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BANKNOCK COUNTY IDAHO

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WHEN RECORDED, Mail to:

Patrick J. Davis, Esq.
Echo Hawk & Olsen, PLLC
505 Pershing Avenue, Suite 100
Pocatello, ID 83201

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

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ARTICLES OF PROTECTIVE COVENANTS

TRAIL CREEK ESTATES - DIVISION 3

The undersigned hereby declare that all of the real property located in the County of Bannock, State of Idaho, TRAIL CREEK ESTATES - DIVISION 3 SUBDIVISION, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to the TRAIL CREEK ESTATES - DIVISION 3 Subdivision Covenants meaning the covenants, conditions and restrictions set forth in this DECLARATION. All of said restrictions are declared and agreed to be in furtherance of a general plan for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of the covenants, conditions and restrictions as set forth in this DECLARATION, shall run with all of said real property for these purposes and shall be binding upon and inure to the benefit of the undersigned, all lots and all owners and their assigns, transferee and successors in interest. These protective covenants shall be subject to amendments as set forth herein. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

The residential area shall consist of real property commonly known as TRAIL CREEK ESTATES - DIVISION 3, more particularly described as:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF NORTHEAST QUARTER (SE1/4 OF NE1/4) OF SECTION 28, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

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

THENCE SOUTH 00°58'30" WEST (BASIS OF BEARING PER CENTRAL MERIDIAN OF EAST ZONE OF THE IDAHO STATE PLANE COORDINATE SYSTEM) ALONG THE EAST LINE OF SAID SECTION 28, A DISTANCE OF 1316.53 FEET TO THE NORTH 1/16 CORNER ON THE EAST LINE OF SAID SECTION 28; THENCE SOUTH 00°16'41" WEST, CONTINUING ALONG THE EAST LINE OF SECTION 28, A DISTANCE OF 908.16 FEET; THENCE NORTH 90°00'00" WEST A DISTANCE OF 4.71 FEET TO AN ANGLE POINT ON THE NORTH BOUNDARY LINE OF TRAIL CREEK ESTATES - DIVISION 1, A SUBDIVISION RECORDED UNDER INSTRUMENT NO. 20817671 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY, THE **POINT OF BEGINNING**;

THENCE SOUTH 63°46'28" WEST, ALONG THE NORTH BOUNDARY LINE OF SAID SUBDIVISION, A DISTANCE OF 276.61 FEET;

THENCE NORTH 26°07'36" WEST A DISTANCE OF 320.00 FEET;

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THENCE NORTH 63°46'28" EAST A DISTANCE OF 109.99 FEET;
THENCE NORTH 26°13'32" WEST A DISTANCE OF 40.00 FEET;
THENCE NORTH 63°46'28" EAST A DISTANCE OF 205.77 FEET;
THENCE SOUTH 14°55'56" EAST A DISTANCE OF 293.78 FEET;
THENCE SOUTH 40°09'03" EAST A DISTANCE OF 74.09 FEET TO THE
POINT OF BEGINNING.

CONTAINING 2.24 ACRES, MORE OR LESS.

Lots within such area shall be for the exclusive use and benefit of the Owners thereof, subject, however, to all of the following limitations and restrictions;

1. INTEREST, SPECIAL RIGHTS AND EXEMPTION OF DECLARANT

- A. INTEREST OF DECLARANT: Declarant has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, the covenants, conditions, Restrictions, reservations and other matters contained in this Declaration along with any amendments thereto. Consequently, until the later of such time as Declarant no longer owns any real property in the Project or the Annexable Area, the following actions, before being undertaken by the Members or by the Association, shall first be approved in writing by Declarant:
- i. Any amendment of this Declaration;
 - ii. The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Common Elements;
 - iii. Any significant reduction of Association maintenance or other services;
 - iv. Any termination or change of a Manager.
- B. SPECIAL RIGHTS OF DECLARANT: Notwithstanding anything to the contrary in this Declaration, the following shall apply:
- i. Nothing in this Declaration shall limit, and no Owner (except Declarant), or the Association or other Person shall do anything to interfere with, the right of Declarant to exercise any Developmental Rights or to develop all or any portion of the Project, including, without limitation the right to subdivide or re-subdivide any portion of the Project or the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems

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advisable in the course of development of the Project for so long as any property in the Project or in the Annexable Area is owned by Declarant.

- ii. Declarant shall, in its sole discretion, have the right to purchase additional property and to add such Lots to the Annexable Area of the Declaration, thereby causing the additional Lots to be governed by the Declaration and the Owners of such Lots to be included in the Association.
- iii. This Declaration shall in no way limit the right of Declarant to (i) grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as may from time to time be reasonably necessary to the proper development and disposal of Lots; (ii) use all or any portion of the Common Elements or Lots owned by Declarant for sales facilities, model homes, offices, signs, special promotions, marketing, advertising and for such other use as is, in Declarant's sole discretion, necessary, appropriate, convenient or incidental to the development, construction, sale or management of the Project or any part thereof; and (iii) access the Common Elements for the purpose of making Improvements therein or in the Project or Annexable Area.
- iv. Declarant need not seek or obtain Architectural Review Committee approval of any Improvement constructed or placed in any part of the Project by Declarant.
- v. All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.
- vi. Notwithstanding any other provision of this Declaration, the prior approval of Declarant, as developer of the Project, will be required before any amendment to this Declaration shall be effective.
- vii. Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Declaration. Declarant and its prospective purchasers of Lots shall be entitled to the nonexclusive use of the Common Elements without further cost for access, ingress, egress, use or enjoyment, in order to show the Project to its prospective purchasers, to dispose of the Lots, and to develop and sell Lots in any Phase of Development.
- viii. Declarant shall, at its option, have the right to maintain and improve the Common Elements in accordance with the standards set forth herein. Declarant may assign the right and obligation to maintain the Common Elements to the Association and the Association shall assume the right and

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obligation to maintain the Common Elements by mutual execution of an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A and by this reference incorporated herein ("Assignment and Assumption Agreement").

- ix. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration; provided, however, that Declarant shall be provided with such notices and other documents without making written request therefor.
- x. The rights and reservations of Declarant referred to in this Section shall terminate on the earlier of (i) the date Declarant shall no longer own any property in the Project or the Annexable Area or (ii) with respect to Declarant's rights and reservations, the date Declarant shall voluntarily terminate in writing its rights hereunder (which termination shall be effective only as to the specific rights so terminated).

2. INSURANCE

- A. DUTY TO OBTAIN INSURANCE; TYPES: Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Board of Directors shall cause to be obtained and maintained (a) adequate blanket public liability insurance (including medical payments), with such limits as the Board of Directors in its discretion considers prudent covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Element; and (b) to the extent the Common Elements are insurable, fire and casualty insurance with extended coverage, insuring against all risks of direct physical loss commonly insured against, without deduction for depreciation, in an amount not less than 80% (or such higher percentage as FNMA, VA, FHA, FHLMC or GNMA may require) of the actual cash value of the Common Element Improvements at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from fire and casualty policies. However, the Board of Directors shall not be required to obtain such casualty insurance if there are no material Improvements constructed on the Common Elements. If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Such insurance shall, to the extent reasonably available, provide that each Owner is an insured Person under such policy with respect to liability arising out of such Owner's interest in the Common Elements or Membership in the Association. The Board of Directors may purchase such other insurance as it shall deem necessary or appropriate, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks as shall customarily or reasonably be covered with respect to projects similar in construction,

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location, and use. Fidelity bond coverage shall be obtained to cover such persons and in such amounts as the Board of Directors shall require, Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FHA, VA, FBLMC, FNMA, GNMA or any similar entity, so long as any of them is an Owner of a Lot or holder or insurer of a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the FHA, VA, FBLMC, FNMA, GNMA or such other similar entity, as applicable. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request.

- B. WAIVER OF CLAIMS AGAINST ASSOCIATION: As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such Persons, except as may be provided elsewhere in this Declaration.
3. **RESIDENTIAL USE.** Each numbered lot within the residential area shall be used exclusively for single family residential purposes. No structure whatever, other than one private single-family dwelling, together with a private garage, and a practically sized yard shed for the storage of yard tools shall be erected, placed or permitted to remain on any of the lots. No gainful occupation, profession, trade, business or other non-residential use which encourages patron visits shall be conducted in, on, or from any lot or building. This provision, however, does not restrict the use of the property for a private office wherein telephone and computer-based work requiring limited additional traffic, parking and visits are undertaken. No signs will be displayed for business purposes. Nothing herein shall be deemed to prevent the leasing of an entire lot and all the improvements thereon to a single family, and not otherwise, from time to time by the OWNER thereof subject to all of the provisions of the TRAIL CREEK ESTATES - DIVISION 3 subdivision Restrictions.
 4. **BUSINESS CONSTRUCTION.** No store, office or other place of business of any kind, and no hospital, sanatorium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon, or other place of entertainment, or any church shall ever be erected or permitted upon any of the lots or any part thereof.
 5. **MAINTENANCE AND REPAIR OF BUILDINGS.** No building, residence, improvement or structure upon any lots shall be permitted to fall into disrepair, each such building and structure shall at all times be kept in good condition and adequately painted or otherwise finished. Owners shall maintain in good repair the exterior surfaces, including but not limited to, walls, roofs, porches, patios, and appurtenances. Nothing shall be done in or to any such building which will impair the structural integrity of any building. Garages must be kept in a neat and tidy manner at all times.
 6. **MAINTENANCE OF LAWNS AND PLANTINGS.** Each owner shall at all times keep all shrubs, trees, grass and plantings of every kind on Owner's lot, including set back easement

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 areas, and park strip next to the curb, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

7. ARCHITECTURAL REVIEW COMMITTEE.

ORGANIZATION, POWER OF APPOINTMENT AND REMOVAL OF MEMBERS: An Architectural Review Committee ("ARC") shall be organized and shall consist of three members. None of the members shall be required to be an architect or to meet any other particular qualifications for membership. Unless the members of the ARC have resigned or been removed, their term of office shall be for a period of one year, or until the appointment of their respective successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed. The right to appoint and remove all members of the ARC, at any time, shall be and is hereby vested solely in Declarant, for so long as Declarant owns any property in the Project or Annexable Area. When Declarant no longer owns any property in the Project or Annexable Area, the Board of Directors shall have the power to appoint, remove and/or replace such members. Any member of the ARC may at any time resign from the ARC by giving written notice thereof to the other members. Vacancies on the ARC, however caused, shall be filled by Declarant, for so long as Declarant owns any property in the Project or Annexable Area and thereafter by majority vote of the Owners. A vacancy or vacancies on the ARC shall be deemed to exist in the case of death, resignation or removal of any member.

DUTIES: It shall be the duty of the ARC to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt ARC Rules and to carry out all other duties imposed upon it by this Declaration. Any decision of the ARC may be reviewed and overruled by the Board of Directors. The Board of Directors may, at its discretion, review any action of the ARC, and if it deems necessary, overrule or reverse the ARC's action.

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

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

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

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Improvement; or (d) the issuance of a permit which is necessary for the occupancy of a Unit or for the use of an Improvement to the Unit.

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

Under no circumstances may the Association or the ARC: 1) unreasonably restrict, prohibit or otherwise impede the lawful rights of an Owner to have reasonable access to his Unit; 2) unreasonably restrict, prohibit or withhold approval for an Owner to add to a Unit:

(i) improvements such as ramps, railings or elevators that are necessary to improve access to the Unit for any Owner or occupant who has a disability; (ii) additional locks to improve the security of a Unit; or (iii) shutters to improve the security of the Unit or to aid in reducing the costs of energy for the Unit.

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

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

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

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

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

8. **ANIMALS.** No animals or fowl, poultry, or livestock, other than a reasonable number of generally domesticated household pets, shall be maintained or permitted on any lot and then only if they are kept, bred or raised thereon solely as household pets and not for commercial purposes. No such animal or fowl shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Any structure for the care, housing confinement of any such animal or fowl shall generally be attached to the main dwelling unit.
9. **ANTENNAE AND SATELLITE DISHES.** No antenna or satellite dish for transmission or reception of television or radio (including short-wave) signals or any other form or electromagnetic radiation shall be erected, used or maintained outdoors whether attached to a building or structure or otherwise, unless approved by the Committee. Satellite dishes and small internet antennas made a part of the home structure and measuring 18" or less in diameter are precluded from this restriction.
10. **UTILITY SERVICE.** Lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals shall be underground. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of an approved building.
11. **TEMPORARY OCCUPANCY.** No trailer, basement of any incomplete building, tent, shack, garage or bam, and no temporary or incomplete building or structure shall be lived in or occupied in any manner.
12. **TRAILERS, BOATS AND MOTOR VEHICLES.** No mobile home, trailer of any kind, tent, or similar structure, and no non-functional vehicles, commercial trucks larger than a pickup, truck camper, recreational vehicle, motorcycle, ATV, go-cart, dune buggy, boat, or boat trailer shall be kept, stored, placed, maintained, constructed, reconstructed or repaired, upon any lot or street within this subdivision unless such vehicles are kept at least 25 feet behind the front property line and screened from street view. Incidental use of recreational vehicles in the street for up to two days is precluded from this requirement.
13. **NUISANCES.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any lot, and no odors shall be permitted to arise there from, so as to render any lot or portion thereof unsanitary, unsightly, offensive or detrimental to any of the occupants thereof. No nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any property in the vicinity. thereof or to its occupants. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells, or other devices used exclusively for security purposes, shall be located, used or placed on any lot.
14. **TRASH CONTAINERS AND COLLECTION.** All garbage and trash shall be placed and kept in covered containers of a type and style as approved by the City of Pocatello. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

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15. **CLOTHES DRYING FACILITIES.** Outside clotheslines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.
16. **ROAD ENCROACHMENTS.** No tree, shrub, planting building or improvement of any kind shall be allowed to overhang or otherwise to encroach upon any road or pedestrian way from ground level to a height of eight (8) feet.
17. **MACHINERY AND EQUIPMENT.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any lot within the Residential Area except such machinery or equipment as is usual and customary in construction of a private residence in TRAIL CREEK ESTATES - DIVISION 3 SUBDIVISION. No elevated tanks or large containers of any kind shall be erected, placed or permitted upon any lot.
18. **CONSTRUCTION.** Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the builder of homes in TRAIL CREEK ESTATES DIVISION 3 SUBDIVISION to maintain during the period of construction and sale of said homes, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said homes, including but not without limitation, a business office, storage area, construction yard, signs, model units and sales office.
19. **DISEASES AND INSECTS.** No owner shall permit anything or condition to exist upon Owner's lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.
20. **RESTRICTION ON FURTHER SUBDIVISION.** No lot in the subdivision shall be further subdivided or separated into small lots, nor shall any less than all of such lots as originally platted be conveyed or transferred or any easement or other interest given therein, except for public utilities, without the prior written approval of the Declarant.
21. **SIGNS.** No commercial signs whatsoever which are visible from neighboring property shall be erected or maintained on any lot within the residential area except: a) Such signs as may be required by legal proceedings; b) Not more than two (2) Residential identification signs of a combined total face area of seventy-two (72) square inches or less for each lot; c) During the time of construction of any residence or other improvement, or to sell an existing home, two job identification signs not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three (3) square feet; and d) Such signs the nature, number and location of which have been approved in advance by the Declarant.
22. **ON-SITE GRADING.** Each builder/homeowner will design on-site lot grading to facilitate protection of their improvements, including landscaping, from any abnormal runoff created by the subdivision improvements or adjacent properties. Lot grading should be completed in accordance with or similar to those designs provided by BUD-FHA in their manual (4240.1) which includes provision for any run-off waters to drain along each side lot line and along all lot lines. Lot grading is to include sloping the yard away from the home in all directions eliminating the possibility of run-off waters running to the house foundation. (See attached Detail). For those lots with a side slope, it will be the responsibility of the owner of the downhill (lower) lot to insure the existing grade of the adjoining lot uphill from his/her, by means, if necessary, of a retaining wall, erosion resistant landscaping or other decorative structure on his/her property if they have altered the existing grade to accommodate their foundation or driveway, etc. Likewise if the owner of the upper lot alters the existing grade, they will

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 be responsible to retain the altered dirt on their own property, and provide means for lot drainage to flow down lot lines.

23. **MAILBOX LOCATION.** Mailboxes shall be individual mailboxes furnished by homeowner/builder.
24. **UTILITIES.** All lots shall be served by underground utility, electrical and telephone lines and cable television and no above ground distribution lines shall be installed. Overhead wires shall not be allowed and are expressly prohibited.
25. **BUILDING SIZES.** No dwelling shall be permitted on these lots having a ground floor area of the main structure, exclusive of one-story open porches and garages, of not less than 1250 square feet for a one-story dwelling on lots 1-13 Block 1, and 1500 for all other lots, and not less than 2000 square feet on the above grade floors of a two-story or split-level dwelling so long as there is at least a 3 car garage. All 3-car garages are to have either 3 single 9 foot doors or one single 9 foot door and one double 16' or greater door.

It is further required that each home have a minimum of a two-car garage having an exterior width of not less than 24 feet attached to the home with two single garage doors of at least 9 feet in width each or one door of at least 18 feet in width. However, if homes are constructed with 2 car garages, then minimum square footage shall be increased by 150 square feet above grade, added to the minimum for a 3 car dwelling.

In the entire subdivision, garages may only be used for the storage of automobiles or other personal property and may not be converted to living area unless a new garage is built at the same time of garage conversion and is approved by both the architectural review committee and the City.

26. **PARK STRIP.** Homeowners are responsible for the maintenance of the "Park Strip" between the curb and the sidewalk, and are to plant, care for and maintain three (3) trees per street frontage area evenly spaced in the park strip. These trees are to be of the species Little Leaf Linden, (*Tilia cordata*). Trees will be planted within the first growing season possible following completion of construction of the home on any given lot. This "Park Strip" is to be specifically covered with grass.
27. **TREE PLANTINGS.** Certain species of trees will not be allowed in this subdivision. These include Siberian Elm (*Ulmus pumila*), American Elm (*Ulmus americana*), Russian Olive (*Eleagnus Spp.*), all cottonwood and poplar species (*Populus spp.*), except Quaking Aspen (*P. tremuloides*). Trees are not to exceed 40 ft. in height. At the time any tree exceeds this height of 40 feet, it must be trimmed or removed. Attached is a list of recommended species to be used.
28. **LANDSCAPE & FENCES.** All yards shall be landscaped in a professional like manner and appearance, with fencing permitted only in the back and side yards with no fencing closer than 25 feet from the front property line. Landscaping shall match other landscaping within subdivision. Landscaping shall be installed no later than the beginning of the first growing season after the completion of home construction. All fences shall comply with the city ordinance. No wire netting, chicken wire, barbed wire or chain link fences will be allowed. Any fencing will be of wood, masonry, vinyl, or similar materials and maintained in an attractive manner.
29. **REMEDIES.** These covenants and restrictions are to run with the land and it shall be lawful for any other person or persons owning any other lot in said development, or subdivision,

including the Developer, to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such covenants or restrictions and either to prevent him or them from so doing to recover damages or other dues for such violations, but the Developer shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

30. AMENDMENTS:

- A. *By Declarant.* Prior to the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration may be amended or terminated unilaterally by Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination.
- B. *By Members.* After the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration, with the written consent of Declarant so long as Declarant owns any property in the Project or the Annexable Area, may be amended by the Recordation of a certificate, signed and acknowledged by the Declarant (if Declarant's consent is required) and the president and secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by 67% of the voting power of the Association and the requisite percentage of holders and insurers of First Mortgages required hereunder, if any.
- C. *Approval of First Mortgages.* Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by the Record holders and insurers of the First Mortgages requesting in writing notice of amendments, based upon one vote for each Mortgage owned or insured:
- i. Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to holders, insurers and guarantors of First Mortgages as provided herein;
 - ii. Any amendment which would necessitate an encumbrance, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;
 - iii. Any amendment which would or could result in an encumbrance being canceled by forfeiture or in the individual Lot not being separately assessed for tax purposes;
 - iv. Any amendment relating to the insurance provisions or to the application of insurance proceeds; or to the disposition of any
 - v. Any amendment which would or could result in partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration;
 - vi. Any amendment concerning voting rights, the method of allocation of interests in Common Elements, rights to use the Common Elements, responsibility for maintenance, repair, and replacement of the Common Elements, the right of annexation to the Project, boundaries of any Lot, the conversion of Lots into Common Elements or Common Elements into Lots,

leasing of Lots and the establishment of self-management by the Association where professional management has been required by any institutional holder or insurer of a First Mortgage;

- vii. Any amendment resulting in an increase of more than 25% of the Common Assessment over the prior Assessment Year and any amendment affecting assessment liens or the priority thereof; and
- viii. Any amendment imposing Restrictions on the leasing of or right to sell or transfer Lots.

D. *Other Amendments.*

- i. Anything in this Section or any other Section to the contrary notwithstanding, Declarant reserves the right at any time to amend all or any part of this Declaration to such an extent and with such language (1) as may be requested by the FHA or the VA, (2) requested by any other federal, state or local governmental or public agencies which request such amendments as a condition precedent to such agency's approval of this Declaration, and (3) to bring any provision hereof into compliance with applicable law. Any provision contained in this Declaration, the Articles or Bylaws, or other governing document of the Association that violates any provision of the Idaho Code shall be deemed to conform with that provision of the Idaho Code by operation of law, and such document is not required to be amended to conform to that provision. Any such amendment shall be effectuated by the Recordation, by Declarant, of a certificate of amendment duly signed by an authorized agent or authorized officer of Declarant, as applicable, with the signatures acknowledged, specifying the reason for such amendment and setting forth the amendment. Recordation of such a certificate shall be binding upon all of the Project and all Persons having an interest therein.
- ii. It is the desire of Declarant to retain certain controls over the Association and its activities during the anticipated period of planning and development of the Project. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such controls, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions.
- iii. In the event this Declaration is Recorded or used for any purpose prior to having been approved by the FHA, the V A or any governmental or public agency with jurisdiction, Declarant shall have the absolute right to amend the provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly Recorded.

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

31. DEVELOPMENT OF THE PROJECT; ANNEXATION

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- A. **PHASES OF DEVELOPMENT:** Declarant hereby reserves the right to purchase additional property and to add such Lots to the Annexable Area for the Project.
- B. **ANNEXATION OF ANNEXABLE AREA:** Declarant, unilaterally and in its sole discretion may, from time to time and at any time as long as Declarant owns any portion of the Project or Annexable Area, but shall in no way be required to, add all or any portion or portions of the Annexable Area to the Project covered by this Declaration. Annexation shall be accomplished by the Recording of a Notice of Annexation with respect to the Annexed Territory in the form attached hereto as Exhibit B and incorporated herein by this reference. Upon the Recording of a Notice of Annexation covering any portion of the Annexable Area, the covenants, conditions, restrictions and other matters contained in this Declaration shall apply to the Annexed Territory in the same manner as if such Annexed Territory were originally covered by this Declaration and constituted an original portion of the Project. Nothing in this Declaration shall be deemed to be a representation by Declarant that all or any particular portion of the Annexable Area shall be annexed to the Project or be made subject to this Declaration.
- C. *Notice of Annexation.* The Notice of Annexation referred to herein shall contain: (i) the written and acknowledged consent of Declarant for so long as Declarant shall own any property in the Project or the Annexable Area; (ii) a reference to this Declaration which shall state the date, county, and book and page of its Recordation, along with its instrument number or any other relevant Recording data; (iii) a statement that the provisions of this Declaration as set forth herein shall apply to the Annexed Territory; (iv) a legally sufficient legal description of the Annexed Territory; and (v) a designation by Declarant of Phase(s) of Development within the Annexed Territory. Each Notice of Annexation shall be signed by Declarant and by all other Persons owning a fee interest in the property being annexed. If required, the approval of the FHA or VA shall be a condition to annexation hereunder.

ARTICLE II

UNINCORPORATED NONPROFIT HOMEOWNER'S ASSOCIATION

2.01. Creation of Association: Unless and until Grantor conveys by written deed, ownership to each and every unit of the Property there shall be no Association, and all authority, decisions, assessments, restrictions and/or powers reserved to the Association herein shall be held, maintained and administered solely by Grantor. All restrictions, limitations and/or conditions described herein shall be in full force and effect regardless of whether Grantor has conveyed by written deed, the ownership to each and every unit of the Property. Upon the conveyance by the Grantor of all the units, the Trail Creek Homeowner's Association, as defined above, shall be created pursuant to Idaho Code 53-701 et seq., and/or the then existing Uniform Unincorporated Nonprofit Association Act as adopted by the State of Idaho. Membership of the Association shall be as defined Article I, Clause 1.04 above.

2.02. Officers of the Association. Upon the creation of the Trail Creek Homeowner's Association as set forth above, the then existing members shall elect by majority vote the following officers/persons who are authorized to manage the affairs of the Association by the majority vote of the members: (1) a President; (2) a Secretary; (3) a Treasurer; and (4) an Agent, who shall be named by appointment in a formal statement which shall be filed with the Idaho Secretary of State's Office pursuant to Idaho Code 53-710. In the event of the death, incapacity or resignation of the above-named officers and/or Agent, the remaining members shall have full authority to designate successor officers and/or an Agent pursuant to Idaho Code 3-710(3).

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Unless altered by the majority vote of the members, officers of the Association shall perform the duties of their office for a period of two years, at which time new officers shall be elected by a majority vote of the members at the annual meeting of the Association which shall be held at the same time and place each year as designated by the Grantor. The responsibilities of the officers will be as follows:

- A. President. The President of the Association shall be responsible for the carrying out the terms, conditions, requirements, limitations, restrictions and covenants that exist upon the creation of the Association and/or that are approved and/or are modified at any time by the members of the Association;
- B. Secretary. The Secretary of the Association shall be responsible for maintaining the records of the Association including minutes of meeting, notices, mailings, and any other record that arise due to the operation of the Association;
- C. Treasurer. The Treasurer of the Association shall be responsible for the collection of the monthly accounts held by the Association and for any payments made by the Association to third persons as designated by the President of the Association;
- D. Agent. The Agent of the Association shall be responsible for receiving service on behalf of the Association from third persons as set forth in Idaho Code 53710.

2.03. Voting within the Association: Once Grantor has conveyed by written deed, ownership to each and every unit of the Property, which shall create said Association, all Association business, decisions, restrictions, authority and powers shall be determined by the majority vote of the members as follows: there shall be allowed one (1) vote for each unit owned. Should a husband and wife, or any other type, kind or degree of co-ownership of a unit exist, said husband and wife or other co-owners shall be constituted as one member in the Association.

2.04. Deadlock: In the event the Members are equally divided in their vote on the basis of any aspect of the management of the Association and/or the Property, business and/or affairs of the Association, and the deadlock is preventing action or one-action by the Association, then the Association may submit the deadlock to be decided by the President of the Association.

2.05. Purposes of the Association. The purposes of the creating the Association are as follows:

- A. to provide for the maintenance, repair and upkeep of the common areas by creating and collecting a general Annual assessment together with collecting any special assessments as are necessary from the members to pay for the expenses of the common areas of the Property, which may include but are not limited to storm water retention ponds, retention walls, private roadways and/or streets, walkways, mailboxes, park areas, grassy areas and/or any and all other common areas associated or created with respect to the Property and/or for any other legal purpose;
 - i. the amount of the regular annual assessment will be determined by Grantor, will be reflected in the buy/sell agreement for each lot, and will be subject to the review annually by the Grantor or the Association, once it is active, for purposes of determining increases and/or decreases;
 - ii. all other assessments will be determined by the Grantor or the President of the Association;

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- iii. each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the owner(s) of the unit assessed, and shall constitute a lien and charge upon the unit;
- iv. in the event the Association is required to file any Notice of Lien or lawsuit, legal proceeding, administrative proceeding or the like against any member to collect any assessment and/or to enforce compliance with any other provision of this Declaration, all the legal fees, costs, expenses and interest associated with the said action shall likewise constitute a separate, distinct and personal debt and obligation of the owner(s) and shall become a lien on the lot assessed pursuant to applicable Idaho law;

- B. to manage the Property by the majority vote of the members;
- C. to maintain the common areas, and enforce compliance with the covenants, conditions, limitations, restrictions and equitable servitudes of the Property as contained herein including the collection of any and all Association Fees that are due and owing by any member; the enforcement of compliance with this Declaration shall be accomplished by any and all legal means available to the Association including but not limited to recording of a Notice of Lien, filing of legal suit or action, and/or the like; and
- D. to provide a fair and equitable means of allowing the members to collectively resolve any and all issues or disputes not contemplated by the Grantor with regard to the Property. The Association shall have all rights and abilities to enforce the terms and conditions contained in this Declaration.

2.06. Non-Liability of Officers, the Aunt and/or Members of the Association. Neither the Officers, nor the Agent nor any member of the Association thereof shall be liable to any unit owner for any loss, damage or injury arising out of or in any way connected with the performance of the Association hereunder, unless due to the negligence, willful misconduct or bad faith of said persons.

2.07. Reservations to the Grantor/Association. The Grantor hereby reserves to itself an easement on each residential lot on the Property and/or associated with the Property or the Association for the installation and maintenance of any and all utilities and drainage facilities or the like. Said easement may or may not be identified on the recorded plat. After the creation of the Association, the easement created and described herein in favor of the Grantor shall pass by assignment and succession from Grantor to the Association.

2.08. Association Fees. At all times while Grantor maintains the Association as set forth herein, and at all times thereafter, the Association Fee for each and every unit, unless changed by an amendment to this Declaration, shall be \$75 annually. This \$75 annual assessment is due and owing by each unit owner in an annual payment on or before the 15th of March. Said payments are to be made payable to TRAIL CREEK ESTATES ADDITION 2 HOMEOWNERS ASSOCIATION and **mailed to the following address: "Five Star Property Management, LLC", 1505 E. Center St, Pocatello, ID 83201.** Furthermore, if at any time a unit is sold, conveyed or transferred in any way, a \$150 exchange fee shall be assessed by the Grantor and/or the Association to the members(s) obtaining said unit.

- A. If at any time a member of the Association fails to make a regular semi-annual payment, or the exchange fee described more fully above, a monthly late fee of \$15.00

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shall accrue on each unpaid assessment for each and every month said assessment goes unpaid.

- B. If after 90 days a member's unpaid assessments together with all late fees are not paid the Grantor and/or the Association shall cause a lien is filed for the amount that is unpaid and shall charge the member against whom the lien is filed a filing fees and attorney expenses.
- C. Grantor reserves the right to increase or decrease the Association Fees, late fees at any time by written notice to all existing members and by recording of an Addendum to this Declaration. The failure of any member to pay these fees shall also result in the Association's collection of these fees as outlined herein. The Grantor's and/or Association's failure to timely exercise any rights provided by this Declaration shall not constitute a waiver of those rights.

IN WITNESS WHEREOF, the undersigned have executed this DECLARATION this 19 day of June, 2020.

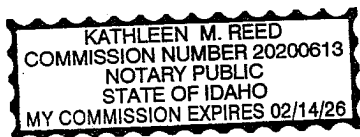
Rod Furniss Member
 Rod Furniss, Owner

McCORMICK RANCH, LLC

State of ID }
 County of Bannock } ss

On this 19 day of June, in the year 20 20 before me, Kathleen Reed, a Notary Public in and for said state, personally appeared Rod Furniss known or identified to me to be the Managing Member in the Limited Liability Company known as McCORMICK RANCH, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name.

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



Notary Public for the State of Idaho
 Residing at:
 Commission expire

K. Reed
 Bannock Co.
 2/14/26