

TWIN FALLS COUNTY

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BRECKENRIDGE HOA

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KRISTINA GLASCOCK

County Clerk

Deputy: CASKEW

**AMENDED, RESTATED AND ALL INCLUSIVE
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRECKENRIDGE HOMEOWNERS ASSOCIATION**

THIS DECLARATION is made on the date hereinafter set forth by Breckenridge Homeowners Association, Inc., an Idaho Non-Profit Organization, hereinafter referred to as "Association".

WITNESSETH:

WHEREAS, this Amended, Restated and all-Inclusive Declaration of Covenants, Conditions and Restrictions for Breckenridge Homeowners Association, Inc. (hereafter "Declaration") shall amend and restate all past Declarations such that the terms of this present Declaration shall hereby replace and supersede all previous Declarations effecting the hereinafter described property.

WHEREAS, certain Owners own parcels of real property and the Association is also the Owner of certain common community areas of real property all of which are situated in the City of Twin Falls, County of Twin Falls, State of Idaho, hereafter referred to as "Property", which property is more particularly described as follows:

A Parcel of Land located in S²SE⁴, and Government Lots 4 and 5, Section 33, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho; being a portion of "Breckenridge Estates Subdivision", and being more particularly described as follows:

- COMMENCING at the Southeast corner of Section 33;
- THENCE South 89° 51'19" West, 2638.59 feet to the South Quarter Corner of Section 33;
- THENCE North 00° 40'01" East, 513.48 feet along the West boundary of said S1/2SE1/4;
- THENCE North 89° 29'59" East, 918.97 feet to the Southwest corner of "Breckenridge Estates Subdivision";
- THENCE North 01° 25'51" East, 709.14 feet to the REAL POINT OF BEGINNING;
- THENCE North 01° 25'51" East, 373.87 feet to a point on the Rim of the Snake River Canyon;
- THENCE along the rim of the Snake River Canyon as follows:
 - North 76° 37'28" East, 28.31 feet;
 - North 85° 06'47" East, 59.75 feet;
 - North 89° 21'07" East, 82.23 feet;
 - South 81° 31'35" East, 152.90 feet;
 - North 87° 58'08" East, 48.53 feet;
 - South 84° 26'46" East, 23.31 feet, to a point on the East boundary of Government Lot 5;
- THENCE South 00° 53'49" West, 45.68 feet, along the East boundary of said Lot 5;

THENCE South 85° 12'41" East, 258.93 feet;
THENCE South 75° 25'41" East, 800.00 feet;
THENCE North 89° 51'19" East, 116.77 feet, to a point on the City of Twin Falls street Right of Way Instrument No. 777548;
THENCE South 80° 37'07" East, 98.34 feet along said City Right of Way;
THENCE along a curve right on said Right of Way;
 Δ – 75° 14'59";
 R – 51.00';
 A – 66.98';
 C – 62.27';
 LCB – South 42° 59'37" East;
THENCE South 05° 22'08" East, 100.72 feet, along said City Right of Way;
THENCE South 01° 22'48" West, 96.89 feet, along said City Right of Way;
THENCE along a curve right;
 Δ – 70° 00'00";
 R – 20.00';
 A – 24.43';
 C – 22.94';
 LCB – South 36° 22'48" West;
THENCE South 71° 22'48" West, 95.33 feet;
THENCE along a curve right;
 Δ – 17° 52'32";
 R – 220.00';
 A – 68.64';
 C – 68.36';
 LCB – South 80° 19'04" West;
THENCE South 89° 15'20" West, 584.67 feet;
THENCE along a curve left;
 Δ – 45° 00'00";
 R – 180.00';
 A – 141.37';
 C – 137.76';
 LCB – South 66° 45'20" West;
THENCE South 44° 15'20" West, 85.89 feet;
THENCE along a curve left;
 Δ – 90° 00'00";
 R – 20.00';
 A – 31.42';
 C – 28.28';
 LCB – North 00° 44'40" West;
THENCE North 45° 44'40" West, 60.46 feet;

THENCE along a curve right;

$\Delta - 45^\circ 00'00''$;

R – 150.00';

A – 117.81';

C – 114.81';

LCB – North $23^\circ 14'40''$ West;

THENCE North $00^\circ 44'40''$ West, 99.80 feet;

THENCE along a curve left;

$\Delta - 109^\circ 47'39''$;

R – 20.00';

A – 38.33';

C – 32.73';

LCB – North $55^\circ 38'30''$ West;

THENCE North $09^\circ 05'16''$ West, 51.02 feet;

THENCE South $69^\circ 27'41''$ West, 144.62 feet;

THENCE North $38^\circ 18'09''$ West, 69.98 feet;

THENCE South $89^\circ 51'19''$ West, 449.85 feet to the REAL POINT OF BEGINNING containing approximately 14.96 acres.

WHEREAS, Grantor has established on the Property an exclusive planned residential community which contains residential dwelling structures thereon, with open spaces, common areas with recreational facilities and pedestrian walkways, created for the benefit of said community through the granting of specific rights, privileges and easements of enjoyment which may and have been shared and enjoyed by all of the residents thereof, subject to the Breckenridge Estates Planned Unit Development Agreement with the City of Twin Falls, State of Idaho.

WHEREAS, Association desires to assure the attractiveness of the individual lots and community facilities within the Property; to prevent any future impairment thereof; to prevent nuisances; to preserve, protect and enhance the values and amenities of the Property; and to provide for the maintenance of the Property including said open spaces, common areas with recreational facilities and pedestrian walkways; and in order to achieve these objectives, the Association is desirous of subjecting the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein, each and all of which is and are for the benefit of the Property and each Owner thereof.

NOW, THEREFORE, Association hereby declares that the Property and each individual lot, parcel, and each and every part and portion thereof shall be held, sold, conveyed, used, occupied and improved subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with and bind, the Property and each individual lot, parcel, and each and every part and portion thereof, and be binding on all parties having any right, title or interest in the Property and each individual lot, parcel, and each and every part and portion thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

- 1.1 "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.
- 1.2 "Articles" shall mean the Articles of Incorporation of the Association as amended or restated.
- 1.3 "Assessments" shall mean those payments required of Owners, including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.
- 1.4 "Association" shall mean the Breckenridge Homeowners Association, Inc., an Idaho Nonprofit Corporation, its successors and assigns, established by Grantor pursuant to Article III of this Declaration to exercise the powers and to carry out the duties set forth in this Declaration.
- 1.5 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property, the imposition of fines and forfeitures for violation of Association Rules and Regulations, and procedural matters for use in the conduct of business of the Association.
- 1.6 "Board" shall mean the Board of Directors of the Association.
- 1.7 "Building Lot" shall mean one or more individual lots within the Property as specified or shown on the Plat (excluding Common Area lots), hereinafter referred to as "Residential Property".
- 1.8 "Bylaws" shall mean the Bylaws of the Association as amended.
- 1.9 "Common Area" shall mean all real property in which the Association holds an interest or which is held by the Association or maintained, permanently or temporarily for the common use, enjoyment and benefit of every Residential Property Owner (once construction of Improvements are fully completed and the Residential Property is occupied thereon) which includes the real property legally described on page 1 and 2 and shall include, without limitation, all such parcels that are designated as common open spaces, common landscaped areas, and common recreational facilities and pedestrian walkways, subject to the Breckenridge Estates Planned Unit Development Agreement with the City of Twin Falls, State of Idaho. Additional Common Area may be established from time to time by the Association on any portion of the Property by describing it on a designed plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration.
- 1.10 "Declaration" shall mean this Declaration of Covenants, Conditions And Restrictions For Breckenridge, as it may be amended from time to time.
- 1.11 "Design Guidelines" shall mean the design and construction guidelines approved by the Architectural Committee.
- 1.12 "Garden Homes" shall refer to the Residential Property Tract which is presently zoned for eleven (10) zero-lot-line dwelling lots and (1) single-family detached dwelling; or a combination of both zero-lot-line and single-family detached dwelling lots and which shall not exceed that density.

- 1.13 "Grantor" shall mean Breckenridge Estates Limited Partnership, an Idaho limited partnership, or its successor in interest as developer of Breckenridge, or any person or entity to whom the rights under this Declaration are expressly transferred by Breckenridge Estates Limited Partnership or its successor.
- 1.14 "Improvement(s)" shall mean the construction of any residential dwelling, any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, pedestrian walkways, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, residences, recreational facilities, and fixtures of any kind whatsoever.
- 1.15 "Limited Assessment(s)" shall mean a charge against each Residential Property Owner for the purpose of allocating the costs of specific maintenance provided by the Association as specified in Article 5.4.
- 1.16 "Manor Homes" shall refer to the Residential Property Tract, which includes the potential for twenty-eight (28) zero-lot-line dwelling lots; or a combination of both zero-lot-line and single-family detached dwelling lots.
- 1.17 "Member" shall mean each person or entity holding a membership in the Association.
- 1.18 "Owner" shall mean the person or other legal entity, holding fee simple interest of record to a Property or Residential Property which is a part of the planned community, and such shall include sellers under executory contracts of sale, but shall exclude those having such interest merely as security for the performance of an obligation.
- 1.19 "Person" shall mean any individual, partnership, corporation or other legal entity.
- 1.20 "Plat" shall mean the subdivision plat of the Property as recorded at the Office of the County Recorder, Twin Falls County, State of Idaho, as the same may be amended by duly recorded amendments thereof.
- 1.21 "Property" shall refer to the real property encompassed by Breckenridge, "A Planned Residential Community", situated in the City of Twin Falls, County of Twin Falls, State of Idaho, hereafter referred to as "Property", which is more particularly described on pages 1, 2 and 3 of this Declaration.
- 1.22 "Recreational Facilities" shall refer to real improvements within the Common Area for the common use, enjoyment and benefit of each Residential Property Owner (once construction of Improvements are fully completed and the Residential Property is occupied thereon), subject to the Breckenridge Estates Planned Unit Development Agreement with the City of Twin Falls, State of Idaho.
- 1.23 "Regular Assessment(s)" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Areas and all Improvements located thereon, and the other costs of an Association which are to be levied against the Property of and paid by each Residential Property Owner to the Association pursuant to the provisions of this Declaration.
- 1.24 "Residential Property" shall refer to any Building Lot with or without appurtenant Improvement(s) thereon.

- 1.25 "Special Assessment(s)" shall mean the portion of the costs of capital improvements or replacements, equipment purchases, repairs, replacements or shortages in Regular Assessments which are authorized and to be paid by each Residential Property Owner to the Association pursuant to the provisions of this Declaration.
- 1.26 "Special Project Assessments" shall mean a charge against each involved Residential Property Owner for the purpose of allocating future project costs provided by the association as specified in Article 5.5.
- 1.27 "Village Homes" shall refer to the Residential Property Tract which includes twenty-eight (28) single-family detached dwelling lots.

ARTICLE II
GENERAL AND SPECIFIC RESTRICTIONS

2.1 Structures - Generally. All structures are to be designed, constructed and used in such a manner as to promote general compatibility and architectural harmony among and between all Owners and all improved properties within the Property and the residential community contemplated by this Declaration.

2.1.1 Use. All Residential Property shall be used exclusively for zero-lot-line or single-family detached dwelling purposes. No Residential Property shall be improved except with a single-family detached dwelling in the Village Homes; and no Residential Property shall be improved except with a zero-lot-line or single-family detached dwelling in the Manor and Garden Homes. Such other accessory structures may be approved by the Architectural Committee, which are not otherwise prohibited by the provisions of this Declaration.

No business or home occupation shall be conducted on any Residential Property or from any other structure except that a home office may be maintained provided that such use is not apparent from the exterior of the structure, and such use does not generate third party traffic. The prohibition against use of any Residential Property or any other structure thereon for the conduct of any business constitutes a prohibition against (and prohibits) use of any Residential Property or any other structure thereon for or as a "half-way house," treatment center, a medical facility of any kind, shelter home, school, day-care center or other similar use, (notwithstanding the provisions of Sections 67-6530 and 67-6531, Idaho Code).

2.1.2 Architectural Committee Review. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvements, or which will affect drainage shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specifications, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: size, height, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, including roofing material, physical or aesthetic impacts on other properties, including Common Areas, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors which the requirements as to the approval of the architectural design shall not apply to the interior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential dwellings except to the extent incidentally necessitated by use, size and height restrictions.

2.1.3 Setbacks and Height. No residential dwelling or other structure (exclusive of fences and similar structures approved by the Architectural Committee) shall be placed nearer to the Residential Property lines than permitted by the setback requirements set forth in detail in the recorded Plat or than permitted by any more restrictive applicable zoning restriction, by any conditional use permit, or by a building envelope designated on the Plat or by the Architectural Committee. The Architectural Committee may restrict structural height which varies from standard design plans for the Manor Homes, Garden Homes and Village Homes where such would adversely affect adjacent structures or the Property as a whole.

- 2.1.4 Accessory Structures. No detached structures shall be allowed on any Residential Property without the prior express written approval as to the location and all elements thereof by the Architectural Committee. Garages shall be constructed of, and roofed with, the same materials, and with similar colors and design as the dwelling on the same Residential Property. No patio covers are allowed unless with express written approval by the Architectural Committee and construction, and design thereof, are controlled by the Architectural Committee. No playhouses, pools, pool slides, diving boards, hot tubs, spas, or similar items shall extend higher than five (5) feet above the finished graded surface of the Residential Property upon which such item(s) are located unless specifically approved by the Architectural Committee. Basketball courts, tennis courts or backboards shall be allowed in the backyard of any Residential Property, provided that such courts or backboards are approved by the Architectural Committee and are not visible from any street, and do not promote noise or other nuisance that is offensive or detrimental to other Residential Property in the vicinity of the Residential Property or offensive or detrimental to the occupants of such other Residential Property.
- 2.1.5 Driveways. All driveways shall be composed of concrete and shall be properly graded to assure proper drainage. No driveway shall be wider than the garage to which said driveway leads unless approved by the Architectural Committee. All driveways shall be a minimum of twenty (20) feet in length.
- 2.1.6 Mailboxes. All mailboxes and stands will be of design, material and coloration, and shall be located at places approved by the Architectural Committee. Such approval may be in the form of specifications adopted as a rule by the Architectural Committee
- 2.1.7 Fencing.
- 2.1.7.1 Lot line fencing in the Manor Homes is prohibited. Special privacy fencing or landscaping shall not be situated, constructed or maintained in the Manor Homes without express written approval of the Architectural Committee; the design, location and installation of which shall be in accordance with strict guidelines set forth by the Architectural Committee. Approved special fencing or landscaping installed by an Owner shall be the exclusive obligation of the Owner to maintain in accordance with Article 2.7 and shall not be subject to Limited Assessment.
- 2.1.7.2 No fence, including landscaping or boundary wall shall be situated, constructed or maintained in the Village Homes and/or Garden Homes without the prior written approval of the Architectural Committee. No fence, landscaping or boundary wall situated anywhere upon a Residential Property shall have a height greater than six (6) feet above the finished graded surface (adjacent to the fence) of the Residential Property upon which such fence, landscaping or boundary wall is situated. Any fence or boundary wall constructed on or near the lot line common to one or more properties shall be constructed as a "good neighbor" fence or wall. No fence shall be constructed so as to extend beyond the front plane of a residential dwelling.
- 2.1.8 Lighting. Exterior lighting on a Residential Property shall not be installed without prior Architectural Committee approval. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the Architectural Committee. Lighting shall be restrained in design, to prevent excessive brightness and to prevent glare or direct lightfall onto adjoining Residential Property or streets. Notwithstanding the foregoing, private street lights of a design and luminescence approved by the

City of Twin Falls shall be maintained by the Association, the expense of which shall be included as a part of the expense of the Common Area maintenance.

2.1.9 Access Restriction. No driveway or other access Improvement shall be constructed upon or across any Common Area.

2.1.10 Roofing Materials. Roof design and surface materials shall be consistent with the existing residential properties and are expressly subject to Architectural Committee approval. Heavy, long-life Architectural composition roofing shall be used in the Village Homes, Manor Homes, and Garden Homes.

2.2 Antennae. No exterior radio antenna, television antenna or other antenna of any type nor any satellite dish shall be erected or maintained on the Property or on any Residential Property unless it is approved by the Architectural Committee and located or screened in a manner acceptable to said Architectural Committee.

2.3 Insurance Rates. Nothing shall be done or kept on any Residential Property which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Residential Property which would result in the cancellation of insurance on any Residential Property owned or managed by the Association or which would be in violation of any law.

2.4 No Further Subdivision. No Residential Property may be further subdivided.

2.5 Signs. No sign of any kind shall be placed on any Residential Property or within the Common Area or displayed to the public view from any Residential Property or the Common Area except:

(1) One (1) sign of customary and reasonable dimensions not to exceed three (3) feet by two (2) feet may be displayed by an Owner on or from a Residential Property advertising the residence for sale or lease.

(2) "Neighborhood Watch" signs allowed subject to Board approval.

2.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area or vacant properties, except for refuse, garbage and trash placed in city approved containers.

No odor shall be permitted to arise from any Residential Property or structure thereon so as to render the Property or any portion thereof unsanitary, offensive or detrimental to the Property or to its occupants.

No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other Residential Property in the vicinity or to its occupants.

Without limiting the generality of any of the foregoing provisions, and with the exception of home security system sound devices meeting the approval of the Architectural Committee, no exterior speakers, horns, whistles, bells or other sound devices, flashing lights or search lights shall be located, used or placed on the Property or any Residential Property without the prior written approval of the Architectural Committee.

2.7 Residential Property Exterior Surfaces Maintenance and Repair Obligations:

- 2.7.1 Manor Homes: No Residential Property or residential exterior surface shall be permitted to fall into disrepair, and every Improvement on said Residential Property shall at all times be kept in good condition and repair. Except for specific maintenance provided by the Association through Limited Assessments as specified in Article 5.4.1.1; maintenance and repair of all residential exterior surfaces and Improvements (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.1) in the Manor Homes shall be the exclusive obligation of the Owner.

Landscaping maintenance (with the exception of private gardens approved by the Architectural Committee, including but not limited to flowers, trees, and vegetables which are installed by the Owner of a Residential Property; hereinafter referred to as "Private Gardens"); private security gate maintenance and private street maintenance (where two or more properties share a private street) shall be provided by the Association through Limited Assessments specified in Article 5.4.1.1. Maintenance and expense of all residential exterior surfaces (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.1) shall be the exclusive obligation of each individual Owner.

In the event that any Owner shall permit any Improvement which is the responsibility of the Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or so as to damage Residential Property or facilities on an adjoining Residential Property or the Common Area, the Board, upon fifteen (15) days prior written notice to the Owner of such Residential Property, shall have the right to correct such condition, and to enter upon such Owner's Residential Property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment against the Owner and shall create a lien enforceable in the same manner as other Assessments set forth in Article V of this Declaration.

The Owner of the offending Residential Property shall be personally liable, and such Owner's Residential Property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, 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 therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments. Each Owner shall have the remedial rights set forth herein if the Association fails to exercise its rights within a reasonable time following written notice by such Owner.

- 2.7.2 Village Homes. No Residential Property or residential exterior surfaces shall be permitted to fall into disrepair, and every Improvement on said Residential Property shall at all times be kept in good condition and repair. Except for specific maintenance provided by the Association through Limited Assessments as specified in Article 5.4.1.2; maintenance and repair of all residential exterior surfaces and all Improvements (including, but not limited to landscaping, fencing, and private driveways) in the Village Homes shall be the exclusive obligation of the Owner.

Private street maintenance, where two or more properties share a private street, shall be provided by the Association through Limited Assessments specified in Article 5.4.1.2. Maintenance and expense of all residential exterior surfaces, landscaping, fencing and private driveways shall be the exclusive obligation of each individual Owner.

In the event that any Owner shall Permit any Improvement, which is the responsibility of the Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or so as

to damage Residential Property facilities on an adjoining Residential Property or the Common Area, the Board upon fifteen (15) days prior written notice to the Owner of such Residential Property, shall have the right to correct such condition, and to enter upon such Owner's Residential Property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment against the owner and shall create a lien enforceable in the same manner as other Assessments set forth in Article V of this Declaration.

The Owner of the offending Residential Property shall be personally liable, and such Owner's Residential Property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, 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 thereof, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments. Each owner shall have the remedial rights set for herein if the Association fails to exercise its rights within a reasonable time following written notice by such Owner.

- 2.7.3 Garden Homes: No Residential Property or residential exterior surface shall be permitted to fall into disrepair, and every Improvement on said Residential Property shall at all times be kept in good condition and repair. Except for specific maintenance provided by the Association through Limited Assessments as specified in Article 5.4.1.3; maintenance and repair of all residential exterior surfaces and Improvements (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.2) in the Garden Homes shall be the exclusive obligation of the Owner.

Landscaping maintenance (with the exception of private gardens approved by the Architectural Committee, including but not limited to flowers, trees, and vegetables which are installed by the Owner of a Residential Property; hereinafter referred to as "Private Gardens"); and private street maintenance (where two or more properties share a private street) shall be provided by the Association through Limited Assessments specified in Article 5.4.1.1. Maintenance and expense of all residential exterior surfaces (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.2) shall be the exclusive obligation of each individual Owner.

In the event that any Owner shall permit any Improvement which is the responsibility of the Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or so as to damage Residential Property or facilities on an adjoining Residential Property or the Common Area, the Board, upon fifteen (15) days prior written notice to the Owner of such Residential Property, shall have the right to correct such condition, and to enter upon such Owner's Residential Property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment against the owner and shall create a lien enforceable in the same manner as other Assessments set forth in Article V of this Declaration.

The Owner of the offending Residential Property shall be personally liable, and such Owner's Residential Property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, 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 therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments. Each Owner

shall have the remedial rights set forth herein if the Association fails to exercise its rights within a reasonable time following written notice by such Owner.

- 2.7.4 Fire or Other Casualty Loss. In case of damage by fire, earthquake, or other casualty to a Residential Property, the Owner of said Residential Property, at its own expense, shall repair the damage with reasonable dispatch, giving due consideration to delays caused by strikes, adjustment of insurance and other causes beyond the Owner's control; provided, however, that in all events the Owner shall commence reasonable clean-up of debris and destruction within thirty (30) days from date the damage occurred and Owner shall commence repairs within one hundred twenty (120) days from receipt of the insurance settlement.

In the event the Owner of said Residential Property has no insurance, Owner shall be fully liable for the clean-up of debris and destruction within thirty (30) days and repairs within one hundred twenty (120) days from date the Residential Property is damaged or destroyed.

The rules for reconstruction shall be the same rules and restrictions, as to design, appearance and size that were in force and complied with at the time of original construction.

All clean-up and repair schedules shall be submitted by Owner, in writing, to the Architectural Committee for approval. In the event the clean-up and repair activities do not take place as provided herein, all remedial action shall be pursued by the Board in accordance with all other provisions provided for in this Declaration.

- 2.8 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 Architectural Committee, and all required governmental approvals are obtained. For the purposes hereof, "established drainage" is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed, or that drainage which is shown on any plans approved by the Architectural Committee, which may include drainage from Common Area over any Residential Property in the Property. Owners and properties shall be subject to such reasonable watering rules and regulations as the Board may adopt from time to time.
- 2.9 Grading. The Owner of any Residential Property on which grading or other work has been performed pursuant to a grading plan approved by the Architectural Committee, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Association, or other public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided in Article V herein, as may be applicable.
- 2.10 Water Supply Systems. No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Residential Property. Each Owner shall connect the appropriate facilities on such Owner's Residential Property to the Twin Falls City Water System and pay all charges assessed therefore.
- 2.11 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements shall be constructed on the Property which are or might be unsafe or hazardous to any Person, the Property or Residential Property.

2.12 Unsightly Articles. No unsightly articles shall be permitted to remain on any Residential Property so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in areas approved by the Architectural Committee.

No clothing or fabrics shall be hung, dried or aired in such a way as to be visible to other Residential Property, and no equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Residential Property except within an enclosed structure or as appropriately screened from view. No vacant residential dwelling or other structures shall be used for the storage of building materials (except in the ordinary course of construction of such dwelling or structures).

2.13 No Temporary Structures. No house trailer, mobile home, tent, shack or other temporary building, improvement or structure shall be placed upon any Residential Property or any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property or as otherwise approved by the Architectural Committee.

2.14 No Unscreened Boats, Campers and Other Vehicles. No boats, trailers, campers, commercial vehicles in excess of three quarter (3/4) ton size, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepaired and unsightly vehicles or similar equipment shall be placed upon any Residential Property or any portion of the Property (including, without limitation, streets, parking areas and driveways) unless the same are enclosed by a structure concealing them from view in a manner approved by the Architectural Committee. To the extent possible, garage doors shall remain closed at all times.

2.15 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Residential Property to the Twin Falls City Sewer System and pay all charges assessed therefore.

2.16 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This paragraph 2.16 shall not prohibit exploratory drilling or coring which is necessary to construct a dwelling or Improvements.

2.17 Energy Devices, Outside. No energy production devices, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This paragraph shall not apply to passive solar energy system incorporated into the approved design of a residential structure.

2.18 Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles, snowmobiles, aircraft and boats, shall be subject to all Association Rules, which may prohibit or limit the use thereof within the Property (provided that no rule shall be adopted prohibiting the use of automobiles or other non-commercial vehicles ordinarily used for personal transportation from using the streets within the Property for ingress and egress). No on-street parking shall be permitted. No parking bays shall be permitted in any side, front or backyard. Vehicles parked on a driveway shall not extend into any sidewalk or pedestrian walkways. No motorized vehicle or device shall

be permitted on any Common Area unless such vehicle is engaged in an emergency procedure or Common Area maintenance activities authorized by the Association.

- 2.19 Animals/Pets. No animals, birds, insects, pigeons, poultry, pigs or livestock shall be kept on the Property, except up to two (2) domesticated dogs, up to two (2) domesticated cats, and other household pets which are kept within the dwelling and which do not unreasonably bother or constitute a nuisance to others.

Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of its owner. Such Owner shall clean up any animal defecation immediately from the Common Area or public right-of-way. Failure to do so may result, at the Board's discretion in a Limited Assessment levied against such animal owner.

The construction and location of dog runs or other pet enclosures is forbidden in the Manor Homes unless specific approval is granted by the Architectural Committee and the design and construction thereof are approved by the Architectural Committee. All approved dog runs or other pet enclosures should be kept clean, maintained in a sanitary condition and free of animal defecation and odor, which may constitute a nuisance to others or interfere with landscaping maintenance provided by the Association.

Pet enclosures in the Village Homes and Garden Homes shall be subject to Architectural Committee approval, shall be appropriately screened, and maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed not less than eight (8) feet from the side and twelve (12) feet from the rear Residential Property line, shall not be placed in any front yard of a Residential Property and shall be screened from view so as not to be visible from the Common Area or an adjacent Residential Property.

- 2.20 Landscaping and Building Construction.

2.20.1 Landscaping. All landscaping shall be in conformance with a landscape design and plan approved by the Architectural Committee. All landscaping shall be commenced within thirty (30) days following the completion of any dwelling on any Residential Property. The Architectural Committee may impose a default penalty upon any Residential Property Owner if construction does not commence or is not completed as provided herein. Owner shall promptly pay to the Association the amount of such default penalty.

The Architectural Committee may adopt rules regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such rules or shall allow such Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's Residential Property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth in Article V.

2.20.2 Building Construction. Construction of a residential dwelling and all other Improvements on any Residential Property shall be diligently pursued and completed in a timely manner.

2.21 Conveyances to and from Municipalities. Providing a majority vote or written consent of at least sixty-seven percent (67%) of its Members, the Association shall have the power to convey any Common Area to the City of Twin Falls, the County of Twin Falls, the State of Idaho, the United States of America or any political subdivision thereof, and shall also have the power to receive a conveyance of any Residential Property interest from the above-referenced entities or any other individual or entity and to hold such Residential Property interest as Common Area.

**ARTICLE III
BRECKENRIDGE HOMEOWNERS ASSOCIATION**

3.1 Organization of Breckenridge Homeowners Association. The Breckenridge Homeowners Association, Inc. (the "Association") shall be initially organized as an Idaho Nonprofit Corporation under the provisions of the Idaho Code relating to general Nonprofit Corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration.

3.2 Membership:

3.2.1 Qualifications. Each Owner of a Residential Property 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 Property within 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.

3.2.2 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.

3.2.3 Transfer of Membership. The membership in the Association of each person or entity who owns, or owns an interest in, one or more Residential Property 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.

3.3 Voting.

3.3.1 Number of Votes. Voting in the Association shall be carried out by Members who may cast the votes attributable to the Residential Property of which they are Owners. The number of votes any Member may cast on any issue is determined by the number of Residential Properties which the Member owns. When more than one person holds an interest in any Residential Property, all such persons shall be Members but nevertheless shall share the vote attributable to the Residential Property. The Association shall have one (1) class of voting membership:

Member: Members are all Owners. Each Member shall be entitled to one (1) vote for each Residential Property in which such Member owns an interest. If a Residential Property is owned by more than one Member, the vote for such Residential Property shall be exercised as the Owners of said Residential Property

shall agree; provided, that no more than one (1) vote shall be cast with respect to any single Residential Property.

3.3.2 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.

3.3.3 Secret Ballot: Cumulative Voting: In any election involving the election or removal of more than one member of the Board, voting shall be by cumulative voting. All votes for election to or removal from the Board 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 is removed by a vote of Association Members, an individual member of the Board shall not be removed unless the number of votes in favor of removal satisfies the requirements of the Act.

3.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by a Board of Directors ("Board") and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of the Association shall be elected in accordance with the provisions set forth in the Association Bylaws.

3.5 Power and Duties of the Association.

3.5.1 Powers. The Association shall have the powers of a corporation organized under the general corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Association's other assets and affairs and the performance of the other responsibilities herein assigned.

3.5.1.1 Assessments. The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

3.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration of the Articles or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

3.5.1.3 Delegation of Powers. The authority to delegate its power to committees, officers, employees, or to any person, firm or corporation to act as manager, and to contract for the maintenance, repair, replacement and operation of the Common Area. Neither the Association nor the members of its

Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

- 3.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Areas and recreational facilities by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Notwithstanding the foregoing, specific rules with application limited to the individual areas of the Manor Homes, Village Homes and Garden Homes may be adopted and enforced so long as such rules apply equally to all Owners and properties within the specific Tract. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

- 3.5.1.5 Emergency Powers. The power, exercised by the Association or by any person authorized by it, to enter upon any Residential Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or Residential Property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable.

- 3.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - 3.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services.

 - 3.5.1.6.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

 - 3.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting Common Areas, public and private streets or land conveyed for any public or quasi-public purpose including, but not limited to, common areas.

3.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by this Declaration, and the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

3.5.2.1 Operation and Maintenance of the Common Area, Landscaping, Private Security Gate, Private Streets, and Private Driveways. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area; and subject to Limited Assessment as specified in Article 5.4.1 landscaping maintenance (other than Private Gardens and special private fencing and landscaping as provided in Article 2.1.7); private security gate maintenance in Manor Homes; and private street maintenance in Manor Homes, Garden Homes and Village Homes (where two or more properties share a private street).

3.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Area.

3.5.2.3 Maintenance of Berms, Retaining Walls, Fences and Drainage Systems. Maintain the berms, retaining walls, fences and drainage systems within the Common Area.

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

3.5.2.5 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical telephone and gas and other necessary services for the Common Area.

3.5.2.6 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance the Board deems necessary or advisable, including without limitation to the following policies of insurance:

3.5.2.6.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Area.

- 3.5.2.6.2 Comprehensive public liability insurance insuring the Board, the Association, and agents and employees of the Association of the foregoing against any liability incident to the ownership and/or use of the Common Area.
 - 3.5.2.6.3 Full coverage directors' and officers' liability insurance.
 - 3.5.2.6.4 The Association shall be deemed trustee of the interest of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith.
 - 3.5.2.6.5 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
 - 3.5.2.7 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Association shall deem advisable.
 - 3.5.2.8 Architectural Committee. Appoint and remove members of the Architectural Committee.
 - 3.5.2.9 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or Bylaws, including, without limitation, the recordation of any claim of lien with the Twin Falls County Recorder, as more fully provided herein.
 - 3.5.2.10 Private Street Lights. Maintain, repair or replace private street lights located on the Property. This duty shall run with the land and cannot be waived by the Association unless the City of Twin Falls consents to such waiver.
- 3.6 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officer of the Association, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, or the Architectural Committee, or any other committee, or any officer or director of the Association, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional misconduct.
- 3.7 Budgets and Financial Statements. Financial statements as hereinafter described for the Association shall be prepared annually and copies shall be distributed to each Member of the Association in attendance at the annual meeting of the Association Membership.
- 3.7.1 A pro forma operating statement or budget for each fiscal year.
 - 3.7.2 A balance sheet as of the last day of the Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year.

3.8 Meetings of the Association. Each year the Association shall hold at least one meeting of the Members, according to the schedule for such meetings established by the Bylaws; provided, that such meeting shall occur no earlier than March 15th and no later than May 31st each year. Only Members shall be entitled to attend Association meetings, and all other persons may be excluded.

Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, not less than ten (10) days nor more than thirty (30) days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held at a reasonable place selected by the Board. 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%) 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.

**ARTICLE IV
RIGHTS TO COMMON AREAS**

- 4.1 Use of the Common Area. Providing construction of Improvements are fully completed on a Residential Property and the property is occupied, every Residential Property Owner shall have a right to use each parcel of the Common Area, which right shall be appurtenant to and shall pass with the title to every Residential Property subject to the following provisions:
- 4.1.1 The right of the Association to levy and increase Assessments;
 - 4.1.2 The right of the Association to suspend the voting rights and rights to use of, or interest in, Common Area by an Owner for any period during which any Assessment or charge against such Owner's Residential Property remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association Rules; and
 - 4.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be permitted by this Declaration, the Articles and Bylaws and agreed to by the Members. No dedication or transfer of said Common Area shall be effective unless an instrument agreeing to such dedication or transfer signed by Members representing sixty-seven percent (67%) of Members has been recorded.
 - 4.1.4 The right of the Association to adopt rules regulating use of the Common Area, and prohibit the construction of structures or Improvements on all Common Areas which interfere with the intended use of such areas.
 - 4.1.5 The right of such Association to protect the Common Area from damage or defacing.
- 4.2 Delegation of Right to Use. Any Owner may delegate, in accordance with the Bylaws and Association Rules, such Owner's right of enjoyment to the Common Area to the members of such Owner's family and such Owner's guests, tenants or contract purchasers who reside on such Owner's Residential Property.
- 4.3 Damages. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenants, or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Residential Property, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Owner and may be collected as provided herein for the collection of other Assessments.

**ARTICLE V
ASSESSMENTS**

- 5.1 Covenant to Pay Assessments. By acceptance of a deed to any Residential Property within the Property, each Owner of such Residential Property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.
- 5.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, cost and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Residential Property against which each such Assessment or charge is made.
- 5.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Residential Property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.
- 5.2 Regular Assessments. All Owners, are obligated to pay Regular Assessments to the Association on a schedule of payments established by the Association.
- 5.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys fees, management fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area, including all Improvements and recreational facilities, located on such areas owned and/or managed and maintained by the Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other Residential Property of the Association that must be replaced and maintained (collectively "Expenses").
- 5.2.2 Computation of Regular Assessments. The Board shall compute the amount of the Association's Expenses on an annual basis.
- 5.2.3 Amounts Paid by Owners. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner, for any given fiscal year shall be computed as follows:
- 5.2.3.1 As to the Association's Regular Assessment, each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Residential Property attributable to the Owner by the total number of Residential Properties within the Property.

5.3 Special Assessments.

5.3.1 Purpose and Procedure. In the event that the Board of the Association shall determine that its Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross Expenses of the Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of such Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

5.3.2 Consistent Basis of Assessment. Except as otherwise provided within this Declaration, every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for such Association.

5.3.3 Responsibility. Each Owner is responsible for full payment of Special Assessments.

5.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board has the power to levy Limited Assessments against a Member or Members as follows for the purpose of allocating the costs of such maintenance provided by the Association:

5.4.1 Limited Assessments for Maintenance:

5.4.1.1 Maintenance Provided by the Association in the Manor Homes. Landscaping maintenance (other than Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.1); private security gate maintenance and private street maintenance (where two or more properties share a private street) in Manor Homes shall be the responsibility of the Association and thereby shall be subject to Limited Assessments. Owners of Residential Property in the Manor Homes shall pay an amount prorated by multiplying the total Limited Assessments amount by the fraction produced by dividing the properties so served and attributable to the Owners by the total number of properties so served.

Maintenance and expense of all residential exterior surfaces (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.1) in the Manor Homes shall not be subject to Limited Assessments, but shall be the exclusive obligation of the Owner as specified in Article 2.7.1.

5.4.1.2 Maintenance Provided by the Association in the Village Homes. Where two or more properties share a private street in the Village Homes, private street maintenance shall be the responsibility of the Association and thereby shall be subject to Limited Assessments. Owners of Residential Property in the Village Homes shall pay an amount prorated by multiplying the total Limited Assessments amount by the fraction produced by dividing the properties so served and attributable to the Owners by the total number of properties so served.

Maintenance and expense of all residential exterior surfaces, landscaping, fencing and private driveways in the Village Homes shall not be subject to Limited Assessment, but shall be the exclusive obligation of the Owner as specified in Article 2.7.2.

- 5.4.1.3 Maintenance Provided by the Association in the Garden Homes. Landscaping maintenance (other than Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.2); private street maintenance (where two or more properties share a private street) in the Garden Homes shall be the responsibility of the Association and thereby shall be subject to Limited Assessments. Owners of Residential Property in the Garden Homes shall pay an amount prorated by multiplying the total Limited Assessments amount by the fraction produced by dividing the properties so served and attributable to the Owners by the total number of properties so served.

Maintenance and expense of all residential exterior surfaces (including Private Gardens and special privacy fencing or landscaping as provided in Article 2.1.7.2) in the Garden Homes shall not be subject to Limited Assessments, but shall be the exclusive obligation of the Owner as specified in Article 2.7.3.

- 5.4.2 Remedial Action. To reimburse the Association for costs incurred in repairing any Common Area, private street or common driveway, damage for which the Member is responsible, or for costs incurred in bringing the Member and/or such Member's Residential Property into compliance with this Declaration or any rules adopted pursuant to authority provided in this Declaration.

5.5 Special Project Assessments:

- 5.5.1 Purpose. To provide a financing procedure to allow for accumulation of funds for anticipated major repairs or replacement that will be needed at some time in the future.
- 5.5.2 Examples of Major Repairs or Replacements. Examples are, but not limited to, sidewalks, private roads, water systems.
- 5.5.3 Levy of Dues. This assessment shall be levied as a limited assessment to each property owner involved in the specific future repair or replacement project.
- 5.5.4 Approval Required. An approval vote of 75% of each group of involved property owners is required to implement this assessment.
- 5.5.5 Other Procedures. This levy will be handled as other limited assessments and the rules established for limited assessments will apply.
- 5.5.6 Accumulation of Funds. Funds raised under this assessment shall be accumulated in an interest earning account until expenditures are required in the future.
- 5.5.7 Balance Sheet. Funds shall be recorded as an investment account and related deferred income account.

- 5.5.8 Transactions in These Funds. Transactions shall not be included in the income and expenses of a fiscal year until such time as the funds are expended in that future year.
- 5.6 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Residential Property for all Members of the Association.
- 5.7 Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31st of each year. The first Assessment shall be pro-rated according to the number of months remaining in the calendar year following the Initiation Date.
- 5.8 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Residential Property subject thereto. The due dates for installment payments of Regular Assessments and Special Assessments shall be the date established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the due date established by the Board. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at eighteen percent (18%) per annum calculated the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Residential Property as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may be exempt from such liability by a waiver of the use and enjoyment of the Common Area, or by lease or abandonment of such Owner's Residential Property.
- 5.9 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the Owner making such request, a statement in writing stating whether or not, to the knowledge of the Association, the Residential Property Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 5.8 may be relied upon by any prospective purchaser or mortgagee of the Owner's Residential Property. Reliance on such Certificate shall not extend to any default as to which the person claiming reliance shall have had actual knowledge. The Association may charge a reasonable fee to defray the cost of preparation of such notices.
- 5.10 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Members of the Association not less than ten (10) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

ARTICLE VI
ENFORCEMENT OF ASSESSMENTS; LIENS

6.1 Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Residential Property, upon becoming an Owner of such Residential Property, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified.

In the event, an attorney or attorneys are employed for the collection of any Assessment whether by suit or otherwise or to enforce compliance with or specific performance of the terms and conditions of this Declaration; each Owner agrees to pay reasonable attorneys' fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to paragraph 6.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

6.2 Assessment Liens.

6.2.1 Creation. There is hereby created a claim of lien with a power of sale on each and every Residential Property to secure payment of any and all Assessments levied against such Residential Property pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective properties upon recordation of a claim of lien with the Twin Falls County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real Residential Property taxes on any Residential Property and Assessments on any Residential Property in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

6.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special, Special Project or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Twin Falls County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Residential Property against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a single notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

6.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law the same as in the case of foreclosure of a Deed of Trust. The Board is hereby authorized to appoint its attorney, any

officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

- 6.4 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Residential Property described in such notice of delinquency and claim of lien, and to the person in possession of such Residential Property, and a copy thereof is recorded by the Association in the Office of the Twin Falls County Recorder.
- 6.5 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Residential Property shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first priority deed of trust or first priority mortgage given and made in good faith and for value that is of record as an encumbrance against such Residential Property prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in paragraph 6.6 with respect to a first mortgagee who acquires title to a Residential Property, the sale or transfer of any Residential Property shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.
- 6.6 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under any deed of trust upon a Residential Property made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Residential Property shall remain subject to this Declaration as amended.

ARTICLE VII
INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

- 7.1 Member's Right of Inspection. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Member of the Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board of the Association shall prescribe. No Member or any other person shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of the Association.
- 7.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to:
- 7.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.
- 7.2.2 Hours and days of the week when such an inspection may be made.
- 7.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this Article VII.
- 7.3 Director's Rights of Inspection. Every member of the Board of the Association (Director) shall have the absolute 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 Director includes the right to make extracts and copies of documents.

ARTICLE VIII
ARCHITECTURAL COMMITTEE

- 8.1 Creation. Breckenridge Homeowners Association, Inc. Board of Directors will form an Architectural Committee ("Architectural Committee") and shall appoint four to ten owners to be the committee. Each member of the committee shall hold office until such time as such member has resigned or been removed. Each successor shall be appointed by the Board, as provided herein.
- 8.2 Association Authority. The Homeowners Association Board shall have the right to appoint or remove any members of the Architectural Committee at any time with or without cause. If a vacancy on the Architectural Committee occurs, The Association Board of Directors, may appoint a replacement.
- 8.3 Review of Proposed Construction. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, 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 its conformance with plans approved by the Architectural Committee. The Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, an engineer or other professional licensed with the State of Idaho, to assist the Architectural Committee in its review of proposals or plans and specifications submitted to the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will conform to the requirements of this Declaration, and will not be detrimental to the Common Area, or the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.
- 8.3.1 Conditions on Approval. The Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, and/or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to an Association for the maintenance thereof, and/or upon the agreement of the Applicant to reimburse an Association for the cost of maintenance, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.
- 8.3.2 Architectural Committee Rules and Fees. The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approvals or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the costs and expenses of the Architectural Committee, including the cost and expense of hiring an architect, an engineer or other professional licensed by the State of Idaho, as provided above, or for such other purposes as established by the Board, and such fee shall be refundable to the extent not expended for the purposes herein stated.

Such rules and guidelines may establish, without limitation, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures as well as special architectural guidelines applicable to properties located adjacent to a street corner or Common Area.

The Architectural Committee may establish rules and guidelines setting forth contract administration procedures to be abided by all contractors performing construction on any Residential Property within the Property. All contractors shall hold the Association, its agents or manager, Members of the Board of Directors of the Association, or representatives of the Property, free from any liens, liability, loss, costs, charges, penalties, obligations, expenses, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with construction or other activities within the Property.

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

8.3.4 Architectural Committee Decisions. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for the approval within thirty (30) days after filing all materials required by the Architectural Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed to the Applicant within thirty (30) days after the date of filing of all required materials with the Architectural Committee. If the plans and specifications are approved the Applicant must complete the project within ninety (90) days after the approval date is given by the Architectural Committee, unless a longer period of completion is given by the Architectural Committee upon a showing of good cause.

8.4 Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. In the absence of such designation, the majority vote of any four to ten (4-10) members of the Architectural Committee as appointed by The Associations Board of Directors or the written consent of any four to ten (4-10) members of the Architectural Committee shall constitute a quorum.

8.5 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans or specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

8.6 Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of the duties hereunder and except as otherwise approved by the Board (and provided that, if an architect, an engineer or other professional is appointed and serves as a member of the Architectural Committee, and provides professional services to the Architectural Committee, reasonable compensation may be paid for such services).

8.7 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

- 8.7.1 Upon the completion of any work for which approved plans are required under this Article VIII, the Owner shall give written notice of completion to the Architectural Committee.
- 8.7.2 Within thirty (30) days thereafter, the Architectural Committee or its duly authorized representatives may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same. Any such Improvement shall be deemed approved unless written notice of noncompliance shall have been mailed to the Applicant within thirty (30) days after the Architectural Committee receives the written notice of completion required by Section 8.7.1 hereinabove.
- 8.7.3 If upon the expiration of thirty (30) days from the date of any notification of noncompliance, or any longer time the Architectural Committee determines to be reasonable, the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling unless the Board specifies a longer time as reasonable. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owners to the Association, the Board shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.
- 8.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Architectural Committee representative, shall be liable to any Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan design from the standpoint of structural safety or conformance with building or other codes.
- 8.9 Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. However, variances shall not be granted for construction of structures or Improvements, except as otherwise provided herein, including without limitation manicured lawns, in the Common Area. Such variances, if approved by the Architectural Committee shall become effective upon recordation in the Office of the County Recorder of Twin Falls County. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration

for any purpose except as to the particular Residential Property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Residential Property, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

**ARTICLE IX
EASEMENTS**

- 9.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Residential Property and the Common Area adjacent thereto, or as between adjacent properties, due to the unwillful placement or settling or shifting of the Improvements including but not limited to structures, pedestrian walkways, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as the encroachment continues to exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Residential Property is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Residential Property agree that minor encroachments over adjoining properties that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph 9.1.
- 9.2 Easements of Access. All Owners of Residential Property will have a perpetual easement for access, ingress and egress over the Common Area. This easement shall run with the land. Such easements may be used by the Association, its Board of Directors and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access (subject to the restriction on use of motorized vehicles in the Common Area hereinabove set forth) and such other purposes reasonably necessary for the use and enjoyment of a Residential Property or Common Area, subject to such rules and regulations as may be adopted from time to time by the Board.
- 9.3 Drainage and Utility Easements. The Association expressly reserves, for the benefit of all the Property, reciprocal easements of access, ingress and egress for all Owners to and from their respective properties for installation and repair of utility services, for drainage of water over, across and upon adjacent properties (provided that surface drainage shall not intentionally be diverted or channeled from one Residential Property onto another Residential Property, except where underground piping incidentally crosses another Residential Property), and Common Areas, resulting from the normal use of adjoining properties or Common Areas, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by the Association for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, the Association hereby reserves to itself for the benefit of the Association the right to grant additional easements and rights-of-way over the Common Area and any of the Property owned by the Association as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Residential Property in the Property to a purchaser.
- 9.3.1 Improvement of Drainage and Utility Easement Areas. The Owners of properties are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas, as shown on the Plat or otherwise designated in any recorded document, which would interfere with or prevent such easement from being used for such purpose; provided, however that the Owner of such properties shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the Architectural Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided, that any drainage

sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Residential Property whose Improvements were so damaged.

- 9.4 Rights and Duties Concerning Utility Easements. The rights and duties of Residential Property Owners within the Property with respect to utilities shall be governed by the following:
- 9.4.1 Wherever house utility connections are installed within the Property, which connections or any portions thereof lie in or upon properties owned by an Owner other than the Owner of the Residential Property served by the connections, the Owner of the Residential Property served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefore, to enter upon any Residential Property or to have their agent enter upon any Residential Property within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.
- 9.4.2 Whenever house utility connections are installed within the Property, which connections serve more than one Residential Property, the Owner of each Residential Property served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service to such Owner's Residential Property.
- 9.5 Driveway Easements. Whenever a driveway is installed within the Property which in whole or in part lies upon a Residential Property owned by an Owner other than the Owner of the Residential Property served, or installed to serve more than one Residential Property, the Owner of each Residential Property served or to be served by such driveway shall be entitled to full use and enjoyment of such other Residential Property as required to service such Owner's Residential Property or to repair, replace or maintain such driveway.
- 9.6 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections or driveways, or with respect to the sharing of the cost therefore, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make the appropriate Limited Assessments against any or all of the Owners involved on behalf of the prevailing Owner(s), which Limited Assessments shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.
- 9.7 Emergency Vehicle Turn-Around Easement. An easement is hereby reserved on the areas of the Property designated on the Plat as "Emergency Vehicle Turn-around Area" for the Association to improve such areas with a hard surface or otherwise as deemed appropriate to accommodate emergency vehicle use. The Owners of properties upon which such easement exists are hereby restricted and enjoined from constructing any improvements upon such easement which would interfere with or prevent the use of such easement for emergency vehicle turn-around use.
- 9.8 Overhang Easement. There shall be an exclusive easement appurtenant to each Residential Property over the Common Areas for overhanging eaves, and for any projections from the buildings, which projections shall not extend beyond the eave line and shall be consistent with all building codes.
- 9.9 Maintenance and Use Easement Between Walls and Lot Lines. Whenever the wall of a structure, or a fence or retaining wall, is legitimately constructed on a Residential Property under plans and specifications approved by the Architectural Committee is located within three (3) feet of the lot line of such Residential Property, the Owner of such

Residential Property is hereby granted an easement over and on the adjoining Residential Property (not to exceed three (3) feet from the Residential Property line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Residential Property is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure or fence.

9.10 Sewer and Drainage Covenants and Restrictions. All Residential Property within the Property shall be subject to and restricted by the following covenants and restrictions:

9.10.1 A monthly sewer charge must be paid after connecting to the City of Twin Falls Public Sewer System, according to the ordinances and laws of the City of Twin Falls.

9.10.2 Each Residential Property Owner shall submit to inspection by either the Department of Public Works or the Department of Building whenever a Residential Property is to be connected to the City of Twin Falls public sewage system and a building sewer is constructed or installed on or within Owner's Residential Property.

9.10.3 The Association shall and hereby does vest in the City of Twin Falls the right and power to bring all actions against the Owner of the Residential Property conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated. This covenant shall run with the land.

9.10.4 All drainage plans for each Residential Property shall be subject to review and approval by the City of Twin Falls.

9.11 Party Walls/Manor Homes and Garden Homes. Each Owner of a zero-lot-line in the Manor Homes and/or Garden Homes shall have the right to lateral support from the adjoining Owner of a similar dwelling for walls placed on the dividing line between such dwellings ("Party Walls"). Each said Owner shall have a right of contribution enforceable against the adjoining Owner for said adjoining Owner's pro rata share of the cost of all repairs, maintenance, and restoration (in the event of destruction) to Party Walls, taking into account each Owner's use thereof and the circumstances giving rise to the need for repairs, maintenance or restoration (including any Owner's negligence, willful acts, or omissions). Any dispute arising concerning Party Walls shall be submitted by the Owner(s) to the Board, which shall finally determine the matter. All rights granted under this subsection shall be appurtenant to and run with the title to each zero-lot-line with Manor Homes and Garden Homes.

**ARTICLE X
MISCELLANEOUS**

- 10.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitude of this Declaration shall run until December 31, 2025, unless amended as herein provided. After December 31, 2025, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by Members holding at least seventy-five percent (75%) of the voting power of the Association and such written instrument is recorded with the Twin Falls County Recorder. The Association shall not be dissolved without the prior written approval of the City of Twin Falls and the Twin Falls County Highway District, such consent not to be unreasonably withheld provided that a responsible successor organization shall agree to perform those maintenance responsibilities arising from applicable city and district governmental requirements.
- 10.2 Amendment.
- 10.2.1 By Owners. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration, other than this Article X, may be amended only by an instrument in writing signed and acknowledged by the president and secretary of the Association truthfully certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than seventy-five percent (75%) of the votes in the Association, and such amendment shall be effective upon its recordation with the Twin Falls County Recorder. Any amendment to this Article X shall require the vote or written consent of Members holding ninety-five percent (95%) of the voting power of the Association.
- 10.2.2 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Residential Property which existed prior to the said amendment.
- 10.3 Mortgagee Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust upon a Residential Property made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first deed of trust such Residential Property shall remain subject to this Declaration, as amended.
- 10.4 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association, as provided in this paragraph 10.4.

10.5 Enforcement and Non-Waiver.

10.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Residential Property shall have the right to enforce any or all of the provisions hereof against any Residential Property within the Property and Owners thereof, provided however, that no individual Owner shall take action to enforce the provisions hereof until such Owner has made written demand upon the Board for enforcement action and the Board fails to take action within thirty (30) days thereafter.

10.5.2 Violations and Nuisances. The failure of any Owner of a Residential Property to comply with any provision hereof, or with any proper order of the Architectural Committee, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action in the Association or any Owner within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, the Association, the Board, or a fully authorized agent of any of them, may enforce by self-help any of the provisions hereof, and only if such self-help is preceded by reasonable notice to the Owner.

10.5.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Residential Property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

10.5.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

10.5.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

10.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

10.6.1 Restrictions Construed Together. All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

10.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph 10.6.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

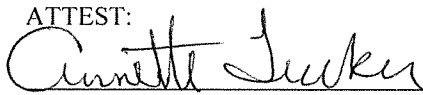
10.6.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

- 10.6.4 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.
- 10.6.5 Binding Effect. This Amended, Restated and all-Inclusive Declaration is appurtenant to and shall run with the Property and shall be binding on the successors, heirs, personal representatives and assigns of all of the owners.

**ARTICLE XI
CERTIFICATION, ATTESTATION AND APPROVAL**

11.1 The undersigned President and Secretary of the Association hereby certify and attest that this Amended, Restated and all Inclusive Covenants, Conditions and Restrictions for the Breckenridge Homeowners Association, Inc., has been approved by the vote or written consent of owners representing more than seventy-five percent (75%) of the votes in the Association and such Amended, Restated and all Inclusive Covenants, Conditions and Restrictions for the Breckenridge Homeowners Association, Inc. shall be effective upon its recordation with the Twin Falls County Recorder.

Dated 5th of July 2018.

ATTEST:

Annette Tucker, Secretary

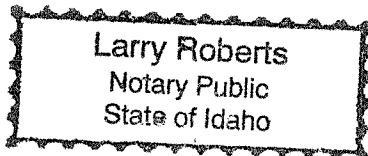
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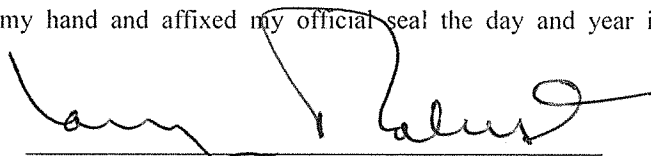
Tom Tucker, President

STATE OF IDAHO)
:SS
COUNTY OF TWIN FALLS)

On this 9th day of July 2018, before me, the undersigned a Notary Public, personally appeared TOM TUCKER, known or identified to me (or proved to me on the oath of _____) to be the President of the Breckenridge Homeowners Association, Inc. that executed the instrument or the person who executed the instrument on behalf of Breckenridge Homeowners Association, Inc., and acknowledged to me that such corporation executed the same.

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

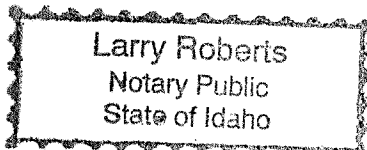


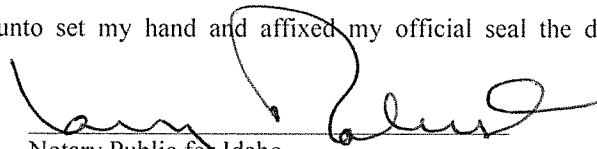

Notary Public for Idaho
Residing at: Twin Falls, Idaho
My Commission Expires on 6-30-21

STATE OF IDAHO)
:SS
COUNTY OF TWIN FALLS)

On this 5th day of July 2018, before me, the undersigned a Notary Public, personally appeared ANNETTE TUCKER, known or identified to me (or proved to me on the oath of _____) to be the Secretary of the Breckenridge Homeowners Association, Inc. that executed the instrument or the person who executed the instrument on behalf of Breckenridge Homeowners Association, Inc., and acknowledged to me that such corporation executed the same.

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




Notary Public for Idaho
Residing at: Twin Falls, Idaho
My Commission Expires on 6-30-21