such occurrence the Association shall not be deemed to have been unable to obtain coverage and shall have no further responsibilities for obtaining any insurance that the Members elect to not have the Association obtain.

## **ARTICLE 11 ARCHITECTURAL REVIEW COMMITTEE**

**11.1 Architectural Review Committee.** The ACC shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he/she has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

**11.2 Appointment.** So long as the Declarant owns any portion of the Subdivision, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.



**11.3 Compensation.** The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the Plans and Specifications described below.

**11.4 Non Liability.** Neither the ACC, or any member thereof, or the Declarant or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of Plans and Specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit in either law or equity against the Association, the Board, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign thereof.

**11.5 Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.

**11.6 Waivers.** The ACC may waive compliance with the requirements of any conditions and restrictions contained in this Master Declaration, the ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such waivers must be evidenced in a writing signed by at least two (2) members of the ACC. If a waiver is granted as provided herein, no violation of this Master Declaration, ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the waiver was granted. The granting of such a waiver shall not operate to waive or invalidate any of the terms and provisions of this Master Declaration or the ACC Standards for any purpose except, as to the particular subject matter of the waiver thereof and the specific Lot covered thereby. The ACC shall have the right to consider and grant a waiver as herein provided either with or without notice to other Owners or a hearing of Owners thereon. The granting of a waiver by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with any regulation or ordinance applicable to the Subdivision adopted by the jurisdiction where the Subdivision is located.

**11.7 Application.** To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Subdivision, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material required by the ACC.



The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

**11.8 ACC Standards.** The Declarants, at or before the completion of construction of the houses on the Building Lots of the Local Association, may prepare architectural standards applicable to and administrated by the ACC, specifying building style, form, maximum or minimum or dimensional standards such as height, width, depth, and number of stories, window placement and size, exterior materials and placement, color and such other standards as Declarants may deem desirable (“**ACC Standards**”). The architectural standards established by the Declarants shall remain in effect until amended, replaced or repealed by two-thirds majority vote of the Local Association.

## **ARTICLE 12 ANNEXATION**

**12.1 Annexation.** Additional property may be annexed to the Subdivision and brought within the provisions of this Master Declaration by the Declarant, at any time, without the approval of an Owner or the Association. To annex additional property to the Subdivision, the Declarant shall record a Supplemental Declaration which shall specify the annexation of the additional property to the Subdivision and which may supplement this Master Declaration with addition or different Covenants and Restrictions applicable to the annexed property, as the Declarant may deem appropriate, and may delete or modify as to such annexed property such covenants as are contained herein which the Declarant deems no appropriate for the annexed property, so long as the additional, different, deleted or modified covenants or restrictions are not prohibited by the regulations and requirements of HUD for residential subdivisions of the nature and type as this Subdivision. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all the rights, privileges and obligations as all other members. The amendment of this Master Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 14.2 of this Master Declaration.

**12.2 De-Annexation.** The Declarant shall have the right to delete all or a portion of the Subdivision from the coverage of this Master Declaration and the jurisdiction of the Association, so long as the Declarant is the Owner of all the property to de-annexed and, provided further, that an appropriate amendment to this Master Declaration is recorded in the Valley County Recorder.

## **ARTICLE 13 PROTECTION OF MORTGAGEES**

**13.1 Purpose.** No amendment by this Master Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that



after foreclosure of any such Mortgage such Lot shall remain subject to this Master Declaration, as amended.

**13.2 Right to Notice.** A Mortgagee, shall be given written notice in accordance with Section 9.6, above, by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Master Declaration, any Supplemental Declaration applicable to the Lot, the Articles or the Bylaws of the Association, which default is not cured within (30) days after the Association has notice of such default.

## **ARTICLE 14 MISCELLANEOUS**

**14.1 Term.** Except as provided herein, the term of this Master Declaration shall be for a period of thirty (30) years ("**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, prior to the date of expiration of the Primary Period or Extension Period then in effect, it is extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Master Declaration and such written instrument is recorded with the Valley County Recorder. Notwithstanding any termination of this Master Declaration, all easements created herein or depicted on the plat shall survive termination of the Master Declaration. The termination of the Master Declaration shall in no way modify the right, title and interest of any Owner in any easement, nor shall termination relieve any Owner of any burden or obligation under any easement set forth herein or on the plat.

**14.2 Amendment.** This Master Declaration may be amended as follows:

**14.2.1 By Declarant.** Until title to a Lot within the Subdivision is conveyed by the Declarant to an Owner, with exception of those items required by City of McCall as conditions of the approval for this Subdivision, this Master Declaration may be amended or terminated by the Declarant by recordation of a written instrument signed by the Declarant and acknowledged setting forth such amendment or termination.

**14.2.2 By Owners.** Except as otherwise expressly provided this Master Declaration, other than this Section and with the exception of those items required by the City of McCall as conditions of approval for this Subdivision, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has, been approved by a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by a majority of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or a majority of the Class A Members, as the case may be. Such amendment shall be effective upon its recordation with the Valley County Recorder. Any amendment of this Section 13.2 shall require the vote of a majority of the total of the Class B votes



cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by seventy-five percent (75%) of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or seventy-five percent (75%) of the Class A Members, as the case may be. Such amendment to this Section shall be in the form of an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment to this Section has been approved as provided herein, and shall be effective upon its recordation with the Valley County Recorder.

**14.3 Sewer Covenants.** The following shall run with each Lot, Easement or Common Area affected hereby and shall be binding upon each Owner of a Lot and all occupants of any Improvements constructed on a Lot:

(a) No Lot may be used or occupied for any allowed use unless the same is connected to the public sewerage collection system constructed and installed within the Subdivision.

(b) All sewer hook-up fees charged by the governmental entity having jurisdiction and control over the Lot shall be paid by the Declarant at the time of construction of the Improvements thereon and the connection thereof to the public sewerage collection system, said sewer hook-up fees to be paid at such time and in such amount as shall be required by the ordinances and regulations of the governmental entity having jurisdiction thereof.

(c) A monthly sewerage charge shall be paid to the governmental entity having jurisdiction thereof, or its designee, after connection to the public sewerage collection system in accordance with the ordinances and regulations of said governmental entity.

(d) All sewer service lines connected to the sewerage collection system constructed and installed by the Declarant in the Subdivision shall be constructed in accordance with all applicable codes and regulations and shall be inspected as required by the governmental entity having jurisdiction thereof to assure a minimum of infiltration from said service line into the sewerage collection system.

(e) The Declarant shall provide access, satisfactory to the governmental entity having jurisdiction thereof, for sewer cleaning equipment to all sanitary sewer manholes located outside of public right-of-way.

(f) The Declarant and each Owner of a Lot hereby authorizes the governmental entity having jurisdiction thereof, or its designee, to bring any action it deems necessary or required for the collection of any fees or charges due said entity for sewer service connected or monthly sewer charges and/or to otherwise enforce any of the obligations respecting the connection to the public sewerage collection system or use thereof as provided in this Section.

**14.4 Books and Records.** All books, records and minutes of the Association and all other books and records maintained by the Manager shall be made available for inspection and



copying by an Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Manager shall prescribe.

**14.5 Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Master Declaration and agrees to be bound by the same.

**14.6 Notices.** Any notice permitted or required to be delivered as provided in this Master Declaration shall be in writing and shall be delivered either personally 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, postage prepaid, property addressed.

**14.7 Severability.** Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**14.8 Not a Partnership.** The provisions of the Master Declaration are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Declarant.

**14.9 No Third Party Beneficiary Rights.** This Master Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

**14.10 Injunctive Relief.** In the event of any violation or threatened violation by a person of any of the covenants, easements and restrictions contained in this Master Declaration, the Declarant, the Association, and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Master Declaration or provided by law.

**14.11 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Master Declaration shall entitle any Owner to terminate this Master Declaration, but such limitation shall not affect in any manner any other rights or remedies with such Owner may have hereunder by reason of any breach of this Master Declaration. Any breach of this Master Declaration shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Master Declaration shall be binding upon and, be in effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**14.12 Attorney's Fees.** In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Master Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such



action or proceeding the prevailing party's reasonable costs and attorney's fees, including the same with respect to an appeal.

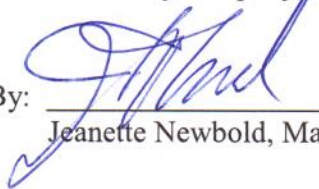
**14.13 Force Majeure.** The period of time provided in this Master Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, acts of war or terrorism, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

**ARTICLE 15  
ADDITIONAL COVENANTS AND CONDITIONS**

**15.1 Permitting and Erosion Control.** Each Owner shall be solely responsible for obtaining all necessary permits for construction upon any Lot at all times. Each Owner shall be solely responsible for ensuring that all work is conducted upon its Lot by its contractors, agents, subcontractors and licensees in conformance with the permits that have been issued. Each Owner shall furthermore be responsible to obtain all necessary erosion and sediment control plans governing its Lot as well as the Subdivision. In no event shall an Owner take any action or permit its contractors, agents, subcontractors and licensees to take any action which would violate the erosion and sediment control permit for the Lot, would violate the erosion and sediment control permits for any adjoining lots or other lots within the Subdivision, or violate erosion and sediment control plan.

THIS DECLARATION IS SIGNED AND ACKNOWLEDGED BY THE DECLARANT AS THE OWNER OF ALL PROPERTY DESCRIBED IN EXHIBIT A AND IN EXHIBIT B this 16 day of May, 2018, and effective upon the recording in the official records of Valley County, Idaho.

By: Synergy Development, LLC  
limited liability company, its Member

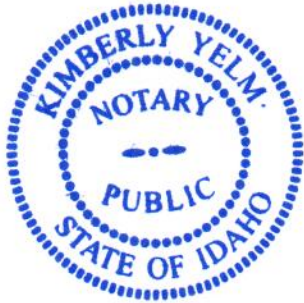
By:   
\_\_\_\_\_  
Jeanette Newbold, Manager



STATE OF IDAHO )  
 )ss,  
County of ~~Valley~~ Ada )

On this 16<sup>th</sup> day of May, 2018, before me, Kimberly Yelm, a Notary Public in and for the State, personally appeared JEANETTE NEWBOLD known or identified to me to be the Manager or Member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company 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.



Kimberly Yelm  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

Residing at: Meridian, Idaho  
Commission Expires: June 15, 2019