

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR CARRIAGEGATE, DIVISION NO. 6**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CARRIAGEGATE, DIVISION NO. 6 (this "Declaration") is made as of the 31 day of JANUARY, 2018, by MC and DM Investments, LLC, an Idaho limited liability company, as the Declarant.

**RECITALS:**

A. The Declarant is the Owner of the Property located in the City of Idaho Falls, Bonneville County, Idaho, which is generally described as Carriagegate, Division No. 6.

B. The Declarant is adopting these covenants, conditions and restrictions to preserve and maintain the character and value of the Property for the benefit of all existing and future Owners of the Property, in conjunction with the residential development of the Property.

C. Declarant has filed with the Recorder of Bonneville County, Idaho a subdivision plat ( the "Plat") for Carriagegate, Division No. 6.

D. A portion of the Property consists of Lots used or to be used as sites for the construction of family residences.

E. The Property is hereby made subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens contained or provided for in this Declaration, all of which shall be enforceable equitable servitudes and shall run with the land.

F. The Property shall generally be known as "Carriagegate".

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, transferred, used and occupied subject to the provisions of this Declaration, including the covenants, restrictions, reservations, assessments, regulations, charges and liens contained or provided for herein, which are for the purpose of protecting the value and desirability of the Property as a residential project, and which shall be construed as covenants of equitable servitude and shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

## ARTICLE I DEFINITIONS

**Section 1.** "Association" shall mean Carriagegate Homeowners Association, Inc., an Idaho corporation, and its successors and assigns.

**Section 2.** "Property" shall mean the real property located in the City of Idaho Falls, Bonneville County, Idaho, particularly described as follows:

All property located within the boundaries of Carriagegate, Division No. 6 as shown on the recorded plat for such subdivision recorded in the records of Bonneville County, Idaho, together with such additions and improvements thereto as may now be located on said real property or as may hereafter be conveyed or brought within the Ownership or jurisdiction of the Association.

**Section 3.** "Carriagegate Property" shall mean all property located within the boundaries of Carriagegate subdivisions 1 through 6 as shown by the plats for such subdivisions recorded in the records of Bonneville County, Idaho and any subsequent phases of Carriagegate.

**Section 4.** "Lot" shall refer to each of the Lots shown on the recorded plats for the Carriagegate Property.

**Section 5.** "Owner" or "Ownership" shall mean the record Owner, whether one (1) or more persons and/or entities, of a fee simple title to each Lot, including contract buyers of record, but excluding mortgagees, contract sellers or others having such interest merely as security for the performance of an obligation unless and until said mortgagee or other holder of a security interest has acquired title to a Lot which is part of the Property pursuant to forfeiture, foreclosure or a proceeding in lieu thereof. An "Owner" shall mean all of the Owners of a particular Lot collectively and shall be jointly regarded as a single Owner for purposes of this Declaration. Any Owner of an equity interest of record in a Lot, and any partner, officer or shareholder of an entity which is an Owner of record, may be treated by the Association as the representative of all the Ownership of such Lot for purposes of giving notices, voting and other matters.

**Section 6.** "Members" shall mean the Owners, as described in Article II hereof.

**Section 7.** "Declarant" shall mean MC and DM Investments, LLC, an Idaho limited liability company, and its successors and assigns as the developer of the Property.

**Section 8.** "Management Committee" shall mean the Board of Directors of the Association, as described in the Articles of Incorporation and Bylaws of the Association and in this Declaration.

**Section 9.** The "Subdivision" shall refer collectively to Carriagegate, Division Nos. 1 through 6 as shown on the recorded plats for such subdivisions recorded in the records of Bonneville County, Idaho and as shown by the plats for any subsequent phases of Carriagegate.

## ARTICLE II THE ASSOCIATION

**Section 1. Membership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, and Ownership of a Lot shall be the sole qualification for Membership. Each Ownership shall constitute one (1) Member. Plats for Carriagegate, Division Nos. 1 through 5 have also been recorded in the records of Bonneville County, Idaho. Covenants, Conditions, and Restrictions for Carriagegate, Division Nos. 1 through 5 have also been recorded in the records of Bonneville County, Idaho. The Owner of each Lot in Carriagegate, Division Nos. 1 through 5, shall also be a Member of the Association. Additional phases for Carriagegate may also be created wherein plats for subsequent divisions of Carriagegate shall be recorded in the records of Bonneville County, Idaho. The Owner of each Lot in any subsequent phases of Carriagegate shall also be Members of the Association.

**Section 2. Voting.** Voting by Members of the Association upon any matter allowing or requiring a vote of Members shall be as follows: there shall be one (1) vote allowed for each Lot. If an Owner includes more than one (1) person and/or entity, the vote for said Member shall be cast in such manner as the persons and/or entities constituting the same shall determine, but the decision of the Management Committee as to the authority conferred upon one (1) or more Owners or other representatives by the Ownership in casting the one (1) vote of the Ownership shall be conclusive and binding.

### **Section 3. Management Committee.**

3.1 The administration of the Property on behalf of the Association shall be conducted by a board of directors, which is referred to herein as the Management Committee, consisting of three (3) natural persons, who are not required to be Owners and shall not be required to be residents of the State of Idaho.

3.2 Subject to the provisions of paragraph 3.6 below, at each annual meeting of the Association, the Association shall elect members to fill any vacancies on the Management Committee.

3.3 Each Member of the Management Committee shall serve for a term of two (2) years. The members of the Management Committee shall serve until their respective successors are elected, or until their earlier death, resignation or removal as provided in the Articles of Incorporation and Bylaws of the Association.

3.4 The members of the Management Committee shall receive no compensation for their services, other than reimbursement of expenses, unless expressly approved by a majority of a quorum of the Association; provided, however, that any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment, and reasonable compensation may be provided without approval of the Association to Management Committee Members during the first thirty-six (36) months following the recording date of this Declaration.

3.5 The Management Committee, for the benefit of the Property and the Association, shall manage the business, property and affairs of the Association and shall enforce the provisions of this Declaration, and may adopt rules and regulations (including without limitation schedules of fines for violations) governing the Property. The Management Committee shall have the powers, duties and responsibilities with respect to the Property as contained in Article III hereof and the other provisions of this Declaration and its Articles of Incorporation and Bylaws, as well as any other applicable law.

3.6 Notwithstanding anything herein to the contrary, as long as Declarant is the Owner of at least twenty percent (20%) of the Lots whose Owners are Members of the Association, the Declarant shall have the option to appoint and remove all members of the Management Committee, to appoint and remove all officers of the Association, and to exercise the powers and responsibilities otherwise assigned by the Declaration to the Association. Declarant shall have the option at any time, by an express written declaration, to turn over to the Association the total responsibility for electing and removing members of the Management Committee and the officers. No term of office of a Management Committee member or an Association officer or agent shall expire or otherwise be affected by the expiration of such period during which the Declarant may control the Association, and if the number of Management Committee members shall be less than three (3) at the end of such period, the vacancies may be filled in accordance with the Bylaws of the Association.

### ARTICLE III STATUS OF OWNERS; MANAGEMENT COMMITTEE

**Section 1. Legal Status.** The Owners do not constitute an association or entity of any kind, and the sole legal entity created hereunder is the Association. The name of the Association shall be the name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suit shall be brought and defended by the Association, the Management Committee or officers thereof on

behalf of and as agents for the Owners in the manner specified in this Declaration, the Articles of Incorporation, the Bylaws, or by applicable law.

**Section 2. Management of Association.** The business, property and affairs of the Association shall be managed by a Management Committee as provided in this Declaration and its Articles of Incorporation and Bylaws.

**Section 3. Powers and Duties of Management Committee.** The Management Committee, acting on behalf of the Association; shall have all the powers, duties and responsibilities which are now or may hereafter be provided by this Declaration, including but not limited to the following:

3.1 To make and enforce all administrative rules and regulations covering the operation and maintenance of the Property.

3.2 To determine and pay Common Expenses and other expenses of the Association.

3.3 To obtain such insurance coverage as the Management Committee may deem is appropriate, including, but not limited to, liability insurance, errors and omissions and directors, officers and agents liability insurance.

3.4 To maintain, repair, replace and operate property owned by the Association and to collect from the Owners as Common Expenses reasonable funds therefore.

3.5 To assess and collect the proportionate shares of Common Expenses and other applicable expenses from the Owners.

3.6 To open bank accounts on behalf of the Association and to designate the signatures thereof.

3.7 To keep adequate books and records, which will be available to the Owners for inspection on a reasonable basis.

3.8 To do all other acts necessary for the administration, operation and maintenance of the Property, including the maintenance and repair of any improvements on the Property if the same is necessary or desirable to protect or preserve the Property.

**Section 4. Limited Liability of Management Committee, etc.** Members of the Management Committee and their officers, assistant officers, agents and employees: (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have

no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith; (iv) shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

**Section 5. Indemnification.** The Association hereby indemnifies and holds harmless any person, their heirs and personal representatives from and against all personal liability and all expenses, including attorney's fees, incurred or imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one (1) or more Owners or any other persons or entities to which he shall be or shall be threatened to be made a party by reason of the fact that he or she was a member of the Management Committee or an officer or assistant officer, member, attorney or manager of the Association, other than to the extent, if any, such liability or expense shall be attributable to his willful misconduct or bad faith; provided, further that in the case of any settlement that the Management Committee shall have approved, the indemnification shall apply only when the Management Committee approves the settlement as being in the best interests of the Association. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Owners or of the Management Committee or otherwise. The indemnification by the Owners as contained herein shall be paid by the Management Committee on behalf of the Owners and shall constitute a Common Expense and shall be assessed and collectable as such.

**Section 6. No Amendment Without Consent.** The provisions of Section 4 and Section 5 above may not be amended with any retroactive effect so as to limit the rights of any person otherwise entitled to the benefits thereof.

#### ARTICLE IV ASSESSMENTS

The making and collection of assessments of any nature from Owners for their share of Common Expenses (determined pursuant to this Article and the other applicable provisions of this Declaration) shall be carried out by the Management Committee in accordance with the following provisions:

**Section 1. Shares of Common Expenses.** Each Owner of a Lot shall be responsible for an equal proportionate share of all Common Expenses. "Common Expenses" include but shall not be limited to the following services provided by the Association: the maintenance, repair and replacement of property owned by the Association; maintenance and improvements for landscaping of the roundabouts and center sections of Carriagegate Lane; and maintenance and improvements of other expenses required for the ongoing operations

of the Subdivision. The Management Committee shall have the right to require each New Owner of a Lot to deposit with the Association a deposit in the amount set by the Management Committee for such New Owners anticipated share of the Common Expenses for the next succeeding twelve (12) months.

**Section 2. Payment of Assessments; Lien Created.** Assessments not paid on or before fifteen (15) days after the date due shall bear interest at the rate of eighteen percent (18%) per annum. The Management Committee may also impose a late charge of up to five percent (5%) of any amount remaining unpaid for fifteen (15) days or more. All payments on account shall be first applied to interest or other charges and then to the assessment payments in the order of when due (that is, the oldest unpaid amounts shall be paid first). All annual and special assessments, together with interest, reasonable attorney fees and all costs and expenses incurred by the Management Committee incident to the collection of such assessments, shall be a charge upon the Lot involved and shall be a continuing lien upon the Lot (including all improvements thereon) for which the assessment was made, as well as the personal obligation of each Owner, jointly and severally, who had any interest of record in or to such that at the time the assessment became due or at any time thereafter. It is expressly understood and agreed that fines for any violations of this Declaration or the rules and regulations of the Management Committee may be assessed against a Lot and against an Owner, for violations by that Owner or by tenants or invitees. The Lien for Assessments referred to herein shall be filed in accordance with and be subject to the terms and provisions of Idaho Code Section 45-810 or any amendment or replacement of such statutes.

**Section 3. Rights to Collect from Tenant.** If an Owner shall, at any time, lease their Lot and shall be in default for a period of one (1) month or more in the payment of assessments or other charges, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall discharge such tenant or subtenant from the obligation for rent to the Owner and the Owner from his obligation to the Association, to the extent of the amount so paid. The Management Committee shall be fully entitled to demand and receive a copy of the applicable lease agreement.

## ARTICLE V

### DECLARANT'S RIGHT TO DEVELOP AND APPLICATION OF LAWS

**Section 1. Right to Develop.** Notwithstanding anything to the contrary, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to carry out and complete the development of the Subdivision or to construct improvements thereon; nor to prevent or limit Declarant's right to maintain any model homes, construction, sales or leasing offices, or similar facilities, on any Lot; nor to prevent or limit Declarant's right to post signs incidental to construction, sales or leasing of Lots within the Subdivision.

**Section 2. Application of Federal, State and Local Laws, Ordinances, Rules and Regulations.** Notwithstanding anything to the contrary, all building, development and improvements which may be located or constructed upon any Lot, and the use for which any Lot may be made, are governed first and foremost by any and all applicable federal, state, and local laws, statutes, codes, rules, regulations, ordinances and zoning restrictions. The Owner of each Lot is required to comply with any and all applicable federal, state, and local laws, statutes, codes, rules, regulations, ordinances and zoning restrictions. The covenants, conditions and restrictions contained herein are intended to govern the use of the Lot, and the building, development and improvements which may be located or constructed upon any Lot after all applicable laws have been complied with by the Owner of any Lot within the Subdivision.

## ARTICLE VI GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

**Section 1. Land Use.** Except as is otherwise set forth herein, all Lots shall be used for single-family residential use. No Lot shall be subdivided or used except for residential purposes. No Lot shall be used for the conduct of any home occupation, trade, business or professional activity; provided, however, that a home occupation, or trade or professional activities may be carried on within a residence so long as all of the following conditions are satisfied: (i) the Lot is used primarily for single-family residential use; (ii) the Lot Owner first applies for, and obtains, any required approval, permit, conditional use permit, and/or any other approval or permit necessary from any applicable federal, state, county or local municipality or agency; (iii) the Lot Owner first applies in writing to, and obtains, the written approval of the Management Committee for such use; and (iv) that there exists no meaningful external evidence of any such trade, professional or administrative occupation carried on in the residence on any such Lot.

Nothing contained herein shall be deemed to prevent any Owner from owning multiple Lots with a single dwelling or duplex located on each such Lot. Nothing contained herein shall be deemed to prevent any Owner of any Lot from constructing approved duplexes or triplexes on any Lot so long as said duplexes or triplexes are for the purpose of single family dwellings and in accordance with zoning and other regulations set forth by the City of Idaho Falls and subject to conditions set forth herein. Nothing contained herein shall be deemed to prevent any Owner or multiple Owners of multiple adjacent Lots from constructing duplexes or triplexes on such multiple adjacent Lots; provided, however, that: (i) the Owner or Owners of such multiple adjacent Lots first apply for, and obtain, any required approval, permit, conditional use permit, and/or any other approval or permit necessary from any applicable federal, state, county or local municipality or agency; and (ii) the Owner or Owners first apply in writing to, and obtain, the written approval of the Management Committee for such use.



At no time shall an Owner of any Lot be required to construct any improvement or dwelling upon any Lot; however, once construction of a dwelling is commenced, the dwelling must be completed within twelve (12) months. The Management Committee may, in its discretion, after request by an Owner, allow an Owner of a Lot to place a detached structure upon the Lot that the Management Committee determines to be architecturally and aesthetically compatible with the dwelling on the Lot.

**Section 2. Joint Ownership and Maintenance of Party Walls.** In the event duplexes or triplexes are constructed on adjacent Lots which share common dividing walls and adjoining roof structures, the following shall apply:

2.1 All such dividing walls and adjoining roof structures now or hereafter constructed shall be considered party walls, shall be deemed to belong to the respective common Owners as tenants in common and shall be used for the common purpose of the residences separated thereby. The preservation and structural repair of any one of said party walls, except for interior decoration, shall be the joint duty and obligation of the Owners using the particular party wall. No structural changes in any one of said party walls shall be undertaken without the prior written consent and approval of each of the Owners of the particular party wall.

2.2 In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of such Owner's guests or agents, or members of such Owner's family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such party wall, then the first such Owner shall forthwith proceed to rebuild and repair the same to as good condition as formally, without cost to the adjoining Owner.

2.3 In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, such Owner's agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formally at their joint and equal expense.

**Section 3. Quality.** All dwellings and improvements constructed upon any Lot shall be of high quality workmanship and materials and built in accordance with professional building standards in addition to complying with all applicable building codes. All dwellings shall be of a "stick built" and on-site construction type. No mobile homes, manufactured homes, log homes, or modular homes shall be permitted.

**Section 4. Dwelling Size Limitations.** No one-story dwelling which is not a duplex or triplex shall be constructed on any Lot having a ground floor area, exclusive of any basement, porches and garage, of less than one thousand two hundred and fifty (1,250) square feet. No one and a half story or two story dwelling which is not a duplex or triplex

shall be constructed on any Lot having a combined floor area, exclusive of any basement, porches and garage, of less than one thousand seven hundred (1,700) square feet. No dwelling shall be constructed higher than two (2) stories and no other structure shall be taller than one (1) story. Each of the two (2) residences comprising a duplex and each of the three (3) residences comprising a triplex shall be constructed so as to have an interior ground floor area, exclusive of any basement, porches and garage, of not less than one thousand two hundred (1,200) square feet.

**Section 5. Garage.** All dwellings which are not duplexes or triplexes shall include at least one (1) fully enclosed two (2) car garage which shall be an integral part of the dwelling structure. All dwellings which are part of a duplex or triplex shall have either a fully enclosed two (2) car garage or a fully enclosed one (1) car garage which shall be an integral part of the dwelling structure. All detached garage structures shall have the same construction, finish, and similar architectural style to the dwelling. Open carports shall not be permitted.

**Section 6. Exterior Finish.** The exterior finish of the front of all dwellings shall be brick, stone, stucco, or steel or vinyl siding. If steel or vinyl siding are used they must be in combination with brick, stone, or stucco such that twenty percent (20%) of the front of the dwelling is one of these materials other than siding.

**Section 7. Basement.** Basements may be built at the discretion of each Lot Owner, provided that any such basement complies with all applicable laws and provided the Lot Owner first obtains the written approval of any state or local governing agency as the Lots may be located within a flood plane.

**Section 8. Roofing.** All roofing must be cedar shakes or asphalt shingles unless otherwise approved in writing by the Management Committee. No roofing consisting primarily of a metal substance shall be allowed unless an exception is expressly approved by the Management Committee, and, may only be approved by the Management Committee if such metal roofing is textured to such a degree as to have the appearance of shingles or tiles. Any roofing color besides standard colors of cedar shakes or asphalt shingles must be approved by the Management Committee.

**Section 9. Mailbox.** When a dwelling is constructed upon a Lot, a mailbox and mailbox holder or stand, of standard design, and accepted by the Management Committee, shall be constructed at a location adjacent to the street or otherwise in accordance with applicable U. S. Postal regulations.

**Section 10. Location and Set-Back Requirements.** The dwelling and all improvements which may be constructed or located upon any Lot shall be subject to any front, side, and back yard set-back restrictions and other requirements, limitations or restrictions set forth in any applicable county or city rule, regulation, ordinance or zoning

ordinance. In addition, all garage (attached or unattached) or other unattached improvements constructed upon a Lot shall be set back from the front of dwelling at least fifteen (15) feet from the front most point of the dwelling, which may in some cases be the porch, or if the garage is constructed such that the entry to the garage is not from the front of the dwelling and the garage is attached, the garage shall have no front set back requirements other than those set forth in any applicable county or city rule, regulation, ordinance or zoning ordinance. Any detached or attached garage with an entry facing the alley on a Lot adjacent to an alley or rear access road which is designed to have an entry from the rear of the Lot, shall be setback from the alley or rear access road at least fifteen (15) feet.

**Section 11. Landscaping.** All Lots with dwellings shall be landscaped within twelve (12) months of completion or occupancy of the dwelling. Landscaping on a Lot must be of uniform nature and must consist primarily of grass, unless a different landscaping scheme is approved by the Management Committee. No landscaping which is primarily rock or ground cover will be allowed. Diverse schemes of landscaping shall be permitted, providing such landscaping scheme is first approved by the Management Committee and is found to be consistent with (and not detrimental or harmful to the general aesthetics of) the area, surrounding Lots, and the Subdivision. All Lot Owners shall be required to construct and maintain in good repair a sidewalk along the front of the Lot of uniform size and construction as directed by the Management Committee. Each Lot Owner shall be required to plant and maintain grass and trees to be grown in the section between the curb and sidewalk with trees planted at a distance of every twenty five (25) feet along the front of the Lot between the curb and sidewalk beginning with the first tree being planted within fifteen (15) feet of the side property line of the Lot. Each Lot will be required to have at least two trees. The trees shall only be of a type approved and directed by the Management Committee and consistent throughout the Subdivision. No other landscaping of any kind will be permitted in the space between the curb and sidewalk. The maintenance of the area from the front of the Lot to the curb shall be the responsibility of Lot Owner.

**Section 12. Architectural Control and Aesthetics.** No structure which will be visible above the ground or which will ultimately affect the visibility of any above ground structure shall be built, erected, placed or materially altered on any Lot, including without limitation, change of exterior colors or materials, unless and until the building or other plans, specifications, and Lot plan have been reviewed and approved in advance by the Management Committee. The Management Committee may, in its reasonable discretion, approve or disapprove such structure or alterations and the location thereof based upon all relevant factors, including without limitation: design and style, mass and form, value, topography, setback requirements, views, exterior color and materials and such improvements, physical or aesthetic conformity to surrounding terrain and the other structures and improvements on the Lot, and adjacent Lots. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of structures. This Declaration is not intended to serve as authority for the Management Committee to

control the interior layout or design of any structure except to the extent incidentally necessitated by use and size requirements.

**Section 13. Plat Conditions.** All covenants, conditions, restrictions, easements and other matters set forth on the Plat are hereby incorporated by this reference and notice is hereby given as to the same.

**Section 14. Detached Structures.** No detached structure, such as a shed, shall be constructed or located on any Lot unless approved by the Management Committee following a request by the Lot Owner. No detached structure shall be allowed unless such structure is architecturally and aesthetically compatible with the dwelling and any other improvements upon the Lot. All such structures shall be located in accordance with any applicable county or city rule, regulation, ordinance or zoning ordinance.

**Section 15. Temporary Structures.** No structure of a temporary character, and no trailer, tent, shack, garage, shed, or other outbuilding shall be placed or used on any Lot at any time as a residence or living facility either temporarily or permanently.

**Section 16. Signs.** No sign of any kind shall be displayed to the public view on any Lot except one sign of no more than five (5) square feet advertising a Lot for sale or for lease, or signs no more than thirty-five (35) square feet used by a builder or Declarant to advertise any Lot or Lots for sale or lease during the construction and sales period (such construction or sales period shall not exceed sixty (60) months).

**Section 17. Antennae and Satellite Receiver.** No outside television antennas, radio aerials, satellite dishes, or similar devices or structures shall be installed on any Lot or the exterior of any structure located thereon, except that such devices smaller than ten (10) feet in total perimeter dimension shall be permitted only if located behind the front plane of the dwelling structure (toward the rear of the Lot) not within building set-back areas, and if appropriately screened from view from any direction.

**Section 18. Fences, Hedges and Walls.** All fences and fence types must be approved by the Management Committee. No fence, hedge, wall, landscaping or screen areas of any kind shall be erected or allowed to continue which constitute a traffic hazard, particularly near corners and street intersections. All perimeter fences must be maintained by the applicable Lot Owner and approved by the Management Committee. The Management Committee may establish rules as to acceptable fencing types, heights and materials. No fence or wall shall be erected or placed on any Lot nearer to any street than the minimum building set-back line and the front of the dwelling. No fence, including a solid board, chain link, concrete block, picket fence, or retaining wall shall be erected that does not have an equally pleasing appearance from either side unless approved by the Management Committee and written permission is first obtained from the Owners of any adjoining Lot directly affected by any such unequal appearance.

**Section 19. Refuse, Storage, Dumping and Disposal.** No rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on any Lot, except trash kept and maintained within the interior of any dwelling or any detached structures in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, neat and sanitary condition and shall be set out only on any such pickup or disposal day by trash collectors. No excavation material, building material, lumber, scrap, grass or yard clippings, refuse pile, junked or inoperable vehicles or parts thereof, underbrush, compost pile, or unsightly growth, weeds or objects shall be allowed to accumulate or remain on any Lot except within an enclosed structure or appropriately screened from view as approved, in writing, by the Management Committee. Screened from view is defined as being concealed, at eye level, from any Lot other than the Lot containing the screened material. During any construction on any Lot, periodic efforts shall be made by the Lot Owner or his contractor to pick up and remove any such scrap materials or other construction debris, and to dispose of any such materials or debris as may be required by law.

**Section 20. Hazardous Activities.** No activity shall be conducted on or in any Lot which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except in a self-contained barbecue unit or outer fireplace.

**Section 21. Nuisances.** No noxious or offensive object or activity, including without limitation, those creating an offensive odor or offensive noise or which may be visually any Lot which may be or may become an annoyance or nuisance to the adjoining Lots, Owners or to neighborhood. Pets must be restrained and not allowed to roam free. No light which is unreasonably bright or causes unreasonable glare shall be emitted from any Lot. No sound shall be emitted from any Lot which is unreasonably loud or annoying. In the event of a dispute, at the request of any Lot Owner, the Management Committee may, in their discretion, make an enforceable determination as to what constitutes a nuisance.

**Section 22. Easements.** Easements and public rights-of-way for the installation, use and maintenance of utilities, irrigation and/or drainage facilities, such as electric power, telephone lines, gas lines, water lines, sewer lines, drainage facilities, public walkways, public access to public parks, and future streets are reserved as shown on the recorded plats. No improvement shall be placed or permitted to remain on any easement or public right-of-way which may block or obstruct public access over and across public walkways or use of public parks or public facilities or which may damage or interfere with the installation, use and maintenance of facilities in the case of utility and irrigation easements or which may cause obstruction or be subject to damage from runoff waters in the case of drainage easement. The easement areas of each Lot and all improvements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**Section 23. Maintenance; Owner's Obligations.** No improvement on any Lot, including, but not limited to sidewalks, mailboxes and landscaping, shall be permitted to fall into disrepair; and each improvement shall at all times be kept in good condition and repair by the Lot Owner. All landscaping shall be adequately and properly maintained and watered.

**Section 24. Parking of Vehicles.** No boats, trailers, tractors, farm machinery, farm trucks, agricultural equipment, recreational vehicles (including, but not limited to, campers, motor homes, automobile campers or similar vehicles or equipment) dilapidated, un-repaired or unsightly vehicles or similar equipment, or buses (working or non-working) shall regularly be parked or stored on any portion of any Lot (including streets and driveways) unless enclosed by a structure or screened from view in a manner approved, in writing, by the Management Committee. Notwithstanding the foregoing, any boat, camper, trailer or recreational vehicle which is owned by a Lot Owner and is in good repair and working order may be stored on the side yard of a Lot between front and rear yard setbacks and must be screened from view; provided, however, such storage may not be located adjacent to the street on a corner Lot.

**Section 25. Pets and Animals.** No animal, reptile or fowl of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other usual household pets may be kept (provided that such animals are not kept, bred or maintained for any commercial purpose, and provided further that no more than one (1) animal per household resident, or three (3) animals (whichever is greater), may be kept or maintained on any Lot. It shall be the obligation of each Lot Owner to maintain all animals and its pens in accordance with any rules which may hereafter be adopted by the Management Committee, and to eliminate any disturbance or annoyance to any other Lot or Lot Owner. All household pets shall be kept under control at all times. All pets shall be maintained in such a way that they shall not become offensively odorous or noisy to any other Lot Owner. No pet which is or becomes an annoyance or nuisance to the neighborhood shall hereafter be kept on any Lot. Without attempting in any way to identify all non-permitted animals or by exclusion to describe any permitted animals, under no circumstance shall any swine, goat, chicken, horse, cows, llama or sheep, be permitted to be kept or maintained on the property. All household pets shall be kept in an enclosure or on a leash, kennel or fenced area that is sufficiently behind the dwelling to be screened from public view. A dog or pet house may be allowed if approved by the Management Committee, and provided that both the dog or pet house and its surroundings are kept in a neat and orderly fashion. Neither dog runs nor kennels shall be permitted unless approved by the Management Committee.

**Section 26. Porches.** All dwellings are required to have a porch on the first floor of the front of the house of at least 40 square feet. Porches shall be constructed in a manner that they are covered by roofing, and can be decorated or supported by railing. Roofing and railing shall be consistent with the roofing and materials used in the construction of the dwelling.

## ARTICLE VII MANAGEMENT COMMITTEE PROCEDURES

**Section 1. Review of Proposed Construction.** The Management Committee shall consider and act upon any and all proposals or plans and specifications submitted in writing for its approval pursuant to this Declaration, including the inspection of construction in progress to assure its conformance with plans approved by the Management Committee. The Management Committee shall have the power to determine, by rule or by written designation consistent with this Declaration, which types of improvements shall be submitted to the Management Committee for review and approval. The Management Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby and will be in harmony with the surrounding structures. The Management Committee may make provision in its rules and guidelines for implementation and maintenance of value standards that will carry out such intent.

**Section 2. Conditions on Approval.** The Management Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Lot Owner submitting the same (hereafter "Applicant"), and may require written submission of additional plans and specifications or other information before approving or disapproving material submitted.

**Section 3. Management Committee Rules.** The Management Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval. Such rules may require additional factors which it will take into consideration in reviewing submissions.

Such rules and guidelines may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures, as well as special architectural guidelines applicable to Lots located adjacent to public and/or private open space.

**Section 4. Detailed Plans.** The Management Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, landscape plans, drainage plans, elevation drawings, specification, and descriptions or samples of exterior materials and colors. Until receipt by the Management Committee of any required plans and specifications, the Management Committee may postpone review of any plan submitted for approval.

**Section 5. Management Committee Decisions.** Decisions of the Management Committee and the reasons therefore shall be transmitted by the Management Committee to the Applicant in writing at the address set forth in the application for approval within twenty

(20) business days after filing all materials required by the Management Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Management Committee shall have been mailed to the Applicant within twenty (20) business days after the date of the filing of said materials with the Management Committee. The said twenty (20) day period shall only commence to run when an authorized representative of the Management Committee has executed an applicable form acknowledging acceptance of such application and acknowledging that such application is complete.

**Section 6. Meetings of the Management Committee.** The Management Committee shall meet from time to time as necessary to perform its duties hereunder. The Management Committee may from time to time by resolution unanimously adopted in writing, designate a Management Committee representative (who may, but not need be, one of its members) to take any action or perform any duties for and on behalf of the Management Committee, except the granting of variances pursuant to Section 9 of this Article VII. In the absence of such designation, the vote of any two (2) members of the Management Committee, or the written consent of any two (2) members of the Management Committee taken without a meeting, shall constitute an act of the Management Committee.

**Section 7. No Waiver of Future Approvals.** The approval by the Management Committee of any proposals or plans, specifications or drawings for any work done or proposed, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever, subsequently or additionally submitted for approval or consent.

**Section 8. Inspection of Work.** Inspection of work and correction of defects therein shall proceed as follows:

**8.1** Upon the completion of any work for which approved plans are required under this Article, the Lot Owner shall give written notice of completion to the Management Committee.

**8.2** Within sixty (60) days thereafter, the Management Committee or its duly authorized representative may inspect such improvement. If the Management Committee finds that such work was not done in substantial compliance with the approved plans, the Management Committee shall notify the Lot Owner in writing of such non-compliance within such sixty (60) day period, specifying the particular non-compliance, and shall require the Lot Owner to remedy the same.

**8.3** If for any reason the Management Committee fails to notify the Lot Owner of any non-compliance within sixty (60) days after receipt of the written notice of compliance from the Lot Owner, the improvement shall be deemed to be in accordance with the approved plans.



**Section 9. Variances.** The Management Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when it deems such action appropriate because of the existence of circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Management Committee, and shall become effective upon recordation in the Office of the Bonneville County, Idaho Recorder. If such variance is granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms or provisions of this Declaration, for any purpose, except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including but not limited to, zoning ordinances and Lot set-back lines, or any other requirements imposed by any governmental or municipal authority.

#### **ARTICLE VIII MAINTENANCE**

The maintenance, repair and replacement of the common landscaping, the common irrigation systems, and other common systems and/or property owned by the Association shall be the responsibility of the Management Committee. The maintenance, repair and replacement of all improvements on each Lot, the individual water and sewer systems on each Lot, the sidewalk and area between the sidewalk and curb in front of each Lot shall be the responsibility of the Owner of such Lot and not the Management Committee.

#### **ARTICLE IX INSURANCE**

Each Owner is solely responsible for obtaining their own insurance covering any and all improvements on their Lot.

#### **ARTICLE X DESTRUCTION, DAMAGE AND OBSOLESCENCE**

Each Owner of a Lot is solely responsible for any damage, destruction, obsolescence, condemnation or abandonment of any improvements thereon, and for repair and reconstruction of such Lot and all improvements thereon.

#### **ARTICLE XI LEASING OF LOTS**

All leases of Lots shall be subject in all respects to the provisions of this Declaration and failure of the lessee to comply with the terms of this Declaration shall be a default under the lease and shall be enforceable against the lessee directly by the Association, but without limitation of any other rights of the Association.

## **ARTICLE XII NOTICES**

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered forty-eight (48) hours after a copy of the same has been deposited in the U.S. mail, postage prepaid.

## **ARTICLE XIII NO WAIVER**

The failure of the Management Committee or its agents to insist, in one (1) or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Management Committee.

## **ARTICLE XIV ENFORCEMENT**

Each Owner shall strictly comply with the provisions of the Declaration, and the rules and regulations and decisions issued by the Management Committee. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, or any other remedy allowed by law, maintainable by the Management Committee or its designee on behalf of the Association or by Declarant or, in an appropriate case, by an aggrieved Owner. Any violation of the provisions of the Declaration or any related rules or regulations is declared to be and shall constitute a nuisance and may be abated by Declarant or the Management Committee. The Association shall be entitled to payment of all attorney fees incurred by the Association (or the Management Committee), payable by an Owner or lessee in violation of this Declaration or any such rules or regulations.

In addition, upon any failure of an Owner to pay when due any assessment for Common Expenses or any other assessment, the Management Committee may seek any remedy provided in this Declaration or otherwise available at law or equity. Unless specifically agreed in writing, liability for payment of assessments shall be joint and several against any and all persons and/or entities holding or claiming any Ownership or leasehold interest in the applicable Lot.

## ARTICLE XV AMENDMENTS

**Section 1. By the Association and Declarant.** The provisions of this Declaration, other than this Article, 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 the vote or written consent of Owners who own at least two-thirds ( $\frac{2}{3}$ ) of the Lots and such an amendment shall be effective upon its recordation with the Bonneville County, Idaho, Recorder. Notwithstanding the foregoing as long as any Lot or portion thereof is owned by Declarant or its designated successor in trust, this Declaration may also be modified, amended and changed by Declarant without the need or necessity of the consent of the then Owners of the Property which is subject to this Declaration.

**Section 2. Effect of Amendment.** Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective Lots notwithstanding that such Owners may not have voted for or consented to such amendment and as to all Mortgagees and other holders of a lien or security interest in any portion of the Property.

**Section 3. Mortgage Protection.** Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee under a Mortgage made in good faith and for value and recorded prior to the recordation of such amendment; provided, however, that the foreclosure of any such Mortgage shall not affect the validity or enforceability of this Declaration, as amended.

## ARTICLE XVI GENERAL PROVISIONS

**Section 1. Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

**Section 2. Captions, Gender and Grammar.** The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or

describe the scope and intent of this Declaration or any provision hereof. The singular wherever used herein shall be construed to mean the plural whenever applicable or vice versa and necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, etc., shall be assumed in each case as though made.

**Section 3. Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Idaho.

**ARTICLE XVII  
EFFECTIVE DATE**

This Declaration shall take effect when recorded with the Recorder of Bonneville County, Idaho.

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