



This document
provided courtesy
of TitleOne

RECORDING FEE: \$310.00

SC



**RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC.**



**TABLE OF CONTENTS FOR:
RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE 1	PREFACE.....	1
ARTICLE 2	RESTATED DECLARATION.....	3
ARTICLE 3	DEFINITIONS	4
3.01	ACC	4
3.02	ACC Rules/ACC Standards	4
3.03	Articles	4
3.04	Assessment	4
3.05	Association	4
3.06	Board And/or Board of Directors	4
3.07	Builder.....	4
3.08	Building.....	4
3.09	Bylaws.....	4
3.10	Common Area.....	4
3.11	Common Easements	5
3.12	Common Expenses	5
3.13	Declarant.....	5
3.14	Director	5
3.15	Dwelling	5
3.16	Grassy Swale.....	5
3.17	Improvement.....	5
3.18	Initial Construction	5
3.19	Lost Creek Estates.....	5
3.20	Lot.....	6
3.21	Member.....	6
3.22	Mortgage.....	6
3.23	Mortgagee	6
3.24	Mortgagor	6
3.25	Open Space Area.....	6
3.26	Occupant	7
3.27	Owner And/or Owners	7
3.28	Person	7
3.29	Plat And/or Plats.....	7
3.30	Project.....	7
3.31	Project Documents	7



3.32	Property	7
3.33	Restated Declaration	8
3.34	Stream Protection Area and Area of Wetland	8
ARTICLE 4	PURPOSE	8
ARTICLE 5	ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS	9
5.01	ORGANIZATION OF THE ASSOCIATION:	9
5.02	POWERS OF THE ASSOCIATION	9
5.03	DUTIES OF THE ASSOCIATION	11
5.04	MEMBERSHIP	12
5.05	TRANSFERRED MEMBERSHIP:	12
5.06	VOTING:	12
5.07	PROXY VOTES:	13
5.08	MEMBERSHIP MEETINGS	13
ARTICLE 6	COMMON AREAS	13
6.01	COMMON AREA	13
6.02	RIGHTS IN COMMON AREA	13
6.03	COMMON EASEMENTS	13
6.04	OWNER DAMAGE TO COMMON AREAS/EASEMENTS	14
6.05	EMERGENCY INGRESS/EGRESS	14
ARTICLE 7	ARCHITECTURAL CONTROL	14
7.01	ARCHITECTURAL CONTROL COMMITTEE	14
7.02	APPOINTMENT:	15
7.03	COMPENSATION	16
7.04	NON-LIABILITY OF COMMITTEE AND ITS COMMITTEE MEMBERS	16
7.05	COMMITTEE APPROVAL REQUIRED	16
7.06	PLAN APPROVAL	16
7.07	COMMITTEE APPROVAL	17
7.08	BASIS OF APPROVAL	17
7.09	VARIANCES	17
7.10	APPLICATION	18
7.11	INSPECTIONS	19
7.12	COMPLAINTS	19
7.13	HEARINGS	20
7.14	APPEAL	20
7.15	ENFORCEMENT	22
7.16	ADDITIONAL DAMAGES	23
7.17	NONEXCLUSIVE REMEDY	23



ARTICLE 8	ARCHITECTURAL GUIDELINES.....	23
8.01	ACC'S ARCHITECTURAL GUIDELINES	23
8.02	REVIEW AND CONSTRUCTION CRITERIA	23
8.03	SUBMITTAL REQUIREMENTS	25
8.04	SHOP GUIDELINES	25
8.05	MISCELLANEOUS	26
ARTICLE 9	REPAIR AND MAINTENANCE AND ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS.....	27
9.01	ASSOCIATION MAINTENANCE REQUIREMENTS	27
9.02	ASSOCIATION EASEMENTS:	27
9.03	OWNER MAINTENANCE	27
9.04	COVENANT TO PAY ASSESSMENTS	27
9.05	ASSESSMENT LIEN.....	28
9.06	PURPOSE OF ASSESSMENTS	28
9.07	REGULAR ASSESSMENTS.....	28
9.08	EXTRAORDINARY ASSESSMENTS	29
9.09	SPECIAL ASSESSMENTS	29
9.10	PAYMENT OF TAXES AND ASSESSMENTS LEVIED AGAINST THE COMMON AREAS AND/OR THE REAL AND/OR PERSONAL PROPERTY OF ASSOCIATION	29
9.11	ALLOCATION OF ASSESSMENTS	29
9.12	DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES	30
9.13	TRANSFER OF LOT BY SALE OR FORECLOSURE	30
9.14	COLLECTION OF ASSESSMENT OBLIGATION AND PRIORITIES:	31
9.15	ENFORCEMENT.....	32
9.16	NOTICE REQUIREMENTS	32
9.17	NONEXCLUSIVE REMEDY	32
9.18	INITIAL LIMITATION ON MONTHLY AMOUNT OF REGULAR ASSESSMENTS.....	32
9.19	DECLARANT'S LIMITED OBLIGATION TO PAY REGULAR ASSESSMENTS.....	34
9.20	NON-ASSESSMENT OF WELL LOT	35
ARTICLE 10	EASEMENTS AND UTILITIES	35
10.01	ACCESS, USE AND MAINTENANCE EASEMENTS	35
10.02	RESERVATION OF EASEMENTS	35
10.03	LIMITED USE OF THE OPEN SPACE AREA BY THE ASSOCIATION	35
10.04	MANAGEMENT OF OPEN SPACE AREA.....	37
10.05	INSURANCE FOR OPEN SPACE	38



10.06	DECLARANT'S RIGHTS IN THE OPEN SPACE.....	39
10.07	RESERVATION OF UTILITY EASEMENTS	40
10.08	PLAT EASEMENTS	40
10.09	RESERVATION OF DEVELOPMENT AND MAINTENANCE EASEMENTS.....	40
10.10	OWNER'S RIGHTS AND DUTIES WITH RESPECT TO UTILITIES	41
10.11	SHARED USE OF UTILITY EASEMENTS.....	41
10.12	LOST CREEK ESTATES WATER ASSOCIATION INC.....	41
ARTICLE 11	IMPOSITION OF MONETARY FINES	42
11.01	AUTHORITY OF BOARD OF DIRECTORS TO IMPOSE MONETARY FINES	42
11.02	METHOD OF IMPOSING MONETARY FINES BY THE BOARD OF DIRECTORS	42
11.03	COLLECTION OF FINES BY THE BOARD OF DIRECTORS	43
11.04	NONMATERIAL AMENDMENT	44
ARTICLE 12	USE RESTRICTIONS	44
12.01	SINGLE-FAMILY RESIDENTIAL USE.....	44
12.02	COMPLIANCE WITH ALL ZONING AND LAND USE ORDINANCES	45
12.03	NO COMMERCIAL USE	46
12.04	ANIMALS	46
12.05	COMPLIANCE WITH IDAHO FISH AND GAME REQUIREMENTS	47
12.06	TEMPORARY STRUCTURES.....	48
12.07	NO HUNTING OR DISCHARGE OF FIREARMS OR OTHER WEAPONS.....	48
12.08	LOT MAINTENANCE.....	48
12.09	NUISANCES	48
12.10	VEHICLE AND EQUIPMENT RESTRICTIONS.....	48
12.11	SIGNS.....	49
12.12	LEASING OF LOTS.....	49
12.13	COMPLETION OF CONSTRUCTION.....	49
12.14	BUILDING SETBACKS	50
12.15	EXTERIOR ENERGY DEVICES	50
12.16	MAILBOXES	50
12.17	LANDSCAPING	50
12.18	FENCES	51
12.19	RADIO AND TELEVISION ANTENNAS	51
12.20	LIGHTING	51
12.21	CLOTHESLINES	51



12.22	MISCELLANEOUS ARCHITECTURAL/USE PROVISIONS	51
12.23	MAINTENANCE	52
12.24	DRAINAGE	53
12.25	ECOLOGICAL CONTROL	53
12.26	NO WARRANTY OF ENFORCEABILITY:.....	54
12.27	EXEMPTION OF DECLARANT	54
12.28	SEPTIC SYSTEM	54
ARTICLE 13	INSURANCE	57
13.01	HAZARD INSURANCE	57
13.02	LIABILITY INSURANCE	57
13.03	FIDELITY BONDS	58
13.04	LENDER'S REQUIREMENTS:	58
13.05	WAIVER OF CLAIM AGAINST ASSOCIATION.....	58
13.06	RIGHT AND DUTY OF OWNERS TO INSURE.....	58
13.07	NOTICE OF EXPIRATION REQUIREMENTS	59
13.08	INSURANCE PREMIUMS:.....	59
13.09	TRUSTEE FOR POLICIES	59
ARTICLE 14	DESTRUCTION OF IMPROVEMENTS	60
14.01	DAMAGE TO COMMON AREAS AND/OR COMMON EASEMENTS	60
14.02	DAMAGE TO LOTS	60
14.03	ALTERNATE PLANS FOR RESTORATION AND REPAIR	60
14.04	APPRAISAL OF DAMAGE	61
14.05	INTERIOR DAMAGE:	61
ARTICLE 15	EMINENT DOMAIN	61
15.01	TAKING OF LOTS	61
15.02	TAKING OF COMMON AREAS AND/OR COMMON EASEMENTS	62
ARTICLE 16	RIGHTS OF MORTGAGEES	62
16.01	LENDER INDUCEMENTS	62
16.02	FIRST MORTGAGEE'S NON-LIABILITY FOR ASSESSMENTS	62
16.03	FIRST MORTGAGEE'S RIGHTS.....	63
16.04	OWNER'S AUTHORIZATION TO RELEASE INFORMATION	63
16.05	LIMITATIONS ON RIGHT TO AMEND	63
16.06	MATERIAL AMENDMENTS.....	63
16.07	WHAT CONSTITUTES A MATERIAL AMENDMENT	63
16.08	RIGHT TO TERMINATE	64
16.09	VOTE REQUIREMENT FOR TERMINATION.....	64



16.10	APPROVAL OF TERMINATION BY AN ELIGIBLE HOLDER	65
16.11	ELIGIBLE HOLDER/INSURER'S RIGHT TO NOTICE	65
16.12	BOARD AGREEMENTS.	65
16.13	OWNER ACKNOWLEDGMENT	65
ARTICLE 17	DURATION AND AMENDMENT	66
17.01	DURATION	66
17.02	AMENDMENT PROCEDURES	66
ARTICLE 18	DECLARANT'S RIGHTS AND RESERVATIONS.	66
18.01	GOAL OF DECLARANT	66
18.02	APPLICATION OF DECLARATION	67
18.03	DECLARANT'S RIGHT TO ANNEX AND SUBDIVIDE ADDITIONAL REAL PROPERTY INTO PROJECT.	67
18.04	TERMINATION OF DECLARANT'S OBLIGATIONS.	69
ARTICLE 19	GENERAL PROVISIONS	69
19.01	ENFORCEMENT	69
19.02	INVALIDITY OF ANY PROVISION	69
19.03	CONFLICT OF PROJECT DOCUMENTS	69
19.04	BOOKS AND RECORDS	70
19.05	WAIVER.	70
19.06	ACCEPTANCE	70
19.07	INDEMNIFICATION OF BOARD MEMBERS	70
19.08	NOTICES	71
19.09	INTERPRETATION.	71
19.10	SEVERABILITY	71
19.11	TOUCHING AND CONCERNING REAL PROPERTY	71
19.12	<u>NO WARRANTY OF ENFORCEABILITY</u>	71
	CERTIFICATE OF COMPLIANCE.	73



RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC.

ARTICLE 1 PREFACE

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Restated Declaration") is made on the date hereinafter set forth, by Waldo Construction Inc., an Idaho corporation ("Declarant") with reference to the following recitals:

- 1.01 Declarant was the owner of that certain real property located in the County of Kootenai, State of Idaho that is more fully described as follows (the "Property):

All that property and appurtenances described in the plat of LOST CREEK ESTATES, County of Kootenai, State of Idaho as recorded on November 21, 2006 as Instrument No. 206820700 in Book "J" of Plats at Pages 407, 407A and 407B records of the County, Recorder of the County of Kootenai, State of Idaho.

- 1.02 Declarant has improved and continues to improve the Property by constructing thereon certain residential improvements and related facilities, and to establish thereon a planned unit development to be managed, operated and maintained by an incorporated Association of Owners, for the benefit of all parts of the Property.

- 1.03 The development of the Property shall be hereinafter referred to as the "Project." The Owner of each Lot shall receive title to such Lot and rights to membership in **Lost Creek Estates Homeowners' Association, Inc.**, a nonprofit corporation formed to operate and maintain the open areas of the Project.

- 1.03.01 The Project currently consists of three (3) phases of development.

- 1.03.01.01 The first phase (sometimes referred to herein as "Phase 1") was the platting of LOST CREEK ESTATES, according to the plat thereof, recorded on November 21, 2006 as Instrument No. 206820700 in Book "J" of Plats at Pages 407, 407A and 407B records of the County, Recorder of the County of Kootenai, State of Idaho.

- 1.03.01.02 The second phase (sometimes referred to herein as "Phase 2") was the platting of LOST CREEK ESTATES 1ST ADDITION, according to the plat thereof, recorded on July 14, 2014 as Instrument No. 2462900000 in Book "K" of Plats at Pages 461, 461A, 461B, 461C and 461D, records of the County, Recorder of the County of Kootenai, State of Idaho.



- 1.03.01.03 The third phase (sometimes referred to herein as "Phase 3") was the platting of LOST CREEK ESTATES 2ND ADDITION, according to the plat thereof, recorded on April 10, 2019 as Instrument No. 687335000 in Book "L" of Plats at Pages 324, 324A and 324B records of the County, Recorder of the County of Kootenai, State of Idaho.
- 1.04 In conjunction with the platting of LOST CREEK ESTATES and LOST CREEK ESTATES 1ST ADDITION, the Declarant caused the following covenants, conditions and restrictions to be recorded in the public records of Kootenai County, State of Idaho, to wit:
- 1.04.01 Declaration of Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc., as instrument No. 2119937000 recorded on September 5, 2007;
- 1.04.02 First Supplement to Declaration of Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc., as instrument No. 2387952000 recorded on December 11, 2012;
- 1.04.03 Second Supplement to Declaration of Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc., as instrument No. 2462901000 recorded on July 14, 2014; and,
- 1.04.04 Third Supplement to Declaration of Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc., as instrument No. 2613362000 recorded on September 27, 2017.
- Hereinafter, all of the foregoing recorded declarations of covenants, conditions and restrictions of Lost Creek Estates Homeowners' Association, Inc. are hereinafter referred to collectively as the "Original Declaration."
- 1.05 It is the intent of the Declarant that this Restated Declaration shall supercede and replace, in their entirety, all of the foregoing recorded declarations of covenants, conditions and restrictions of Lost Creek Estates Homeowners' Association, Inc. that are referred to collectively herein as the Original Declaration.
- 1.06 Declarant intends by this Restated Declaration to impose upon the Project mutually beneficial restrictions under a general plan of operation for the benefit of all of said Lots and the Owners thereof.



ARTICLE 2 RESTATED DECLARATION

Declarant hereby redeclares that the Property and the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following restated declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project, and every part thereof, in accordance with the plan for the establishment of the Project as a residential subdivision. All of the declarations, limitations, covenants, conditions, restrictions and easements set forth herein shall constitute covenants and encumbrances that touch and concern all of the Property and which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

No provision of this Restated Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete the development of the Property in accordance with the plan therefore as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot within the Project and any real property annexed into the Project by the Declarant. No development or construction activities shall be deemed to constitute a nuisance or violation of this Restated Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion by the Owner. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Restated Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Restated Declaration.

Upon the recordation of this Restated Declaration in the public records of Kootenai County, State of Idaho, the entirety of the Original Declaration (i.e., the Declaration, First Supplement, Second Supplement and Third Supplement of the Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc., that were recorded as instrument Nos. 2119937000, 2387952000, 2462901000 and 2613362000, respectively, all in the records of Kootenai County, State of Idaho) shall automatically terminate without further notice and shall be rendered null and void and of no further force or effect.

ARTICLE 3 DEFINITIONS

Unless otherwise expressly provided, the following words and phrases, when used in this Restated Declaration and in the project Documents, shall have the following meaning:

- 3.01 “ACC”: The Architectural Control Committee for Lost Creek Estates. The ACC is also referred to herein as the “Committee.”
- 3.02 “ACC Rules/ACC Standards”: Such rules or standards promulgated by the ACC as authorized herein.
- 3.03 “Articles”: The Articles of Incorporation of the Association as restated or amended from time to time.
- 3.04 “Assessment”: That portion of the cost of maintaining, improving, repairing, operating, insuring and managing the Common Areas and/or Common Easements and/or costs required for the administration or management of the Project which is to be paid by the Lot Owners as determined by the Association under this Restated Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments or Special Assessments, as those terms are more specifically defined in this Restated Declaration.
- 3.05 “Association”: Lost Creek Estates Homeowner’s Association, Inc., an Idaho nonprofit corporation, formed by Declarant in conjunction with the creation of the subdivision, the Members of which shall be the Owners of Lots in the Project as provided for herein.
- 3.06 “Board And/or Board of Directors”: The governing body of the Association.
- 3.07 “Builder”: Any Owner acquiring one (1) or more Lots directly from the Declarant for purposes of constructing Dwellings thereon for resale to members of the general public, provided that a person’s status as a Builder shall terminate with respect to any Lot upon resale of the Lot or upon conversion of such Lot to personal use of the Builder.
- 3.08 “Building”: Any structure constructed on a Lot on a temporary or permanent basis and, unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.
- 3.09 “Bylaws”: The bylaws of the Association as restated or amended from time to time. The initial bylaws shall be as adopted by the incorporating member of the Board of Directors.
- 3.10 “Common Area”: All of the real property and improvements located thereon designated as Monument and Landscape areas on the Plat (including bus stop shelters) all of which shall



be owned and maintained by the Association for the common use and enjoyment of all Owners. Said Common Area include those areas designated as Tracts A and B on the Plat. Additionally, the Common Area shall include any other property conveyed to the Association for the use and benefit of the Owners of all Lots in the Project.

- 3.11 "Common Easements": Those areas designated on the Plat as easements benefitting the Association and/or its Members. Additionally, Common Easements shall include any other easements conveyed to the Association for the use and benefit of the Owners of all Lots in the Project.
- 3.12 "Common Expenses": The actual and/or estimated expenses of maintenance, improvement, repair, operation, insurance and management of the Common Areas, the Open Space Area and/or Common Easements and or administering the Association and the Project, and any reasonable reserve for such purposes as determined by the Board, and all sums designated as Common Expenses by or pursuant to the Project Documents.
- 3.13 "Declarant": Waldo Construction, Inc., an Idaho Corporation, its successors-in-interest and assigns with respect to the entire Project, but shall not include independent third parties purchasing completed Lots.
- 3.14 "Director": A member of the Board of Directors of the Association.
- 3.15 "Dwelling": Any Building or portion thereof within the Project that is designed and intended for use and occupancy as a single-family residence.
- 3.16 "Grassy Swale": Those areas bordering the roadways that are utilized to accumulate and disperse storm water which is to be maintained by the Owner and/or the Association.
- 3.17 "Improvement": All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, Dwellings, roads, driveways, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of any Building and that cannot be readily observed when outside thereof.
- 3.18 "Initial Construction": The first construction of permanent improvements on a Lot following the sale of that Lot by the Declarant to an Owner, and intended for residential occupancy.
- 3.19 "Lost Creek Estates": The whole of the land described herein as the Property and as the Project, and any additional land annexed thereto as provided herein, including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as the Property and/or as the Project).



- 3.20 "Lot": Any separately numbered parcel of real property shown on the Plat as a residential parcel intended for sale to and use and enjoyment by an Owner.
- 3.20.01 The term "Lot" does not include Lot 1, Block 3 of the Plat of Lost Creek Estates that is designated on the Plat as "Well Lot."
- 3.20.02 As of the time of the making of this Restated Declaration, there are currently sixteen (16) Lots located within LOST CREEK ESTATES (also known and referred to herein as "Phase 1"), twenty two (22) Lots within LOST CREEK ESTATES 1ST ADDITION (also known and referred to herein as "Phase 2") and twenty six (26) Lots within LOST CREEK ESTATES 2ND ADDITION (also known and referred to herein as "Phase 3") will be created for a total of **sixty four (64) Lots**.
- 3.20.03 The term "Lot" also does not include those parcels of property designated on any of the plats of Lost Creek Estates as "Tract," "Open Space" and/or "Unplatted Remainder."
- 3.21 "Member": A person entitled to membership in the Association as provided herein.
- 3.22 "Mortgage": Any security instrument, including but not limited to a recorded mortgage, deed of trust, real estate contract or other instrument creating a security interest in any Lot.
- 3.23 "Mortgagee": Any person or entity, including but not limited to a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor or other holder of a mortgage, including Declarant or Declaring's assignee with respect to any purchase-money security interest retained by Declaring, for the sale of any Lot.
- 3.24 "Mortgagor": Any person or entity including, but not limited to, a mortgagor, the grantor of a deed of trust, real estate contract vendee or other individual, person, partnership or entity granting a security interest in any Lot.
- 3.25 "Open Space Area": That areas designated on the Plat as Tract B, Tract C and Tract D.
- 3.25.01 The Open Space Area and the trails and foot bridge located thereon shall be managed and maintained by the Association for the use and benefit of the Owners of all Lots in the Project. Previously, the Declarant has quit claimed its right, title and interest in said Tract C to the Association subject to certain reservations of rights.
- 3.25.02 As provided for herein, Declarant reserves the right to annex additional real property into the Project and any such annexed real property shall be encumbered and benefitted by this Restated Declaration and shall have the right to use the



Common Area, the Common Easements and the Open Space Area described in the plat of LOST CREEK ESTATES, LOST CREEK ESTATES 1ST ADDITION, LOST CREEK ESTATES 2ND ADDITION as well as any subsequent plats of any additional annexed real property and this Restated Declaration.

- 3.26 “Occupant”: Any person, association, corporation or other entity who has acquired the legal right to rent, use or otherwise occupy any Building or Improvement on a Lot whether or not such right is exercised, including said Occupant’s heirs, personal representatives, successors and assigns.
- 3.27 “Owner And/or Owners”: The record holder or holders of title to a Lot in the Project. This term shall include any person or entity having fee title to the Lot but shall exclude any person or entity having an interest in any Lot solely as security for the performance of any obligation. If a Lot is sold under a recorded or unrecorded contract of sale to a purchaser, the legal title owner of the Lot and not the purchaser shall be considered the Owner. If a Lot is conveyed and a life estate is created, the remainder man and not the holder of the life estate shall be considered the Owner. The purchaser under any recorded or unrecorded contract of sale of a Lot and any holder of a life estate of a Lot shall, for purposes of this Restated Declaration, be considered Occupants.
- 3.28 “Person”: Any individual, partnership, joint venture, corporation, firm, association, trust, limited liability business organization or other similar entity or organization.
- 3.29 “Plat And/or Plats”: The recorded final subdivision plats of the Project, including but not limited to the plat of LOST CREEK ESTATES, the plat of LOST CREEK ESTATES 1ST ADDITION and LOST CREEK ESTATES 2ND ADDITION that identifies each Lot in the Project and depicts its relative location and dimensions.
- 3.30 “Project”: The entirety of the Property described by this Restated Declaration.
- 3.30.01 As provided for herein, Declarant reserves the right to annex additional real property into the Project and any such annexed real property shall be encumbered and benefitted by this Restated Declaration and shall have the right to use the Common Area, the Common Easements and the Open Space Area described in the Plats as well as any subsequent plats of any additional annexed real property and this Restated Declaration.
- 3.31 “Project Documents”: This Restated Declaration, the Plats, Articles of Incorporation of for the Association, the Association’s Bylaws and any other rules or regulations of the Association as each may be restated or amended from time to time.
- 3.32 “Property”: The real property described in this Restated Declaration and the Plats together with all Buildings, Dwellings, Improvements or other structures thereon and every



easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the Owners.

- 3.33 “Restated Declaration”: This Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.
- 3.34 “Stream Protection Area and Area of Wetland”: Those areas depicted on the Plat as such. No mechanized vehicles or equipment are allowed within said areas. No logging operations are to be conducted within said areas and only minor cleanup/landscaping is allowed not utilizing mechanized equipment. Natural vegetation is to be left undisturbed and all terms and conditions of the Kootenai County Site Disturbance Ordinance applies to the same.

ARTICLE 4 PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in this Restated Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure the proper design, development, improvement, use and maintenance of the Property for the purpose of:

Insuring that all Buildings, Dwellings and other Improvements constructed within Lost Creek Estates are of good quality and design so that the development, improvement, use and maintenance of the same are done in such a manner as to protect and enhance the investment and use of all Lots and Improvements.

Preventing the placement or construction in Lost Creek Estates of Buildings, Dwellings and other Improvements of improper and/or unsuitable design, construction or materials.

Encouraging and insuring the placement or construction of high quality and attractive Buildings, Dwellings and other Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.

Securing and maintaining proper setbacks from streets and other ways in Lost Creek Estates and adequate free spaces between Buildings, Dwellings and other Improvements.

Integrating the development of all of the Lots by setting common general standards consistent with the Plat, this Restated Declaration and any and all ACC Rules/ACC Standards existing from time to time.

Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.



ARTICLE 5 ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

- 5.01 ORGANIZATION OF THE ASSOCIATION: The Association is incorporated under the name of **“Lost Creek Estates Homeowners’ Association, Inc.”** as a nonprofit corporation under the Idaho Nonprofit Corporation Act.
- 5.01.01 The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.
- 5.01.02 Neither any Board member nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer(s), managers or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- 5.02 POWERS OF THE ASSOCIATION: The duties and powers of the Association are those set forth in this Restated Declaration and in the Articles and Bylaws, together with its general and implied powers as a nonprofit corporation. The duties and powers are, generally, to do any and all things that a nonprofit corporation organized under the laws of the State of Idaho may lawfully do and which are necessary and proper for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Restated Declaration, the Articles and the Bylaws.
- 5.02.01 The Association shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done under the Articles, Bylaws or this Restated Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Areas and Common Easements and the performance of other responsibilities including, but not limited to, the following:
- 5.02.01.01 The power to levy Regular, Extraordinary and Special Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Restated Declaration;
- 5.02.01.02 The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory



injunction or otherwise, all provisions thereof;

- 5.02.01.03 The authority to delegate its managerial power and duties to committees, officers, employees, or to any persons, firms or corporations of its choosing;
- 5.02.01.04 The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of the Common Areas, the Open Space Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Restated Declaration. A copy of the Association's rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings, said Association rules shall have the same force and effect as if they were set forth in and were part of this Restated Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Restated Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency;
- 5.02.01.05 The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners or Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant;
- 5.02.01.06 The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety convenience and welfare of the Owners for the purpose of constructing, erecting, operating or maintaining:
- 5.02.01.06.01 Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service;
- 5.02.01.06.02 Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and,
- 5.02.01.06.03 Any similar public or quasi-public improvements or facilities;
- 5.02.01.07 The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget Assessment and accounting purposes.



- 5.03 DUTIES OF THE ASSOCIATION: In addition to the powers delegated to it by the Articles, Bylaws and this Restated Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:
- 5.03.01 Perform, or provide for the performance of, the operation, maintenance and management of the Common Areas, Common Easements and all other property owned by the Association, including the restoration, repair and replacement of property or Improvements thereon damaged or destroyed.
 - 5.03.02 Pay all real and personal property taxes and assessments separately levied against the Common Areas owned by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
 - 5.03.03 Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas, weed control and other necessary services for the Common Areas, Common Easements and all other property owned by the Association.
 - 5.03.04 Maintain, repair or replace all or any portion of any private road(s) and traffic control devices located within the Property or adjacent thereto, if the same serve the Property.
 - 5.03.05 Make, establish, promulgate, amend and repeal Association rules.
 - 5.03.06 Appoint and remove members of the Architectural Control Committee as provided herein.
 - 5.03.07 Perform such other acts, whether or not expressly authorized by this Restated Declaration, as may be reasonably necessary to enforce any of the provisions of this Restated Declaration and the Association rules.
 - 5.03.08 Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:
 - 5.03.08.01 A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.



- 5.03.08.02 Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.
- 5.03.08.03 Until the creation and organization of the Association, the Declarant shall have the right to exercise all of the powers of the Association set forth in this Restated Declaration.
- 5.04 MEMBERSHIP: Upon an individual(s) or an entity(ies) becoming the Owner of a Lot, as defined in Article 3, said Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as said individual(s) or entity(ies) no longer qualify as an Owner, as defined in Article 3, at which time said former Owner's membership in the Association shall automatically cease without further notice. Membership shall be in accordance with this Restated Declaration and the Articles and the Bylaws of the Association.
- 5.04.01 The owner of Lot 1, Block 3 of the Plat of Lost Creek Estates that is designated on the Plat as "Well Lot" shall not be considered to be a Member of the Association solely based upon said ownership.
- 5.04.02 So long as the Declarant owns any real property within the Project, including but not limited to any real property that Declarant has annexed into the Project, the Declarant shall be a Class B Member of the Association, as that term is defined below, and shall be eligible to act as an elected officer of the Association and to vote upon all matters put to a vote by the Association.
- 5.05 TRANSFERRED MEMBERSHIP: Membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of ownership of the Lot to which it is a appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer of a membership is void. In the event that the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the new purchaser of any Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void without further notice.
- 5.06 VOTING: The Association shall have two (2) classes of voting membership:
- 5.06.01 Class A Members shall be all Owners of Lots within the Project, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned.



- 5.06.02 Class B Members shall be the Declarant. Upon the first sale of a Lot to an Owner, the Declarant shall thereupon be entitled to five (5) votes for each Lot owned by the Declarant. The Class B membership shall cease when the Declarant no longer has any right, title or interest in any portion of the Project.
- 5.07 PROXY VOTES: Voting by proxy is permitted and shall be done in accordance with the Bylaws and pursuant to Idaho Code.
- 5.08 MEMBERSHIP MEETINGS: Regular and special meetings of the Members of the Association shall be held with the frequency and at the time and place and in accordance with the provisions of the Bylaws of the Association.

ARTICLE 6 COMMON AREAS

- 6.01 COMMON AREA: The Common Area shall include all real property and improvements within the Project designated as a "Tract" on any of the Plats of Lost Creek Estates, and any other land which may be conveyed to and accepted by the Association, all of which shall be dedicated to the common use and benefit of Owners of Lots in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. The Common Area shall be operated, maintained, and insured by the Association. All Common Areas will be owned by the Association. Each Lot Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of, or encroaching upon, the lawful rights of any other Lot Owner(s). Notwithstanding the transfer of the Common Area to the Association, the Declarant hereby reserves unto itself, its agents, employees, and successors in interest an easement, and the right to grant further easements over, across and under the Common Area for ingress to and egress from the Project for the purpose of completing construction, maintenance, or repair work, and for ingress and egress to and from adjacent property in connection with development, use and occupancy thereof.
- 6.02 RIGHTS IN COMMON AREA: Regardless of the possible dissolution of the Association and conveyance of fee title to the Common Area to the Owners as tenants in common pursuant thereto, no Owner shall bring any action for partition or divisions of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use and enjoyment of the Common Area.
- 6.03 COMMON EASEMENTS: The Common Easements shall consist of those areas designated on the Plat as drainage easements and such other easement rights as may be conveyed to the Association for the benefit of all Lots in the Project. This term shall not, however, include utility or access easements, designated on the Plat or otherwise, the benefits of which are limited to designated Lots. The Common Easements shall be



maintained by the Association for the use and benefit of Owners of Lots in the Project, to the same extent and subject to the same limitations as are applicable to the Common Area as set forth herein.

- 6.04 **OWNER DAMAGE TO COMMON AREAS/EASEMENTS:** Each Owner shall be personally liable to the Association for any damage to the Common Area or the Common Easements not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Owner, the Owner's Occupants, guests, tenants or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area and the Common Easements from the Owner, or that Owner's family, guests, tenants or invitees. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the person for whom the Owner may be liable as described above. The cost of correcting the damages to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Lot owned by said Owner and may be enforced as provided hereby for the enforcement of any other assessment.
- 6.05 **EMERGENCY INGRESS/EGRESS:** Pursuant to the Plat, there exists a thirty foot (30.00') wide water main and emergency ingress/egress easement corridor connecting the two (2) public roads known as Winch Road and Abeja Court. Said emergency corridor shall, at all times, be readily and easily passable by any and all emergency vehicles in use in Kootenai County. No Owner or Occupants within the Project shall place, or cause to have placed within the boundaries of said emergency access corridor, any obstruction, including but not limited to fencing, chains, ropes, cables, trees, bushes, rocks, boulders, ponds, structures or any other improvement or landscaping feature that would, or potentially could, interfere with the ready and easy passage of any and all emergency vehicles in use in Kootenai County. All costs of maintaining and preserving said emergency vehicle access corridor shall be that of the Association.

ARTICLE 7 ARCHITECTURAL CONTROL

- 7.01 **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee ("ACC") shall be comprised of three (3) persons, all of whom shall be appointed as herein provided. An ACC Committee member of the ACC shall hold office until said member has resigned or has been removed, but in any event, until said Committee member's successor has been appointed. Committee members of the ACC may be removed at any time, with or without cause.
- 7.01.01 The Committee shall be comprised of at least one (1), but no more than two (2),



Owner(s) of a Lot in each of the Project's three (3) phases.

- 7.01.01.01 ACC Committee members shall be unpaid volunteers comprised of Lot Owners who are eligible to hold such a position.
- 7.01.01.01.01 In the event that any ACC Committee membership chair is unfilled due to a lack of volunteers, the Board may appoint a Director to fill the ACC Committee membership chair.
- 7.01.01.02 For any structure, improvement, variance or alteration of any kind to be located within **Phase 1** that requires the approval of the ACC, the membership of the ACC shall, solely for purposes of said Phase 1 approval, consist of two (2) Lot Owners owning improved Lots within Phase 1 and one (1) non-Phase 1 Lot Owner.
- 7.01.01.02.01 If necessary, the Board is hereby authorized to temporarily appoint, on an *ad hoc* basis, two (2) ACC members meeting the ownership requirements set forth in this paragraph.
- 7.01.01.02.01.01 In no event shall the ACC membership exceed three (3) persons. In the event that the Board temporarily appoints one (1) or two (2) ad hoc Phase 1 Owner(s) to the ACC and the resulting membership of the ACC is in excess of three (3) persons, the Board may temporarily suspend the ACC membership of any non-Phase 1 Owner for purposes of temporarily reducing the ACC membership to three (3) persons, two (2) of which are to be Phase 1 Lot Owners as defined herein.
- 7.01.01.02.01.02 For purposes of this paragraph, an "improved Lot" is a Lot located within Phase 1 having a single family residence constructed thereon. The affirmative vote of at least one (1) ACC member meeting the ownership requirements set forth in this paragraph is required for the ACC approving any structure, improvement, variance or alteration of any kind to be located within Phase 1 that requires ACC approval.
- 7.01.02 Except as set forth above relating to ACC approval of Phase 1 improvements, all decisions by the ACC shall be approved by a simple majority of the ACC members.
- 7.02 APPOINTMENT: So long as the Declarant owns any Lot or parcel of real property within the Project, the Declarant shall have the sole right to appoint and remove all Committee members of the ACC. Thereafter, all Committee members of the ACC shall be appointed and removed by the Board.
- 7.02.01 The ACC shall have the right to make a resolution in writing unanimously



adopted, to designate one (1) of its Committee members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) Committee members of the ACC shall constitute an act of the ACC.

- 7.03 **COMPENSATION:** The Committee members of the ACC shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder, said compensation to be determined by the Board.
- 7.04 **NON-LIABILITY OF COMMITTEE AND ITS COMMITTEE MEMBERS:** Neither the Architectural Control Committee nor any Committee member thereof shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee or a Committee member. The Committee shall review and approve or disapprove all plans submitted to it for any proposed structure, improvement or alternation, solely on the basis of aesthetic considerations and overall benefit or detriment which would result to the immediate vicinity and the Project generally. The Committee shall not be responsible for reviewing any plan or design from the standpoint of structural safety or conformance with building or other codes. The Committee's approval of any plan or design shall not be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any Committee member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign thereof to recover such damages.
- 7.05 **COMMITTEE APPROVAL REQUIRED:** Subject to the exemption of the Declarant set forth herein, no structure, improvement, or alteration of any kind (which will be visible from other Dwellings, the Common Area, or any public right of way) shall be commenced, erected, painted or maintained upon the Property until the same has been approved in writing by the ACC.
- 7.06 **PLAN APPROVAL:** Plans and specifications showing the nature, kind, shape, color, size, materials and location of any such structure, improvements or alteration shall be submitted to the Committee for approvals as to quality of workmanship and design and harmony of external design with existing structures, topography and finish grade evaluation. In addition, all plans and specifications of any such structure submitted shall address the preservation and protection of natural drainage and, when deemed reasonably necessary by the ACC, in its sole and absolute discretion, shall be accompanied with a State of Idaho Certified Engineer's Soils Testing Report on the subject Lot and subsequent stamp of



approval on all footings and foundation specifications. No permission or approval shall be required to rebuild in accordance with Declarant's original plans and specifications, or to rebuild in accordance with plans and specifications previously approved by the Committee.

- 7.07 COMMITTEE APPROVAL: The Committee shall consider and act upon any and all plans and specifications submitted for the Committee's approval under this Article and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure that the construction conforms with the plans approved by the Committee. Any application submitted to the Committee pursuant to this Article shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the applicant within fourteen (14) days after the date of receipt by the Committees of all required materials.
- 7.08 BASIS OF APPROVAL: Approval by the ACC shall be based, among other things, on the ACC Rules/ACC Standards, the adequacy of the Lot dimensions; conformity and harmony of external design with neighboring Improvements, the effect of location and use of Improvements on neighboring Lots; operations and uses; relations to topography, grade, finished ground elevation and landscaping of the Lot being improved to that of neighboring Lots; proper facing of the main elevation with respect to nearby streets; and the conformity of the plans and specifications to the purpose and general plan and intent of this Restated Declaration.
- 7.09 VARIANCES: The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Restated Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole and absolute discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) Committee members of the ACC.
- 7.09.01 If a variance is granted as provided herein, no violation of this Restated Declaration, ACC Rules/ ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Restated Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.
- 7.09.02 The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon. However, the ACC shall have no right to waive or modify the ACC Rules/ ACC Standards that requires a Lot Owner to provide an estoppel affidavit to the



Declarant prior to undertaking a “major project” as defined by the ACC Rules/ ACC Standards unless said waiver or modification is first approved in writing by the Declarant.

- 7.10 APPLICATION: To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested therein and shall be accompanied by all other material to be submitted as hereafter provided.
- 7.10.01 All applications must contain, or have submitted therewith, the following material (collectively called “plans and specifications”) prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:
- 7.10.01.01 A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements.
- 7.10.01.02 A building plan which shall consist of preliminary or final blueprints, elevation drawings of all exterior sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- 7.10.01.03 A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.
- 7.10.01.03.01 Landscaping plans do not need to be submitted to the ACC for approval until after the primary residential improvements have been constructed on a Lot. Prior to submitting any landscaping plans to the ACC, the Lot Owner shall have an on-site meeting with a member of the ACC to discuss the proposed plans and their compliance, or noncompliance, with the letter and the spirit of the ACC Rules and ACC Standards.
- 7.10.01.04 The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.
- 7.10.01.05 The ACC shall have the right to require an Owner submitting an application for



approval of plans and specifications to pay a fee at the time the application is submitted, the amount of such fee to be based upon the reasonable and actual expenses of the ACC in reviewing and processing the application. Said fees as to be established by the ACC. The ACC shall not be obligated to commence the review and processing of an application until such fee, if required, is paid.

- 7.10.01.06 In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain Lost Creek Estates as a first class residential development.
- 7.10.01.06.01 The ACC will refer to the established architectural guidelines for Lost Creek Estates in order to provide guidance and/or suggestions to an application. Irrespective of established guidelines, the ACC has the right to withhold approval of any plans or specifications, with or without cause, even if all guidelines are apparently met. The ACC's final approval of any plans or specifications is a subjective decision that relates to the feel and style that the Project is trying to attain. In all cases, the ACC will work to the best of it's abilities, and keeping cost effectiveness in mind, to help the applicant reach the design that works best for all parties concerned.
- 7.10.01.07 Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within two (2) weeks after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a Committee member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.
- 7.10.01.08 A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.
- 7.10.01.09 Denial of an application shall state with particularity the reasons for such denial.
- 7.11 INSPECTIONS: The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Restated Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.
- 7.12 COMPLAINTS: The ACC is empowered to receive from other Owners ("Complainants")



complaints in writing involving deviations from approved, applications or violations of this Restated Declaration or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

- 7.12.01 Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:
 - 7.12.01.01 The Owner shall immediately cease the activity that constitutes a deviation or violation.
 - 7.12.01.02 The Owner shall adhere to the corrective measures set forth in the written notice.
 - 7.12.01.03 Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.
- 7.13 HEARINGS: An Owner submitting an application, or served with a written notice of deviation or violation, or a Complainant, shall have the right to request to be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC Committee members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and any legal fees, such costs and fees shall be paid by the Complainant unless an Owner is found to be in violation, in which event, such Owner shall pay all costs and fees. The payment of such costs and fees shall be enforceable as provided for below.
- 7.14 APPEAL: An Owner and/or a Complainant shall each have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to the preceding paragraph, provided, however, that neither an Owner nor a Complainant shall be entitled to such an



appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

- 7.14.01 A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.
- 7.14.02 The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each Committee member of the ACC.
- 7.14.03 The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.
- 7.14.04 At the hearing the Owner, the Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing or appeal heard by the ACC or the Board.
- 7.14.05 Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC Committee members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed to all interested parties. If the Board incurs any costs or expenses in connection with the

investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board, and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided for herein.

7.14.06 A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal or review by any third party or entity.

7.15 ENFORCEMENT: The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Project, the continuation of which violates the provisions of this Restated Declaration, the ACC Rules/ACC Standards or the approved plans and specifications or for the collection of any monies owed to the ACC.

7.15.01 The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings ten (10) days following the service of the notice to the Owner. Service by mail shall be deemed made upon mailing.

7.15.02 The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

7.15.03 In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorney's fees and costs both at the trial level and at the appellate level shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association with five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Special Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Special Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article 8.



- 7.16 **ADDITIONAL DAMAGES:** In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation, or violation or the costs and expenses incurred by the Association to correct the same, shall be assessed as a Special Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Special Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Special Assessment shall be the same as provided in Article 8.
- 7.17 **NONEXCLUSIVE REMEDY:** The right of the Association to levy a Special Assessment as described above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver or any other legal or equitable remedy, pursue enforcement of the lien of said Special Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity. The Association may take any action permitted by law to execute upon any judgment without the necessity of proceeding with any lien levy provided for herein.
- 7.17.01 In addition and concurrently to any and all procedures and remedies set forth above, the ACC may also concurrently submit a complaint regarding any alleged violation of the ACC Rules/ACC Standards to the Board of Directors for concurrent review and for the possible concurrent imposition of fines by the Board in conformity with Article 10.A in conjunction with all procedures and remedies set forth in this Article 7.

ARTICLE 8

ARCHITECTURAL GUIDELINES

- 8.01 **ACC'S ARCHITECTURAL GUIDELINES:** Except as specifically set forth below in Article 8.02 relating to improvements located on Lots located within Phases 2 and 3, all improvements constructed or otherwise placed upon any Lot shall comply with the ACC's architectural guidelines that are set forth in **Exhibit 1**, attached hereto and incorporated herein by reference, as the same may be amended from time to time.
- 8.02 **REVIEW AND CONSTRUCTION CRITERIA:** The following ACC review and construction criteria for any approved improvements located on any Lot within Phases 2 and 3 of the Project supplement the Architectural Guidelines attached as Exhibit 1 to this Restated Declaration.
- 8.02.01 To the extent that the following conflict with any Architectural Guidelines set forth in Exhibit 1 of this Restated Declaration, the following shall control and supercede any conflicting guideline. Except as specifically set forth herein, the Architectural Guidelines attached as Exhibit 1 to this Restated Declaration remain in full force



and effect:

8.02.01.01 MONUMENTS:

8.02.01.01.01 Monuments shall not be required except that the street address number shall be prominently displayed on the front of the residential structure. Lot Owners shall be responsible for installing their own mailbox/newspaper receptacles, as may be required.

8.02.01.02 BUILDING SIZES:

8.02.01.02.01 Any single story residential structure shall consist of a minimum of 1,800 square space of indoor habitable living space.

8.02.01.02.02 Any multiple story residential structure shall consist of a minimum of 2,200 square feet of indoor habitable living space.

8.02.01.02.02.01 Multiple story residential structures include any structure having a second floor, a room above the attached garage and/or a walk out basement.

8.02.01.02.02.02 A structure that has a fully enclosed non-walkout basement but otherwise does not have a second floor or a room above an attached garage shall not be considered a multiple story residential structure.

8.02.01.02.02.03 Multiple story residential structures shall have a minimum of 1,300 square feet of habitable living space on the front entry level of the structure.

8.02.01.03 GARAGES:

8.02.01.03.01 Garage door elevations do not need to be stepped.

8.02.01.04 ROOFS:

8.02.01.04.01 Composition shingles shall be a minimum grade of a 30 year warranty type composition shingle.

8.02.01.04.02 All roofing fascia shall be a minimum of 1" x 8" in nominal dimension.

8.02.01.04.03 No fascia is required if the roof structure includes finished exposed rafter tails as an approved architectural detail approved by the ACC.

8.02.01.04.04 All roof pitches shall be 4:12 or greater.



8.02.01.04.05 All roof overhangs shall be a minimum of 16" in length, with the exception of small roof elements, including but not limited to shed dormers and eyebrow windows.

8.02.01.05 DOORS:

8.02.01.05.01 "Carriage Style" garage and shop doors are not required. Garage doors shall be painted a complimentary color to match the color scheme of the house but shall not be white.

8.02.01.06 CHIMNEY AND ROOF PENETRATIONS:

8.02.01.06.01 Fireplace chimneys that are visible from the road or neighboring properties will be framed in and chimney pipes will be painted black. Roof vent pipes that are on the front elevation will be painted black.

8.03 SUBMITTAL REQUIREMENTS:

8.03.01 No application fee to the ACC/HOA is required.

8.03.02 All applications for any and all improvements located within Phases 1, 2 and 3 shall be submitted to: Association Services, Inc., 1110 Park Place, Suite 101, Coeur d'Alene ID 83814, or as otherwise directed by the Declarant from time to time.

8.04 SHOP GUIDELINES:

8.04.01 The following ACC review and construction criteria for any approved free standing shops to be located on any eligible Lot within the Project supplements the Architectural Guidelines attached as Exhibit 1 to this Restated Declaration. To the extent that the following conflict with any Architectural Guidelines set forth in Exhibit 1 of this Restated Declaration, the following shall control and supercede any conflicting guideline. Except as specifically set forth herein, the Architectural Guidelines attached as Exhibit 1 to this Restated Declaration remain in full force and effect:

8.04.01.01 All Lots located within the Project shall be permitted to have one (1) external free standing shop building constructed on each respective Lot.

8.04.01.02 The external design, style, look and color of any shop building shall be compatible and complimentary with the external design, style, look and color of the residence located on the Lot.



- 8.04.01.02.01 A shop building's exterior will match the residence both in body and trim. Materials will also be similar, or compatible as that of the residence as determined by the ACC.
- 8.04.01.02.02 A shop building shall be built on site either by traditional "stick-built" framing (e.g., using dimensional lumber) or pole barn type construction. Wholly factory preassembled structures, such as portable modular structures, are not permitted.
- 8.04.01.02.03 All shop buildings shall have a traditional sloping straight roof and the pitch must match that of the residence located on the Lot and a minimum of twelve inch (12") long eaves and overhangs.
- 8.04.01.02.04 All shop buildings shall incorporate an exterior wainscoting feature and other architectural details to harmonize the shop building with adjacent residential structures. All exterior architectural details are subject to ACC approval.
- 8.04.01.02.05 Round, curving and/or Quonset hut type structures are not permitted.
- 8.04.01.02.06 Structures utilizing tubing covered with a fabric type material are not permitted.
- 8.04.01.02.07 Any proposed building site for a shop building on Lot shall be subject to approval by the ACC. The intended goal is to minimize the visual impact of the location of the shop to the surrounding improvements.

8.05 MISCELLANEOUS:

- 8.05.01 A shop building cannot be constructed before a residence is constructed on the Lot. Shop buildings and residences can be constructed concurrently.
- 8.05.02 All residences shall be fully constructed and eligible for the issuance of a certificate of occupancy within three hundred sixty- five (365) days of the beginning of any construction on the Lot.
- 8.05.03 Proposals for shop building construction will be submitted to the ACC for review and approval processing. Each submittal must include a site plan showing front, side and back elevations and description of materials and colors used. Landscaping plans may be submitted concurrently with the application or at anytime during the construction process. However, landscaping plans relating to the construction project must be submitted no later than the completion date of the primary construction of the shop building.



ARTICLE 9 REPAIR AND MAINTENANCE AND ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

- 9.01 **ASSOCIATION MAINTENANCE REQUIREMENTS:** Subject to provisions of this Restated Declaration pertaining to eminent domain and the destruction of improvements, the Association shall maintain, restore, repair and replace all parts of the Common Area, the Open Space Area and the Common Easements, or shall contract for such maintenance, repair and replacement to assure maintenance of such areas in good condition, reasonable wear and tear excepted.
- 9.01.01 In the event that an Owner fails to maintain that Owner's Buildings, Dwelling, Improvements or Lot, or provide other maintenance or repair as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and request that it be done within sixty (60) days (five (5) days for routine landscaping maintenance such as mowing, raking and weeding) from the giving of such notice. In the event that Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, enforce the special assessment lien against the Owner's Lot for the amount thereof.
- 9.02 **ASSOCIATION EASEMENTS:** For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Project or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of the Board's responsibilities under this Restated Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portions of the Common Area and the Common Easements, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Lot and/or Dwelling.
- 9.03 **OWNER MAINTENANCE:** Except for those portions of the Property which the Association is required or elects to maintain and repair, each Owner shall, at that Owner's sole expense, maintain and repair all components of that Owner's Dwelling and Lot (including interior and exterior, structural, nonstructural, and all landscaping), keeping the same in good condition, and shall repair all damage to the Common Area and the Common Easements for which the Owner is responsible pursuant to the terms hereof. Without limiting the foregoing, each Owner whose Lot is benefitted by an access and/or utility easement designated on the Plat shall share equally the responsibility for the maintenance of such easement with all other Lots so benefitted, unless otherwise agreed to in writing by the Owners of said benefitted Lots.
- 9.04 **COVENANT TO PAY ASSESSMENTS:** Each Owner of any Lot, by acceptance of a



deed or other instrument of conveyance thereof, whether or not it shall be so expressed in such deed or other instrument, is deemed to have covenanted and agreed to pay to the Association the following Assessments, which shall be established and collected as provided for herein:

9.04.01 Regular Assessments:

9.04.02 Extraordinary Assessments, and;

9.04.03 Special Assessments.

9.05 ASSESSMENT LIEN: All Assessments, together with interest, costs, penalties and actual attorney's fees, shall be a charge and a continuing lien upon the actual Lot against which each Assessment is made. As such, the lien will become effective upon recordation of a Notice of Assessment Lien by the Board of Directors as required by law, and limited in duration as provided by law. Each Assessment, together with interest, costs, penalties and actual attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and/or Common Easements or any other part of the Project, or by the abandonment of his Lot.

9.06 PURPOSE OF ASSESSMENTS: The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all the Owners of Lots in the entire Project and/or for the operation, maintenance, improvement, repair, restoration and replacement of the Open Space Area, Common Areas and/or Common Easements for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repair and replacement of those elements of the Open Space Area, Common Areas and/or Common Easements, which must be replaced on a periodic basis. The reserve funds, including funds placed in any working capital fund, shall be maintained as a segregated fund, separate from the other funds of the Association.

9.07 REGULAR ASSESSMENTS: Until the end of the Association's fiscal year immediately following the closing of the sale of the first Lot in the Project, the annual maximum Regular Assessment per Lot shall be such amount as is set forth in the Project budget prepared by the Declarant, payable in installments as determined by the Board. Each Lot's share for the first fiscal year shall be prorated based upon the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessments against each Lot at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20.00%) above the maximum annual Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the total voting power of the Association.



- 9.08 **EXTRAORDINARY ASSESSMENTS:** In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, restoration or replacement of a capital improvement element of any Common Areas and/or Common Easements, including but not limited to unanticipated or underestimated Regular Assessments; provided, however, that the aggregate Extraordinary Assessment for any one fiscal year shall not exceed five percent (5.00%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written consent of a majority of the total voting power of the Association.
- 9.09 **SPECIAL ASSESSMENTS:** In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments, without limitation as to amount or frequency, against an individual Lot and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Lot into compliance with the provisions of the Project Documents, including interest, penalties, actual attorney's fees and costs. Such Special Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Special Assessment.
- 9.10 **PAYMENT OF TAXES AND ASSESSMENTS LEVIED AGAINST THE COMMON AREAS AND/OR THE REAL AND/OR PERSONAL PROPERTY OF ASSOCIATION:** In the event that any taxes or fees are assessed against the Common Area and/or the real and/or the personal property of the Association, rather than against the Lots, said taxes or fees shall be included in the Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Lots in an amount equal to said taxes, regardless of the limitation on Extraordinary Assessments set forth above.
- 9.11 **ALLOCATION OF ASSESSMENTS:** Except for any Lot owned by the Declarant, each Lot shall bear their respective share of each Regular and Extraordinary Assessments as follows:
- 9.11.01 Any Lot which does not include a completed Dwelling shall be assessed one half ($\frac{1}{2}$) of all Regular and Extraordinary Assessments that may be levied by the HOA and shall also be liable for the full monthly water standby fees charged by the water service provider more fully described below.
- 9.11.01.01 This partial exemption for an undeveloped Lot shall automatically terminate upon the issuance of a certificate of occupancy or its equivalent for the Dwelling or until one hundred eighty (180) days after the issuance of a building permit for the Dwelling, whichever occurs first.



- 9.11.01.02 Any Builder building a residence for immediate sale is exempt from paying normal HOA Assessments until the issuance of a certificate of occupancy or its equivalent for the Dwelling has been issued. The Builder will be liable for the full monthly water standby fees charged by the water service provider more fully described below at the time the Builder obtains a building permit for the residential improvements.
- 9.11.01.02.01 The Builder shall be obligated to pay the water hook up fee charged by the water service provider prior to being connected to the water service provider's water system.
- 9.12 DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES: The Regular Assessments provided for herein shall commence as to all Lots in the Project on the first day of the month following closing of the sale of the first Lot in the Project. Due dates of Assessments shall be the first day of every calendar month, or otherwise as ordered by the Board. No notice of such Assessment shall be required other than an annual notice setting forth the amount and frequency of the Assessment for the following year.
- 9.13 TRANSFER OF LOT BY SALE OR FORECLOSURE: The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability thereof, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of foreclosure or a recorded first mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments that become due prior to such sale or transfer. Sale or transfer pursuant to a mortgage foreclosure shall not, however, affect the personal liability of the prior Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Commons Expenses collectible from all of the Lots, including the Lot for which the lien was extinguished.
- 9.13.01 In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments owed to the Association by the grantor for the grantor's share of the Common Expense, and for his obligation for individual Special Assessments, up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to alien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, that the grantee shall be liable for any such Assessment becoming due after the date of any such statement.



9.14 COLLECTION OF ASSESSMENT OBLIGATION AND PRIORITIES: If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge equal to five percent (5.00%) of the Assessment, but not less than \$10.00, shall be added to and collected with the Assessment.

9.14.01 If any part of any Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, the total unpaid Assessment, including all late charges shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%) until paid. Such interest shall commence on thirty (30) days after the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of nonpayment of an Assessment.

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

9.14.03 There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in Lost Creek Estates pursuant to this Restated Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Restated Declaration except only for:

9.14.03.01 Valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority;

9.14.03.02 A lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Kootenai County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and

9.14.03.03 Labor or materialman's liens, if the same are prior by reason of applicable law. All



other lien holders acquiring liens on any Lot after recordation of this Restated Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

- 9.15 **ENFORCEMENT:** Such assessment lien, when delinquent, may be enforced by sale of the Lot encumbered by said lien, by the Association, acting through the Board; the Association's attorney or other person authorized by this Restated Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Idaho law applicable to the exercise of powers of sale in deed of trust, with the Board having the right and authority to appoint an independent trustee, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at the foreclosure sale, and to acquire and hold, lease, encumber and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent, interest, costs, penalties and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorney's fees and costs and may temporarily suspend the Association membership rights of a Lot Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.
- 9.16 **NOTICE REQUIREMENTS:** Notwithstanding anything to the contrary contained in this Restated Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot so affected. Said Notice of Default may also be recorded by or on behalf of the Board in the public records of Kootenai County.
- 9.17 **NONEXCLUSIVE REMEDY:** The remedies set forth in this Article or elsewhere in this Restated Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.
- 9.18 **INITIAL LIMITATION ON MONTHLY AMOUNT OF REGULAR ASSESSMENTS:** Beginning as of the date of the recordation of this Restated Declaration with the Kootenai County Recorder no Lot, or Owner thereof, shall be assessed a Regular Assessment of more than fifty dollars (\$50.00) per month, nor more than a total annual Regular Assessment amount of six hundred dollars (\$600.00) per year, until January 1, 2011. Beginning on January 1, 2011 the amount of the Regular Assessment may be increased by the Board as provided for herein.



- 9.18.01 In the event that prior to January 1, 2011 that there is any budget shortfall as a result of the said temporary Regular Assessment limitation, the Declarant shall pay to the Association the difference in the total amount of the Regular Assessments assessed against the Lots and the amount of the regular annual budget. However, Declarant's contribution obligations as set forth herein shall be limited to the amount of the actual budget shortfall or ten thousand dollars (\$10,000.00), which ever is less, per any calendar year until January 1, 2011, at which time Declarant's contribution obligations shall terminate without further notice. Because of Declarant's contribution obligations set forth herein, any Lot owned by Declarant shall not be assessed any Regular or Extraordinary Assessments until January 1, 2011. Thereafter, any such Assessment shall be in conformity with the Declarant's limited obligations to pay Assessments as set forth below.
- 9.18.01.01 If there is still a budget shortfall after crediting the maximum of the Declarant's contribution obligations, ten thousand dollars (\$10,000.00), the remaining budget shortfall shall be met by the Association levying an Extraordinary Assessment against equally against all Lots located within the Project, including but not limited to those Lots owned by Declarant.
- 9.18.01.01.01 By way of example and not limitation in year 2008, four (4) Lots in the Project are owned by third parties and the balance of the Lots of the Project are owned by the Declarant. In addition, the Board has set a budget for 2008 in the amount of seven thousand dollars (\$7,000.00). In this case, each of said four (4) Lots would be assessed no more than six hundred dollars (\$600.00) in Regular Assessments for the year 2008, for a total of two thousand four hundred dollars (\$2,400.00). The balance of the Lots of the Project owned by the Declarant would not be assessed any Regular Assessments for the year 2008 but Declarant would be obligated to pay to the Association the sum of four thousand six hundred dollars (\$4,600.00) for the year 2008.
- 9.18.01.01.02 By way of further example and not limitation in year 2009, ten (10) Lots in the Project are owned by third parties and the balance of the Lots of the Project, totaling six (6) in number, are owned by the Declarant. In addition, the Board has set a budget for 2009 in the amount of twenty thousand dollars (\$20,000.00). In this case, each of said ten (10) Lots would be assessed no more than six hundred dollars (\$600.00) in Regular Assessments for the year 2009, for a total of two thousand six thousand dollars (\$6,000.00). The balance of the Lots of the Project owned by the Declarant would not be assessed any Regular Assessments for the year 2009 but Declarant would be obligated to pay to the Association the maximum sum of ten thousand dollars (\$10,000.00), resulting in a budget shortfall of four thousand dollars (\$4,000.00). As a result of the budget shortfall, all of the Lots located within the Project, totaling sixteen (16) in number owned by both



third parties and the Declarant, would be assessed an Extraordinary Assessment of two hundred fifty dollars (\$250.00) per Lot for the year 2009. The Lots owned by the Declarant would not be assessed any Regular Assessment for the year 2009 but would be assessed an Extraordinary Assessment.

9.18.01.02 *Except for the maximum of six hundred dollars (\$600.00) in yearly Regular Assessments assessed against any Lot not owned by the Declarant, the foregoing examples are using purely arbitrary figures for purposes of illustration and should not be construed as any type of representation as to the amount of any annual budget, the amount of any Extraordinary Assessment that may be made by the Board or the number of Lots comprising the Project and/or owned by the Declarant.*

9.19 DECLARANT'S LIMITED OBLIGATION TO PAY REGULAR ASSESSMENTS: Until January 1, 2011, no Regular Assessment shall be assessed against any Lot owned by the Declarant. Beginning on January 1, 2011 the Declarant shall be responsible for the payment of any Regular Assessments that may be levied by the Board as a result of Declarant's ownership of any Lot. However, the total amount of any Regular Assessments levied against the Declarant for all of the Declarant's Lots shall not exceed an amount equal to 2.50% of the total Regular Assessments levied by the Board against all of the Lots of the Project in any calendar year, regardless of how many Lots are owned by the Declarant.

9.19.01 By way of example only and not of limitation, in the event that the total amount of the Regular Assessments levied by the Board for any calendar year beginning on January 1, 2011 is \$1000.00 and there are forty (40) Lots subject to regular and extraordinary assessments, then in that event, each Lot would be assessed equally the amount of \$25.00 for that calendar year if the Declarant did not own any of the Lots. However, if during said calendar year the Declarant owns five (5) of the 40 Lots comprising the Project and the other thirty five (35) Lots are owned by third parties, then in that event Declarant would be assessed a total Regular Assessment amount of \$25.00 for all of Declarant's Lots ($\$1,000.00 \times 2.50\% = \25.00) and the remaining thirty five (35) Lots would each be assessed \$27.86 ($(\$1000.00 - \$25.00) \div 35 = \27.86).

9.19.02 *The foregoing example is using purely arbitrary figures for purposes of illustration and should not be construed as any type of representation as to the amount of any annual budget, the amount of any Assessment that may be made by the Board or the number of Lots located within the Project and/or owned by the Declarant at any time.*

9.19.03 Declarant shall be responsible for the payment of any and all Extraordinary and Special Assessments that may be levied against the Declarant as provided for



herein.

- 9.19.04 Collection of any delinquent assessments of the Declarant shall be governed by the terms and conditions of this Restated Declaration.
- 9.19.05 No Assessments shall be levied against any of Declarant's reserved rights in the Open Space Area.
- 9.20 NON-ASSESSMENT OF WELL LOT: The Owner of Lot 1, Block 3 of the Plat of Lost Creek Estates that is designated on the Plat as "Well Lot" shall not be assessed any Regular or Extraordinary Assessments.

ARTICLE 10 EASEMENTS AND UTILITIES

- 10.01 ACCESS, USE AND MAINTENANCE EASEMENTS: Declarant expressly reserves for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress, and for use and enjoyment, over all of the Common Area and all Common Easements, and for the use and enjoyment thereof. Subject to the provisions of this Restated Declaration governing use and enjoyment thereof, and subject to terms of the limited use of the Open Space Area, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for walkways, vehicular access (except as limited hereby) and such other purposes reasonably necessary for the use and enjoyment of a Lot in the Project.
- 10.02 RESERVATION OF EASEMENTS: Declarant expressly reserves for the benefit of the Board and all agents, officers and employees of the Association, non-exclusive perpetual easements over the Common Areas as may be necessary to perform all other tasks in accordance with the provisions of this Restated Declaration. Such easements over the Common Area shall be appurtenant to, binding upon and shall pass with the title to, every Lot conveyed.
- 10.03 LIMITED USE OF THE OPEN SPACE AREA BY THE ASSOCIATION:
 - 10.03.01 Only Members of the Association and said Members' household, guests, invitees and Occupants shall be entitled to exercise the limited entry right unto the Open Space Area. Hereinafter said Members of the Association and said Members' respective household, guests, invitees and occupants who have the limited entry right unto the Open Space Area are referred to herein as "Trail Users").
 - 10.03.02 Entry upon the Open Space Area by Trail Users shall be limited to human powered access only, i.e., only pedestrians, bicycle riders and skiers shall be permitted entry



upon the Open Space Area. Subject to Declarant's rights set forth below, no motorized conveyances or draft animal use of the Open Space Area is permitted by any Trail User.

- 10.03.02.01 Only if medically necessary, battery powered wheel chairs and/or scooters are permitted to be used on the Open Space Area. However, the Association shall not be obligated or responsible for maintaining any portion of the Open Space Area passable for such battery operated conveyances.
- 10.03.03 In order to protect the Open Space Area, the Trail Users are encouraged to limit there use of the Open Space Area to the existing foot bridge and improved trails currently traversing the Open Space Area. The Board may enact rules and regulations governing and/or prohibiting the use of the Open Space Area by the Trail Users.
- 10.03.04 Domesticated dogs and cats are prohibited from entering upon the Open Space Area unless leashed and held under physical control at all times.
- 10.03.04.01 No livestock, including but not limited to horses, donkeys, burros, alpacas, llamas, goats, cattle, pigs or other domesticated animals are permitted to enter upon any portion of the Open Space Area.
- 10.03.05 Littering or dumping of trash on any portion of the Open Space Area is strictly prohibited.
- 10.03.06 No gathering of firewood, nor any cutting of trees or vegetation is permitted on any portion of the Open Space Area by any Trail Users.
- 10.03.07 Hunting, trapping, target practice or any type of discharge of any firearm, bow or other weapon within any portion of the Open Space Area by any Trail Users is prohibited.
- 10.03.08 No fireworks, fuel cans, fires, lighted cigarettes, pipes and cigars, lighted matches or other lighted or otherwise flammable objects are permitted to be on the Open Space Area.
- 10.03.09 Trail User's are personally responsible for any damage they may cause to Open Space Area.
- 10.03.10 All Trail User's shall make themselves familiar with and shall fully comply with all the restrictions contained herein relating to the use of or activities in the Open Space Area. Owners and Occupants shall also be responsible for notifying their tenants, guests, representatives, agents, employees, contractors and successors of



these restrictions and securing their compliance. Any breach of the use restrictions of the Open Space Area as set forth herein shall constitute adequate grounds for the Association, or any third party manager of the Open Space Area, to apply to a Court having jurisdiction over the Project for the entry of a temporary restraining order and a temporary and permanent injunction against the defaulting Trail User.

- 10.03.11 The Association shall maintain adequate markers along the Open Space Area's boundaries to ensure that the Owners of Lots contiguous with the Open Space Area, and persons making recreational use of the Open Space Area, are aware of the Open Space Area's boundaries.
- 10.03.12 Other than the pre-existing trails and footbridge, and the boundary markers provided for above, no other structures, buildings or other improvements shall be placed on any portion of the Open Space Area. However, if approved by the Board, the ACC and the fee title owner of the timber located on the Open Space Area, additional trails, footbridges, structures, buildings and other improvements may be erected and/or constructed on the Opens Space Area.
- 10.03.13 The fee title owner of any timber located, or to be located in or upon the Open Space Area shall have the right to enforce all of the use restrictions set forth in this paragraph in law or equity and the successful party in any litigation, including any appeal, shall be entitled to an award of the successful party's attorneys fees and costs. The term "timber" is more fully defined herein. Failure by any such fee title owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.
- 10.04 MANAGEMENT OF OPEN SPACE AREA: The Open Space Area shall be managed by the Association. Said management duties may be contracted out to a third party and the Association may levy regular, extraordinary and special assessments against the Lots for said contractual maintenance work.
 - 10.04.01 So long as Declarant owns any legal or equitable right, title or interest in any portion of the Project, including but not limited to the real property designated on the Plat as "Unplatted Remainder A," Unplatted Remainder B" or any other real property that has been annexed into the Project, Declarant shall be deemed to be the aforementioned third party manager.
 - 10.04.01.01 At any time, and regardless of whether Declarant has any residual legal or equitable right, title or interest in any portion of the Project, including but not limited to the real property designated on the Plat as "Unplatted Remainder A," Unplatted Remainder B" or any other real property that has been annexed into the Project, Declarant may unilaterally relinquish Declarant's management duties of the Open Space Area by providing the Association thirty (30) days written notice



of the same.

- 10.04.02 During such time as Declarant is the manager of the Open Space Area, Declarant shall be reimbursed for its management of the Open Space Area.
- 10.04.02.01 The initial monthly management fee to be paid to Declarant shall be fifteen dollars (\$15.00) per month per Lot.
- 10.04.02.02 Said (\$15.00) per month per Lot shall be part of, and included in, the Regular Assessment levied against each of the Lots of the Project as provided for herein.
- 10.04.02.03 The amount of the monthly management fee may be unilaterally adjusted by Declarant based upon any increased costs incurred by Declarant in maintaining and managing the Open Space Area. Said management fee increase shall not occur more than one (1) time in any calendar year and any such increase shall not exceed fifteen percent (15.00%) of the prior monthly fee.
- 10.04.02.04 At the Association's option, the monthly fees may be prepaid up to one (1) year in advance of the due date of said monthly fee.
- 10.04.03 The management fee owed to the Declarant does not include any out of pocket expenses incurred by Declarant in managing the Open Space Area, including but not limited to any repair or maintenance costs of the footbridge that traverses Lost Creek and the repair, re-graveling or other maintenance of the trail system traversing the Open Space Area. Said out of pocket expenses of Declarant shall also be reimbursed to Declarant by the Association within thirty (30) days of Declarant's presentment to the Association of said out of pocket expenses.
- 10.04.03.01 Any such pocket expenses of Declarant may be paid by the Association by levying an Extraordinary Assessments against each of the Lots of the Project as provided for herein.
- 10.04.04 Failure of the Association to timely pay the monthly management fee and/or any out of pocket expenses incurred by Declarant will constitute a breach of this Restated Declaration and Declarant shall be entitled to file and foreclose a mechanic's lien against the Open Space Area in conformity with Title 45, Chapter 5 of the Idaho Code.
- 10.05 INSURANCE FOR OPEN SPACE AREA: At the Association's expense, the Association shall be obligated to maintain a comprehensive general liability insurance policy covering the Trail Users' use of the Open Space Area. The liability policy shall provide coverage for at least two million dollars (\$2,000,000.00) for bodily injury and property damage for any single occurrence, covering bodily injury and property damage resulting from the



operation, maintenance or use of said areas, and any legal liability resulting from lawsuits related to employment contracts to which the Association may be a party.

10.06 DECLARANT'S RIGHTS IN THE OPEN SPACE AREA: In addition to Declarant's right to manage the Open Space Area as provided above, Declarant is the fee title owner of all timber located, or to be located, on the Open Space Area. In order to exercise Declarant's right to said timber, Declarant is entitled to:

- 10.06.01 Manage the Open Space Area as productive timber lands;
- 10.06.01.01 As used in this Restated Declaration, the term "timber" means any wood growth, of any species and of any size, standing or down that is located, and to be located and/or planted within the Open Space Area at any time into perpetuity, including but not limited to saplings, brush, fruit trees, trees suitable only for firewood or decoration, sawlogs, veneer, poles, cedar products, pulp logs and all products derived from trees and/or wood growth, including but not limited to fence posts, wood chips, sawdust, bark and every other form into which a fallen tree and/or wood growth may be cut before it is manufactured into lumber or run through a processing mill or cut into cord wood, stove wood or hewn ties.
- 10.06.02 Selectively cut, harvest and/or prune any trees, shrubs, timber and other vegetation located on the Open Space Area an unlimited multiple number of times except that Declarant shall not remove any more than 50% of the timber located within the Open Space Area at any one time;
- 10.06.03 Replant an unlimited multiple number of times the Open Space Area with seed or seedlings of any species and harvest the same at maturity, however, Declarant is under no duty herein to replant the Open Space Area;
- 10.06.04 Cut, prune and/or mow any and all vegetation located on the Open Space Area;
- 10.06.05 Undertake any other activity to maintain and protect the Open Space Area as productive forest product producing lands;
- 10.06.06 Enter upon any portion of the Open Space Area;
- 10.06.07 Use draft animals, motorized vehicles and equipment on the Open Space Area to assist Declarant and Declarant's agents, employees and contractors in the management of the Open Space Area both on behalf of the Association and on behalf of managing Declarant's timber rights; and,
- 10.06.08 Convey or otherwise encumber Declarant's timber and access rights to any third party. Any such conveyance or encumbrance shall be subject to the terms of this



Restated Declaration and any person or entity acquiring Declarant's timber rights shall have the rights set forth in this paragraph and as further set forth in this Restated Declaration.

- 10.06.09 The rights set forth in this paragraph shall not be amended, repealed, altered or otherwise changed without the prior written approval of the fee title owner of the timber located within the Open Space Area.
- 10.07 **RESERVATION OF UTILITY EASEMENTS:** Declarant expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over, under and across the entire Project, together with the right to grant and transfer the same, for the installation, repair and maintenance of sanitary sewer, water, electric, gas, telephone, television and other utility lines and services, drainage facilities, walkways and landscaping as may be deemed appropriate to service the Project.
- 10.08 **PLAT EASEMENTS:** All of the easements depicted on the Plat (and the right to grant the same to private or public utility providers) are hereby expressly reserved for the benefit of the Declarant and its successors-in-interest and assigns, the Association and its successors-in-interest and assigns.
- 10.09 **RESERVATION OF DEVELOPMENT AND MAINTENANCE EASEMENTS:** There is hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:
- 10.09.01 **Utility Easements:** For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables as said utility easements are designated on the recorded subdivision plat(s) for Lost Creek Estates.
- 10.09.02 **Drainage Easements:** For water drainage purposes as said drainage easements are designated on the recorded subdivision plat(s) for Lost Creek Estates
- 10.09.03 For the purpose of permitting the Declarant or its contractors and agents, to enter onto those Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Improvements within the Common Area.
- 10.09.04 Reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be



altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.

- 10.09.05 Any additional easements, if any, as shown and designated on the recorded subdivision plat for Lost Creek Estates.
- 10.09.06 The easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.
- 10.10 OWNER'S RIGHTS AND DUTIES WITH RESPECT TO UTILITIES: The rights and duties of the Owners of Lots within the Project with respect to utilities shall be as follows:
- 10.10.01 Whenever sanitary sewer, water, electric, gas, telephone, television and other utility lines, connections and services and drainage facilities are located or installed within the Project, which connections, or any portion thereof, lie in or upon or benefit Lots or Dwellings owned by other than the Owner of a Dwelling served by said connections, the Owners so served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots and/or Dwellings or to have the utility service providers enter upon the Lots and/or Dwellings in or upon or below said connections, lines, services and facilities, or any portion thereof to repair, replace and generally maintain said connections as and when necessary.
- 10.11 SHARED USE OF UTILITY EASEMENTS: Whenever sanitary sewer, water, electric, gas, telephone, television and other utility lines and services and/or drainage facilities are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling so served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot.
- 10.12 LOST CREEK ESTATES WATER ASSOCIATION INC.: Each Owner is a member of Lost Creek Estates Water Association, Inc. an Idaho non-profit corporation formed by the Declarant (hereinafter referred to as "LCWA") by virtue of being an Owner of a Lot. The water purveyor is LCWA who maintains a lease agreement with Northern Water LLC in order to provide water for domestic use and fire flows to Lost Creek Estates. Northern Water LLC owns the water system and maintains the water rights through Idaho Dept. of Water Resources. LCWA contracts with a third party operator (properly licensed by the State of Idaho) to operate the water system. LCWA establishes the rate structure.



ARTICLE 11 IMPOSITION OF MONETARY FINES

11.01 AUTHORITY OF BOARD OF DIRECTORS TO IMPOSE MONETARY FINES:

Pursuant to Idaho Code § 55-115, the Board of Directors of the Association is authorized to impose monetary fines on any Member of the Association for any violation(s) of the covenants, conditions and restrictions set forth in this Restated Declaration, as well as all ACC Rules/ACC Standards as the same may be changed from time to time.

11.02 METHOD OF IMPOSING MONETARY FINES BY THE BOARD OF DIRECTORS:

Upon its own initiative, or upon receiving a written complaint from any Member of the Association or the ACC regarding a possible violation of any covenant, condition and/or restriction of the Declaration to the ACC Rules/ACC Standards, the Board of Directors shall provide the Member alleged to be violating any covenant, condition and/or restriction of the Declaration (hereinafter said Member alleged to be violating any covenant, condition and/or restriction of the Declaration is referred to herein as the "Respondent") written notice of a meeting of the Board of Directors to deliberate the occurrence of the alleged violations and to vote for the imposition, or non-imposition, of any fine or fines relating to said violation(s).

11.02.01 The Board of Directors is not obligated to schedule and undertake a meeting based solely upon it receiving a written complaint from any Member of the Association or the ACC.

11.02.02 Said written notice shall be given to the Respondent via personal service and/or certified mail, return receipt request, at least thirty (30) days prior to said meeting. Said notice shall describe the nature of the alleged violations, shall give notice to the Respondent that monetary fines may be imposed upon the Respondent if the Board of Directors finds at the meeting that the Respondent has violated any covenant, condition and/or restriction of the Declaration and shall give notice to the Respondent that the Respondent may present evidence and testimony at the meeting. The Notice shall identify the place, time and date of the meeting. Said notice shall also provide notice to the Respondent that if the Respondent begins resolving the alleged violations prior to the meeting, that no fine shall be imposed as long as the Respondent continues to address the violation in good faith until fully resolved. Said resolution shall be completed within a reasonable time.

11.02.03 At the conclusion of the meeting, and after hearing all comments of the Respondent and any other Member or member of the ACC, the Board of Directors shall determine if the Respondent has violated any covenant, condition and/or restriction of the Declaration. If the Board of Directors finds that the Respondent has violated any covenant, condition and/or restriction of the Declaration, the Board of Directors shall thereafter vote for the imposition of a daily monetary fine



against the Respondent.

- 11.02.03.01 A majority vote by the Board shall be required prior to imposing any fine on the Respondent for a violation of any covenant, condition and/or restriction of the Declaration.
- 11.02.03.02 Any fine imposed by the Board of Directors shall be a daily fine that begins to accumulate the day after the Board of Directors votes for the imposition of the fine and shall continue to accumulate on a daily basis until the violation is completely cured. The Board of Directors may also impose an escalating fine amount that increases by a set amount and at set intervals during the pendency of the violation(s).
- 11.02.03.03 The amount of the fine(s) shall be at the sole and absolute determination of the Board of Directors based upon a majority vote of the Board of Directors at the meeting.
- 11.02.03.03.01 The Board of Directors may create a schedule of daily fine amounts for various violations of specific covenants, conditions and/or restrictions of the Declaration, including but not limited to the ACC Rules/ACC Standards as the same may be changed from time to time. Said schedule of fines may be relied upon by the Board of Directors when imposing a fine. However, the Board of Directors are not bound by the fine schedule and may impose a fine amount based upon the totality of the circumstances and said fine may be more or less than the scheduled fine amount.
- 11.02.03.03.02 No portion of any fine may be used to increase the remuneration of any member of the Board of Directors or any agent of the Board of Directors.
- 11.02.03.04 The imposition and collection of any fine shall be in addition to any assessment that may be levied against the Respondent and shall be in addition to all other remedies available to the Board of Directors.
- 11.03 COLLECTION OF FINES BY THE BOARD OF DIRECTORS: All daily fines imposed by the Board of Directors shall be immediately due and payable by the Respondent at 9:00 a.m. Pacific Standard Time on each day that a fine accumulates. In the event that the Respondent fails to immediately and timely pay in full to the Board of Directors all accumulated fines, the Board of Directors may, on behalf of the Association, file a civil action in the First Judicial District in and for the County of Kootenai, State of Idaho for the collection of the same. Any fines imposed against a Respondent shall be the personal liability of the Respondent and the Respondent shall remain personally liable for any unpaid fine even if the Respondent no longer owns or holds an interest in any Lot.



11.03.01 In conformity with Idaho Code § 55-115(4), the Board of Directors may also impose attorney's fees and costs for the imposition and collection of any fines imposed against a Respondent. However, attorney's fees and costs shall not accrue and shall not be assessed or collected by the Board of Directors until the Board of Directors Association has complied with the requirements of Section 10.A.02 *and* the Respondent has failed to address the violation by beginning to resolve the violation(s) prior to the meeting and continues to cure the violation(s) in good faith until fully resolved. A court of competent jurisdiction may determine the reasonableness of attorney's fees and costs assessed against a Respondent. In an action to determine the reasonableness of attorney's fees and costs assessed by the Board of Directors against a Respondent, the court may award reasonable attorney's fees and costs to the prevailing party.

11.04 NONMATERIAL AMENDMENT: The authorization of the Board of Directors to impose and collect fines as set forth in this Article 11 does not constitute a material amendment of the Declaration.

ARTICLE 12 USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each Lot therein is subject to the following:

12.01 SINGLE-FAMILY RESIDENTIAL USE: Except as permitted herein, no structure or building of any kind shall be erected on any Lot other than a single family dwelling for single family residential occupancy only and such uses as are customarily incidental thereto. Except those Lots which are designated as Common Area, no Lot shall be improved except with one (1) dwelling unit and each dwelling unit shall contain such minimum floor area as may be specified in this Restated Declaration or the ACC Rules/ACC Standards attached hereto as Exhibit 1 and incorporated herein by reference. Said ACC Rules/ACC Standards may be modified and/or amended from time to time by the Board based upon a majority vote thereof.

12.01.01 Approval of Use and Plans. No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article 6, above.

12.01.02 The Declarant, or in the event of Declarant's failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the Declarant, or the ACC, as the case may be, to carry out the purposes of this Restated Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Restated



Declaration. Said ACC Rules/ACC Standards may allow the construction of detached shops and guest/auxiliary living quarters and other such structures commonly associated with single family residences on any Lot. All such permitted structures shall be subject to further ACC approval as provided for herein.

- 12.01.03 Subject to Declarant's right to subdivide the real property designated on the Plat as "Unplatted Remainder A" and "Unplatted Remainder B" into additional Lots and Declarant's right to subdivide any additional real property that may be annexed into the Project into additional Lots, no Lot may be further subdivided, nor may any right, title or interest therein less than the whole be conveyed, leased or otherwise encumbered by the Owner thereof without the prior written consent of the ACC, provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefore. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdivision of a Lot within the prohibition contained herein. However, no lot line adjustment shall render any Lot ineligible for the issuance of a building permit by Kootenai County or which renders a Lot unable to comply with all of the building and setback criteria set forth in any Project Document.
- 12.01.04 No Owner shall bring any action for partition or division of any Lot. Judicial partition by sale of a single Lot owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby so long as there is no physical partition of said Lot.
- 12.01.05 If permitted by the Kootenai County Planning Department, and as approved by the ACC, guest/auxiliary living quarters may be constructed on a Lot in addition to the permitted primary single family residence.
- 12.02 COMPLIANCE WITH ALL ZONING AND LAND USE ORDINANCES: No use of any Lot shall be permitted that is in conflict with any applicable zoning and/or land use statutes, regulations or ordinances.
- 12.02.01 A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC and must comply with Kootenai County Site Disturbance and Storm Water plans before any construction is initiated. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or grassy swales should be an integral part of the grading design, Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be



allowed to drain or flow upon, across or under adjoining Lots or Common Areas, unless an express written easement for such purpose exists.

- 12.02.02 The Department of Environmental Quality for the State of Idaho and Kootenai County have required that a subdivision contain grassy swales in order to properly disperse and absorb storm water. Each Lot Owner is responsible for the proper maintenance of the grassy swales as depicted on the Plat that border Owner's lot. Grassy swales shall be part of the landscaped lawn area, and shall be maintained in conformity with the requirements of the Department of Environment Quality and/or Kootenai County, State of Idaho and/or any other governmental or quasi-governmental entity having jurisdiction over the Project.
- 12.03 NO COMMERCIAL USE: No Lot shall be used for any commercial, trade, retail, wholesale, manufacturing, professional or business use. The purchasing of a Lot with the intent to resell the same for a profit shall not be considered a commercial use.
- 12.03.01 Subject to Board approval to the contrary, no trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted on any Lot, nor shall any goods, advertising material (including signs), equipment, materials or supplies used in connection with any trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind, wherever the same may be conducted, be kept, parked, stored, dismantled or repaired on any Lot.
- 12.03.02 In its sole and absolute discretion, and upon written application by the Owner seeking said approval, the Board may permit certain types of non-intrusive home office/businesses to be conducted on a Lot. A written application from an Owner must be submitted and approval received from the Association Board before any such business related activity commences. In no case shall any signage be allowed and in no event shall any type of retail or commercial sales be permitted to take place on any Lot.
- 12.03.03 The management and harvesting of timber from the Open Space Area by Declarant, and/or the Declarant's successors in interest for sale to third parties shall not constitute a prohibited commercial use.
- 12.04 ANIMALS: Except as may expressly permitted or excluded by the Board, no animals or birds of any kind shall be raised, bred or maintained on any Lot or within any Dwelling. Three (3) or less domesticated dogs and cats may be kept out of doors on any Lot so long as they are confined to the said Lot and are not permitted to roam freely outside of the property lines of said Lot. Subject to any rule or prohibition that may be enacted by the Board at any time, an unlimited number of ordinary household pets such as domesticated dogs, cats and birds may be kept on any Lot so long as said pets are kept within the



residential Dwelling located on any such Lot and not out of doors and so long as the Board determines that said indoor pets do not constitute a nuisance and/or health hazard to any Member or Occupant.

- 12.04.01 All dogs shall be kept upon a leash or within an enclosed area within the Lot at all times.
- 12.04.02 No dogs that are a hybrid of a domestic dog breed and a wild and/or undomesticated species are permitted.
- 12.04.03 No commercial kennels and/or boarding of any animals whatsoever shall be permitted.
- 12.04.04 Owners shall prevent their pets from soiling any portion of the Property and in the event a pet does soil a portion of the Property, the Owner or person in control of such pet shall immediately clean up after the pet.
- 12.04.05 The Board may enact rules respecting the keeping of animals within the Project and may designate certain areas in which the animals not be taken or kept, or may require that specific animals not be allowed on any part of the Property.
- 12.04.06 Nothing herein shall prevent Declarant from using draft animals on or within the Open Space Area as provided for herein.
- 12.05 COMPLIANCE WITH IDAHO FISH AND GAME REQUIREMENTS: Except for bird feeders suspended above ground level or placed upon a pole, no food shall be placed on any portion of the Project for the feeding of wildlife. This applies to turkeys and any form of upland game birds. Seeds on the ground are an attractant to bears and other foragers and can create an unwelcome mix of wildlife with humans. Feeding wildlife can also lead to spreading of wildlife disease, over-population and extension of wildlife habitat into human living spaces. Bird seed feeders are discouraged, but, at the least, they should be regularly cleaned and the ground underneath them should also be kept clean so as not to attract foraging animals. Garbage shall not be left outside, except during the day of scheduled solid waste pick-up. Bear resistant containers are encouraged for the use of solid waste disposal. Containers are available for purchase or lease from the solid waste disposal vendor: Coeur Garbage. Pets should be leashed or contained and not allowed to chase wild animals. When observing wildlife, maintain a safe distance. Do not disturb their normal activities. Resist the temptation to "save" baby animals, as their parent(s) are generally nearby. Animals that appear injured may simply have a pulled muscle, bruised bone, or torn tendon. And, just like humans, the injury will heal over time. Wild animals are very resilient and heal quickly. There is no reason to "put these animals out of their misery."



- 12.06 **TEMPORARY STRUCTURES:** No trailer, camper, motor home, tent, shack or other out buildings or structures of a temporary nature shall be used as a residence. As used in this paragraph, the term "residence" shall mean substantially continuous occupancy for any period of twenty-four (24) hours or longer.
- 12.07 **NO HUNTING OR DISCHARGE OF FIREARMS OR OTHER WEAPONS:** Hunting, trapping, target practice and any type of discharge of any firearm or other weapon within any area of any Lot or the Property as a whole are all strictly prohibited.
- 12.08 **LOT MAINTENANCE:** Each Lot and all improvements and landscaping thereon shall be maintained in a clean, neat and orderly condition and in good repair at all times. All rubbish, trash and garbage shall be regularly removed from the Project and shall not be allowed to accumulate on any portion thereof. Trash, garbage and other waste shall kept only in sanitary animal proof containers that shall be kept screened and concealed from the view of all other Lots, Dwellings and Common Areas and public rights-of-way.
- 12.09 **NUISANCES:** No noxious, illegal or offensive activities shall be carried on in any Lot, or any part or portion of the Project, nor shall anything be done thereon that may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same or which will impair the structural integrity of any improvement or building. Every Owner hereby waives any right to maintain any farming/agricultural operation on the Owners' Lot that is, or may become, a protected activity under Title 22, Chapter 45 of the Idaho Code (Idaho Right to Farm Act).
- 12.10 **VEHICLE AND EQUIPMENT RESTRICTIONS:** No utility trailer, boat trailer, camper or other trailer, motor home, mobile home, commercial vehicle, bus, truck (other than standard size pickup trucks or smaller), inoperable automobiles, boats or similar equipment, and no vehicle that is in an extreme state of disrepair, or part(s) thereof, shall be permitted to remain on any Lot or any portion of the Project unless placed within a fully enclosed garage or otherwise screened from view from other lots or from public roads. This restriction does not apply to temporary use such as the loading and unloading of passengers or personal property. No noisy, off-road or unlicensed vehicles shall be maintained or operated upon the Property. Operation of any motorized vehicle in the Open Space Area is prohibited (except as expressly permitted by this Restated Declaration for maintenance of the recreational trail by the Association). Parking of boats, trailers, motorcycle, trucks, truck/campers and like equipment shall not be allowed on any public right of way or upon any Common Areas or Common Easements. If any of the provisions of this paragraph are violated, the Board may employ a tow truck or other device to remove the vehicle after prior written notice to the Owner of the subject vehicle and such Owner shall be responsible for any charges arising there from.



- 12.10.01 The use, parking and storing of all vehicles, including but not limited to automobiles, boats, trucks, bicycles, snowmobiles and motorcycles, shall be subject to ACC rules, which may prohibit or limit the use thereof within Lost Creek Estates, provide parking regulations and other rules regulating same. No vehicle shall be parked for more than twelve hours on any private road or public right of way or upon any Common Areas or Common Easements. No vehicle shall be parked for more than one week on any private Lot unless in an enclosed garage or otherwise screened from view. The Board, upon request, may approve in writing longer-term temporary parking on any private road or upon any Common Areas or Common Easements and on private Lots for guest parking or other special circumstances. No vehicle shall be parked at any time in a way that impedes or blocks access to any driveway, any private road, any public right of way or upon any Common Areas or Common Easements.
- 12.11 SIGNS: No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, and reasonably sized vacancy sign or For Sale sign thereon. Signs advertising the name of the Builder and the name of the institution providing financing therefore may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in Lost Creek Estates shall be permitted, provided the same is approved by the ACC prior to installation.
- 12.12 LEASING OF LOTS: Any Owner may lease his Lot to any tenant or lessee under any terms and conditions except that no lease or rental agreement shall relate to less than the whole of any Lot. All leases and rental agreements shall be subject to the terms and conditions of this Restated Declaration, any Project Documents and any and all other restrictions or regulations affecting the Lot being rented. Any failure of any tenant or lessee to comply with the terms of the Project Documents shall be deemed to be in default under the lease, whether or not it is expressed therein, and the Owner and the Owner's tenant/lessee shall be jointly and severally liable for any costs incurred that result from the tenant or lessee's actions.
- 12.12.01 The long-term rental of any Lot shall not be considered a commercial use. The rental of a Lot for at least six (6) continuous calendar months to the same tenant shall be considered a long-term rental. The rental of a Lot for less than six (6) continuous calendar months to one or more tenants shall not be considered a long-term rental and shall be considered a prohibited commercial use.
- 12.13 COMPLETION OF CONSTRUCTION: Any improvement erected or placed on any Lot shall be completed as to external appearance, including finished painting, within three hundred and sixty five (365) days from the date of commencement of construction.



- 12.14 **BUILDING SETBACKS:** All Dwellings and other structures to be placed upon any Lot shall strictly comply with all applicable building set back requirements imposed by Kootenai County and by the ACC.
- 12.15 **EXTERIOR ENERGY DEVICES:** No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.
- 12.16 **MAILBOXES:** All mailboxes shall be in accordance with ACC standards.
- 12.17 **LANDSCAPING:** The following provisions shall govern the landscaping of Lots within Lost Creek Estates.
- 12.17.01 The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided for herein. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. Landscaping of a Lot shall be in accordance with the approved plan.
- 12.17.02 All landscaping shall be installed within sixty (60) days after completion of the Dwelling unit constructed on said Lot, with a reasonable extension allowed for weather.
- 12.17.03 In the spirit of water conservation and as part of an agreement with Kootenai Environmental Alliance the following rules and control measures will be established and maintained by the Association:
- 12.17.03.01 Each Owner shall retain at least 25% of native vegetation on their property and limit the size of irrigated lawns to $\frac{1}{4}$ of an acre;
- 12.17.03.02 Moisture sensors shall be installed as an integral part of the constructed automatic irrigation systems on each Owner's property;
- 12.17.03.03 Irrigation will not be allowed during the high evaporation times between 10:00 A.M and 8:00 P.M.. on any watering day. The Association will establish and enforce an odd only or even only watering schedule;
- 12.17.03.04 Owners are encouraged to use landscape irrigation companies that are from a recommended list available from Northern Water LLC;
- 12.17.03.05 Owners are encouraged to supplement existing soils, as necessary, to enhance the moisture retention characteristics of the soils that will be used in the irrigated



portions of each lot in the development;

12.17.03.06 Xeriscaping features for landscaping that preserve water use are encouraged. Reputable landscape firms are familiar with these techniques.

12.18 FENCES: No fence, wall or other perimeter marking devise of any kind shall be constructed on a Lot unless approved by the ACC prior to construction or installation. It is the goal of the ACC to minimize fences, with separation between Lots to be established by the utilization of natural vegetation.

12.18.01 In the event that a fence, wall or other perimeter marking devise is approved by the ACC, said approved structures shall be well constructed of suitable and approved materials and shall be artistic in design and shall not, in the opinion of the ACC, be offensive to the other Owners within the Project, and shall be first approved by the ACC.

12.19 RADIO AND TELEVISION ANTENNAS: No exterior radio antenna, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

12.19.01 In no event shall "citizens band," "ham radio" or other similar transmission and transmission structures be permitted on the Property.

12.20 LIGHTING: Exterior lighting and interior light reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot(s) and shall be in accordance with the ACC Rules/ACC Standards.

12.21 CLOTHESLINES: No exterior clotheslines shall be erected or maintained and there shall be no outside laundry or drying of clothes.

12.22 MISCELLANEOUS ARCHITECTURAL/USE PROVISIONS:

12.22.01 All residential structures shall have a private attached three (3) bay garage.

12.22.02 All residential structures shall be for single-family occupancy only.

12.22.03 No structures, i.e., barns, sheds, detached garages, shops, etc., shall be constructed on any Lot until the construction of a single family residential structure begins on said Lot.

12.22.04 No structures shall be permitted to be placed upon any Lot without first obtaining prior written approval of the ACC as provided herein.



- 12.22.05 The use of any and all exterior building materials, including but not limited to shingles, siding, stone work, concrete, asphalt, etc. must be approved in writing by the ACC prior to the installation of the same.
- 12.22.06 No mobile home or modular home, whether on a foundation or otherwise, shall be permitted on any Lot as a residence.
- 12.22.07 No trailer, camper, motor home, tent, shack, garage, barn, or other outbuilding, or any structure of a temporary character erected or placed on any parcel, shall at any time be used as a residence.
- 12.22.08 All exterior roofing material, including color, size, material, and texture, must be approved in writing by the ACC prior to the installation of the same.
- 12.22.09 All improvements and landscaping shall be in compliance with all applicable setback requirements imposed by any governmental or quasi-governmental agencies having jurisdiction over the Property and the improvements thereon.
- 12.22.10 The work of construction, altering or repairing any structure shall be diligently prosecuted from its commencement until completion. Any dwelling or other structure erected or placed on any Lot shall be completed as to external appearance, including finished painting and front and side yard landscaping as soon as reasonably practicable and in no event more than three hundred sixty five (365) days year from the date of commencement of construction. All construction shall conform to requirements established by any governmental or quasi-governmental agency having jurisdiction over the property.
- 12.23 MAINTENANCE: The following provisions shall govern the maintenance of Lots and all Improvements thereon:
- 12.23.01 Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- 12.23.02 All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- 12.23.03 All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view, except



for trash removal.

- 12.23.04 No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set back area along a public or private right of way or otherwise kept in the open or exposed to public view.
- 12.23.05 Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Restated Declaration.
- 12.23.06 In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition as determined by the ACC, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's/materialman's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Special Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth herein.
- 12.23.07 After completion of the Initial Construction and in the event of the reconstruction, remodeling, repainting or refinishing of a Building within Lost Creek Estates, in whole or in part, exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance.
- 12.24 DRAINAGE: There shall be no interference with the established drainage pattern over any portion of the property unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or as contemplated by the Plat.
- 12.25 ECOLOGICAL CONTROL: Under no circumstances shall the Owner of any Lot:
- 12.25.01 Obstruct, dam or in any way divert water from a naturally flowing spring, creek or irrigation ditch;



- 12.25.02 Disturb the natural soil, trees, or grasses unless the Owner immediately thereafter constructs Improvements thereon, or paves or gravels or re-plants such disturbed areas with ground cover approved by the ACC.
- 12.26 NO WARRANTY OF ENFORCEABILITY: While Declarant has no reason to believe that any restrictive covenants contained in this Article or elsewhere in this Restated Declaration or any of the Project Documents may be invalid or unenforceable in whole or in part, for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance upon any one or more of such restrictive covenants shall assume all risk of the validity and enforceability thereof and, by acquiring the Lot agrees to hold Declarant and all of Declarant's agents, attorneys, consultants and employees, harmless therefrom.
- 12.27 EXEMPTION OF DECLARANT: Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to Common Areas to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Property owned or controlled by the Declarant, or to alter the foregoing and its development plans and designs, or construct additional improvements as the Declarant deems advisable in the course of development of the Project. This Restated Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain ACC approval of any improvements constructed or placed within the property by the Declarant in connection with the development of Lost Creek Estates, but this exemption shall not apply to a building(s) constructed by the Declarant on a lot owned by the Declarant.
- 12.28 SEPTIC SYSTEM: With the exception of proposed Lots 1 and 2, of Block 6 of Phase II of Lost Creek Estates (i.e., the planned subdivision of the parcel of real property designated on the Plat as "Un-platted Remainder A"), all residential homes constructed within the Lost Creek Estates subdivision, are required to install an additional waste water treatment system that meets Idaho Department of Environmental Quality ("DEQ") requirements and requires an annual inspection and reporting to the Panhandle Health Department (PHD). Each Owner shall enter into a "Maintenance Inspection Agreement", as set forth in **Exhibit 2**, attached hereto and by this reference incorporated herein. Each Owner will be responsible for all of the fees charged by the service provider. In the event that Owner fails to pay such fees, or perform the required maintenance and inspection, the Association shall have the right to pay the same, perform the maintenance work required, and such charges shall constitute a lien upon the Owner's property by the Association,



which the Association may foreclose upon at Owner's expense, including payment of reasonable attorney's fee and court costs. If Owner fails to perform the required maintenance and inspection, or pay the required fees, the contracted service provider shall inform PHD of the same. All septic systems installed shall be constructed, maintained and monitored pursuant to the rules and regulations of the State of Idaho and PHD.

Appropriate measures shall be taken by Owner to prevent erosion in any septic system

12.29 As required by Idaho DEQ, it is required that each individual homeowner is responsible and required to have perpetual Operation & Maintenance (O&M) on their individual AdvanTex® Extended Treatment Systems, also known as "Sewer Systems". The initial visit should be scheduled with the service provider (R.C. Worst) within 3 to 9 months after occupancy. There after it is required to have one (1) visit per year, for the life of the system. The cost, at the time of this writing, is \$275 per visit. This amount covers labor, mileage, and equipment inspection, taking samples of effluent, transportation to an independent third party lab, and testing of the sample. This fee will also cover the required reporting to the local Health District.

12.29.01 Required repairs and equipment replacements will be done on a time and material basis based on standard hourly rate and market material pricing.

12.29.02 In the event that the system failed a required sampling, the owner will be responsible for a return site visit and testing at the standard rate of \$275 per visit.

Sewer System Components

The sewer systems installed in this development must contain a primary septic tank, extended treatment system and transport line to the Pan Handle Health District approved individual drain field. The systems components must be sized accordingly to the proposed home size, and will include, but not limited to, Orenco Systems®, Inc. AdvanTex® Treatment System sized for 1-4 bedroom homes, Orenco Systems®, Inc. AdvanTex® Treatment sized for 5-6 bedroom homes, and Orenco Systems®, Inc. AdvanTex® Treatment Systems sized for 4-5 bedroom homes that will include a transfer pump, if required.

Specified Sewer System Equipment

The following equipment must be used as called out in Engineering and has been designed for this development:

Sewer System

1. Orenco Systems®, Inc. AdvanTex® Extended Treatment System for a 5-6 bedroom home to include 1 primary and 1 recirculation/blend Orenco Systems®, Inc. FRP septic tanks, AX20 Mode 3a treatment unit, Orenco Systems®, Inc. 30 GPM



treatment unit dosing pump, Biotube Pump Vault, Orenco Systems®, Inc. recirculating splitter valve, Orenco Systems®, Inc. VeriComm Control Panels to allow remote monitoring, alerting and system adjustments (requires common house phone line connection at panel), and necessary fittings associated with installing the system.

2. Orenco Systems®, Inc. AdvanTex® Extended Treatment System for a 5-6 bedroom home to include 1 primary and 1 recirculation/blend Orenco Systems®, Inc. FRP septic tanks, AX20 Mode 3b treatment unit, Orenco Systems®, Inc. 30 GPM treatment unit dosing pump, Biotube Pump Vault, Orenco Systems®, Inc. recirculating splitter valve, Orenco Systems®, Inc. VeriComm Control Panels to allow remote monitoring, alerting and system adjustments (requires common house phone line connection at panel), AFS effluent pump basin and pump (if transport pump is needed) and necessary fittings associated with installing the system.
3. Orenco Systems®, Inc. AdvanTex® Extended Treatment System for a 1-4 bedroom home to include a 2 compartment primary Orenco Systems®, Inc. FRP primary treatment tank, AX20 Mode 3a treatment unit, Orenco Systems®, Inc. 30 GPM treatment unit dosing pump, Biotube Pump Vault, Orenco Systems®, Inc. recirculating splitter valve, Orenco Systems®, Inc. VeriComm Control Panels to allow remote monitoring, alerting and system adjustments (requires common house phone line connection at panel), and necessary fittings associated with installing the system.
4. Orenco Systems®, Inc. AdvanTex® Extended Treatment System for a 1-4 bedroom home to include a primary Orenco Systems®, Inc. FRP primary treatment tank, AX20 Mode 3b treatment unit, Orenco Systems®, Inc. 30 GPM treatment unit dosing pump, Biotube Pump Vault, Orenco Systems®, Inc. recirculating splitter valve, Orenco Systems®, Inc. VeriComm Control Panels to allow remote monitoring, alerting and system adjustments (requires common house phone line connection at panel), AFS effluent pump basin and pump (if transport pump is needed) and necessary fittings associated with installing the system.

* Each system will include necessary components to prevent freezing, such as insulated lids and heaters in the control panels.



ARTICLE 13 INSURANCE

The Board shall cause to be obtained and maintained the following policies of insurances:

13.01 **HAZARD INSURANCE:** A “master” or “blanket” type of hazard insurance policy or policies with respect to the Common Areas, the Open Space Area and the Common Easements, protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard “all risk” endorsement. If available, the hazard policy shall cover one hundred percent (100.00%) of the current replacement costs of all insured facilities, but excluding land, foundations, excavations or other items normally excluded from insurance coverage. Additionally, the policy may include the following special endorsements and provisions:

- 13.01.01 Agreed amount and inflation guard endorsement, when available;
- 13.01.02 Construction code endorsements;
- 13.01.03 The requirement that any Insurance Trust Agreement will be recognized;
- 13.01.04 A waiver of any right of subrogation against Lot Owners;
- 13.01.05 A requirement that the insurance will not be prejudiced by any acts or omission of individual Lot Owners that are not under the control of the Association; and,
- 13.01.06 An indication that the policy is a primary policy, even if a Lot Owner has other insurance covering the same loss.
- 13.01.07 The policy shall name the Association (for the use and benefit of the individual Owners), as the named insured and shall contain the standard mortgage clause, naming the holders of first mortgaged (and their successors and assigns) as the mortgagees.
- 13.01.07.01 As the owner of the timber located, or to be located on the Open Space Area, the Declarant shall be named as a loss payee for any hazard in insurance the Board is required to obtain for the Open Space Area.

13.02 **LIABILITY INSURANCE:** A comprehensive general liability insurance policy covering all Common Areas, Common Easements, the Open Space Area and all public ways and other areas that are under the supervision of the Association. The liability policy shall provide coverage for at least two million dollars (\$2,000,000.00) for bodily injury and property damage for any single occurrence, covering bodily injury and property damage



resulting from the operation, maintenance or use of said areas, and any legal liability resulting from lawsuits related to employment contracts to which the Association may be a party.

- 13.02.01 As the owner of the timber located, or to be located on the Open Space Area, the Declarant shall be named as a loss payee for any general liability insurance the Board is required to obtain for the Open Space Area.
- 13.03 FIDELITY BONDS: If required by a lender under one of the programs described herein, blanket fidelity bonds for anyone who either handles or is responsible for funds that are held or administered by the Association, whether or not they receive compensation for such services. Any management agent that handles funds for the Association shall also be covered by its own fidelity bond. The bond shall cover the maximum funds that will be in the custody of the Association or its agent at any time while the bond is in force. Additionally, the fidelity bond coverage must at least equal the sum of three (3) months assessments of all Lots in the Project, plus the Associations's reserve fund.
- 13.04 LENDER'S REQUIREMENTS: Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and bond requirements for similar projects established by The Mortgage Corporation (TMC), the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Veterans Administration (VA), and/or the Federal Housing Administration (FHA) so long as any of them shall be a holder, insurer or guarantor of a mortgage encumbering a Lot within the Project (or an actual Owner of a Lot), except to the extent such coverage is not available or has been waived in writing by any of said entities, as applicable.
- 13.05 WAIVER OF CLAIM 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 and the 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 and of said persons.
- 13.06 RIGHT AND DUTY OF OWNERS TO INSURE: It is the responsibility of each Owner to provide hazard insurance on that Owner's Dwelling, and on that Owner's personal property and upon all other property and improvements within that Owner's Lot. This insurance policy must be in effect prior to construction of any improvement on Owner's Lot. Nothing hereby shall preclude any Owner from carrying any public liability insurance as that Owner deems desirable to cover that Owner's individual liability for damage to person or property occurring within that Owner's individual Lot or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such



other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by that Owner to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

- 13.07 NOTICE OF EXPIRATION REQUIREMENTS: If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated or expired by their terms, without thirty (30) days prior written notice to the Board, the Declarant, Owners and their respective first mortgagees (provided that such person other than the Board have filed written requests with the carrier for such notice) and every other person in interest who requests such notice to the insurer.
- 13.08 INSURANCE PREMIUMS: Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. That portion of the Regular Assessments necessary for the required insurance premium shall be separately accounted for by the Association in the reserve fund to be used solely for the payment of premiums of required insurance as such premiums become due.
- 13.09 TRUSTEE FOR POLICIES: The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interest of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under such policies as provided for in this Restated Declaration shall be paid to the Board as Trustee. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided for herein. Insurance proceeds shall be used by the Association for the repair or replacement of the Property for which the insurance was carried or otherwise disposed of as provided by this Restated Declaration. The Board is hereby granted the authority to negotiate loss settlement with the appropriate insurance carrier, with participation, to the extent they desire, of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Restated Declaration. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.



ARTICLE 14

DESTRUCTION OF IMPROVEMENTS

- 14.01 **DAMAGE TO COMMON AREAS AND/OR COMMON EASEMENTS:** The Association shall restore and repair any element of the Common Area, the Common Easements, public ways and other areas that are under the supervision of the Association that is/are damaged or destroyed as promptly as possible and said restoration/repair shall be done in a manner that repairs/restores said damaged/destroyed element to its former condition. The obligation of the Association as provided for herein shall only apply to those elements of said areas for which the Association has an affirmative duty to maintain and repair as set forth in the Project Documents. The proceeds of any insurance maintained pursuant to the terms contained herein hereof shall be used for such purpose, unless otherwise provided for herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as is practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy an Extraordinary Assessment to collect any expense of restoration and repair not covered by insurance, and to proceed as quickly as practicable with the restoration and repair.
- 14.02 **DAMAGE TO LOTS:** In the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling(s) to restore and repair the same to its/their former condition, as promptly as possible, under the supervision of the Board. The proceeds of any insurance maintained by the Owner for the reconstruction or repair shall be made available for that purpose. The Dwelling(s) shall be reconstructed or rebuilt substantially in accordance with the original construction plans, or with such new plans as may be approved by the Architectural Committee as provided in Article 7, above. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated costs of the restoration and repair, the Owners(s) of the Dwelling(s) shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event that more than one Dwelling is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repairs and restoration of each Dwelling.
- 14.03 **ALTERNATE PLANS FOR RESTORATION AND REPAIR:** The Association shall have the right, by a vote of two-thirds (2/3) of the voting power of each class of membership of the Association, to make alternate arrangements respect in the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modifications of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owners whose Dwelling has been physically damaged (to the extent of any



modifications required to such Dwelling).

- 14.04 APPRAISAL OF DAMAGE: In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated costs of repair or the allocations referred to in this Restated Declaration, the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Kootenai County, Idaho to appraise the damage and establish allocation amounts for the various damaged portions of the Property. Within twenty (20) days after the selection of the appraisers, a majority of the appraisers shall set the estimates and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15.00%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The costs of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by a Special Assessment assessed against the Lot(s) of the Owner(s) whose Property has been damaged.
- 14.05 INTERIOR DAMAGE: Restoration and repair of any damage to the interior of any individual Dwelling, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the sole and individual expense of the Owner of the Dwelling so damaged.

ARTICLE 15 EMINENT DOMAIN

- 15.01 TAKING OF LOTS: In the event of any taking of any Lot in the Project by eminent domain, including actual condemnation or sale under threat of condemnation, the Owner of such Lot shall be entitled to receive the award for such taking, subject to the rights of any mortgagees thereof and subject to any unpaid Assessments owed to the Association. After the acceptance of the award, the Owner and any mortgagee of the Lot shall be divested of all interest in the Project if the Owner shall vacate the Lot as a result of such taking. The remaining portion of the Project shall be resurveyed, if necessary, and this Restated Declaration shall be amended to reflect such taking and to readjust the interests of the remaining Owners in the Project.
- 15.01.01 In the event of taking by eminent domain of more than one Lot at the same time, the Board shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by a Court.



15.02 **TAKING OF COMMON AREAS AND/OR COMMON EASEMENTS:** In the event of any taking of all or any portion of the Common Areas and/or Common Easements by eminent domain, including the actual condemnation or sale under threat of condemnation, the Association shall be entitled to receive the award for such taking. It shall be the duty of the Association to make arrangements for the providing of alternative Common Areas and/or Common Easements as soon as is practical. The proceeds of the condemnation award shall be used for such purpose, unless otherwise provided for herein.

15.02.01 The Association is authorized to levy an Extraordinary Assessment to collect any amounts necessary to provide alternative Common Areas and/or Common Easements, and to proceed forthwith with the necessary arrangement.

ARTICLE 16 RIGHTS OF MORTGAGEES

16.01 **LENDER INDUCEMENTS:** In order to induce various public and private lenders and lending agencies including, but not limited to The Mortgage Corporation (TMC), the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Veterans Administration (VA), and/or the Federal Housing Administration (FHA), to participate in the financing of the sale of the Lots within the Project, this Article 14 is included in this Restated Declaration. To the extent these added provisions, pertaining to the rights of lenders and lending agencies, conflict with any other provisions of this Restated Declaration or any other of the Project Documents, the terms and conditions of this Article 14 shall control.

16.01.01 For purposes of this Article, the terms “Eligible Holder” and “Eligible Insurer or Guarantor” refer to a holder, insurer or guarantor of any first mortgage on a Lot, who has provided a written request to the Association, to be notified of any proposed action requiring the consent of a specified percentage of such holder, insurer or guarantors.

16.01.02 Notwithstanding any other provision of any Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any mortgagee of a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage, such Lot shall remain subject to the Project Documents.

16.02 **FIRST MORTGAGEE’S NON-LIABILITY FOR ASSESSMENTS:** Each first mortgagee of a mortgage encumbering any Lot, which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued after the time such mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Lot.



16.03 FIRST MORTGAGEE'S RIGHTS: First mortgagees, upon written request, shall have the right to:

- 16.03.01 Examine the books and records of the Association during normal business hours;
- 16.03.02 Require from the Association the submission of financial reports and other financial data as audited in the discretion of the Board;
- 16.03.03 Attend any and all meetings of the Members;
- 16.03.04 Receive written notice of all meetings of the Members; and,
- 16.03.05 Designate, in writing, a representative who may attend any and all of the meetings of the Members.

16.04 OWNER'S AUTHORIZATION TO RELEASE INFORMATION: Each Owner hereby authorizes the first mortgagee of a first mortgage on his Lot to furnish information to the Board concerning the status of the first mortgage and loan that it secures.

16.05 LIMITATIONS ON RIGHT TO AMEND: Lot Owners shall have the right to amend the Project Documents in accordance with Article 15, below, subject to the rights of Eligible Holders to participate in the amendment process as provided for in this Paragraph.

16.06 MATERIAL AMENDMENTS: Amendments of a material nature shall be agreed to by:

- 16.06.01 The Declarant, so long as the Declarant owns any Lot in the project;
- 16.06.02 Lot Owners representing at least seventy five (75.00%) of the total allocated votes in the Association, excluding votes held by the Declarant; and,
- 16.06.03 Eligible Holders representing at least fifty one percent (51.00%) of the votes of Lots that are subject to mortgages held by Eligible Holders.

16.07 WHAT CONSTITUTES A MATERIAL AMENDMENT: A change to any of the provisions governing the following would be considered as material:

- 16.07.01 Voting Rights;
- 16.07.02 Increases in Assessments that raise the previously assessed amount by more than twenty percent (20.00%), assessment liens, or the priority of assessment liens;
- 16.07.03 Responsibility for maintenance and repairs;



- 16.07.04 Reallocation of rights in the Common Areas and/or Common Easements;
- 16.07.04.01 The annexation of additional real property into the Project **by the Declarant** and/or the addition of additional Common Areas, including additional Open Space, **shall not** be considered a material amendment.
- 16.07.05 Convertibility of Lots into common area or vice-versa;
- 16.07.06 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- 16.07.06.01 The annexation of additional real property into the Project **by the Declarant** and/or the addition of additional Common Areas, including additional Open Space, **shall not** be considered a material amendment.
- 16.07.07 Hazard or fidelity insurance requirements;
- 16.07.08 Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
- 16.07.09 A decision by the Association to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Holder;
- 16.07.10 Restoration or repair of the Project, after damage or condemnation, in a manner other than specified in the Project Documents; and/or
- 16.07.11 Any provisions that expressly benefit mortgage holders, insurers or guarantors.
- 16.08 RIGHT TO TERMINATE: Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs shall be agreed to by:
 - 16.08.01 The Declarant, so long as the Declarant owns any Lot in the project;
 - 16.08.02 Lot Owners representing at least seventy five percent (75.00%) of the total allocated votes in the Association, excluding votes held by the Declarant; and,
 - 16.08.03 Eligible Holders representing at least fifty one percent (51.00%) of the votes of Lots that are subject to mortgages held by Eligible Holders.
- 16.09 VOTE REQUIREMENT FOR TERMINATION: If the Lot Owners are considering termination of the legal status of the Project for reasons other than those due to substantial destruction or condemnation, approval must be obtained from Eligible Holders



representing at least fifty one percent (51.00%) of the votes of Lots that are subject to mortgages held by Eligible Holders.

- 16.10 APPROVAL OF TERMINATION BY AN ELIGIBLE HOLDER: Approval of an Eligible Holder under this Article shall be assumed when the Eligible Holder fails to submit a response to any written proposal for an amendment or for termination of the legal status of the Project, within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by verified mail or registered mail, postage prepaid, return receipt requested.
- 16.11 ELIGIBLE HOLDER/INSURER'S RIGHT TO NOTICE: Each Eligible Holder and each Eligible Insurer or Guarantor, upon written request therefore, is entitled to timely written notice of the following:
- 16.11.01 Any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its mortgage;
 - 16.11.02 Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Lot on which the Eligible Holder holds the mortgage;
 - 16.11.03 A lapse, cancellation or material modification of any insurance policy maintained by the Association; and/or,
 - 16.11.04 Any proposed action that requires the consent of a specified percentage of Eligible Holders.
- 16.12 BOARD AGREEMENTS: In addition to the foregoing, the Board shall have the power and authority, without the Vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, TMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering any Lots.
- 16.13 OWNER ACKNOWLEDGMENT: Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Lots, if such lending agencies approve the Property as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.



ARTICLE 17

DURATION AND AMENDMENT

- 17.01 **DURATION:** This Restated Declaration shall continue in full force and effect for a term of thirty (30) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded that meets all of the requirements of a material amendment as set forth herein, above.
- 17.02 **AMENDMENT PROCEDURES:** Notice of the subject matter of a proposed amendment to this Restated Declaration, in reasonably detailed form, shall be included in the notice of any meeting of the Association at which the proposed amendment may be proposed by an Owner at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than seventy five percent (75.00%) of the total voting power of the Association. Notwithstanding the foregoing, the following special voting provisions shall apply:
- 17.02.01 Amendments of a material nature shall be enacted in compliance with the provisions of this Restated Declaration; and,
- 17.02.02 The specified percentage of the voting power necessary to amend a specified provision of this Restated Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision.
- 17.02.03 A certificate signed by at least two (2) officers of the Association, that the record Owners of the required number of Lots, and the required number of first mortgagees, where applicable, have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years.

ARTICLE 18

DECLARANT'S RIGHTS AND RESERVATIONS

- 18.01 **GOAL OF DECLARANT:** Declarant is undertaking the work of constructing certain improvements to the Project and the establishment of a residential subdivision project. The completion of that work and the sale, rental and other disposal of the Lots is essential to the establishment and welfare of the Project as a residential subdivision. In order that said work may be completed and said Property be established as a fully occupied residential project as rapidly as possible, nothing in this Restated Declaration shall be understood or construed to:
- 18.01.01 Prevent Declarant, its contractors or subcontractors from doing on the Property or



within any Lot, whatever is reasonably necessary or advisable in connection with the completion of the work, including but not limited to the operation of any heavy equipment; or

- 18.01.02 Prevent Declarant or its representative from erecting, constructing and/or maintaining on any part or parts of the Property such structures or signs as may the Declarant deem necessary for the conduct of its business of completing said work and establishing the Property as a residential subdivision project and of disposing of the Lots by sale, lease or otherwise; or
- 18.01.03 Prevent Declarant from maintaining such sign or signs on any portion of the Property as Declarant deems necessary for the sale, lease or disposition thereof.
- 18.02 APPLICATION OF DECLARATION: So long as Declarant, its successors-in-interest and/or assigns, owns one or more of the Lots established and described in this Restated Declaration, and except as otherwise specifically provided for herein, Declarant, its successors-in-interest and/or assigns shall be subject to the provisions of this Restated Declaration.
- 18.03 DECLARANT'S RIGHT TO ANNEX AND SUBDIVIDE ADDITIONAL REAL PROPERTY INTO PROJECT:
 - 18.03.01 The two (2) parcels of real property currently owned by Declarant that are designated on the Plat as "Unplatted Remainder A" and Unplatted Remainder B" (said two (2) parcels of remainder land property being, respectively, the second and third development phases of the Project) are currently incorporated into the Project and all Lots subdivided out of said two (2) parcels of remainder land shall be encumbered and benefitted by this Restated Declaration and shall be entitled to the use and benefit of the Common Areas as provided for herein.
 - 18.03.01.01 Until such time as said two (2) parcels of remainder land are further subdivided into Lots, no assessments shall be levied against said two (2) parcels of remainder land.
 - 18.03.01.02 The Association shall be required to accept any such new Common Areas, including any additional Open Space Areas, created, dedicated or otherwise set aside by the Declarant in the subdivision of said two (2) parcels of remainder land and the Association shall responsible for the maintenance of the same as provided for herein.
 - 18.03.01.02.01 The Members of the Association shall be entitled to use any new Common Areas, including any additional Open Space Areas, created, dedicated or otherwise set aside by the Declarant in the subdivision of said two (2)

parcels of remainder land as provided for herein.

- 18.03.02 So long as the Declarant owns any legal or equitable right, title or interest in any portion of the Project as described herein, including but not limited to any rights to the timber located on Tract C (the Open Space Area), Declarant shall have the unilateral right to annex additional parcels of real property into the Project, which right may be exercised on one (1) or more times by Declarant so long as Declarant owns any legal or equitable right, title or interest in any portion of the Project as described herein, including but not limited to any rights to the timber located on Tract C (the Open Space Area).
- 18.03.02.01 All such real property annexed into the Project shall be shall be encumbered and benefitted by this Restated Declaration and shall be entitled to the use and benefit of the Common Areas as provided for herein. All of the Lots of the Project shall be entitled to use any Common Areas, including any additional Open Space Areas, created, dedicated or otherwise set aside by the Declarant in the additional real property so annexed into the Project.
- 18.03.02.02 The Association shall be required to accept any such new Common Areas, including any additional Open Space Areas, created, dedicated or otherwise set aside by the Declarant in the additional real property so annexed into the Project and the Association shall responsible for the maintenance of the same as provided for herein.
- 18.03.02.02.01 The Members of the Association shall be entitled to use any new Common Areas, including any additional Open Space Areas, created, dedicated or otherwise set aside by the Declarant in any real property annexed into the Project by Declarant as provided for herein.
- 18.03.03 To effectuate said annexation of additional parcels of real property into the Project, Declarant shall provide written notification to the Association of Declarant's annexing additional real property into the Project and said notification shall provide a good and sufficient legal description of the real property so annexed. Said notice shall also be recorded in the public records of the County of Kootenai, State of Idaho and said annexation shall be effective upon the recordation of said notice. The real property so annexed may be thereafter further subdivided into Lots by the Declarant.
- 18.03.03.01 Until such time as the annexed real property is further subdivided into Lots by the Declarant, no assessments shall be levied against said annexed real property. However, if said annexed real property is comprised of two (2) or more buildable parcels of property at the time of the annexation, each of said buildable parcels of property shall be assessed as a Lot as provided for herein, including any



assessment exemption provided to the Declarant as provided for herein. Said assessment of the annexed property as a Lot shall not prohibit Declarant from further subdividing said annexed buildable parcels of property.

- 18.03.03.01.01 The term “buildable parcel” means a parcel of real property that qualifies for the issuance of a residential building permit or setting permit by the Kootenai County Planning and Building Department. **The eligibility of the issuance of a setting permit shall not constitute any type of waiver of the covenant restricting mobile home or modular homes and no mobile homes or modular homes shall be placed, erected or constructed on portion of the Project, including any real property annexed into the Project by the Declarant.**
- 18.03.04 The Declarant shall be entitled to reserve unto Declarant any and all rights to any and all timber located, or to be located, within any real property annexed into the Project in conformity with Article 9, above.
- 18.04 TERMINATION OF DECLARANT’S OBLIGATIONS: In the event that Declarant shall convey all of its right, title and interest in and to the Project to any third party, then in that event, Declarant shall be fully and absolutely relieved of any performance of any further duty or obligation hereunder and such third person shall be obligated to perform all such duties and obligations of the Declarant.

ARTICLE 19 GENERAL PROVISIONS

- 19.01 ENFORCEMENT: The Association, acting through the Board and/or any Owner and/or any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations liens, and charges now or hereafter imposed by this Restated Declaration, and in such action shall be entitled to recover costs and reasonable attorney’s fees as are ordered by the Court. Failure by any such person, agency, municipality or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.
- 19.02 INVALIDITY OF ANY PROVISION: Should any provision of this Restated Declaration or the other Project Documents be declared wholly or partially invalid; enforceable (or unenforceable as the case may be); or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions of this Restated Declaration and the Project Documents shall remain unaffected and in full force and effect and said affected subject provision shall be enforced to the greatest extent allowed by law.
- 19.03 CONFLICT OF PROJECT DOCUMENTS: If there is any conflict among or between the



Project Documents, the provisions of the Plat shall prevail; thereafter, priority shall be given to the Project Documents in the following order: any covenant contained in any deed or other transfer document transferring any right, title or interest of the Declarant, real or personal, to the Association, this Restated Declaration; Articles; Bylaws; ACC Rules/ACC Standards and any rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

- 19.04 **BOOKS AND RECORDS:** All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.
- 19.05 **WAIVER:** The failure of the Declarant, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Restated Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future enforcement of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.
- 19.06 **ACCEPTANCE:** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Restated Declaration and agrees to be bound by the same.
- 19.07 **INDEMNIFICATION OF BOARD MEMBERS:** Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Article shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Association or prior thereto during the period the Declarant is exercising the powers of the Association.



- 19.08 NOTICES: Any notice permitted or required to be delivered as provided in this Restated Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered, seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.
- 19.09 INTERPRETATION: The provisions of this Restated Declaration shall be liberally construed to effectuate the purposes set forth herein, above, and shall be construed and governed by the laws of the State of Idaho.
- 19.09.01 Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter.
- 19.09.02 All captions and titles used in this Restated Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.
- 19.10 SEVERABILITY: Notwithstanding the provisions of the preceding Article, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- 19.11 TOUCHING AND CONCERNING REAL PROPERTY: The conditions, covenants and restrictions set forth in this Restated Declaration touch and concern real property and shall run with the Property and shall be binding upon all persons and entities who acquire any right, title or interest in the Property and their respective heirs, devisees, successors and assigns of the parties hereto.
- 19.12 ***NO WARRANTY OF ENFORCEABILITY: Declarant makes no warranty or representation as to the present or future validity or enforceability of any term or covenant set forth herein or in any any of the Project Documents. Any person or entity acquiring any right, title or interest in any portion of the real property described herein in reliance upon any term or covenant set forth herein or in any of the other Project Documents shall assume all risk of the validity and enforceability thereof and by acquiring any such right, title or interest, such person and/or entity is irrevocably deemed to hold Declarant, and all of Declarant's officers, stockholders, employees, agents, attorneys and all other consultants harmless therefrom.***



Dated this ____ day of July, 2019.

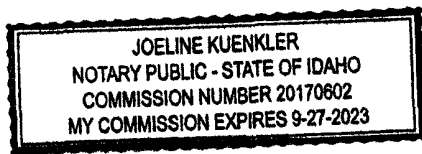
**Waldo Construction, Inc., an Idaho
Corporation**

By: Norm Waldo
Norm Waldo, President

STATE OF IDAHO)
)ss.
County of Kootenai)

On this 8th day of August, in the year 2019, before me Joeline Kuenkler^a
Notary Public for the State of Idaho, personally appeared Norm Waldo known or identified to me,
or proved to me on the oath of to be the President of the corporation (Waldo Construction, Inc.)
that executed the instrument or the person who executed the instrument on behalf of said
corporation, and acknowledged to me that such corporation executed the same.

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



Joeline Kuenkler
Notary Public for Idaho
Residing in: Kootenai County
My Commission Expires: 9-27-2023



CERTIFICATE OF COMPLIANCE

The undersigned, being at least two (2) officers of the LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC., an Idaho non-profit corporation (hereinafter referred to as the "Association"), hereby state the record Owners of the required number of Lots (e.g., Waldo Construction Inc., Declarant, owner of 30 Lots and the holder of 150 Class B Votes); and the required number of first mortgagees (not applicable) have waived the necessity of notice and meeting and have consented in writing, by the execution of the above, to the adoption of the foregoing Restated Declaration of Covenants, Conditions and Restrictions of Lost Creek Estates Homeowners' Association, Inc.

**LOST CREEK ESTATES
HOMEOWNERS ASSOCIATION, INC.
an Idaho nonprofit corporation**

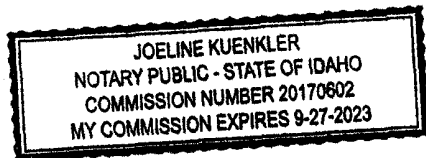
By *Norman G. Waldo*
Norman G. Waldo, President

**LOST CREEK ESTATES
HOMEOWNERS ASSOCIATION, INC.
an Idaho nonprofit corporation**

By *Charles Hughes*
Charles Hughes, Treasurer

STATE OF IDAHO)
 ss.
County of Kootenai)

SUBSCRIBED AND SWORN to before me, Joeline Kuenkler Notary
Public for the State of Idaho this 8th day of August, 2019.



Joeline Kuenkler
Notary Public for Idaho
Residing in: Kootenai County
My Commission Expires: 9-27-2023



This document
provided courtesy
of TitleOne

**EXHIBIT 1 TO
RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC.**

ARCHITECTURAL GUIDELINES



This document
provided courtesy
of TitleOne

The Estates at
LOST CREEK

ARCHITECTURAL GUIDELINES



This document
provided courtesy
of TitleOne

Article 1 | Purpose

Article 2 | Site Planning & Landscaping

Article 3 | Architecture

Article 4 | Design Review Process

Appendix A | Design Review Submittal Application / Checklist

Appendix B | Variance Request



1 PURPOSE:

The purpose of the Design Guidelines is to examine the Conditions, Covenants and Restrictions of Lost Creek Estates as it applies specifically to the design and construction phase of the homes and home sites. The Design Guidelines are laid out with photo imagery and specific text to encourage strong consistent design and a certain level of quality. The Design Guidelines should not be looked at as a hindrance – in fact, the Design Guidelines can assist realtors and prospective homeowners/home buyers as much as designers and contractors.

Lost Creek Estates is a sensitively designed development with large, mostly wooded lots and territorial views. The houses should be situated with other lots in mind, and the design of the homes should fit the beautiful and rugged mountain terrain.

Draftspersons, Home Designers or Architects are allowed to design homes in the development. Stock plans from home plan books will be strongly discouraged due to the unique nature and original settings of each lot.

All Design Development Articles shall meet or exceed all local codes and ordinances, specifically Kootenai County Building and Planning regulations, and the Lost Creek Estates CC&R's and Homeowner's Association Guidelines.

It is important to note that the Design Review Committee (ACC) has the final say on design matters. Design Guidelines may conflict in some cases, while in other cases leniency with Design Guidelines may be appropriate at the discretion of the ACC. If a designer or builder does not agree with a final ACC decision, an appeals process is available. Please refer to Appendix B for a variance form.

2.1 SETBACKS:

Setbacks are as follows with the exceptions noted below:

Front yard: 30'

Side Yards: 20' (10' if a reasonable hardship exists per ACC approval)

Rear Yards: 20'

2.2 VIEW EASEMENTS:



View easements will be allowed and are required for all lots facing the conservatory. No construction will take place which restricts the view of other lots to this conservatory area. The easement will be dictated as follows:

Vertical view easement: from the grade (whether sloping or flat) to a line
20 degrees above level.

Horizontal view easement: from extension to extension of side property lines.

Percent openness: Owner has the right to remove and/or trim trees and vegetation to create and/or restore their view to no greater than 60% openness- subject to review by the ACC.

2.3 BUILDING SITING:

Houses shall be sited to remove as few trees as possible. House siting may be adjusted per ACC recommendations if the structure impacts the view or setting of adjacent homes already constructed, or as dictated by the natural terrain. House siting will be one of the key components of the design review process.

2.4 DRIVEWAYS:

All driveways shall be paved with concrete, asphalt, or concrete/brick pavers. Asphalt with edging is encouraged.

2.5 FENCING:

All fencing must be approved by the Design Review Committee. Refer to Article 10.18 of the CC&Rs for guidance on fencing.

2.6 LANDSCAPING:

Homes are required to have some lawn area around the immediate area of the front entry.

Homes are required to have a selection of indigenous shrubs and trees in the front yard area, unless mature trees are retained in this area.

Landscaping should be natural and curvilinear, rather than formal and straight.

Landscaping should be blended between home sites. Do not end landscaping abruptly.

Planting beds may be dirt, mulch or rock.

All landscaped and lawn areas shall be irrigated with a permanent type sprinkler system or drip lines.

Cut and fill areas shall be fully landscaped or brought back to "native" condition.

Boulder walls and natural "tumbled" type landscape (segmental) block walls are required.

Exposed concrete, CMU and angular landscape block walls are not allowed.



Provide erosion control devices per Kootenai County Planning guidelines.

Landscape water conservation measures will comply with Article 10.17 of the CC&Rs.

2.7 NATIVE TREES:

All trees are to remain where not disturbed by driveway or structure or within 10'-0" of any structure. Thinning of trees will be allowed only at the discretion of the ACC. For lots facing the conservatory, thinning may take place up to an openness of 60% from grade to a 20% angle from level. This represents a "view easement" that can be maintained (with ACC approval) for perpetuity.

2.8 MONUMENTS:

The builder is required to install a street monument for two newspaper tubes and addressing purposes. A light fixture is recommended but not required.

Monuments shall match the architectural character of the house.

An address plaque will be required with the following specifications:

Size: 12-16" wide by 6-8" tall.

Shape: Rectangle

Finish: Antique copper or aged bronze

The developer will provide "gang" mailboxes (nicely covered and appointed) at locations selected by Postmaster.

2.9 OTHER LANDSCAPE ITEMS:

Above ground swimming pools are not allowed. Provide only below-ground pools. Above ground hot tubs are allowed if carefully screened or set away from neighbor's view.

Garden sheds, tool sheds are allowed as long as they match the architecture of the house.

One detached storage building or garage is allowed, as long as it matches the architecture of the house and meets all setbacks.

3.1 OVERALL APPEARANCE:

The homes in Lost Creek Estates shall not be contemporary in style. The homes do not need to be extravagant and expensive – in fact preference is to create a home design that is understated and natural. Simple forms are acceptable, as long as attention is given to detailing and pleasing siding applications. Vernacular and historical styles are strongly encouraged.

The architecture of Lost Creek Estates homes shall fall into four main style categories:



Mountain Style:

Characterized by a predominance of cedar, rustic timber detailing, large overhangs and thick fascia, and a steep or low roof pitch. The mountain style can be divided into an alpine look or a ranch look.

Craftsman Style:

Characterized by long, broad roof forms, an informal collection of gable ends and shed dormers, and wood detailing. Stonework is often battered, and details and trim pieces are typically oversized.

A rustic craftsman style is encouraged in lieu of an urban craftsman or bungalow style.

Log Style:

Characterized by simple forms, steep (often metal) roofs and dormers.

Log style can be true log construction, hybrid log/framing construction, or log siding over wood framing.

Country Cottage or Farmhouse Style:

Characterized by large, deep front porches, steep roof pitches and traditional window groupings. Care should be taken with this style that the exterior appearance is not overly formal, stark white or horizontal in appearance. The intent here is that the style blends well in a wooded setting, rather than a prairie setting.

3.2 BUILDING MASSING

The design of the house shall be composed of a variety of forms. Large expanses of roofs shall be punctuated with one or more gables or dormers, or other forms. Each side of the house shall be punctuated with at least one dormer, gable, bump-out, exposed chimney, deck or other form to break up the scale of surface and create façade variety.

Elevations which are completely obscured from other home sites shall be allowed leniency with regards to building massing, upon discretion of the Design Review Committee.

3.3 BUILDING SIZES:

1,800 square feet minimum for a single story residence.

2,600 square feet minimum total for a multi-story (includes second floor or walk-out basement, but does not include a full basement)

Of the 2,600 square feet total, the main living level shall be a minimum of 1,400 square feet.

For garage size, refer to the following Section 3.4.

3.4 GARAGES:

See section 3.8 for garage doors



Garages shall be side loading, unless the lot is such that a front facing garage door is obscured from the street, or a lot configuration is so narrow that side loading garages do not fit.

Detached garages are allowed, if attached by some type of architectural element, such as a roof or trellis.

Suites or "Mother-in-Law" quarters are allowed above a garage with an exterior entrance, but please note Kootenai County guidelines for so-called "Accessory Living Units".

A three car (or bay) minimum garage will be required. The third bay is allowed to be smaller for a golf cart, tractor, etc.

The garage door elevation of the garage shall be stepped out of plane at least once between doors.

An architectural feature such as columns or brackets in front of or above some or all of the garage doors will be allowed in lieu of stepping the wall plane.

A window feature or other architectural feature will be required at the street elevation of all garages.

The elevation opposite the garage doors shall be treated with a bump-out, change in material, or windows to break up the expanse of wall.

3.5 ROOFS, ROOFING

The following roof forms shall be accepted:

Concrete Tile

"Shake" or "Slate" looks are recommended

Tiles with a varied pattern are recommended

Cedar Shingles (fire retardant treated)

40 year/lifetime composition shingles

Architectural grade is recommended and refers to a staggered "shake" appearance rather than a straight butt line appearance.

Metal Roofing

Standing seam or other raised hidden seam metal roofing is allowed. Corrugated or rusted metal roofing will be allowed subject to ACC approval, but only with Log or Mountain Styles.

Slate or composite (plastic, rubber) slate is allowed.

The following roof forms shall not be accepted:

Exposed seam metal roofing

Single ply or roll roofing

Metal shingles

Clay tile



Spanish or wavy concrete tile

Fiberglass roofing

Roof Fascia shall be a minimum of 1x10 unless exposed rafter tails are employed. Roof fascia shall be double stepped (1x4 over 1x10 for example) unless gutters are employed.

Roof pitch shall not be less than 5:12 except for porches or shed dormers in limited applications and when combined with a steeper pitch. Crickets do not apply to this rule.

Farmhouse style homes should be a minimum of 7:12 pitch,
except for the exceptions mentioned immediately above.

Maximum pitch shall be 14:12.

All Roofs shall overhang a minimum of 2'-0" with the exception of small roof elements, such as shed dormers or eyebrows.

3.6 ENTRY, DECKS, PORCHES, COLUMNS

Entries shall be recessed and covered with a sizeable portico or covered porch.

Entries shall not be monumental in scale (ie: two stories or more in height).

Entry porch surfaces shall be tinted/stamped/exposed concrete, stone or wood.

Single wood deck columns and porch posts shall be a minimum of 6x6 in size. 4x4 is approved when used as a multiple grouping.

Entry columns shall be substantial in size and match the architecture of the rest of the house.

Log, timber and boxed columns are strongly encouraged.

Deck surfaces (side and rear) may be of any material. Decks should be design to match the terrain and provide ample access to the surrounding terrain.

3.7 WINDOWS:

The following windows shall be accepted:

Wood Windows (including Metal Clad)

Fiberglass Windows

Vinyl Windows

The following windows shall not be accepted:

Steel or Aluminum Windows

Window styles shall be traditional in character

Large expanses of glass will not be allowed. Windows shall be broken into pairs or threes, such as three adjacent single hung windows.

Muntin bars or grids shall be employed where possible, especially on high windows. Muntin bars or grids



are not required on primary view windows.

Windows should be vertical in nature as opposed to horizontal.

Projection sills shall not be required.

All windows shall have a bold trim treatment.

Siding shall not butt directly to a window. Refer to example pictures.

3.8 DOORS:

Full-lite and half-lite doors shall be fiberglass, wood or metal clad.

Solid doors (including entry door) shall be stain grade or paint grade wood or paint grade fiberglass. No white or off-white doors will be allowed.

Provide glazing in entry door, or transom or one or more sidelites.

Garage doors shall be paint grade steel or fiberglass, or shall be stain grade wood doors.

All garage doors shall be "carriage style" doors. Carriage style doors are those types that appear to open as swing doors, and usually have cross bucks or vertical and horizontal banding.

Windows in garage doors are not required but recommended.

Garage door heights shall be a minimum of 8 feet tall. Double garage doors are allowed, although single garage doors are recommended.

3.9 SIDING MATERIALS

The following siding materials shall be accepted:

Cement Fiber siding (Hardi-plank, for example)

Cement Fiber siding may be in the form of lap siding or board & batten.

Rough-sawn Cedar

Lap siding or wavy bevel edge lap siding is recommended.

Log, half-log or log siding

Stucco or E.I.F.S. in limited applications

Stucco (or E.I.F.S.) shall be used only as a secondary application. A good example is at a walk-out basement under a deck, or as an accent at a dormer or other bump-out.

The finish shall be hand trowelled, natural, and in a natural gray, brown or beige.

Stone

Stone, although expensive, is strongly encouraged to give a wooded, mountain appearance. Synthetic stone veneers are allowed. Stacked and Rubble type stone veneers are recommended, in lieu of Stream stone type veneers.

Stone shall always terminate at a ground plane, with two exceptions. Stone may terminate into an arch as



long as there is a corbelled stone pattern at the edge of the arch. Stone may terminate at the bottom of a bump-out if a thick, substantial band of wood with brackets (or other similar detail) is provided to visually support the stone.

Brick

Brick will be allowed only mixed with stone veneers. For example, brick that is "shotgunned" in the stone or used as a lintel or header is allowed.

Brick style shall be weathered or rustic in look and earth tone in color.

Board & Batten

Board & Batten may fall into the following two categories:

1. Rough-sawn or re-sawn fir or cedar plywood, or "wood grain" cement boards applied to the wall with cedar or composite wood trim strips. The trim strips shall be a minimum of 1x2 at 12" on center or 1x3 at 16" on center.
2. Vertical planks of cedar, wavy edge, or milled log, with strips or planks applied over base planks.
3. Board & Batten vinyl siding will not be accepted.

Sidewall Shakes:

Sidewall shakes may be of Cedar or Cement Fiber.

Vinyl shakes will not be allowed.

Vinyl:

Vinyl may only be used in minor detail applications,
upon review of the Design Review Committee.

3.9 SIDING MATERIALS (*continued*)

The following siding materials shall not be accepted:

T1-11 or other sheet surfaces where
edges are exposed or trim strips are
not provided at regular intervals

Wood fiber lap siding products

E.I.F.S. (synthetic stucco) which is
spray applied or smooth in texture

Spanish lace type stucco finish

Metal

Vinyl siding of any type

Exposed concrete foundations shall be screened on the front elevation with stucco, stone or dense landscaping. Exposed concrete on other elevations shall be minimized to the greatest extent possible. Locate landscape walls at stepped foundation areas to conceal large expanses of concrete.



3.10 EXTERIOR COLORS

The intention of Lost Creek Estates is that all homes blend naturally into their environment. Because of this, earth tone colors will be required for the primary and secondary (if applicable) surfaces.

Accent colors of a bright nature are allowed on trim elements only.

White paint or white solid body stain will not be allowed as a primary material.

Paint and stains are both allowed. While paints are more appropriate for a Farmhouse style, emphasis should be placed on stained finishes. Painted and stained finishes on the same house is encouraged for interest.

3.11 MISCELLANEOUS ARCHITECTURAL FEATURES:

Design brackets, corbels and beams that are substantial and in proportion to eave overhangs. Hardware and structural connectors shall be black, bronze or brown in color and shall not be left primed or galvanized.

Light fixtures shall be black iron, bronze, rust or other dark natural metal finish. Bright brass or chrome shall not be accepted. Provide exterior light fixtures that are large enough to fit the scale of the home.

Chimney Caps and/or screens shall be required to screen flues and spark arrestors from view.

Caps and screens shall be painted to match the color of the roofing or rock.

Direct vent fireplace flues will not be allowed on the front elevation of the house.

Copper flashing, trim and gutters shall be allowed, as long as it is left to patina. Treated copper to retain the original shiny appearance will not be allowed.

Railings shall be iron, aluminum, steel or wood or a combination thereof. Composite plastic or vinyl railing systems will not be allowed. Aircraft cable railings will not be allowed.

Solar panels are allowed if carefully sited away from the principal street view.

All mechanical equipment shall be ground mounted and screened from view.

Skylights are allowed if the raised flashing and framework matches the roof color.

4 SUBMITTAL REQUIREMENTS

One final submittal will be required when the drawings are completed. It is recommended and encouraged to make an informal submittal at any time during the design process if there are any concerns or questions. The intent is to help the designer along with the process to create a pleasing home that blends into the development, rather than to slow or frustrate the process.

Items to include for submittal to the Design Review Committee are the following:



This document
provided courtesy
of TitleOne

- One set of drawings with all items required by Kootenai County Building Department and other local agencies
- Sample Board (see example below and Appendix A)
- All other items listed on Design Review Checklist (Appendix A)
- \$250 fee will be required at the time of submittal, made out to:
Lost Creek Homeowners' Association

Discrepancies in the Design Guidelines and Interpretations:

Any discrepancies and interpretations are the sole discretion of the Design Review Committee. The ACC will make every effort possible to assist in a reasonable and logical manner so that the process continues smoothly.



This document
provided courtesy
of TitleOne

LOST CREEK DESIGN REVIEW APPLICATION FORM

Sales Lot Number/Parcel Number: _____

Submittal Date: _____

Owner(s):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email:

Architect/Designer:

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email:

Contractor/Builder:

Address: _____



This document
provided courtesy
of TitleOne

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email: _____

Anticipated Construction Start Date: _____

Anticipated Construction Completion Date: _____

I have read and will comply with the Lost Creek Estates Design Guidelines concerning construction activities and the Covenants, Conditions, Restrictions and Easements in the Lost Creek Estates community.

Signature: _____

Printed Name: _____ Date: _____

OTHER INFORMATION

One full set of drawings will be required for Design Review. Deliver to:

ML Architect & Associates
444 N. Bay St.
Post Falls, ID, 83854
Hours: 8:00 AM to 5:00 PM Monday to Friday

DESIGN REVIEW APPLICATION FEE:

Check payable to Lost Creek ACC

Amount: \$250.00 first and second review

\$125.00 third or additional reviews

The application and drawings will be reviewed within 7 to 14 days from the time of submittal. A letter will be mailed or faxed to the Owner, Designer and Contractor indicating acceptance, acceptance with corrections as noted, or re-submittal.

CONTACT:

For questions or comments directly relating to design, design review,
or the ACC please contact:

Mark Latham AIA
ML Architect & Associates
(208) 773-9864



This document
provided courtesy
of TitleOne

LOST CREEK DESIGN REVIEW CHECKLIST

Note: This is not to be filled out or submitted, but to be used merely as a guideline by the designer and builder.

☐ Design Review Application Form completed

☐ Check payable to Lost Creek ACC

Amount: \$250.00 first and second review

\$125.00 third or additional reviews

☐ Site Plan

Scale: 1" = 20'-0" minimum

Show proposed cut and fill areas, adjusted contour lines

Indicate any retaining walls with proposed elevation marks

Show a minimum of twenty feet of adjacent lots or common areas

Note and dimension Design Guideline setbacks

Show size, location and material of all decks, patios walkways and driveways

Show location, size and detail of all fencing

Indicate any exterior mechanical equipment

All other site items required by Kootenai County

☐ Site Disturbance Plan for lots exceeding 12% slope

and/or when required by Kootenai County

☐ Landscape Intent Plan

Scale: 1" = 1'-0" minimum

Indicate preliminary planting concept. Show locations of native vegetation, lawn areas, and planting areas

Provide a general description of planting areas (ie: low manicured shrubs, ornamental trees with low ground cover, large dense tree plantings, etc)

Indicate existing trees which will be removed and show locations of
trees to remain

☐ Floor Plan



This document
provided courtesy
of TitleOne

Scale: _____ " = 1'-0"

☐ Roof Plan and/or Roof Framing Plan

Scale: _____ " = 1'-0"

☐ Exterior Elevations

Scale: _____ " = 1'-0"

Indicate roof pitch, roof overhang

Show approximate proposed grade

Indicate all materials on one typical elevation and indicate materials on remaining elevations if they are unique to the typical elevation

☐ Sample Board or Colored Elevation

Show and call out material and color for the following:

Roof

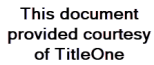
Wall Surfaces (siding, stone)

Exterior Trim, Fascia

Windows

Exterior Doors

Garage Doors



Sales Lot Number/Parcel Number: _____

.....

Address: _____

Telephone: _____ Fax: _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



This document
provided courtesy
of TitleOne

Signature: _____

Printed Name: _____ Date: _____

The variance application will be reviewed within 7 to 14 days from the time of submittal. A letter will be mailed or faxed to the Applicant indicating acceptance, acceptance with corrections as noted, or refusal.

For questions or comments directly relating to design, design review,
or the ACC please contact:

Mark Latham AIA

ML Architect & Associates

(208) 773-9864

Hours: 8:00 AM to 5:00 PM Monday to Friday



This document
provided courtesy
of TitleOne

**EXHIBIT 2 TO
RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
LOST CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC.**

**MAINTENANCE INSPECTION
AGREEMENT**



This document
provided courtesy
of TitleOne

Maintenance Inspection Agreement

R.C. Worst & Co. Inc.

625 Best Avenue • Coeur d'Alene, ID 83814 • Phone: 208-664-2133
Fax: 208-667-8775 e-mail: allen.worst@rcworst.com
888-809-6778 Toll Free

It is hereby agreed this _____ (date) by and between _____
The Treatment Equipment Owner and R.C. Worst & Co., Inc. that in consideration of the payments provided prior to visits herein, R.C. Worst & CO., Inc. will provide the services of a factory-trained representative to perform a Preventative Maintenance Inspection of the equipment described herein on the frequency shown below.
In the event of non-payment a \$100.00 fee will be assessed and a lien may be placed on the property.

Each inspection of the treatment and pumping equipment shall be followed by a written report to the owner. The inspection report will describe the operational status of the system. It will also include recommendations for any preventative maintenance deemed necessary by the inspector as well as a list of any replacement parts needed.

Inspection will be performed one (1) time every year after the system is in operation. This agreement will remain in effect for not less than a 3 year period with no expiration unless the terms of this agreement are changed by either party, or the ownership of the property below is transferred to another party not listed in this agreement.

This inspection agreement covers only operation and maintenance and testing procedures performed by an operation and maintenance entity contracted by R.C. Worst & Co., Inc. Upon a failed test result, all corrective action, adjustments, additional equipment, repairs, and follow-up testing will be the responsibility of the property owner. The details of any additional actions or testing performed on the system outside of this agreement will be communicated in writing to R.C. Worst & Co., Inc. All additional repairs, testing or equipment replacements will be done on a time and materials basis and performed by a competent and trained entity. Directly contracting R.C. Worst & Co., Inc., the company providing operation and maintenance services is recommended in the event of a repair or failed test.

In no event shall Orenco, Inc. or R.C. Worst & Co., Inc. be responsible for special or consequential damages, including but not limited to, loss of time, injury to person or property or any other consequential damages or incidental or economic loss due to equipment failure or for any other reason whatsoever.

This agreement shall remain in force for a period of at least 3 years, beginning _____

Equipment Covered Under This Agreement


System Description: Orenco AX20RT Wastewater System	Rate Per Visit: \$ 325.00
Location of Subject Property:	
Parcel #:	Septic Permit:

Treatment Equipment Owner:	
Name:	
Mailing Address:	
City, State, Zip:	
Phone 1:	
Phone 2:	
Fax:	
e-mail:	

Maintenance Company:	
Name: R.C. Worst & Co. Inc.	
Address: 625 Best Avenue	
City, State, Zip: Coeur d'Alene, Idaho 83814	
Phone 1: (208) 664-2133	
Phone 2: (888) 809-6778	
Fax: (208) 667-8775	
e-mail: allen.worst@rcworst.com	

Owner Signature

Date


R.C. Worst & Co. Inc.

01/24/2019

Date