

**Amended and Restated Bylaws of  
Breckenridge Homeowners Association, Inc.**

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# **Amended and Restated Bylaws of Breckenridge Homeowners Association, Inc.**

## 1. NAME AND LOCATION.

The name of the Association is Breckenridge Homeowners Association, Inc. (the "Association"). The Association is organized as an Idaho Nonprofit Corporation under the Idaho Nonprofit Corporation Act, § 30-3-1, et seq., 1993, as amended (the "Act"). The principal office of the Association shall be located at 550 Blue Lakes Boulevard North, Twin Falls, Idaho, 83301. Meetings of Members shall be held at those places specified herein.

## 2. DEFINITIONS.

Terms used in these Bylaws shall have the meaning given to them in the Declaration of Covenants, Conditions and Restrictions for Breckenridge Estates, dated and recorded on March 21, 1994 as File No. 1994005018, and amended and restated as the Amended Declaration of Covenants, Conditions and Restrictions for Breckenridge, "A Planned Residential Community" (formerly Breckenridge Estates") on December 15, 1999 and recorded on January 25, 2000 as File No. 2000-00 1189, as amended, in the offices of the Twin Falls County Recorder of Twin Falls County, Idaho (the "Declaration") and as same may be amended from time to time as therein provided, said Declaration, being incorporated herein by this reference.

## 3. MEMBERSHIP; VOTING RIGHTS.

### 3.1 Membership.

3.1.1 Qualifications. Each Owner of a Residential Property, including Grantor, shall be a Member of the Association. No Owner shall hold more than one membership in the Association even though such Owner may own, or own an interest in more than one Residential Property. Ownership of a Residential Property or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in all Residential Properties in the Property ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Residential Property merely as security for performance of an obligation are not to be regarded as Members.

3.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in these Bylaws, the Articles of Incorporation (the "Articles"), the Declaration and the Association rules and all their amendments.

3.1.3 Transfer of Membership. The membership in the Association of each person or entity who owns, or owns an interest in, one or more Residential Properties shall be appurtenant to each such Residential Property, and shall not be assigned, transferred,

pledged, hypothecated, conveyed or alienated in any way except on a transfer of ownership of each such Residential Property or interest therein and then only to the transferee. Any attempt to make a transfer prohibited herein shall be void. Any transfer of title of a Residential Property or Interest therein shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner.

### 3.2 Voting.

3.2.1 Number of Votes. Voting in the Association shall be carried out by Members who may cast the vote(s) attributable to the Residential Properties of which they are Owners. There shall be a single class of voting membership. Each Owner (as defined in the Declaration) shall be entitled to one vote for each Residential Property owned. When more than one person holds an interest in a single Residential Property, all such persons shall be Members of the Association. The vote for such single Residential Property shall be exercised as said Members shall determine, but in no event shall more than one vote be cast with respect to any single Residential Property.

3.2.2 Joint Owner Votes. The voting rights for each Residential Property may not be cast on a fractional basis. If the joint Owners of a Residential Property are unable to agree among themselves as to how their vote(s) shall be cast, they shall forfeit their right to vote on the matter in question. If any Owner exercises the voting rights of a particular Residential Property, it will be conclusively presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Residential Property. If more than one (1) person or entity exercises the voting rights for a particular Residential Property, their votes shall not be counted and shall be deemed void.

3.2.3 Secret Ballot; Cumulative Voting. In any election involving the election or removal of more than one member of the Board of Directors, voting shall be by cumulative voting. All votes for election to or removal from the Board of Directors shall be by secret written ballot. Each Member shall be entitled to vote, in person or by proxy, as many votes as such Member is entitled to exercise as provided in the Declaration. As to removal, unless the entire Board of Directors is removed by a vote of Association Members, an individual member of the Board of Directors shall not be removed unless the number of votes in favor of removal satisfies the requirements of the Act.

## 4. MEETINGS OF MEMBERS.

4.1 Annual Meetings. After the initial organizational meeting, the annual meeting of the Members shall be held as described in paragraph 4.8 of the Declaration.

4.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or by the Members owning at least thirty-five percent (35%) of the Residential Properties.

4.3 Notice of Meetings. Notice of all Members' meetings, annual or special, shall be given by personal delivery mail or telefacsimile and shall be given not less than ten (10) days nor more than thirty (30) days before the time of the meeting and shall set forth the place (which shall be at the Property or as close thereto as reasonably feasible), the, and hour of the meeting, and the nature of the business to be undertaken. Notices shall be given by, or at the direction of the secretary or person authorized to call the meeting, and shall be transmitted to each Member entitled to vote and to each Mortgagee who has requested in writing that such notice be sent to it; the notices shall be addressed to the Member's or Mortgagee's address last appearing on the books of the Association, or supplied by the Member or Mortgagee to the Association for the purpose of notice. Mailed notices shall be deemed received forty-eight (48) hours after they are mailed; notices by telefacsimile shall be deemed received twenty-four (24) hours after they are sent. Notices to Members may also be personally delivered and shall be deemed received upon delivery to any occupant of the Member's residence.

4.4 Quorum. The presence in person at any meeting of a Member or by duly executed written proxy of the authorized representative of a Member representing Owners holding at least twenty-five percent (25.0%) of the total votes of all Members shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was scheduled. A second meeting may be called as the result of such an adjournment, provided notice is given as provided above. At any such subsequent meeting properly called, the presence of any Member shall constitute a quorum.

4.5 Proxies. At all meetings of Members, each Member may be present in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall have the date of the meeting for which it is given, and is revocable and automatically ceases when the ownership interest or interests which entitles a Member to membership in the Association ceases.

4.6 Order of Business. The order of business of all meetings of the Members shall be as follows:

4.6.1 Roll call;

4.6.2 Proof of notice of meeting or waiver of notice;

4.6.3 Reading of minutes of preceding meeting;

4.6.4 Reports of Board of Directors and officers;

4.6.5 Election of members of the Board of Directors, if any are to be elected;

4.6.6 Unfinished business; and

4.6.7 New business.

4.7 Parliamentary Procedure. All questions of parliamentary procedure shall be decided in accordance with Roberts Rules of Order.

4.8 Majority of Owners. Except as otherwise provided here or in the Declaration, the majority of the total voting power present, in person or by proxy, shall prevail at all meetings.

4.9 Action Without Meeting. Any action other than election of members of the Board of Directors that may be taken at a meeting of the Members may be taken without a meeting if done in compliance with the provision of Section 30-3-49 of the Act.

4.10 Rights of Mortgagees. Any Mortgagee through its designated representative shall be entitled to attend any Members' meeting but shall only be entitled to vote on matters as set forth in the Declaration.

## 5. SELECTION AND TERM OF OFFICE OF BOARD OF DIRECTORS.

5.1. Number. The number of directors of the Association shall be not less than four (4) nor more than ten (10), with the exact number of directors within such parameters to be set by resolution of the board of directors from time to time; provided, however, that no decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

5.2. Election and Term of Office. The members of the Board of Directors shall be elected at each annual meeting of the Association in accordance with these Bylaws. The term of office for each director shall be one year.

### 5.3 Removal and Vacancies.

5.3.1 Removal. The Members by majority vote at any annual or special meeting may remove any member of the Board of Directors and may elect a new member of the Board of Directors to serve the unexpired term of any Board of Directors member so removed with or without cause.

5.3.2 Vacancies. When the death or resignation of a member of the Board of Directors occurs, his or her successor shall be selected by the remaining members of the Board of Directors and shall serve for the unexpired term of his or her predecessor.

5.4 Compensation. A member of the Board of Directors shall not receive compensation for any services he or she may render to the Association except upon the prior approval of holders of a majority of the voting power of the Association. Any member of the Board of Directors may be reimbursed for actual approved out-of-pocket expenses incurred by him or her in the performance of his or her duties.



6. NOMINATION AND ELECTION OF BOARD OF DIRECTORS.

6.1 Nomination. Except as otherwise provided in this Section 6.1, nominations for election to the Board of Directors shall be made by a nominating committee, appointed by the Board of Directors, and comprised of one member of the Board of Directors and two other persons. Nominations also may be made from the floor at each annual meeting. Nominations may be made from among Members or non-Members. Notwithstanding the foregoing, during the first year following incorporation of the Association, the Grantor shall have the sole and exclusive right to appoint the directors of the Association.

6.2 Election. Except as otherwise provided in Section 6.1, election to the Board of Directors shall be by secret ballot. At the election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to cast under provisions of these Bylaws, the Articles of Incorporation, and the Declaration (and subject to cumulative voting and to the provisions regarding specially elected members of the Board of Directors as are described therein). The candidates receiving the highest number of votes shall be deemed elected.

7. MEETINGS OF THE BOARD OF DIRECTORS.

7.1 Regular Meetings. Regular meetings of the Board of Directors shall be held monthly or at such frequency as the Board of Directors shall determine, at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Should any such meeting fall on a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday. Notice of the time and place of any such meeting shall be posted at a prominent place or places within the Common Area, and communicated to members of the Board of Directors not less than four (4) days prior to the meeting; provided, however, that notice of a meeting need not be given to any member of the Board of Directors who has signed a waiver of notice or a written consent to holding of the meeting. Meetings shall be held at the Property if possible, and if not, as close thereto as possible.

7.2 Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the President, the Vice President, or by thirty-five percent (35%) of the Directors of the Association. By unanimous consent of the Board of Directors, special meetings may be held without call or notice at any time or place.

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

7.4 Conduct of Meetings. Regular and special meetings of the Board of Directors shall be open to all Members of the Association; provided, however, that Members who are not on the Board of Directors may not participate in any deliberation or discussion unless expressly

authorized by the vote of a majority of a quorum of the Board of Directors. The Board of Directors may, with the approval of a majority of a quorum of the Board of Directors adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar or otherwise sensitive nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

## 8. POWER AND DUTIES OF THE BOARD OF DIRECTORS.

8.1 Powers. The Board of Directors has all powers conferred upon the Association that are specified herein as well as in the Declaration except those powers expressly reserved to the Members.

8.2 Duties. It shall be the duty of the Board of Directors:

8.2.1 To cause to be kept a complete record of all of its acts and doings and to present a statement of them to the Members at each annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members representing one-fourth (1/4) of the Members of the Association;

8.2.2 To supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

8.2.3 To delegate its powers as provided in the Declaration; and

8.2.4 To formulate and enforce any reasonable requirements pertaining to the use and maintenance of the units, the Common Areas and Facilities to prevent the unreasonable interference of the use of such areas among the respective unit owners. This duty and power shall include the assignment of parking facilities and other facilities within the Common Areas, as necessary.

8.3 Notice of Action by Written Consent.

8.3.1 The Board of Directors may take actions without a meeting if all of the members of the Board of Directors consent in writing to the action to be taken.

8.3.2 If the Board of Directors resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Common Area within three days after the written consents of all members of the Board of Directors have been obtained.

9. OFFICERS AND THEIR DUTIES.

9.1 Enumeration of Officers. The officers of the Association shall be a President and Vice-President, who shall at all times be Members of the Board of Directors, a Secretary/Treasurer, and such other officers as the Board of Directors may create from time to time by resolution.

9.2 Election of Officers. The election of officers shall take place at the organizational meeting of the Board of Directors and at each meeting of the Board of Directors that follows each annual meeting of the Members.

9.3 Term. The officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one year unless he or she resigns, is removed, or becomes otherwise disqualified to serve.

9.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

9.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. The resignation shall take effect on the date of receipt of such notice or at any later time specified in the notice, and, unless otherwise requested by the notice, the acceptance of the resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

9.7 Multiple Offices. The offices of the Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created under Section 9.4 of these Bylaws.

9.8 Duties. The duties of the officers are as follows:

9.8.1 President. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

9.8.2 Vice-President. The Vice-President shall act in place of the president in case of his or her absence or his or her inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

9.8.3 Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members, shall serve notices of meetings of the Board of Directors and of the Members, shall keep appropriate current records showing the Members and their addresses, and shall perform such other duties as required by the Board of Directors.

9.8.4 Treasurer. The Treasurer or Chief Financial Officer shall receive and deposit in appropriate bank accounts all money of the Association and shall disburse such funds as directed by the Board of Directors, shall co-sign all checks and promissory notes of the Association, shall keep proper books of account, and shall cause the financial statements required in Section 14 of these Bylaws to be prepared and distributed to each Member as required therein.

9.9 Fees and Compensation. Officers shall be entitled to receive reasonable reimbursement for costs as determined by the Board of Directors. Nothing herein contained shall be construed to preclude any Officer from serving the Association in any other capacity as a director, officer, agent, employee or otherwise and receiving compensation therefor. It is not contemplated that officers will receive compensation for performing their duties as officers, but in the event that the Board of Directors decides to pay an officer compensation for his or her services, such officer, if he or she is a member of the Board of Directors shall not participate in fixing such compensation, and any compensation paid to a member of the Board of Directors (regardless of the services rendered) must be approved by Members holding a majority of the voting interests of the Association.

## 10. COMMITTEES.

Subject to any contrary provisions of the Declaration and these Bylaws, the Board of Directors may appoint a nominating committee as provided in these Bylaws. In addition, the Board of Directors may appoint such other committees as it deems appropriate to carry out its purposes.

## 11. ASSESSMENTS.

As more fully provided in the Declaration, each Member is obliged to pay to the Association annual and special assessments to be collected as described in that section, all of which is incorporated here by reference.

12. AMENDMENTS.

12.1 These Bylaws can be amended only by the~ vote or written consent of Members constituting a sixty-seven percent (67%) majority of the Members of the Association.

12.2 The adoption of any amendment to these Bylaws must comply with the provisions of the Act.

13. GENERAL PROVISIONS.

13.1 Conflicting Provisions. In case of any conflict between any provision of the Declaration and these Bylaws, the provisions of the Declaration control.

13.2 Fiscal Year. The fiscal year of the Association shall be a calendar year unless a different fiscal year is adopted by the Members at a duly constituted meeting.

13.3 Proof of Membership. No person can exercise the rights of membership in the Association until satisfactory proof of membership has been furnished to the Secretary. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person to be the Owner of a Residential Property entitling him or her to membership. The deed or policy is conclusive in the absence of a conflicting claim based on a later deed or policy.

13.4 Absentee Ballots. The Board of Directors may make such provisions as it considers necessary or desirable for absentee ballots.

13.5 Consent to Waiver of Notice. The transactions at any meeting of the Board of Directors or Members at which a quorum is present, however noticed, shall be of the same validity as if they occurred at a meeting held after regular notice; provided, that either before or after the meeting each absent member of the Board of Directors or absent Member must sign a written waiver of notice, a consent to the holding of such meeting, or an approval of the correct minutes of such meeting. All such waivers, consents, or approvals shall be included in the records of the Board of Directors and made a part of its minutes.

13.6 Reserves. Any amounts collected by or paid to the Association in excess of operational needs shall be set aside as reserves for future financial needs in the manner described in the Declaration and shall be deposited into insured, interest-bearing accounts.

14. ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS.

Financial statements as described and set forth in paragraph 4.7 of the Declaration shall be prepared annually and copies shall be distributed to each Member of the Association in attendance at the annual meeting of the Members of the Association.

15. INSPECTION OF ASSOCIATION BOOKS AND RECORDS.

15.1 Any membership register, books of account and minutes of meetings of the Members, the Board of Directors and committees of the Board of Directors shall be made available for inspection and copying by any Member or his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member, at the office of the Association or at such other place within the Property as the Board of Directors prescribes.

15.2 The Board of Directors shall establish by resolution reasonable rules with respect to:

15.2.1 Notice to be given to the custodian of the records of the Association by the Member, representative or Mortgagee desiring to make an inspection.

15.2.2 Hours and days of the week when inspection may be made.

15.2.3 Payment of the cost of reproducing copies of documents requested by a Member or by a representative or Mortgagee.

15.3 Every member of the Board of Directors shall have the right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the Board of Directors includes the right to make extracts and copies of documents.

## Secretary's Certificate

The undersigned is the duly elected Secretary of the Breckenridge Homeowners Association, Inc., an Idaho non-profit corporation, and does hereby certify that the foregoing ten (10) pages constitute the duly adopted Amended and Restated Bylaws of said corporation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Rose Russell, Secretary

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