

WHITEHURST SUBDIVISION NO. 1

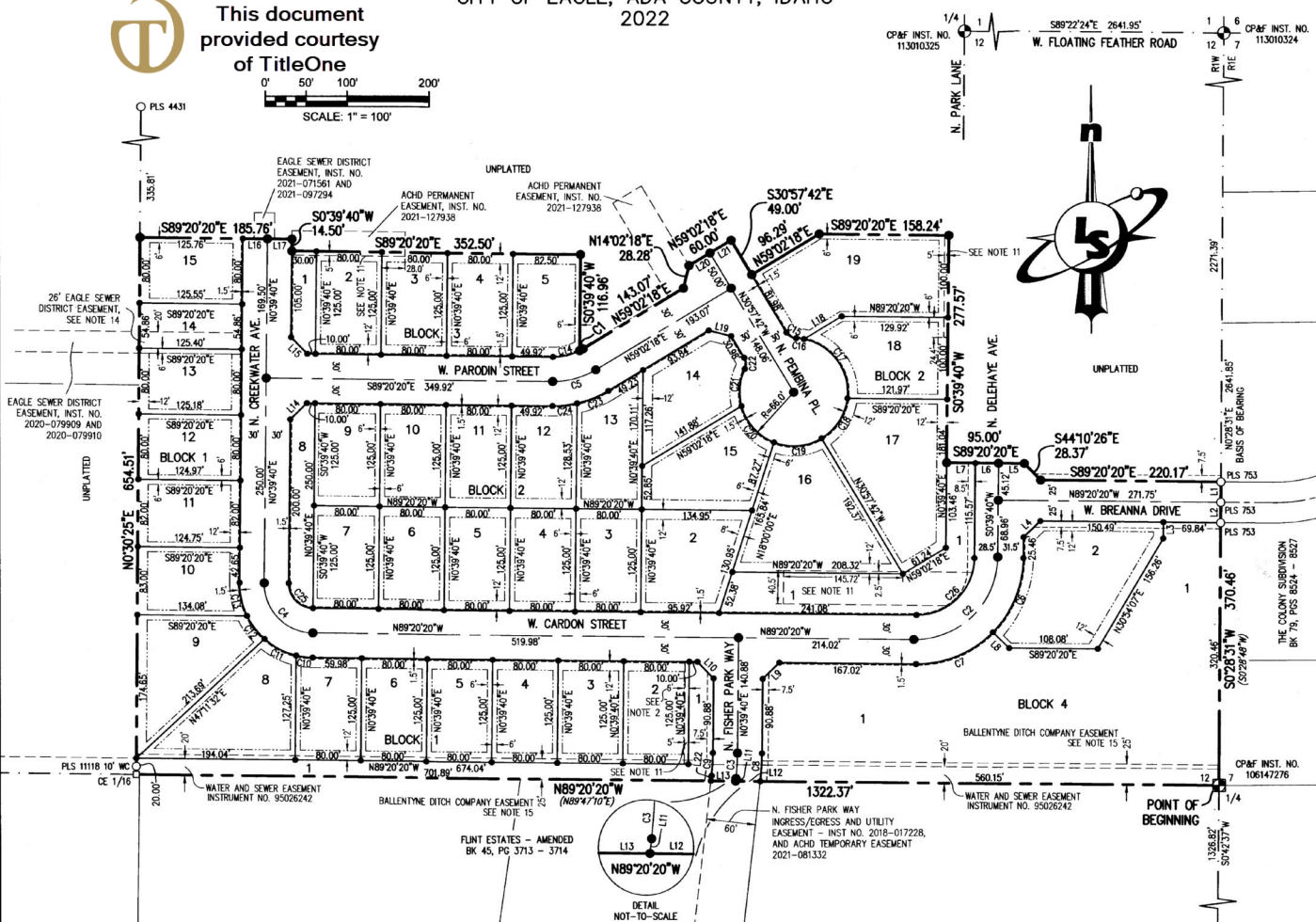
LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 12, T.4N., R.1W., B.M.
CITY OF EAGLE, ADA COUNTY, IDAHO
2022

BOOK 123, PAGE 19612



This document
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SCALE: 1" = 100'



- LEGEND**
- SUBDIVISION BOUNDARY
 - SECTION LINE
 - RIGHT-OF-WAY LINE
 - CENTERLINE
 - LOT LINE
 - EXISTING PARCEL LINE
 - PUBLIC UTILITY, PRESSURE IRRIGATION & LOT DRAINAGE EASEMENT LINE - SEE NOTES 1 & 2
 - ADA COUNTY HIGHWAY DISTRICT PERMANENT EASEMENT - INSTRUMENT NO. 2021-094813
 - OTHER EASEMENT LINE AS NOTED
 - FOUND BRASS CAP AS NOTED
 - FOUND ALUMINUM CAP AS NOTED
 - SET 5/8" x 24" REBAR w/ PLASTIC CAP
 - SET 1/2" x 24" REBAR w/ PLASTIC CAP
 - FOUND 5/8" REBAR, AS NOTED
 - 11 LOT NUMBER

- NOTES**
1. EACH LOT IS HEREBY DESIGNATED AS HAVING A PERMANENT EASEMENT FOR PUBLIC UTILITIES, WHITEHURST COMMUNITY ASSOCIATION PRESSURE IRRIGATION AND LOT DRAINAGE OVER THE TWELVE (12) FEET ADJACENT TO ANY PUBLIC STREET. THIS EASEMENT SHALL NOT PRECLUDE THE CONSTRUCTION OF HARD-SURFACED DRIVEWAYS AND WALKWAYS TO EACH LOT.
 2. UNLESS OTHERWISE SHOWN AND DIMENSIONED, EACH LOT IS HEREBY DESIGNATED AS HAVING A PERMANENT EASEMENT FOR PUBLIC UTILITIES, WHITEHURST COMMUNITY ASSOCIATION PRESSURE IRRIGATION AND LOT DRAINAGE OVER THE SIX (6) FEET ADJACENT TO ANY INTERIOR SIDE LOT LINE, AND OVER THE TWELVE (12) FEET ADJACENT TO ANY REAR LOT LINE OR SUBDIVISION BOUNDARY. THE PERMANENT EASEMENT ALONG THE REAR LOT LINES ON LOTS 8 THROUGH 13, AND LOT 15, BLOCK 1 IS ALSO DESIGNATED FOR WHITEHURST COMMUNITY ASSOCIATION GRAVITY IRRIGATION.
 3. ANY RE-SUBDIVISION OF THIS PLAT SHALL COMPLY WITH CITY CODE IN EFFECT AT THE TIME OF THE RESUBDIVISION.
 4. IRRIGATION WATER HAS BEEN PROVIDED TO EACH LOT BY THE BALLENTINE DITCH COMPANY, LTD. IN COMPLIANCE WITH IDAHO CODE SECTION 31-3805(1)(B). ALL LOTS WITHIN THE SUBDIVISION WILL BE ENTITLED TO IRRIGATION WATER RIGHTS, AND WILL BE OBLIGATED FOR ASSESSMENTS FROM THE HOMEOWNERS ASSOCIATION. THE PRESSURIZED IRRIGATION SYSTEM SHALL BE OWNED AND MAINTAINED BY THE WHITEHURST COMMUNITY ASSOCIATION, INC., OR ITS ASSIGNS.
 5. MINIMUM BUILDING SETBACK LINES SHALL BE IN ACCORDANCE WITH THE APPLICABLE ZONING AND SUBDIVISION REGULATIONS AT THE TIME OF ISSUANCE OF THE BUILDING PERMIT, OR AS SPECIFICALLY APPROVED AND/OR REQUIRED.
 6. MAINTENANCE OF ANY IRRIGATION OR DRAINAGE PIPE OR DITCH CROSSING A LOT IS THE RESPONSIBILITY OF THE LOT OWNER UNLESS SUCH RESPONSIBILITY IS ASSUMED BY AN IRRIGATION/DRAINAGE ENTITY.
 7. DIRECT LOT ACCESS TO N. FISHER PARK WAY AND N. DELEHAYE AVENUE IS PROHIBITED.
 8. LOTS 1 AND 14, BLOCK 1; LOTS 1 AND 8, BLOCK 2; LOT 1, BLOCK 3; AND LOT 1, BLOCK 4 ARE COMMON LOTS TO BE OWNED AND MAINTAINED BY THE WHITEHURST COMMUNITY ASSOCIATION OR ITS ASSIGNS. SAID LOTS ARE COVERED BY EASEMENTS FOR PUBLIC UTILITIES, WHITEHURST COMMUNITY ASSOCIATION PRESSURE IRRIGATION, AND WHITEHURST COMMUNITY ASSOCIATION GRAVITY IRRIGATION. ALL OTHER LOTS IN THIS SUBDIVISION ARE FOR SINGLE-FAMILY DWELLINGS.
 9. THIS DEVELOPMENT RECOGNIZES SECTION 22-4503, IDAHO CODE, RIGHT-TO-FARM, WHICH STATES THAT NO AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF SHALL BE OR BECOME A NUISANCE, PRIVATE OR PUBLIC, BY ANY CHANGED CONDITIONS IN OR ABOUT THE SURROUNDING NON-AGRICULTURAL ACTIVITIES AFTER IT HAS BEEN IN OPERATION FOR MORE THAN ONE (1) YEAR, WHEN THE OPERATION, FACILITY OR EXPANSION WAS NOT A NUISANCE AT THE TIME IT BEGAN OR WAS CONSTRUCTED PROVIDED THAT THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHEN A NUISANCE RESULTS FROM THE IMPROPER OR NEGLIGENT OPERATION OF AN AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF.
 10. THIS SUBDIVISION IS SUBJECT TO THE TERMS OF A DEVELOPMENT AGREEMENT RECORDED AS INSTRUMENT NO. 2020-086690, RECORDS OF ADA COUNTY, IDAHO, AND ANY SUBSEQUENT MODIFICATIONS OF THE DEVELOPMENT AGREEMENT.
 11. LOTS 1, 2, & 14, BLOCK 1; LOTS 1, 8, 16, 17, 18, & 19, BLOCK 2; LOTS 1, 2, & 3, BLOCK 3; OR PORTIONS OF SAID LOTS AS SHOWN HEREON ARE SERVIENT TO AND CONTAIN THE ADA COUNTY HIGHWAY DISTRICT STORM WATER DRAINAGE SYSTEM. THESE ARE ENCUMBERED BY THAT FIRST AMENDED MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT RECORDED ON NOVEMBER 10, 2015 AS INSTRUMENT NO. 2015-102356, OFFICIAL RECORDS OF ADA COUNTY, AND INCORPORATED HEREBY BY THIS REFERENCE AS IF SET FORTH IN FULL (THE "MASTER EASEMENT"). THE MASTER EASEMENT AND THE STORM WATER DRAINAGE SYSTEM ARE DEDICATED TO THE ADA COUNTY HIGHWAY DISTRICT PURSUANT TO SECTION 40-2302 IDAHO CODE. THE MASTER EASEMENT IS FOR THE OPERATION AND MAINTENANCE OF THE STORM WATER DRAINAGE SYSTEM.
 12. THIS DEVELOPMENT IS SUBJECT TO THE TERMS OF AN ADA COUNTY HIGHWAY DISTRICT TEMPORARY LICENSE AGREEMENT RECORDED AS INSTRUMENT NO. 2021-115122, RECORDS OF ADA COUNTY, IDAHO.
 13. THIS SUBDIVISION IS SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHITEHURST SUBDIVISION, TO BE RECORDED. THESE COVENANTS MAY NOT BE DISSOLVED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY OF EAGLE.
 14. LOTS 13 AND 14, BLOCK 1 ARE SUBJECT TO AN EASEMENT FOR THE EAGLE SEWER DISTRICT AS SHOWN, FOR THE INSTALLATION AND MAINTENANCE OF SANITARY SEWER FACILITIES.
 15. THIS DEVELOPMENT IS SUBJECT TO THE TERMS OF THE BALLENTINE DITCH COMPANY LICENSE AGREEMENTS RECORDED AS INSTRUMENTS NO. 2021-073257 AND 2021-073258, RECORDS OF ADA COUNTY, IDAHO. LOT 1, BLOCK 1 IS SUBJECT TO A BLANKET EASEMENT, AND LOTS 1 THROUGH 9, BLOCK 1 AND LOT 1, BLOCK 4 ARE SUBJECT TO AN EASEMENT FOR THE BALLENTINE DITCH COMPANY AS SHOWN FOR THE USE AND MAINTENANCE OF THE BALLENTINE CANAL.

SURVEYOR'S NARRATIVE

THE BOUNDARY FOR THIS SUBDIVISION WAS DEVELOPED FROM SURVEYED TIES TO CONTROLLING SECTION CORNER MONUMENTATION, INFORMATION FROM PLAT OF FLINT ESTATES, THE PLAT FOR THE COLONY SUBDIVISION, RECORD OF SURVEY NUMBERS 7649, 8323, 10167, 11744, AND 11863, AND CURRENT DEEDS OF RECORD. THE SURVEYED MONUMENTATION AND CONTROLLING BOUNDARIES FIT THE RECORDS WELL AND WERE ACCEPTED TO ESTABLISH THE BOUNDARY FOR THIS SUBDIVISION SHOWN HEREON.



EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID

ENGINEERING SOLUTIONS
Land Surveying and Consulting
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JOB NO. 19-14
SHEET 1 OF 3

CURVE TABLE						CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	CHORD	CURVE #	LENGTH	RADIUS	DELTA	BEARING	CHORD
C1	4.75'	70.00'	353°02'	N60°58'49"E	4.74'	C14	33.89'	70.00'	27°44'20"	N76°47'30"E	33.56'
C2	159.44'	101.50'	90°00'00"	N45°39'40"E	143.54'	C15	14.28'	14.50'	56°26'28"	S59°07'56"E	13.71'
C3	31.07'	300.00'	55°05'05"	N37°42'E	31.06'	C16	9.71'	66.00'	8°25'33"	N83°11'23"W	9.70'
C4	94.25'	60.00'	90°00'00"	S44°20'20"E	84.85'	C17	98.61'	66.00'	85°36'10"	N36°10'32"W	88.69'
C5	55.19'	100.00'	31°37'22"	N74°50'58"E	54.49'	C18	60.37'	66.00'	52°24'45"	N32°49'56"E	58.29'
C6	99.71'	130.00'	43°56'47"	N22°38'03"E	97.28'	C19	60.38'	66.00'	52°24'50"	N85°14'43"E	58.29'
C7	104.49'	130.00'	46°03'13"	N67°38'03"E	101.70'	C20	61.75'	66.00'	53°36'11"	S41°44'47"E	59.52'
C8	34.18'	330.00'	55°05'05"	N37°42'E	34.17'	C21	46.57'	66.00'	40°25'37"	S51°02'02"W	45.61'
C9	27.97'	270.00'	55°05'05"	N37°42'E	27.95'	C22	14.28'	14.50'	56°26'28"	N2°44'28"W	13.71'
C10	20.19'	90.00'	12°51'03"	S82°54'49"E	20.14'	C23	41.39'	130.00'	18°14'38"	N68°09'37"E	41.22'
C11	44.12'	90.00'	28°05'04"	S62°26'45"E	43.67'	C24	30.36'	130.00'	17°22'45"	N83°58'18"E	30.29'
C12	35.22'	90.00'	22°25'28"	S37°11'29"E	35.00'	C25	47.12'	30.00'	90°00'00"	S44°20'20"E	42.43'
C13	41.85'	90.00'	26°38'25"	S12°39'32"E	41.47'	C26	109.96'	70.00'	90°00'00"	N45°39'40"E	98.99'

LINE TABLE			LINE TABLE		
LINE #	LENGTH	DIRECTION	LINE #	LENGTH	DIRECTION
L1	25.00'	S02°28'31"W	L12	30.16'	N89°20'20"W
L2	25.00'	S02°28'31"W	L13	30.16'	N89°20'20"W
L3	20.00'	N03°39'40"E	L14	28.28'	N45°39'40"E
L4	28.28'	N45°39'40"E	L15	28.28'	S44°20'20"E
L5	31.50'	S89°20'20"E	L16	30.00'	S89°20'20"E
L6	28.50'	S89°20'20"E	L17	30.00'	S89°20'20"E
L7	35.00'	S89°20'20"E	L18	53.82'	N59°02'18"E
L8	27.89'	S45°28'22"E	L19	28.28'	S75°57'42"E
L9	28.28'	N45°39'40"E	L20	30.00'	N59°02'18"E
L10	28.28'	S44°20'20"E	L21	30.00'	N59°02'18"E
L11	3.12'	N6°35'45"E	L22	6.24'	N6°35'45"E

WHITEHURST SUBDIVISION NO. 1

BOOK 23, PAGE 19613

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS:

THAT EVANS DEVELOPMENT, LLC, AN IDAHO LIMITED LIABILITY COMPANY, ARE THE OWNERS OF THE PROPERTY DESCRIBED AS FOLLOWS:

A PARCEL LOCATED IN THE SE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 1 WEST, BOISE MERIDIAN, CITY OF EAGLE, ADA COUNTY, IDAHO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ALUMINUM CAP MONUMENT MARKING THE SOUTHEAST CORNER OF THE NE $\frac{1}{4}$ (E $\frac{1}{4}$ CORNER) OF SAID SECTION 12, FROM WHICH A BRASS CAP MONUMENT MARKING THE NORTHEAST CORNER OF SAID SECTION 12 BEARS N $0^{\circ}28'31''$ E A DISTANCE OF 2641.85 FEET;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID NE $\frac{1}{4}$, ALSO BEING THE NORTHERLY BOUNDARY OF THE AMENDED PLAT OF FLINT ESTATES, AS FILED FOR RECORD IN BOOK 45 OF PLATS AT PAGES 3713 THROUGH 3714, RECORDS OF ADA COUNTY, IDAHO, N $89^{\circ}20'20''$ W (FORMERLY N $89^{\circ}47'10''$ E) A DISTANCE OF 1322.37 FEET TO THE SW CORNER OF THE SE $\frac{1}{4}$ OF SAID NE $\frac{1}{4}$ (CE $1/16$ CORNER);

THENCE N $0^{\circ}30'25''$ E ALONG THE WESTERLY BOUNDARY OF SAID SE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ A DISTANCE OF 654.51 FEET TO A POINT;

THENCE LEAVING SAID BOUNDARY S $89^{\circ}20'20''$ E A DISTANCE OF 185.76 FEET TO A POINT;

THENCE S $0^{\circ}39'40''$ W A DISTANCE OF 14.50 FEET TO A POINT;

THENCE S $89^{\circ}20'20''$ E A DISTANCE OF 352.50 FEET TO A POINT;

THENCE S $0^{\circ}39'40''$ W A DISTANCE OF 116.96 FEET TO A POINT ON A CURVE;

THENCE A DISTANCE OF 4.75 FEET ALONG THE ARC OF A 70.00 FOOT RADIUS NON-TANGENT CURVE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF $3^{\circ}53'02''$ AND A LONG CHORD BEARING N $60^{\circ}58'49''$ E A DISTANCE OF 4.74 FEET TO A POINT OF TANGENCY;

THENCE N $59^{\circ}02'18''$ E A DISTANCE OF 143.07 FEET TO A POINT;

THENCE N $14^{\circ}02'18''$ E A DISTANCE OF 28.28 FEET TO A POINT;

THENCE N $59^{\circ}02'18''$ E A DISTANCE OF 60.00 FEET TO A POINT;

THENCE S $30^{\circ}57'42''$ E A DISTANCE OF 49.00 FEET TO A POINT;

THENCE N $59^{\circ}02'18''$ E A DISTANCE OF 96.29 FEET TO A POINT;

THENCE S $89^{\circ}20'20''$ E A DISTANCE OF 158.24 FEET TO A POINT;

THENCE S $0^{\circ}39'40''$ W A DISTANCE OF 277.57 FEET TO A POINT;

THENCE S $89^{\circ}20'20''$ E A DISTANCE OF 95.00 FEET TO A POINT;

THENCE S $44^{\circ}10'26''$ E A DISTANCE OF 28.37 FEET TO A POINT;

THENCE S $89^{\circ}20'20''$ E A DISTANCE OF 220.17 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID SE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$, ALSO BEING THE WESTERLY BOUNDARY OF THE COLONY SUBDIVISION, AS FILED FOR RECORD IN BOOK 79 OF PLATS AT PAGES 8524 THROUGH 8527, RECORDS OF ADA COUNTY, IDAHO;

THENCE ALONG SAID BOUNDARY S $0^{\circ}28'31''$ W (FORMERLY S $0^{\circ}28'48''$ W) A DISTANCE OF 370.46 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 17.35 ACRES MORE OR LESS.

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY INCLUDE THE ABOVE-DESCRIBED PROPERTY IN THIS PLAT AND TO DEDICATE TO THE PUBLIC THE PUBLIC STREETS AS SHOWN ON THIS PLAT. THE EASEMENTS AS SHOWN ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC; HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE ERRECTED WITHIN THE LINES OF SAID EASEMENTS. ALL LOTS WITHIN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER FROM AN EXISTING WATER SYSTEM, AND THE SUEZ WATER COMPANY HAS AGREED, IN WRITING, TO SERVE ALL THE LOTS WITHIN THIS SUBDIVISION.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS THIS 8 DAY OF December, 2021

DZE
D. ZACHARY EVANS
MANAGER, EVANS DEVELOPMENT, LLC

ACKNOWLEDGEMENT

STATE OF IDAHO }
COUNTY OF ADA } SS

ON THIS 8th DAY OF December, 2021, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED D. ZACHARY EVANS, KNOWN OR IDENTIFIED TO ME TO BE THE MANAGER OF EVANS DEVELOPMENT, LLC, AN IDAHO LIMITED LIABILITY COMPANY, WHO SUBSCRIBED SAID LIMITED LIABILITY COMPANY'S NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN SAID LIMITED LIABILITY COMPANY'S NAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

Carolyn Wiese
NOTARY PUBLIC FOR IDAHO
RESIDING AT EAGLE, IDAHO
MY COMMISSION EXPIRES: 5-14-2025



CERTIFICATE OF SURVEYOR

I, CLINTON W. HANSEN, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, AND THAT THIS PLAT AS DESCRIBED IN THE "CERTIFICATE OF OWNERS" WAS DRAWN FROM THE FIELD NOTES OF A SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

CLINTON W. HANSEN
PLS 11118



EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID

JOB NO. 19-14
SHEET 2 OF 3



WHITEHURST SUBDIVISION NO. 1

BOOK 123, PAGE 19614

ACCEPTANCE OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 30 DAY OF June 2022.



PRESIDENT
ADA COUNTY HIGHWAY DISTRICT

Signed by Bruce S. Wong, Director
for President

APPROVAL OF CENTRAL DISTRICT HEALTH

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 50, CHAPTER 13 HAVE BEEN SATISFIED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL. SANITARY RESTRICTIONS MAY BE RE-IMPOSED, IN ACCORDANCE WITH SECTION 50-1326, IDAHO CODE, BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL.



Roni Bodin PEHS 6-9-2021
CENTRAL DISTRICT HEALTH

CERTIFICATE OF COUNTY TREASURER

I, Elizabeth Mohn, COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF IDAHO CODE 50-1308, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

Elizabeth Mohn 6-9-22
COUNTY TREASURER DATE
signed by deputy: Jane Furuhel

CERTIFICATE OF THE CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS FINAL PLAT AND THAT THE EAGLE CITY REQUIREMENTS REGARDING FINAL PLATS HAVE BEEN MET.

Chris M. Cant 5-11-2022
EAGLE CITY ENGINEER PE16745

CERTIFICATE OF COUNTY SURVEYOR

I, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

Del P. Murr
COUNTY SURVEYOR

PLS #13553

9 June 2022



APPROVAL OF CITY COUNCIL

I, THE UNDERSIGNED, CITY CLERK IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 11 DAY OF May, 2022, THIS PLAT WAS DULY APPROVED AND ACCEPTED.



Tracy E. Olson 5/11/2022
CITY CLERK

CERTIFICATE OF COUNTY RECORDER

INSTRUMENT NO. 2022-054152

STATE OF IDAHO)
COUNTY OF ADA) SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF
Engineering Solutions AT 25 MINUTES PAST 10 O'CLOCK A.M.,
THIS 9th DAY OF June, 2022, IN MY OFFICE AND WAS DULY
RECORDED IN BOOK 123 OF PLATS AT PAGES 19612-19614

JMUR Phil McGraw
DEPUTY EX-OFFICIO RECORDER
Fee \$16.00



EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID

JOB NO. 18-14
SHEET 3 OF 3

ENGINEERING SOLUTIONS LLP
MERIDIAN, IDAHO

LandSolutions
Land Surveying and Consulting
231 E. 5th St., Ste. A Meridian ID 83642
(208) 388-2940 • (208) 388-2971 fax

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
EASEMENTS
FOR THE
WHITEHURST COMMUNITY**

WELCOME!

We are pleased that you have decided to become a Member of the Whitehurst Community. The following document is the Declaration of Covenants, Conditions, Restrictions and Easements that will govern the Community. The purpose of the Declaration is to:

- Set forth basic residential use restrictions to protect residences of the Community from undesirable or noxious activities.
- Provide the Community will govern itself through the Whitehurst Community Association, Inc.
- Provide the procedure for budgets and assessments for Community expenses.
- Provide for the maintenance and improvement of the Community common areas.
- Set forth the rules by which the Community will resolve problems and disputes in a fair, impartial and expeditious manner.

Please read this entire Declaration carefully. It sets forth the rights and obligations of you and the other Community members. We make no representations of any kind (express or implied) through any agent, realtor, employee or other person regarding the Community except as set forth in this Declaration. We expressly disclaim any representations, warranties, statements, or information about the Community not set forth herein.

DECLARATION HIGHLIGHTS

Please read this entire Declaration carefully, but the following are highlights of a few key provisions that may be of interest to you, or important for you to know.

- Assessments: Owners and Lots are subject to Regular Assessments, Special Assessments, Limited Assessments and Transfer Assessments. The amount of the Regular Assessments will be set by the Association; provided, however, the Regular Assessments will not increase by more than 10% per year unless the Association gives each Owner prior notice and opportunity to object at an Association meeting. See [Article 5](#).
- Association Management: The Association will be controlled by Developer during the Development Period (where the Owners would find the management of the Association to be unduly burdensome). See [Section 10.1](#). Thereafter, the Association is governed by the Owners. See [Article 2](#).
- Yard Signs: Customary "For Sale", open house, construction and political signs are permitted, but with strict limitations. No other signs are permitted. See [Section 3.16](#).
- Leasing: Owners may lease to the Owner's family. Owners may also lease to others provided that the initial term lease term is a least six (6) months. No short-term or vacation rentals are permitted. See [Section 3.2](#).
- Holiday Lights: Permitted from November 15 to January 15. See [Section 3.21](#).
- Flags: The American flag, Idaho flag, POW/MIA flag and any armed forces flags are permitted. All other flags are restricted. See [Section 3.18](#).
- Trash Cans: Trash receptacles, including recycling receptacles, must not be visible from any street except between 5:00 AM and 8:00 PM on the day selected by the trash collector for trash and recycling pick-up. See [Section 3.22](#).
- Civility: Courtesy, civility, respect and family-friendly conduct will be required of all Community members. See [Section 3.24](#).

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR THE
WHITEHURST COMMUNITY**

This Declaration of Covenants, Conditions, Restrictions and Easements for the Whitehurst Community (this "**Declaration**") is made effective as of the date this Declaration is recorded in the real property records of Ada County, Idaho (the "**Effective Date**") by Evans Development LLC, an Idaho limited liability company ("**Developer**"). Capitalized terms not otherwise defined in the text hereof are defined in Article 1.

WHEREAS, Developer own that certain real property legally described as follows (collectively, the "**Community**");

Lots 1 through 15, Block 1; Lots 1 through 19, Block 2; Lots 1 through 5, Block 3; and Lots 1 and 2, Block 4 of the Whitehurst Subdivision No. 1, according to the official plat thereof recorded in the real property records of Ada County, Idaho as Instrument No. 2022-054152, a copy of which is attached hereto as Exhibit A (the "**Initial Plat**").

WHEREAS, Developer desires to record this Declaration to set forth the basic restrictions, covenants, conditions, restrictions, easements and equitable servitudes that will apply to the Community, all of which are designed to protect, enhance and preserve the value, desirability and attractiveness of the Community, and to ensure that the Community is developed in a well-integrated and high-quality manner.

NOW, THEREFORE, Developer hereby declares that the Community, and each Lot and portion thereof, will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved in accordance with this Declaration. This Declaration: (a) runs with the land; (b) is binding upon, and inures to the benefit of, any person or entity having or acquiring any right, title or interest in any Lot or portion of the Community; and (c) inures to the benefit of and is binding upon Developer.

**ARTICLE 1
DEFINITIONS**

"**Articles**" means the Articles of Incorporation of the Association (which are on file with the Idaho Secretary of State).

"**Assessments**" means the Regular Assessments, Special Assessments, Limited Assessments and Transfer Assessments, and for each together with any late charges, interest and costs incurred in collecting the same, including attorneys' fees.

"**Association**" means Whitehurst Community Association, Inc., an Idaho nonprofit corporation. In the Community Documents, the Association may be called the "Whitehurst Homeowners' Association" or words of similar import.

"**Board**" means the Board of Directors of the Association.

"**Bound Party**" has the meaning set forth in Section 9.1.

“Budget” has the meaning set forth in Section 5.6.

“Building Envelope” means the area within a Lot where a residential structures may be located. Unless otherwise designated on the applicable Plat, the Building Envelope is that portion of the Lot not located within easements or setbacks required by the applicable Plat, this Declaration or applicable law.

“Bylaws” means the Bylaws of the Association.

“Claims” has the meaning set forth in Section 9.1.

“Committee” means the Architectural Review Committee identified in Section 4.1.

“Common Area” means each of the following real property interests:

- (a) Lots 1 and 14 in Block 1 of the Initial Plat;
- (b) Lots 1 and 8 in Block 2 of the Initial Plat;
- (c) Lot 1 in Block 3 of the Initial Plat;
- (d) Lot 1 in Block 4 of the Initial Plat;
- (e) any real property interest designated as Common Area by Developer on any Supplemental Declaration;
- (f) any real property interest conveyed to, and accepted by, the Association as Common Area under this Declaration; and
- (g) any lease, license or other right for amenities or facilities held by the Association.

“Common Expenses” has the meaning set forth in Section 5.2.

“Common Improvements” means any Improvements owned, maintained or managed by Association, whether or not the Improvements are located in Common Area.

“Community” has the meaning set forth in the opening recitals of this Declaration.

“Community Documents” means this Declaration, any Plat, the Articles, the Bylaws, the Community Rules and the Design Requirements.

“Community Rules” has the meaning set forth in Section 2.6.2.

“Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements for the Whitehurst Community.

“Design Requirements” has the meaning set forth in Section 4.2.

“Developer” has the meaning set forth in the opening preamble of this Declaration.

“Developer Member” has the meaning set forth in Section 2.32.2.

“Development Period” means the period expiring on the date Developer informs the Board, in a writing recorded in the real property records of Ada County, Idaho, that Developer no longer wishes to exercise its rights as Developer Member.

“Effective Date” has the meaning set forth in the opening preamble of this Declaration.

“Home Occupation” has the meaning set forth in Section 3.1.

“Household Pets” has the meaning set forth in Section 3.8.

“Improvement” means any structure, facility, system or object, whether permanent or temporary, which is installed, constructed, placed upon or allowed on, under or over any portion of the Community, including residential structures, club houses, pump or lift stations, fences, streets, drives, driveways, parking areas, sidewalks, bridges, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction and utilities.

“Initial Plat” has the meaning set forth in the Recitals.

“Irrigation System” means the system for delivering seasonal irrigation water to the Community that exists separate and apart from the potable water system, as further described in Sections 2.6.3 and 3.13. The Irrigation System includes the pump, pump station and related facilities, and includes all pipes, lines, sprinklers, controls and other irrigation equipment located in the Common Area. The Irrigation System does not include the pipes, lines, sprinklers, controls and other irrigation equipment located on each Lot to serve that Lot.

“Levy Meeting” has the meaning set forth in Section 2.6.6.

“Limited Assessment” means a charge against a particular Owner for an expense directly attributable to the Owner, equal to the cost incurred or estimated to be incurred by the Association in connection with corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration, including correcting damage to or maintenance, repair, replacement and operation activities performed for any Common Area for the failure of an Owner to keep the Owner’s Lot in proper repair, and including interest thereon as provided in this Declaration or for any goods or services provided by the Association benefiting less than all Owners.

“Lot” means any lot depicted on any Plat.

“Member” means each Owner holding a membership in the Association, including Developer.

“Mortgage” means any mortgage, deed of trust, or other document pledging any portion of the Community or interest therein as security for the payment of a debt or obligation.

“Occupant” means any person that occupies a dwelling structure located on a Lot.

“Owner” means the record owner, whether one or more persons or entities, holding fee simple interest of record to a Lot, and buyers under executory contracts of sale, but excluding those persons or entities having the interest merely as security for the performance of an obligation, unless and until the person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

“Owner Parties” means, for each Owner, all of the Owner (including all persons or entities that comprise Owner), its Occupants, and the guests of any of them, and the Owner’s contractors and invitees.

“Plat” means the Initial Plat and any future subdivision plat covering any portion of the Community that is lawfully recorded in the Ada County Recorder’s Office.

“Prohibited Activities” has the meaning set forth in Section 3.23.

“**Regular Assessments**” means assessments that are regularly levied against each Owner and each Lot by the Association to fund the Common Expenses.

“**Released Party**” has the meaning set forth in Section 2.8.

“**Remedial Period**” has the meaning set forth in Section 2.6.6.

“**Special Assessment**” means an assessment that are levied against each Owner and each Lot by the Association to fund capital expenses (such as capital improvements or equipment purchases, or major repairs or replacements to Common Improvements) or shortages in Regular Assessments.

“**Supplemental Declaration**” has the meaning set forth in Article 12.

“**Transfer Assessment**” has the meaning set forth in Section 5.5.

“**Violation**” has the meaning set forth in Section 2.6.6.

ARTICLE 2 WHITEHURST COMMUNITY ASSOCIATION

2.1 **Organization of the Association.** Developer has organized the Association to manage the business and affairs of the Community in accordance with applicable law and the Community Documents.

2.2 **Membership.** The Association will have two (2) classes of membership as follows:

2.2.1 Regular Members. Each Owner, by virtue of being an Owner and for so long as the ownership is maintained, will be a regular member of the Association. No Owner will have more than one (1) membership in the Association for each Lot owned by the Owner. When more than one (1) person or entity holds an ownership interest in any Lot, all of them will be members. Memberships in the Association will be appurtenant to the Lot or other portion of the Property owned by the Owner. The memberships in the Association must not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner’s title and then only to the transferee of title. Any prohibited transfer or attempt to make a prohibited membership transfer will be void and will not be reflected on the books of the Association.

2.2.2 Developer Member. During the Development Period, Developer will be the “**Developer Member**” of the Association with the sole voting power of the Association. Developer Member will cease to exist on expiration of the Development Period.

2.3 **Membership Meetings; Voting.** The Association will hold an annual meeting of the members and periodic special meetings of the members as set forth in the Bylaws. Prior to expiration of the Development Period, the regular members are not entitled to vote. Upon the expiration of the Development Period, each regular member will be entitled to one (1) vote for each Lot owned by the regular member; provided, however, the vote for any Lot with common ownership will be exercised as the Owners of the Lot determine, but in no event will more than one (1) vote be cast with respect to any Lot.

2.4 **Board of Directors.** The business and affairs of the Association will be managed by the Board. The Board will consist of not less than three (3) directors and no more than five (5) directors. Directors need not be Owners. During the Development Period, Developer Member has the

exclusive right to appoint, remove and replace directors at any time and from time-to-time in Developer Member's sole discretion. After the Development Period, the Owners have the right to elect, remove and replace directors as provided in the Bylaws; provided, however, any vacancies on the Board will be filled by a plurality vote of the remaining directors through a special election at any meeting of the Board.

- 2.5 **Delegation of Authority.** The Board may delegate all or any portion of its powers and duties to committees, officers, employees or agents. The Association may employ or contract for the services of a professional manager or management company to manage its day-to-day affairs; provided, however, the employment or contract must not have a term of not more than two (2) years (with two-year renewable terms acceptable). If the manager is Developer or Developer's affiliate, then the contract must be subject to cancellation by the Association with or without cause, and without payment of a termination fee (but including all fees incurred through the date of termination), so long as the Association provides at least thirty (30) days' prior notice of termination.
- 2.6 **Powers of the Association.** The Association has all the powers of a nonprofit corporation organized under Idaho law and all of the powers and duties set forth in the Community Documents, including the power to perform any and all acts which may be necessary to, proper for, or incidental to the foregoing powers. The powers of the Association include, by way of illustration and not limitation:
- 2.6.1 Assessments. The power to levy Assessments against each Lot (except Common Area) and Owner thereof pursuant to the restrictions enunciated in this Declaration, and to enforce payment of the Assessments, all in accordance with the provisions of this Declaration. This power includes the right of the Association to levy Assessments against the Lots and the Owners thereof to cover the operation and maintenance costs of Common Area.
- 2.6.2 Community Rules. The power to adopt, amend and repeal any rules as the Board deems reasonable and appropriate to govern the Community (the "**Community Rules**"), including rules regarding the use of the Common Area, the Common Improvements and the Irrigation System, and rules regarding the conduct of the business and affairs of the Association. Except when inconsistent with this Declaration, the Community Rules have the same force and effect as if they were set forth in this Declaration. Promptly after adoption of the Community Rules (or any amendment thereto or repeal thereof), the Association will deliver to each Owner a copy of the Community Rules (or the amendment thereto or repeal thereof).
- 2.6.3 Irrigation System. The power and authority to construct, install, maintain, repair, replace, manage, and operate the Irrigation System, including without limitation the power and authority to enter upon any Lot (but not inside any building constructed thereon) as necessary to construct, install, maintain, repair, replace, manage, and operate the Irrigation System. The Association may operate and/or share ownership of the Irrigation System as part of a common irrigation water supply arrangement with neighboring properties, regardless of whether such neighboring properties are now or hereinafter annexed into the Community.
- 2.6.4 Common Area and Common Improvements. The power to acquire, construct, improve, modify and dispose of, and the duty to manage, operate, maintain, repair and replace, the Common Area and Common Improvements for the benefit of the Community (including the Irrigation System); provided, however, except as permitted under Section 2.6.7 hereof,

no interest in the Common Area will be disposed of without the approval by the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association.

- 2.6.5 Entry onto Lots. The power to enter upon any Lot (but not inside any building constructed thereon) in the event of any emergency involving potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. The entry will be made with as little inconvenience to the Owner of the Lot as practical under the circumstances, and any damage caused thereby will be repaired by and at the expense of the Association.
- 2.6.6 Fines. The power to impose reasonable monetary fines that will constitute a lien upon the Lot owned or occupied by the Owner or Occupant determined by the Board to be in violation of the Community Documents (individually, a “**Violation**”). Provided, however, pursuant to the provisions of Idaho Code Section 55-115, the Association will not impose a fine on an Owner for a Violation unless: (i) the Board votes to impose the fine at any regular or special meeting of the Board or the Association (individually, a “**Levy Meeting**”); (ii) the Owner is provided at least thirty (30) days advance written notice of the Levy Meeting by personal service or certified mail at the last known address of the Owner as shown in the records of the Association; and (iii) the Owner is given a reasonable opportunity to respond to the Violation during the Levy Meeting. Provided further, the Association will not impose a fine on an Owner if the Owner, prior to the Levy Meeting, begins resolving the Violation and continues to address the Violation in good faith until the Violation is fully resolved (the “**Remedial Period**”). For purposes of this Section, the phrase “address the violation in good faith until the Violation is fully resolved” means the Owner must resolve the Violation within thirty (30) calendar days after the Notice; provided, however, if the nature of the Violation is such that more than thirty (30) calendar days are required for its resolution, then the Owner must diligently prosecute the same to completion as promptly as practical. All fines will be part of the Assessments to which the Owner’s Lot is subject under this Declaration. In all events, no portion of the fines may be used to increase the compensation to the Board or agent thereof.
- 2.6.7 Licenses, Easements and Rights-of-Way. The power to convey any easements and licenses to use the Common Area as may be necessary or appropriate for the maintenance, preservation, and enjoyment of the Common Area or Common Improvements, or for the preservation of the health, safety, convenience and the welfare of the Community, or for the purpose of constructing, erecting, operating or maintaining any of the following:
- 2.6.7.1 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 provision of lighting and services;
- 2.6.7.2 Public and other 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; and
- 2.6.7.3 Mailboxes and sidewalk abutments around 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 pedestrian and bicycle pathways.

2.6.7.4 The Irrigation System.

- 2.6.8 Amenity Agreements. The power to enter into any lease, license, use or other agreements as the Board deems proper or convenient to secure the use of off-site amenities or facilities for the benefit of the Community. Without limiting the generality of the foregoing, and only by way of example, the Association may enter into agreements with others for the use of any recreational amenities or facilities by the Owners on any terms as the Association deems reasonable or prudent. Any costs incurred by the Association related thereto will be Common Expenses, and the Common Expenses will be included in the Regular Assessments.
- 2.6.9 Reserves. The power to fund operating reserves and capital reserves as the Board deems necessary or prudent.
- 2.6.10 Taxes. The power to pay all real and personal property taxes and assessments (if any) levied against the Common Area, the Association, or any other property owned by the Association. In addition, the Association will pay all taxes, including income, revenue, corporate or other taxes (if any) levied against the Association.
- 2.6.11 Enforcement. The power at any time and from time-to-time, on its own behalf or on behalf of any consenting Owners, to take any action, including any legal action, to prevent, restrain, enjoin, enforce or remedy any breach or threatened breach of the Community Documents. The power of enforcement includes:
- 2.6.11.1 The right to enter upon any Lot (but not inside any building constructed thereon) for the purpose of removing, altering, reconstructing, or restoring any Improvements constructed, reconstructed, refinished, added, altered, or maintained in violation of the Community Documents. If the Improvements are located on a Lot, then Association will first provide the Owner thereof with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days), and if the Owner does not cure the default to the reasonable satisfaction of the Association within the cure period, the Owner of the Improvements will immediately reimburse the Association for all expenses incurred by the Association in connection with its removal, alteration, reconstruction, or restoration of the Improvements.
 - 2.6.11.2 The right to enforce the obligations of the Owners to pay each and every Assessment or charge provided for in the Community Documents.
 - 2.6.11.3 The right to perform any obligation of an Owner under the Community Documents if the obligation is not timely performed by the Owner. In that event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in performing the obligation. Except in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power hereunder.
 - 2.6.11.4 The right to authorize variances from the requirements of this Declaration when required by applicable law (such as the Fair Housing Act) or when needed to prevent the requirements would impose an undue hardship on an Owner that would be inequitable for the Owner to bear. The granting of a variance will not waive any

element of the Declaration for any purpose except as to the particular Lot and the particular provision covered by the variance. Approval of a variance will not affect the Owner's obligation to comply with the other elements of this Declaration or applicable law.

If the Association employs attorneys to collect any Assessment or charge, whether by suit or otherwise, or to otherwise enforce compliance with the Community Documents, the Association is entitled to recover its reasonable attorneys' fees in addition to any other relief or remedy obtained.

2.6.12 Insurance. The power to obtain any bonds and insurance required by applicable law and any further insurance as the Board deems necessary or prudent, including casualty insurance for any Common Area or Common Improvements, public liability insurance related to the Association's operations and the use of the Common Area, directors and officers liability coverage, automobile insurance, worker's compensation insurance and fidelity bonds. Unless otherwise authorized by Developer, the Association will procure at least the following insurance policies to the extent the policies are available on commercially reasonable terms:

2.6.12.1 Casualty insurance on all insurable real and personal property for which the Association bears risk of loss, which insurance will be for the full replacement cost thereof without optional deductibles;

2.6.12.2 Worker's compensation and employer's liability coverage as required by law;

2.6.12.3 Broad form comprehensive public liability insurance insuring the Association, the Board, the Committee and their respective agents and employees against any liability incident to the ownership or use of the Common Area; which insurance will be for not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury/sickness/death and One Million Dollars (\$1,000,000) per occurrence with respect to property damage; and

2.6.12.4 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

2.6.13 Entitlement Obligations. The power to fulfill any duties imposed by any governmental or other quasi-governmental agencies as part of the entitlements for the development of Community, including any requirements or obligations identified in the entitlements as the responsibility of community association (aka homeowners association), such as plat notes, development agreements or conditions of approval.

2.6.14 Financing. The power to enter into any agreements necessary or convenient to allow Owners to take full advantage of, or secure the full availability of, any financing programs offered or supported by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC) or any similar entity.

2.6.15 Estoppel Certificates. The power to execute a written statement stating (a) whether or not, to the knowledge of the Association, a particular Owner or Owner's Lot is in default of this Declaration; (b) the dates to which any Assessments have been paid by a particular Owner,

and (c) any other matters as the Board deems reasonable. Any estoppel certificate may be relied upon by a bona-fide prospective purchaser or mortgagee of the Owner's Lot, but only to the extent the prospective purchaser or mortgagee has no knowledge to the contrary. The Association may charge a reasonable fee for the statements.

2.6.16 Improvements in the Public Right-of-Way. The power to enter into (or assume) any license and easement agreements with the applicable highway authority (or assume the obligations under any license and easement agreements entered into by Developer) to install, maintain, improve, irrigate, trim, repair and replace improvements and landscaping in the public rights-of-way (including sidewalk easements and planter strips).

2.6.17 Open Space Corridors. The power to enter into agreements to improve, operate, maintain, repair or replace any corridor, open space, recreation facility, greenbelt or trail spaces, either for the benefit of the Community or the general public.

2.6.18 Other. Any other powers as the Association may have consistent with the Community Documents and applicable law.

2.7 **Association Records; Owner Inspection**. The Association will keep records of its business and affairs as is customary for community associations, including a membership register, accounting records, financial statements, operating budgets, balance sheets and minutes of meetings of the Board, the Members and committees. The records will be available at the Association's regular offices for inspection and copying by any Owner at the Owner's expense. The Board may establish reasonable rules with respect to (a) notice to be given to the custodians of the records by persons desiring to make the inspection, (b) hours and days of the week when an inspection may be made, and (c) payment of the cost of reproducing copies of documents requested pursuant to this Section 2.7. The Association's obligations hereunder may be fulfilled by making the records available to an Owner electronically, including delivery by electronic mail or by the posting the records on the Association's website. No Owner may request the inspection of records more than two times during any calendar year (and for this limitation, all persons or entities that own a Lot will be considered to be one Owner).

2.8 **Immunity; Indemnification**. Each Owner understands and agrees that Developer, the Association, the Association's manager (if any), the Committee and the directors, officers, agents, employees and committee members of any of them (each individually a "**Released Party**") are immune from personal liability to the Owner or any other person, and the Owner hereby knowingly and voluntarily waives and releases each Released Party, for the Released Party's actions or failure to act with respect to the Community Documents that does not constitute gross negligence or willful misconduct on the part of the Released Party. The Association will indemnify, defend and hold each Released Party harmless from any action, expense, loss or damage caused by or resulting from the Released Party's actions or failure to act with respect to the Community Documents; provided, however, the Association is not obligated to indemnify, defend and hold harmless any Released Party for their own gross negligence or willful misconduct.

2.9 **Waiver of Consequential Damages**. Neither Developer nor the Association is liable to any Owner for, and each Owner releases Developer and the Association from, any form of indirect, special, punitive, exemplary, incidental or consequential or similar costs, expenses, damages or losses arising from or related to the Community.

ARTICLE 3
GENERAL AND SPECIFIC OBLIGATIONS AND RESTRICTIONS

- 3.1 **Residential Use.** All Lots (except Common Area) will be used exclusively for residential purposes and other uses incidental thereto as permitted by this Declaration and applicable law. Except for Home Occupations permitted pursuant to this Section, no Lot will be used at any time for commercial or business activity. A “**Home Occupation**” is any lawful, gainful occupation conducted on a Lot by an Occupant of the Lot. A Lot may be used for a Home Occupation provided that the home office or studio related thereto is: (a) not more than five hundred (500) square feet in size; and (b) located entirely within a dwelling. The Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. A Lot may be used for other Home Occupations only upon the specific approval of the Association, which approval may be subject to any conditions as the Association deems appropriate, and which Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. No Home Occupation may (i) involve highly combustible materials, (ii) involve retail operations, (iii) use equipment or tools where the dimensions, weight or power rating are beyond normal household equipment or tools, (iv) cause abnormal automotive or pedestrian traffic in the Community, (v) be, in the reasonable opinion of the Board, objectionable due to unsightliness, odor, dust, smoke, noise, glare, heat, vibration or similar disturbances, (vi) involve dispatch activities where employees meet in the Community and are sent to other locations, (vii) involve other uses that, in the reasonable opinion of the Association, would detract from the residential character of the Community, including vacation rentals. It is not a violation of this Section for an Owner to lease its Lot and the Improvements thereon in accordance with Section 3.2.
- 3.2 **Leasing.** In order to foster and maintain the stable, residential character of the Community and to preserve the Community values, no Owner may lease, in whole or part, the Owner’s Lot or the primary residential dwelling located thereon to any person or entity except as expressly permitted in this Section 3.2. For purposes of this Section 3.2, the term “lease” as applied to a Lot will be deemed to include any rental, letting, subletting, licensing, demising or assignment of any interest, estate or right of use, enjoyment, occupancy or possession of any Lot (or portion thereof) to any entity or a person who is not a member of the Owner’s family. For purposes of this Section 3.2, a “member of the Owner’s family” will be defined as any person who is related to the Owner by blood, legal marriage or legal adoption. Each Owner may lease its entire Lot to any tenant comprised as a single housekeeping unit so long as the lease is for a term of six (6) months or greater. For purposes of this Section, the term “single housekeeping unit” will be one (1) or more individuals living together sharing household responsibilities and activities which may include, sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social, economic and psychological commitments to each other. An Owner who leases a Lot is fully responsible for the conduct and activities of the Owner’s tenant as if the Owner were the tenant. Any Owner who leases a Lot will comply with the Fair Housing Act to the extent it applies to the Owner.

If an Owner leases a Lot in violation of the restrictions set forth in this Section or otherwise fails to comply with this Section, the Owner will be in default of this Declaration, and will indemnify, defend and hold harmless the Association and the other Owners from and against any and all claims, loss or damage arising from or related to the violation, including any actions taken or fines or penalties imposed under federal law, and will further be subject to the remedies described in Section 15.7 hereof

If any Owner or the Owner's spouse is on military deployment or has had a change of station, then the six (6) month limitation in this Section 3.2 will be reduced to one (1) month for the duration of the deployment (if a deployment) or for one (1) year (if a change of station).

- 3.3 **Exterior Maintenance Obligations.** Each Owner agrees to keep all Improvements on the Owner's Lot in good, safe condition and repair. Without limiting the generality of the foregoing, each Lot must be kept in a neat, orderly, weed-free condition at all times, including the period prior to the Owner constructing any Improvements thereon. In the event that any Owner permits any Improvement on the Owner's Lot to: (a) fall into disrepair such that it, in the judgment of the Board, creates an unsafe, unsightly, unattractive, or inoperable condition; or (b) be constructed, reconstructed, refinished, removed, added, altered, or maintained in violation of this Declaration, the Association may exercise its power hereunder to enter upon the Owner's Lot and take any action as the Association deems necessary or appropriate to correct the condition or violation. In that event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in correcting the condition or violation. Except in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power hereunder. Each Owner hereby designates the Association as the Owner's agent for purposes of Idaho's mechanic's lien statute (i.e., Idaho Code § 45-501), and each laborer, material supplier or other person who performs work on the Owner's Lot at the direction of the Association will have a mechanic's lien against the Owner's Lot for the work.
- 3.4 **Nuisances.** No rubbish or debris of any kind will be placed or permitted to accumulate anywhere upon the Community, including the Common Area or vacant Lots, so as to render the Community or any portion thereof unsanitary, unsightly, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No Owner will allow any odor to arise from the Community so as to render the Community or any portion thereof unsanitary, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No business or Home Occupation, no noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness or other nuisance will be permitted to exist or operate upon any portion of the Community so as to be offensive or detrimental to the Community or its Occupants or to other property in the vicinity or to its occupants or residents, as determined by the Board, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Committee), flashing lights or search lights will be located, used or placed on the Community without the Committee's approval. No unsightly objects will be permitted to remain on any Lot so as to be visible from any other portion of the Community. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material and scrap will be kept at all times in containers and in areas approved by the Committee. No clothing or fabric will be hung, dried or aired in a way that is visible to any other portion of the Community. No major appliances (such as clothes washers, dryers, refrigerators or freezers) may be kept, stored or operated on any balcony, patio, porch or other exterior area of any Improvement. Window air-conditioning units are not allowed. Windows will be covered only by drapes, shades or shutters that are white or muted earth tone in color, and will not be painted or covered by foil, cardboard, sheets or similar materials. Garage sales within the Community are prohibited except to the extent arranged by the Association.

- 3.5 **No Hazardous Activities.** No activities will be conducted on the Community, and no Improvements will be constructed in the Community which are or might be unsafe or hazardous to any Occupant.
- 3.6 **Insurance Rates.** Nothing will be done or kept on any Lot which will increase the rate of or cancel any insurance on any other portion of the Community without the approval of the Owner of any other portion, nor will anything be done or kept on the Community or a Lot which would result in the cancellation of insurance on any portion of the Community owned or managed by the Association or which would be in violation of any law.
- 3.7 **Vehicles and Equipment.** On-street parking on public roads will be limited to those specific areas where on-street parking is expressly permitted by the highway authority responsible for the public road; provided, however, no vehicles may be parked on public streets for more than forty-eight (48) hours in any given seven (7) day period. Vehicles must not extend or otherwise be permitted on or into any sidewalk, bicycle path or pedestrian path unless the vehicle is engaged in an emergency procedure, or as provided elsewhere in the Community Documents. No motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (defined as any vehicle which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer), oversized vehicles (defined as vehicles which are too high or too wide to clear the entrance of a standard residential garage door opening), dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and/or any other unsightly equipment and machinery will be placed upon any portion of the Community, including but not limited to streets, parking areas and driveways, unless the same are located entirely within a garage and concealed from the view of anybody standing outside the garage, except when the garage is open to facilitate ingress and egress. To the extent possible, garage doors will remain closed at all times. Electric, gas or other fuel operated gardening, yard or snow removal equipment will only be operated from 7:00 a.m. to 9:00 p.m., subject to applicable law.
- 3.8 **Animals/Pets.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot except that Household Pets (defined below) may be kept for an Owner's personal use provided that (a) the Household Pets are not bred or maintained for any commercial purpose, (b) no more than four (4) of any combination of Household Pets may be kept on a Lot, and (c) any Household Pets will be properly restrained and controlled at any time they are within the Community. "**Household Pets**" means (1) generally recognized household pets that are customarily kept as indoor pets, such as domesticated dogs, domesticated cats, fish, birds, rodents and non-poisonous reptiles, and (2) hens and chickens (no roosters) (which may be kept as outdoor pets). Household Pets will not include livestock, poultry (except hens and chickens), swine or waterfowl. Household Pets will not be kept which unreasonably bother or constitute a nuisance to other Owners. Any noisy animal (defined below), any vicious animal, any non-domestic household pet or any animal which damages or destroys property will be deemed a nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, pursuing or attacking other animals, including wildlife, and trespassing upon private property in a manner that may damage the Community will also be deemed a nuisance. A "noisy animal" means any animal which habitually or frequently disturbs the sleep, peace or quiet of any Occupant. Owners will contact the local animal control agency regarding noisy animals prior to complaining to the Board about the animals. Any costs associated with responding to complaints of a noisy animal or nuisance pet may be levied against an Owner as a Limited Assessment. The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the Household Pet (if not the Owner), will be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of any Common Area, roads or other property necessitated by the Household Pet.

- 3.9 **Assistance Animals.** Assistance animals are welcome in the Community in accordance with the Fair Housing Act (42 U.S.C. § 3601 et. seq., as amended) and the implementing regulations promulgated thereunder. An assistance animal will be as defined in the Fair Housing Act, which is currently any animal needed by a disabled individual to have an equal opportunity to use and enjoy a dwelling. Examples of assistance animals are guide animals, animals that alert people who are deaf, animals that pull a wheelchair, animals that alert and protect a guest who is having a seizure, animals that remind an individual with mental illness to take prescribed medications, animals that calm an individual with Post Traumatic Stress Disorder (PTSD) during an anxiety attack and animals that provide comfort or emotional support. Assistance animals in training are to be treated as assistance animals, even if the handler is not disabled. An assistance animal need not be licensed or certified by any government. Individuals with assistance animals will not be treated less favorably than other residents or charged fees that are not charged to other residents without animals. The Association has the right, to the extent permitted under the Fair Housing Act, to prohibit or restrict any assistance animal that (a) is out of control and the handler does not take effective action to control it, or (b) the animal's behavior poses a threat to the health or safety of others. Any individual who brings an assistance animal on the Community is financially and legally responsible for any injury or damage caused by the assistance animal, and for any clean-up of Common Areas, roads or other property necessitated by the assistance animal.
- 3.10 **Construction and Temporary Structures.** During the course of construction, no trailer houses or similar mobile units designed for overnight accommodations will be parked on any street. No trailer, tent, shack, garage, barn or other unattached structure erected on a Lot will, at any time, be used as a residence, temporarily or permanently, nor will any residence of a temporary character be permitted. No building of any kind will be erected or maintained on a Lot prior to the construction of the Improvements thereon. The construction of Improvements will be prosecuted diligently and continuously from the time of commencement thereof until the Improvements are fully completed and painted. The construction site will be cleaned of trash and debris nightly and maintained in a non-nuisance condition.
- 3.11 **Drainage.** No Owner will interfere with the established drainage pattern over any portion of the Community, unless adequate alternative provisions for proper drainage have first been approved by the Committee and properly installed. 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 Community is completed by Developer, or that drainage which is shown on any plans approved by the Committee, which may include drainage from Common Area over any Lot in the Community.
- 3.12 **Grading.** Except as provided in Section 3.11, no Lot will drain onto, over, across or under the Common Area or an adjacent Lot. The Owner of any Lot within the Community in which grading or other work has been performed pursuant to a grading plan approved by any public agency, or by the Committee, will maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public agency, and plantings and ground cover installed or completed thereon.
- 3.13 **Irrigation System.** The Association will own and operate the Irrigation System for the Community. No Owner will modify any portion of the Irrigation System. Each Owner will connect its Lot(s) to the Irrigation System, if available, prior to or at the time of landscaping installation. The private irrigation system installed on each Lot will be automated and timer-controlled, and will be operated in accordance with any rules adopted by the Association. Each Owner acknowledges that the Irrigation System water may be inadequate, particularly during low water years and seasons, and that no Owner is guaranteed any specific amount of water for use on such Owner's Lot.

- 3.14 **Irrigation District Assessments.** The Community may be located in an irrigation district or lateral association and, if so, the irrigation district may assess the Association or the Owners. If the irrigation district or lateral association assesses the Association, then the Association will pay the assessment and the assessments will be part of the Common Expenses. If the irrigation district or lateral association directly assesses the Owners, then the Owners will pay the assessments directly to the irrigation district.
- 3.15 **Energy Devices.** Solar panels and solar collectors (“**Solar Devices**”) are permitted on the rooftop of any structure on any Lot if the rooftop is owned, controlled and maintained by the Owner; provided however, the Committee will have the right to determine the specific location where the Solar Devices may be installed on the roof as long as installation is permitted within an orientation to the south or within forty-five (45) degrees east or west of due south. The Association may adopt reasonable rules for the installation of Solar Devices consistent with an applicable building code or to require that panels or collectors of the Solar Devices be parallel to a roof line, conform to the slope of the roof, and that any frame, support bracket, or visible piping or wiring be painted to coordinate with the roofing material. No other energy production devices or generators of any kind (e.g., windmills) will be permitted in the Community without the Committee’s approval of the device and the installation thereof.
- 3.16 **General Signs.** No more than one (1) sign will be allowed on any Lot at the same time to advertise the Lot for sale or to advertise the Lot during the course of construction, and all signs must be removed within fifteen (15) days of occupancy or closing of sale. Directional and open house signs may be used during open house time period only. No sign of any kind will be displayed to the public view more than six (6) square feet in size and not more than three (3) feet above grade. The Association may erect and maintain identification signs, street signs and other appropriate informational signs upon the Common Area or upon utility easements of a size and design approved by the Committee. No other signs will be placed or maintained upon the Common Area. Signs advertising a Lot for rent or lease are not allowed anywhere within the Community. An Owner may place political signs for an upcoming election on any Lot owned by that Owner, but only during the prior that is thirty (30) days prior to the applicable election, and the signs will be removed within two (2) days after any the election.
- 3.17 **Political Signs.** A “political sign” is limited to any fixed, ground-mounted display in support of or in opposition to a candidate for office or a ballot measure. An Owner may place political signs for an upcoming election on any Lot owned by that Owner, but only during the prior that is thirty (30) days prior to the applicable election, and the signs will be removed within three (3) days after any the election. The Association may adopt reasonable rules, subject to any applicable laws, regarding the time, size, place, number, and manner of display of political signs. The Association may remove political signs that violate this Declaration or the Association’s rules, so long as the removal is not prohibited by applicable law (e.g., Idaho Code § 55-115(5) or its successor).
- 3.18 **Flags.** No flags, banners, windsocks or similar items are permitted within the Community except for the flag of the United States of America, the flag of the state of Idaho, the POW/MIA flag, and an official or replica flag of any branch of the United States armed forces (the “**Permitted Flags**”). The Association may adopt reasonable rules that regulate the display of Permitted Flags as permitted by applicable law (e.g., Idaho Code § 55-115(6) or its successor).
- 3.19 **Antenna; Satellite Dishes.** The following restrictions will apply to direct broadcast satellite dishes that are less than one meter in diameter and antenna for receipt of video programing (each, a “**Device**”) except where the restrictions would (a) unreasonably delay or prevent installation, maintenance or use of the Device; (2) unreasonably increase the cost of installation, maintenance

or use of the Device; or (b) preclude reception of an acceptable quality signal to the Device. The Device must be installed on the rear of the residential structure on the Lot, or within four (4) feet of the rear of the structure on any of the structure's side walls. The Device must be screened by a fence, landscaping or similar structures in accordance with the Design Requirements, or as otherwise required to ensure the safety of the residents of the Community. No Device may be installed until after an Owner has received Committee approval for construction of residential Improvements on the Owner's Lot. Satellite dishes that are one meter or larger in diameter, and any antenna other than an antenna for the receipt of video programming, will not be a Device and are prohibited unless the Device and its installation are expressly approved by the Committee.

- 3.20 **No Further Subdivision.** No Lot may be further subdivided unless the subdivision is approved by the Board, and then only in accordance with applicable law.
- 3.21 **Holiday Lights.** Winter holiday decorations and lighting displays are permitted starting on November 15 of each year and must be removed by January 15 of the following year. Any other holiday decorations or lighting displays (such as Halloween) are permitted up to fifteen (15) days prior to the holiday and must be removed within three (3) days after the holiday.
- 3.22 **Trash.** Trash cans and other trash receptacles, including recycling cans and receptacles, must not be visible from any street except between 5:00 AM and 8:00 PM on the day selected by the trash collector for trash and recycling pick-up.
- 3.23 **Marijuana-Free Community.** No Owner may use, occupy, or permit the use or occupancy of any Lot (or any portion thereof) that in any manner relates to the use, sale, possession, cultivation, manufacture, distribution, or marketing of any substance containing any amount of marijuana, cannabis, or tetrahydrocannabinol, whether for commercial, medical, or personal purposes, whether or not the activities are lawful under all applicable laws (collectively, "**Prohibited Activities**"). Notwithstanding the foregoing, nothing in this section will prohibit any person from possessing and using any drug approved by the U.S. Food and Drug Administration that has been lawfully prescribed and lawfully obtained by the person, provided that the person only possesses and uses the drug in compliance with applicable law.

Any lease (as defined in Section 3.2) of a Lot entered into by an Owner must contain a clause expressly prohibiting the tenant thereunder from engaging or permitting others to engage in any Prohibited Activities, and further permitting the Owner to terminate the lease and evict the tenant in the event the tenant violates the clause or otherwise violates this Section 3.23. If the Owner becomes aware that its tenant is or has been engaged, or is permitting or has permitted others to engage, in any Prohibited Activities on the Owner's Lot, then the Owner must take all reasonable actions to terminate the lease in accordance with applicable law, evict the tenant, and otherwise take all reasonable actions to terminate the Prohibited Activities on the Lot. The Owner must keep the Association fully advised of the Owners actions and plans to prohibit and terminate the Prohibited Activities as required by this Section.

In addition and not by way of limitation, each Owner agrees to indemnify, defend and hold the Association and all other Owners harmless from and against any loss, claim (including without any governmental action for seizure or forfeiture of any real or personal property, with or without compensation, and whether or not the property is taken free of or subject to lien or security interest), damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of, or related to any Prohibited Activities at or on the Owner's Lot and/or the indemnifying Owner's breach, violation, or failure to enforce or comply with any of the covenants set forth in this Section.

The failure by any Owner to fully and faithfully comply with this Section will constitute a material non-curable event of default that grants the Association and any other Owner the right to exercise any right or remedy available in the Community Documents or at law.

3.24 **Civility.**

3.24.1 Civility. Each Owner covenants that its Owner Parties will engage with all members of the Community with courtesy, civility and respect. Further, each Owner acknowledges that the Community is to be a family-oriented and family-friendly environment, and each Owner covenants that the conduct of its Owner Parties in the presence of children in the Community will be age appropriate for the children present. An Owner will be deemed to have violated the covenants in this Section 3.24 if any of its Owner Parties engage in, or threatens to engage in: (a) abusive, threatening, disrespectful or rude language toward any Community member; (b) in any conduct that places any Community member in (or causes a Community member to reasonably believe that he or she might be in) an unreasonable risk of suffering substantial personal injury or property damage; (c) any intentional or reckless failure to comply with the any of the Community Rules regarding safety; (d) any conduct or behavior that constitutes harassment toward any person lawfully in the Community; (e) any conduct that unreasonably disrupts or impairs the peace and tranquility in the Community; or (f) any conduct that unreasonably disrupts or impairs the ordinary or efficient operation the Community. “**Harassment**” means any verbal, written or physical conduct (or conduct using technology) that limits or denies a Community member’s ability to enjoy the benefits of the Community. To constitute harassment, the conduct must be severe, persistent or pervasive such that it has the purpose or effect of unreasonably interfering with an individual’s participation in the Community, or that it creates an intimidating, hostile, or offensive environment in the Community. To rise to the level of Harassment, the behavior must be subjectively and objectively unreasonable, taking into consideration the characteristics of the victim.

3.24.2 Remedies. If the Association finds (in its discretion) that any Owner Party violates the covenant in Section 3.24, then the Association may (a) temporarily ban the Owner Party from access to, or use of, any Common Area for any period the Association deems appropriate; (b) place any restrictions on the Owner Party’s access to, or use of, any Common Area for any period the Association deems appropriate; (c) refrain from responding to any letters, emails, calls, texts or other communications from Owner Party (except, and only to the extent, a response to the communication is required by applicable law); and/or (d) designate a point of contact for all communications to the Association from the Owner Party, and in that event Owner covenants that the Owner Party will communicate to the Association and its officers, directors, employee and agents only through the designated point of contact (except, and only to the extent, that applicable law allows direct communications).

3.24.3 Interpretations. Each Owner agrees that (a) the terms of this Section 3.24 will be interpreted broadly to effectuate its purpose; (b) the Association will have broad discretion to decide how it will investigate and enforce this Section 3.24; and (c) the Association’s decisions pursuant to this Section 3.24 will be binding on the affected Owner Parties, unless the Association’s decision violates applicable law or unless there is clear and convincing evidence that the Association acted in bad faith.

ARTICLE 4 ARCHITECTURAL REVIEW COMMITTEE

- 4.1 **Creation.** The Board will appoint no less than three (3) and no more than five (5) individuals to serve on the Architectural Review Committee (the “**Committee**”). Committee members may be Board members, and if the Board fails to appoint of Committee members, then Board members will serve as the Committee members. The Board has the exclusive right to appoint, remove and replace Committee members at any time with or without cause, and to fill vacancies on the Committee. If a vacancy on the Committee occurs and the Board has not yet appointed a replacement, the remaining Committee members may appoint an acting member to serve until the Board appoints a replacement. A Committee member need not be an Owner.
- 4.2 **Design Requirements.** The Committee has the power to adopt, amend and repeal any rules that the Committee deems reasonable to ensure that all Improvements in the Community meet the minimum requirements for external design, quality and type of construction, architectural character, materials, color, location in the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and other design or aesthetic considerations (the “**Design Requirements**”). The Design Requirements may include rules and regulations: (a) to protect the special qualities of the Community; (b) to encourage creative design; (c) to provide general architectural, design and construction guidelines; (d) that provide landscape guidelines (including a description of existing, natural conditions and vegetation); (e) that provide submittal and review procedures; (f) establishing fees and charges for review; and (g) establishing penalties for noncompliance. The Design Requirements must conform to this Declaration, and if the Design Requirements conflict with this Declaration, this Declaration will govern. If any provision of the Design Requirements are deemed ambiguous on any matter, the Committee’s interpretation of the provision will be given deference so long as the interpretation is a reasonable.
- 4.3 **Design Review Required.** No Owner will construct, reconstruct, alter, install or remove any Improvements or landscaping except with the Committee’s approval. The Committee will review, study and either approve or reject the proposed Improvements or landscaping, all in compliance with the Declaration and the Design Requirements. Except as otherwise set forth herein, any action or decision made by a majority of the Committee will be the binding decision of the entire Committee. The Committee is authorized to retain the services of one or more consulting architects, landscape architects, engineers, designers and other consultants to advise and assist the Committee on a single project, on a number of projects or on a continuing basis. The Committee’s action in the exercise of its discretion by its approval or disapproval of the proposed Improvements or landscaping, or with respect to any other matter before it, will be conclusive and binding on all interested parties. The Committee will not direct or control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.
- 4.4 **Fences.** Subject to the approval required by Section 4.3, each Owner will be responsible for the construction, maintenance, and replacement of all fences desired on the Owner’s property, and specific approval from the Committee will be required prior to constructing any gate that opens to Common Area. All fences must be a post and rail design with a maximum top rail height of 42” and a bottom rail height of 18”. No fences, hedges, or retaining walls shall be installed or maintained on any lot unless approved by the Committee. To the extent a fence has been constructed by Grantor on an Owners Lot, then such Owner shall maintain such fence in good condition and repair, and shall likewise replace such fence at the end of its useful life with the type of fencing materials originally constructed thereon or with such substitutes as will, in all respects, be equal to such original materials in quality, appearance, and durability.”
- 4.5 **Common Expenses.** All expenses of the Committee will be Common Expenses paid by the Association. The Committee will have the right to charge reasonable fees for applications submitted

to it for review, in amounts which may be established by the Committee from time-to-time, and the fees will be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation, including reasonable payment to each member of the Committee for their services as provided herein. Each Owner, by submitting a design review application to the Committee, agrees to pay any additional reasonable fees based on costs incurred by the Committee in retaining consultants for the review and approval of the Owner's application(s).

- 4.6 **Variances.** The Committee may authorize variances from any of the Design Requirements when the Committee deems it desirable to address special circumstances, such as unusual topography, natural obstructions, hardship, aesthetic considerations or other circumstances. The granting of a variance will not waive any element of the Design Requirements for any purpose except as to the particular property and particular provision covered by the variance. Approval of a variance will not affect the Owner's obligation to comply with this Declaration or applicable law.
- 4.7 **Committee Approvals.** The Committee's approval of any Improvement does not mean the Improvements will be permitted by applicable law, approved by the applicable governmental authorities or others. The Committee will not be responsible in any way for any defects or errors in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to the plans and specifications.
- 4.8 **Immunity; Indemnification.** The Committee's members, agents and employees will be immune from liability and entitled to indemnification as set forth in Section 2.8 hereof.

ARTICLE 5 ASSESSMENTS

- 5.1 **Covenant to Pay Assessments.** Each Owner covenants and agrees to pay when due (without deduction, setoff, abatement of counterclaim of any kind whatsoever) all Assessments or charges made against the Owner or the Owner's Lot pursuant to the Community Documents. Assessments against a Lot will be a continuing lien on the Lot until paid, whether or not ownership of the Lot is transferred. Assessments against a Lot are also the personal obligation of the Owner of the Lot when the Assessment becomes due and payable. The personal obligation will remain with the Owner regardless of whether the Owner remains the owner of the Lot. Delinquent Assessments related to a Lot will not pass to the Owner's successors in title unless expressly assumed by them. The Assessments and charges, together with interest, costs and reasonable attorneys' fees, which may be incurred in collecting the same, will be a charge on the land and will be a continuing lien upon the Community against which each the Assessment or charge is made.
- 5.2 **Regular Assessments.** Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs or the exercise of any of the Association's powers, obligations under the Community Documents (collectively, the "**Common Expenses**"). Without limiting the generality of the foregoing, the Common Expenses will include:
- 5.2.1 The cost and expenses incurred by the Association for professional management of its business and affairs;
- 5.2.2 The costs and expenses incurred by the Association in the exercise of any of its powers under Section 2.6;

- 5.2.3 The costs and expenses of construction, improvement, protection, insurance, maintenance, repair, management and operation of the Common Area and any Improvements located in other areas that are owned, managed or maintained by the Association; and
- 5.2.4 An amount to fund adequate reserves for extraordinary operating expenses, contingent risks or liabilities (such as indemnification and defense expenses), capital repairs, capital replacements and any other expenses for which the Board deems prudent to fund a reserve.

If Developer transfers a Lot to a registered contractor, then the contractor is only required to pay twenty-five percent (25%) of the Regular Assessments otherwise due for a maximum of twelve (12) months after taking title to the Lot. The foregoing building contractor discount terminates early if any structure on the Lot is occupied.

- 5.3 **Special Assessments.** If the Board determines that the Regular Assessment for a given calendar year is or will be inadequate to meet the Common Expenses for the calendar year for any reason, the Board may levy a Special Assessment to collect the additional funds needed to meet the Common Expenses for the calendar year. Special Assessments will be levied and paid upon the same basis as Regular Assessments; provided, however, the Association will, in the Board's reasonable discretion, set the schedule under which the Special Assessment will be paid, which schedule may be different than Regular Assessments.
- 5.4 **Limited Assessments.** Notwithstanding the above provisions with respect to Regular Assessments and Special Assessments, the Association may levy a Limited Assessment against an Owner (a) for any fines, fees or charges levied against the Owner under the Community Documents; (b) to reimburse the Association for any costs incurred to bring the Owner's Lot or any Improvements thereon into compliance with the Community Documents; (c) to reimburse the Association for any damages caused by an Owner or any of its Owner Parties to any Common Area or Common Improvements; and (d) for the cost of providing any goods or services under the Community Documents that benefit the Owner or Owner's Lot, but less than all Owners or all Owners' Lots.
- 5.5 **Transfer Assessments.** Upon any transfer of fee simple title to a Lot, the transferee will pay the then current transfer assessment to the Association (the "**Transfer Assessment**"). The Association may use the Transfer Assessments for any purpose that is not prohibited by law.
- 5.6 **Assessment Procedures.** Unless otherwise determined by the Board, the Association will compute and forecast the total amount of Common Expenses on an annual basis (the "**Budget**"). The computation of the Budget will take place not less than thirty (30) nor more than ninety (90) days before the beginning of each fiscal year of the Association, unless a change in Owners or other circumstance makes it impracticable to compute the Budget in that time frame, in which event the Budget will be computed as soon as reasonably practicable. In all events, the computation of the Budget will be completed in good faith and is valid upon completion. Each Owner's Regular Assessment will be computed by multiplying the Budget by the fraction produced by dividing the number of Lots owned by the Owner by the total number of Lots not then exempt from Assessment. The Association may, in its discretion or as provided in the Community Documents, require payment of Regular Assessments in monthly, quarterly, semi-annual, or annual installments. The Association will provide Owners with not less than fifteen (15) days and no more than thirty (30) days of prior notice before any Board meeting for the purpose of levying a Special Assessment or increasing the Regular Assessment by more than ten percent (10%). Assessments are due and payable within thirty (30) days after the Association provides an invoice therefor to each Owner. If all or any part of an Assessment is not paid when due, then: (a) the delinquent Owner will pay to the Association a late payment charge equal to five percent (5%) of the delinquent amount; and (b)

interest accrues on the delinquent amount at the rate of twelve percent (12%) per annum until paid in full. In the event an Owner's payment is returned for any reason, the Owner will pay to the Association an administrative fee in an amount set by the Board and thereafter the Association has the right to require future Assessments due from the Owner to be paid in the form of a cashier's check, certified check, or other form of immediately collectible funds acceptable to the Association in the Board's discretion. Each Owner acknowledges and agrees that the late payment charge and administrative fee are reasonable compensation to the Association for additional administrative costs and expenses caused by any late payment or returned check.

5.7 **Assessment Liens.**

5.7.1 *Creation.* There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against the Lot pursuant to the Community Documents, together with interest thereon at the rate described in Section 5.6 and all collection costs and attorneys' fees which may be paid or incurred by the Association in connection therewith. Upon default of any Owner in the payment of any Assessment related to a Lot, the Association may record a claim of lien against the Lot in accordance with applicable law (currently, Idaho Code § 45-810). Each delinquency will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. The claim of lien may be foreclosed in any manner permitted by applicable law. Upon payment of the lien in full, the Association will record a release of the claim of lien.

5.7.2 *Subordination to First Mortgages.* Upon recordation of a claim of lien for delinquent Assessments in accordance with applicable law, the lien will be prior and superior to all other liens or claims created subsequent to the recordation of the claim of lien except for (a) liens which, by law, would be superior thereto and (b) the lien of a first Mortgage given and made in good faith and for value that is of record as an encumbrance against the Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Section 5.7.2, the sale or transfer of any Lot will 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 the sale or transfer, nor will the sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

5.8 **Exemptions.** All Common Area and any Lots owned by the Association will be exempt from Assessments. Developer will be exempt from Assessments as set forth in Section 10.4.

ARTICLE 6 RIGHTS TO COMMON AREAS

6.1 **Use of Common Area.** Every Owner will have a right to use the Common Area as set forth in this Declaration subject to:

6.1.1 The Community Documents;

6.1.2 The right of the Association to suspend the right of an Owner to use the Common Area for any period during which any Assessment or charge against the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the Community Rules;

- 6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or other party for any purposes and subject to any conditions as may be permitted by the Community Documents; and
- 6.1.4 The provisions of Section 3.24.
- 6.2 **Delegation of Right to Use.** An Owner may delegate its right to use the Common Area to any Owner Parties; provided, however, each Owner will be liable to the Association for any damage to any Common Area or Common Improvements caused by the negligence or misconduct of any Owner Parties. The cost of correcting the damage will be a Limited Assessment against the Lot.
- 6.3 **Association's Responsibility.** The Association will maintain, repair and replace the Common Area and Common Improvements so as to keep the same in good operating condition.

ARTICLE 7 EASEMENTS

- 7.1 **Easements of Encroachment.** There will be reciprocal appurtenant easements of encroachment as between adjacent Lots and between Lots and adjacent portions of the Common Area due to the placement or settling or shifting of the Improvements constructed, reconstructed or altered in accordance with the Community Documents. Easements of encroachment will be valid only so long as they exist, and the rights and obligations of Owners will not be altered in any way because of the settling or shifting of the Improvements; provided, however, that in no event will a valid easement for encroachment occur due to an Owner's willful or bad faith acts. If an Improvement is partially or totally destroyed, the Improvement may be repaired or rebuilt within the minor encroachments that existed prior to the encroachment and may be reconstructed pursuant to the easement granted by this Section 7.1.
- 7.2 **Easements of Access.** There will be reciprocal appurtenant easements of ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services and for necessary maintenance and repair of any Improvement, such as fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping.
- 7.3 **Improvements in Drainage and Utility Easements.** No Owner will construct or alter any Improvements in any drainage or utility easement areas which would interfere with the easement being used for its intended purpose. The Owners may install and maintain Improvements on the easement areas as permitted by the Community Documents so long as the Improvements are permitted by the terms of the easement and the Improvements will not interfere with or prevent the easement areas from being used for their intended purposes. No lawful user of the easement will incur any liability to the Owner for the damage or destruction of the Improvements.
- 7.4 **Easements Deemed Created.** All conveyances of Lots made after the date of the recording of the Declaration, whether by Developer or otherwise, will be construed to grant and reserve the easements contained in this Article 7 and elsewhere in this Declaration, even though no specific reference to the easements appear in the conveyance instrument.
- 7.5 **Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies to enter upon the Community in the proper performance of their duties.

- 7.6 **Maintenance Easement.** A non-exclusive easement is hereby reserved to Developer and the Association upon, across, over, in, and under all portions of all Lots that are not improved with an occupied structure. Developer and the Association may use the easement reserved herein as Developer or the Association may deem necessary, appropriate, or convenient to perform any of their respective rights or obligations identified in the Community Documents, to perform their respective duties and functions to which they are obligated or permitted to perform pursuant to the Community Documents, and to make emergency repairs. Nothing herein relieves each Owner's obligation to maintain Improvements on the Owner's Lot.
- 7.7 **Developer's Rights Incident to Construction.** Developer retains a right and easement of ingress and egress over, in, upon, under, and across the Community and the right to store materials thereon and to make any other use thereof as may be reasonably necessary or incident to the construction of the Improvements in the Community on those portions owned by Developer or the Association; provided, however, that Developer will not exercise the rights in a way that will unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or its Owner Parties.

ARTICLE 8 STORM WATER DRAINAGE AND RETENTION SYSTEM

This Association will be responsible for maintaining the storm drainage and retention system in accordance with that certain Storm Drainage Operation and Maintenance Plan for Whitehurst Subdivision No. 1 dated [] and prepared by [], as the same is amended from time to time (the "**O&M Manual**"). A true and correct copy of the current O&M Manual is recorded in the real property records as Instrument No. _____.

ARTICLE 9 RESOLUTION OF DISPUTES

- 9.1 **Agreement to Avoid Litigation.** Developer, the Association and the Owners agree that it is in their best interests to provide a fair, impartial and expeditious procedure for the resolution of disputes related to the Community Documents (rather than costly, lengthy and unpredictable litigation). Accordingly, Developer, the Association (including its officers, directors and committee members), each Owner and any party claiming a right or interest under the Community Documents (each, a "**Bound Party**") agree to encourage the efficient resolution of disputes within the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees that all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights or obligations of any Bound Party under the Community Documents ("**Claims**") will be subject to the provisions of Section 9.3 unless exempt under Section 9.2. All Claims will be subject to resolution pursuant to this Article 9 as a condition precedent to the institution or continuation of any legal or equitable proceeding; provided, however, any Bound Party may proceed in accordance with applicable law to comply with any notice or filing deadlines prior to resolution of the Claim.
- 9.2 **Exemptions.** The following Claims will not be subject to this Article 9:
- 9.2.1 Any Claim by the Association against any Bound Party to enforce the obligation to pay any Assessment under the Community Documents;
- 9.2.2 Any Claim by Developer or the Association to obtain injunction or equitable relief to enforce any provision of the Community Documents;

- 9.2.3 Any Claim between Owners where Developer or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Community Documents;
- 9.2.4 Any Claim in which any indispensable party is not a Bound Party;
- 9.2.5 Any Claim against a Released Party that would be barred by Section 2.8;
- 9.2.6 Any Claim which otherwise would be barred by any applicable law (such as, for example, the applicable statute of limitations); and
- 9.2.7 Any Claim arising out of or relating to the interpretation, application or enforcement of any purchase, sale or construction agreement with Developer or any builder related to the construction of Improvements within the Community, or the rights and obligations of any Bound Party under the agreements, it being understood that applicable law and the provisions of the agreements will control the resolution of any claims or disputes related thereto.

9.3 **Dispute Resolution.**

- 9.3.1 Direct Discussions. Any Bound Party having a Claim against any other Bound Party will notify the party(ies) of the Claim in writing, stating plainly and concisely the following: (a) the nature of the Claim; (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (c) the basic facts supporting the allegations in the Claim; (d) the other persons involved in the Claim or with personal knowledge of the facts alleged; and (e) the claimant's proposed remedy, including the specific monetary amounts (if any) demanded. The Bound Parties to the Claim will make reasonable efforts to meet in person to resolve the Claim by good faith discussions and negotiations – it being understood that the best opportunity to achieve a fair and satisfactory resolution to a Claim is ordinarily through early discussions and negotiations held in good faith.
- 9.3.2 Dispute Resolution. If the Bound Parties to a Claim are unable to resolve the Claim through direct discussions within a reasonable time, either Bound Party may submit the Claim to the Board for assistance in resolving the Claim. In that event, the Board may, by notice to each Bound Party to the Claim within thirty (30) days of its receipt of a request for assistance:
 - 9.3.2.1 Order the Bound Parties to continue direct discussions and negotiations for a period of up to thirty (30) days. If the Claim is not resolved in the period, any Bound Party may request the Board's assistance to resolve the Claim;
 - 9.3.2.2 Order the Bound Parties to mediate the Claim with an independent real estate attorney, real estate professional or judge selected by the Association. The mediator will set the rules of the mediation. Any party to the mediation can invite additional parties to the mediation if the presence of the additional party is required for a complete resolution of any Claim. The parties will share the mediator's fee and any filing fees equally. Unless otherwise agreed, the mediation will be held within thirty (30) days of the order for mediation and will be held in a neutral location near the Community selected by the mediator. Agreements reached in mediation will be enforceable as settlement agreements in any court having

jurisdiction thereof. If the mediation does not resolve the Claim, the Bound Parties may proceed to litigation of the Claim in any court of competent jurisdiction;

9.3.2.3 Order the Bound Parties to settle the Claim through arbitration by a single arbitrator conducted in accordance with the Idaho Uniform Arbitration Act (Idaho Code, Title 7, Chapter 9) except as otherwise provided herein. The arbitrator will be any independent real estate attorney or judge appointed by the Association. The arbitrator will set the rules of the arbitration. The arbitrator may, in its discretion, order parties to produce documents relevant to the dispute and may order written discovery and depositions (but with care to avoid burdensome discovery or depositions). The arbitrator will endeavor to hold the arbitration at mutually convenient times and locations; provided, however, the arbitrator will endeavor to complete the arbitration within forty-five (45) days after appointment of the arbitrator. The parties will bear their own attorneys' fees (if any) and share the arbitrator's fees equally; provided, however, the arbitrator may award costs, arbitrator's fees and attorneys' fees to the substantially prevailing party. The arbitrator's award will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof;

9.3.2.4 If the Claim is within the jurisdiction of the Small Claims Department of the Magistrate Division (currently, monetary claims for \$5,000 or less), order a Bound Parties to file the Claim exclusively therein; or

9.3.2.5 Elect to exempt the Claim from this Article 9, at which time the Bound Parties are free to exercise any right or remedy in accordance with applicable law.

If the Board fails to notify the Bound Parties within thirty (30) days of its receipt of a request for assistance, the Board will be deemed to have elected to exempt the Claim from this Article 9.

9.3.3 If the Bound Parties resolve any Claim through mediation or arbitration pursuant to this Article 9 and any Bound Party thereafter fails to abide by the terms of the resolution (i.e., settlement agreement or arbitrator's award), then any other Bound Party may take any legal or other action to enforce the settlement agreement or arbitrator's award without the need to comply again with the procedures set forth in this Article 9. In that event, the Bound Party taking action to enforce the resolution will be entitled to recover from any non-complying Bound Party all costs and attorneys' fees reasonably incurred in the enforcement.

ARTICLE 10 INITIAL DEVELOPMENT PERIOD

10.1 **Community Management.** Each Owner recognizes that the Community will require a high level of knowledge, effort, judgment, diligence and attention during the Development Period, and that level is beyond what can reasonably be expected from Community volunteers. Accordingly, each Owner agrees that it is in the best interest of the Community for Developer to have full management authority for the Community during the Development Period, including the sole and exclusive right

to appoint, remove and replace directors of the Board and members of the Committee at any time and from time-to-time in Developer's sole discretion.

- 10.2 **General Exemptions.** Developer may take any of the following actions as Developer deems appropriate without the approval of Association or Committee:

10.2.1 Make modifications or Improvements on any Lot or the Common Area;

10.2.2 Place or authorize signs of any size, design and number as Developer for the initial development of the Community, including signs to identify the Community, display information pertaining to the Community, display information or instructions to builders, to advertise Lots and homes for sale (including sale events and open houses), and to advertise of Community elements or events;

10.2.3 Authorize any developer or contractor to use any Lot as a model home, sales office, construction office or construction storage yard; and

10.2.4 Place or authorize temporary structures upon any Lot or the Common Area.

- 10.3 **Water Rights Appurtenant to Community Lands.** Developer owns certain water and water rights which are appurtenant to the Community. Developer hereby reserves unto itself any and all the water and water rights appurtenant to the Community, and Owners of any and all Lots accordingly will have no right, title or interest in or to any of said water or water rights.

- 10.4 **Developer's Exception from Assessments.** If Developer owns any Lots during the first two (2) years following the date Assessments are first assessed against the Owners of Lots, Developer will not be assessed any Regular Assessments or Special Assessments for any Lots owned by Developer. If Developer owns at least one (1) Lot during the period, Developer will pay the shortfall, if any, in the operating Common Expenses of the Association; provided, however, the obligation will not exceed the amount that the Regular Assessments and Special Assessments that Developer would otherwise be assessed as an Owner multiplied by the total number of Lots owned by Developer on the date Regular Assessments or Special Assessments are assessed against the Owners of Lots. After the foregoing period, Developer will be assessed Regular Assessments and Special Assessments for each Lot owned by Developer.

- 10.5 **Assignment of Developer's Rights.** Developer may assign any or all of its rights under the Community Documents to any person or entity in a written instrument that contains the assignee's acceptance of the assignment and agreement to assume any of Developer's obligations pertaining to the rights assigned, which acceptance and assumption will be effective upon the recordation of the written instrument recorded in the real property records of Ada County, Idaho. Developer will promptly provide a copy of the recorded instrument to the Association and, thereupon, be released from Developer's obligations pertaining to the rights assigned.

ARTICLE 11

TERM

The easements created hereunder are perpetual, subject only to extinguishment by the holders of the easements as provided by law. The remainder of this Declaration runs until December 31, 2049 and

thereafter will be automatically extended for successive periods of ten (10) years each, unless earlier amended or terminated in accordance with Article 13.

ARTICLE 12 ANNEXATION AND DEANNEXATION

Developer may annex additional lands into the Community from time-to-time by recording a supplement to this Declaration declaring such additional lands to be part of the Community and subject to this Declaration (each a “**Supplemental Declaration**”). The Supplemental Declaration may add or delete covenants, conditions, restrictions, and easements applicable to the annexed lands as Developer may deem appropriate. Upon annexation, Owners within the annexed lands will become Owners in the Community on equal footing with the then current Owners in the Community, and will have the same rights, privileges and obligations (except as may otherwise be set forth in the annexing Supplemental Declaration). Developer will have the right to de-annex any property owned by Developer from the Community upon Developer’s recordation of a Supplemental Declaration identifying the de-annexed lands and declaring that such lands will no longer be subject to this Declaration. In order to be valid, all Supplemental Declarations must refer to this Declaration and be recorded in the real property records of Ada County, Idaho.

ARTICLE 13 AMENDMENTS

- 13.1 **Amendment.** From and after the recordation of this Declaration until the expiration or earlier termination of the Development Period, Developer will have the exclusive right to amend, or terminate, this Declaration by executing a written instrument setting forth the amendment, or termination, and the same will be effective upon the recordation thereof with the Ada County Recorder’s Office. After the expiration or earlier termination of the Development Period, any amendment to this Declaration, or termination hereof, will be by a written instrument setting forth the amendment or termination, signed and acknowledged by the president and secretary of the Association certifying and attesting that the amendment or termination has been approved by the vote or written consent of Members representing more than sixty-five percent (65%) of the total voting power in the Association, and the same will be effective upon the recordation thereof with the Ada County Recorder’s Office.
- 13.2 **Effect of Amendment; Mortgagee Protection.** Any Supplemental Declaration or amendment or termination of this Declaration will be effective upon its recordation with the Ada County Recorder’s Office and will be binding on and effective as to all Owners, whether or not the Owners voted for or consented to the amendment or termination. Any amendment to this Declaration may add to, delete, and/or otherwise change the covenants, conditions, restrictions, and easements applicable to the Community; provided, however, no amendment will operate to defeat or render invalid the rights of the beneficiary under any Mortgage made in good faith and for value, and recorded prior to the recordation of the amendment, provided that after foreclosure of any Mortgage, the Lot will remain subject to this Declaration as supplemented or amended.
- 13.3 **No Amendment of Required Provisions.** Except with the express written consent of the City of Eagle (“**City**”), which consent must be recorded in the real property records of Ada County, Idaho, this Declaration may not be amended or terminated with respect to the following: (a) any provision required by City in its approval of this Declaration; (b) any provision that affects, recognizes, conveys or confers upon City any easement, right, or power; (c) any provision that relates to easements, access, and/or the operation repair, maintenance, or replacement of Common Area, infrastructure, and/or public works systems; or (d) any dissolution or termination of the Association.

ARTICLE 14 NOTICES

Any notices, invoices, consents, approvals or other communications required or permitted by this Declaration will be in writing and may be delivered personally, by electronic mail or by U.S. mail. Each Owner will be responsible for ensuring that the Association has the Owner's then current mailing address, physical address, electronic mail address and telephone numbers. Each Owner will be deemed to have received any notice when the notice is actually received by the Owner (regardless of the method of delivery) or when the notice is delivered to any of the addresses then currently on file with the Association. Notices delivered by U.S. Mail will not be deemed received until three (3) business after posting. The Association will provide the notice addresses of all Owners to Developer or any other Owner promptly upon request.

ARTICLE 15 MISCELLANEOUS

- 15.1 **Interpretation.** This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community. As used herein, the word "including" will be deemed to be followed by "but not limited to" unless otherwise indicated. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and will not affect that which is set forth in any of the provisions hereof. As used herein the terms "shall," "will," and "must" may be used interchangeably and are mandatory, while the term "may" is permissive. *In the event that any provision of this Declaration is deemed ambiguous on any matter, the Board's interpretation of the provision will be given deference so long as the interpretation is reasonable.*
- 15.2 **Governing Law.** This Declaration will be governed by the laws of the State of Idaho without regard to its conflicts of law principles. Any legal action to interpret or enforce this Declaration will be filed exclusively in the state or federal courts situated in Ada County, Idaho.
- 15.3 **Severability.** Each provision of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision herein.
- 15.4 **Entire Agreement.** This Declaration and the documents referenced herein constitute the sole agreement of Developer and the Owners with respect to the subject matter herein and supersedes all prior understandings and agreements with respect to the subject matter hereof.
- 15.5 **No Third Party Beneficiaries.** Except as otherwise set forth herein, this Declaration and each and every provision herein is for the exclusive benefit of Developer, the Association and the Owners and not for the benefit of any third party.
- 15.6 **No Waiver.** No waiver by the Association hereunder may be oral. No waiver, forbearance, delay, indulgence or failure by the Association to enforce any of the provisions of this Declaration will in any way prejudice or limit the Association's right thereafter to enforce or compel strict compliance with the provision hereof, any course of dealing or custom of the trade notwithstanding. No delay or omission on the part of the Association will operate as a waiver thereof, nor will any waiver by the Association of any breach of this Declaration operate as a waiver of any subsequent or continuing breach of this Declaration.

- 15.7 **Enforcement; Remedies.** The failure of any Owner or Occupant to comply with applicable law pertaining to the ownership, use or occupancy of any Lot or the Community, or to comply with any provision of the Community Documents, is hereby declared a nuisance and gives rise to a cause of action (subject to Article 9) in Developer, the Association (on its own and/or on behalf of any consenting Owners) and any affected Owner for recovery of damages or for negative or affirmative injunctive relief or both enforce the provisions hereof only as set forth in this Declaration. Each remedy provided herein is cumulative and not exclusive. If any party initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the substantially prevailing party will be entitled to recover any costs and attorneys' fees reasonably incurred therein.
- 15.8 **Consents and Approvals.** Subject to Developer's rights as Developer Member (sole voting Member) during the Development Period, any consents or approvals required or contemplated herein must be in a writing executed by the party whose consent or approval is required or contemplated. No Owner unreasonably withhold, condition or delay its consent or approval of any matter requested by Developer, the Association, the Committee or another Owner.
- 15.9 **Recitals and Exhibits.** All recitals and exhibits to this Declaration are true, correct, material, and are hereby incorporated as if set forth herein in full.

[end of text; signature page follows]

Developer has executed this Declaration effective as of the Effective Date.

"Developer"

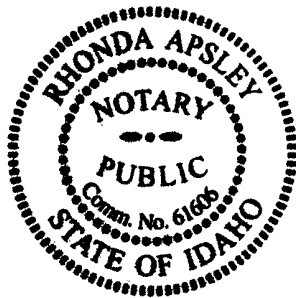
EVANS DEVELOPMENT LLC, an Idaho limited liability company

By:

DZE
D. Zachary Evans, Manager

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on March 28 2022 by D. Zachary Evans as Manager of Evans Development LLC, an Idaho limited liability company.



Rhonda Apsley
Signature of Notary Public
Exp. 5/14/2025

EXHIBIT A

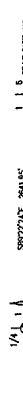
PLAT

[attached; three (3) pages]

LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 12, T.4N., R.1W., B.M.

ADA COUNTY, IDAHO

2022

BOOK 123, PAGE 196 12

SUBDIVISION BOUNDARY
 SECTION LINE
 RIGHT-OF-WAY LINE
 CENTERLINE
 LOT LINE
 EXISTING PARCEL LINE
 PUBLIC UTILITY, PRESSURE
 & LOT DRAINAGE EASEMENT
 SEE NOTES 1 & 2



NOTES

each lot is hereby designated as having a permanent easement for public utilities, without compensation, association pressure, promotion and lot drainage over the twelve (12) feet adjacent to any public street, sidewalk or driveway, and the construction of hard-surfaced driveways and walkways to each lot, and the installation of storm sewers, shall not preclude the construction of hard-surfaced driveways and walkways to each lot, and unless otherwise shown and indicated, such lot is hereby designated as having a permanent easement for public utilities, without compensation, association pressure, promotion and lot drainage over the six (6) feet adjacent to any public utility, and the lot owner shall be responsible for obtaining all permits from the appropriate city or county agency for any excavation work required to install or repair any underground facility. The easement shall extend along the rear lot lines on lots 8 through 13, and lot 15. A block is also designated for watershed community association grant production.

[illegible][illegible][illegible]

12. THIS DEVELOPMENT IS SUBJECT TO THE TERMS OF AN EASEMENT FOR A HIGHWAY TRAIL, TRAILWAY, EASEMENT OR RIGHT-OF-WAY, RECORDED AS AIN COUNTY, DANA, 1981-1932, RECORDED AS AIN COUNTY, DANA, 1981-1932. THIS SUBDIVISION IS SUBJECT TO THE DECLARATION OF CONVEYANCE AND RESTRICTIONS FOR METROPOLITAN COMMUNITY DEVELOPMENT, RECORDED AS AIN COUNTY, DANA, 1981-1932. THIS DEVELOPMENT IS SUBJECT TO THE DECLARATION OF CONVEYANCE AND RESTRICTIONS FOR METROPOLITAN COMMUNITY DEVELOPMENT, RECORDED AS AIN COUNTY, DANA, 1981-1932. THESE COVENANTS MAY NOT BE USUALLY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY OF EAGLE.

13. THE LOTS IN 14 AND 15 ARE SUBJECT TO AN EASEMENT FOR THE EAGLE SENIOR CENTER AS SHOWN FOR THE TRAILWAY AND MAINTENANCE OF SANITARY SERVICES FACILITIES.

14. THIS DEVELOPMENT IS SUBJECT TO THE TERMS OF THE BAILEY DITCH COMPANY LICENSE AGREEMENTS RECORDED AS INSTRUMENTS NO. 2001-00257 AND 2001-01254, RECORDS OF AIN COUNTY, DANA, LOT 1, BLOCK 1, EASEMENT FOR THE BAILEY DITCH COMPANY AS SHOWN FOR THE TRAILWAY AND MAINTENANCE OF SANITARY SERVICES FACILITIES.

15. THIS DEVELOPMENT IS SUBJECT TO THE TERMS OF THE BAILEY DITCH COMPANY LICENSE AGREEMENTS RECORDED AS INSTRUMENTS NO. 2001-00257 AND 2001-01254, RECORDS OF AIN COUNTY, DANA, LOT 1, BLOCK 1, EASEMENT FOR THE BAILEY DITCH COMPANY AS SHOWN FOR THE TRAILWAY AND MAINTENANCE OF SANITARY SERVICES FACILITIES.

SURVEYOR'S NARRATIVE

THE BOUNDARY FOR THIS SUBDIVISION WAS DEVELOPED FROM SURVEYED TIES TO CONTROLLING SECTION CORNER MONUMENTATION, INFORMATION FROM THE AMENDED PLAT OF ESTATE PARTS, THE PLAT FOR THE COLONY SUBDIVISION, RECORD OF SURVEY NUMBERS 7649, 8353, 10167, 11744, AND 11883, AND CURRENT DEEDS OF RECORD. THE SURVEY WAS CONDUCTED TO CORRELATE MONUMENTATION AND CONTROLLING BOUNDARIES FIT THE RECORDS WELL AND WERE ACCEPTED TO ESTABLISH THE BOUNDARY FOR THIS SUBDIVISION SHOWN HEREON.

EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID

**ENGINEERING
SOLUTIONS^{LLP}**

Landsolutions
Land Surveying and Consulting
211 E. 5th St., Ste. A, Madison ID 83812
(208) 258-2040 - (208) 258-2557 fax

JOB NO. 19-14
SHEET 1 OF 3

JOB NO. 19-14
SHEET 1 OF 3JOB NO. 19-14
SHEET 1 OF 3

WHITTEHURST SUBDIVISION NO. 1

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS: THAT EVANS DEVELOPMENT, LLC, AN IDAHO LIMITED LIABILITY COMPANY, ARE THE OWNERS OF THE PROPERTY DESCRIBED AS FOLLOWS:

A PARCEL LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 1 WEST, BOISE MERIDIAN, CITY OF EAGLE, ADA COUNTY, IDAHO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ALUMINUM CAP MONUMENT MARKING THE SOUTHEAST CORNER OF THE NE 1/4 (E 1/4 CORNER OF SAID SECTION 12, FROM WHICH A BRASS CAP MONUMENT MARKING THE NORTHEAST CORNER OF SAID SECTION 12 BEARS N 07°31'E A DISTANCE OF 2641.85 FEET;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID NE 1/4, ALSO BEING THE NORTHERLY BOUNDARY OF THE AFORESAID PLAT OF FLINT ESTATES, AS FILED FOR RECORD IN BOOK 45 OF PLATS AT PAGES 3713 THROUGH 3714, RECORDS OF ADA COUNTY, IDAHO, N 89°20'20"W (FORMERLY N 89°47'10"E) A DISTANCE OF 1322.37 FEET TO THE SW CORNER OF THE SE 1/4 OF SAID NE 1/4 (CE 1/16 CORNER);

THENCE N 03°02'25"E ALONG THE WESTERLY BOUNDARY OF SAID SE 1/4 OF THE NE 1/4 A DISTANCE OF 654.51 FEET TO A POINT;

THENCE LEAVING SAID BOUNDARY S 89°20'20"E A DISTANCE OF 185.78 FEET TO A POINT;

THENCE S 03°40'40"W A DISTANCE OF 14.50 FEET TO A POINT;

THENCE S 89°20'20"E A DISTANCE OF 352.50 FEET TO A POINT;

THENCE S 03°40'40"W A DISTANCE OF 118.96 FEET TO A POINT ON A CURVE;

THENCE A DISTANCE OF 4.75 FEET ALONG THE ARC OF A 70.00 FOOT RADIUS NON-TANGENT CURVE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 353°02' AND A LONG CHORD BEARING N 60°58'49"E A DISTANCE OF 4.74 FEET TO A POINT OF TANGENCY;

THENCE N 59°02'18"E A DISTANCE OF 143.07 FEET TO A POINT;

THENCE N 14°02'18"E A DISTANCE OF 28.28 FEET TO A POINT;

THENCE N 59°02'18"E A DISTANCE OF 60.00 FEET TO A POINT;

THENCE S 30°57'42"E A DISTANCE OF 48.00 FEET TO A POINT;

THENCE N 59°02'18"E A DISTANCE OF 96.29 FEET TO A POINT;

THENCE S 89°20'20"E A DISTANCE OF 158.24 FEET TO A POINT;

THENCE S 03°40'40"W A DISTANCE OF 277.57 FEET TO A POINT;

THENCE S 89°20'20"E A DISTANCE OF 85.00 FEET TO A POINT;

THENCE S 44°02'29"E A DISTANCE OF 28.37 FEET TO A POINT;

THENCE S 89°20'20"E A DISTANCE OF 220.17 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID SE 1/4 OF THE NE 1/4, ALSO BEING THE WESTERLY BOUNDARY OF THE COUNTY SUBDIVISION, AS FILED FOR RECORD IN BOOK 78 OF PLATS AT PAGES 6524 THROUGH 6527, RECORDS OF ADA COUNTY, IDAHO;

THENCE ALONG SAID BOUNDARY S 02°53'1"W (FORMERLY S 02°48'48"W) A DISTANCE OF 370.46 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 17.35 ACRES MORE OR LESS.

IT IS THE INTENTION OF THE UNDERSIGNED TO HEREBY MAKE THE ABOVE DESCRIBED PROPERTY IN THIS PLAT AND TO BE THE PROPERTY OF THE PUBLIC. THE UNDERSIGNED, HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE PLACED THEREON. THE UNDERSIGNED, HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE PLACED THEREON. THE UNDERSIGNED, HOWEVER, THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES AS DESIGNATED WITHIN THIS PLAT, AND NO PERMANENT STRUCTURES ARE TO BE PLACED THEREON.

IN WITNESS WHEREOF, WE HAVE HEREIN SET OUR HANDS THIS 8 DAY OF December 2021.

DZE
D. ZACHARY EVANS
MANAGER, EVANS DEVELOPMENT, LLC

ACKNOWLEDGEMENT

STATE OF IDAHO }
COUNTY OF ADA } SS
ON THE 8th DAY OF December, 2021, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED D. ZACHARY EVANS, KNOWN OR IDENTIFIED TO ME TO BE THE MANAGER OF EVANS DEVELOPMENT, LLC, AN IDAHO LIMITED LIABILITY COMPANY, WHO SUBSCRIBED SAID LIMITED LIABILITY COMPANY'S INTEREST IN SAID PARCEL, AND WHO REQUESTED THAT I SET MY HAND AND SEAL TO THE EXECUTED THE SAME IN SAID LIMITED LIABILITY COMPANY'S NAME.

IN WITNESS WHEREOF, I HAVE HEREIN SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

Clinton W. Hansen
NOTARY PUBLIC
RESIDING AT EAGLE, IDAHO
MY COMMISSION EXPIRES: 5-14-2025



CERTIFICATE OF SURVEYOR

I, CLINTON W. HANSEN, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, AND THAT THIS PLAT AS DISCLOSED IN THE CERTIFICATE OF OWNERS WAS DRAWN FROM THE FIELD NOTES OF A SURVEY MADE ON THE PARCEL DESCRIBED HEREIN IN ACCORDANCE WITH THE SURVEYING ACTS AND PLATS THEREON, AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.



CLINTON W. HANSEN
PLS 11118

EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID



WITTENBURST SUBDIVISION NO. 1

BOOK 123, PAGE 1464

ACCEPTANCE OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 30 DAY OF 5-11-2022.

[Signature]
PRESIDENT
ADA COUNTY HIGHWAY DISTRICT
Signed by Bruce S. Young, Director
for President



APPROVAL OF CENTRAL DISTRICT HEALTH

SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE, TITLE 49, CHAPTER 13 HAVE BEEN SATISFIED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL. SANITARY RESTRICTIONS MAY BE IMPOSED IN ACCORDANCE WITH SECTION 49-1324, IDAHO CODE, BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL.

[Signature]
ADA COUNTY HEALTH
CENTRAL DISTRICT HEALTH
6-9-2022



CERTIFICATE OF COUNTY TREASURER

[Signature]
COUNTY TREASURER
COUNTY TREASURER IN AND FOR THE COUNTY OF IDAHO, DO HEREBY CERTIFY THAT ANY AND ALL CURRENTLY DUE PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

[Signature]
COUNTY TREASURER
signed by deputy: *[Signature]*
DATE 6-9-22



CERTIFICATE OF THE CITY ENGINEER

I, THE UNDERSIGNED, CITY ENGINEER IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS FINAL PLAT AND THAT THE EAGLE CITY REQUIREMENTS REGARDING FINAL PLATS HAVE BEEN MET.

[Signature]
EAGLE CITY ENGINEER
5-11-2022
PE16745

CERTIFICATE OF COUNTY SURVEYOR

I, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

[Signature]
COUNTY SURVEYOR
PLS #18055
9 June 2022



CERTIFICATE OF COUNTY RECORDER

INSTRUMENT NO. 2022-054152
STATE OF IDAHO)
COUNTY OF ADA)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF *[Signature]*
THE COUNTY SURVEYOR AT 2:55 MINUTES PAST 10 O'CLOCK A.M.
THIS 9th DAY OF JUNE, 2022, IN MY OFFICE AND WAS DULY
RECORDED IN BOOK 123 OF PLATS AT PAGES 1462-1464.
[Signature]
DEPUTY
EX-OFFICIO RECORDER
Fee \$16.00

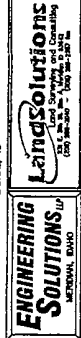
APPROVAL OF CITY COUNCIL

I, THE UNDERSIGNED, CITY CLERK IN AND FOR THE CITY OF EAGLE, ADA COUNTY, IDAHO, DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 11 DAY OF 5-11-2022, THIS PLAT WAS DULY APPROVED AND ACCEPTED.

[Signature]
CITY CLERK
5-11-2022



EVANS DEVELOPMENT, LLC
DEVELOPER
BOISE, ID



SHEET 3 OF 3

Recording requested by, and please return to:

Evans Development LLC
c/o Conger Management Group LLC
4824 W Fairview Ave
Boise, Idaho 83706

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE WHITEHURST COMMUNITY**

This First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Whitehurst Community (this “**First Amendment**”) is made effective as of the date this First Amendment is recorded in the real property records of Ada County, Idaho (the “**First Amendment Date**”), by Evans Development LLC, an Idaho limited liability company (“**Developer**”).

RECITALS

- A. Reference is made to that certain Declaration of Covenants, Conditions, Restrictions, and Easements for the Whitehurst Community recorded in the real property records of Ada County, Idaho as Instrument No. 2022-065705, as previously supplemented and amended (the “**Declaration**”). Capitalized terms not otherwise defined herein will have the meaning given to them in the Declaration.
- B. Article 13.1 of the Declaration provides that Developer has the exclusive right, during the Development Period, to amend the Declaration at any time by executing a written instrument setting forth the amendment, and the same will be effective upon the recording thereof in the real property records of Ada County;
- C. Article 8 of the Declaration references the Storm Drainage Operation and Maintenance Plan for Whitehurst No.1 (the “**O&M Manual**”);
- D. Developer desires to amend the Declaration to remove Article 8 as there was no O&M Manual required for the subdivision.

AGREEMENT

NOW, THEREFORE, Developer hereby declares as follows:

- 1. **Removal of Article 8.** Article 8 is hereby removed from the Declaration.
- 2. **Effect of First Amendment.** Except as expressly provided in this First Amendment, all of the terms and conditions of the Declaration remain in full force and effect. To the extent there is a conflict between the terms and conditions of the Declaration and the terms and conditions of this First Amendment, the terms and conditions of this First Amendment will control.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Developer has executed this First Amendment effective as of the First Amendment Date.

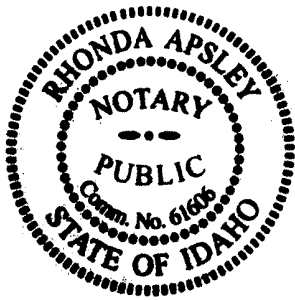
DEVELOPER:

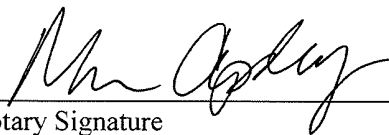
EVANS DEVELOPMENT LLC, an Idaho limited liability company

By: 
Name: Benjamin Evans
Title: Manager

STATE OF IDAHO)
)ss.
County of Ada)

This record was acknowledged before me on July 21, 2023 by Benjamin Evans as Manager of Evans Development LLC.




Notary Signature
Exp. 5/14/2025
Residing in Boise, ID

Recording requested by, and please return to:

Evans Development LLC
c/o Conger Management Group LLC
4824 W Fairview Ave
Boise, Idaho 83706

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE WHITEHURST COMMUNITY**

This Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Whitehurst Community (this “**Second Amendment**”) is made effective as of the date this Second Amendment is recorded in the real property records of Ada County, Idaho (the “**Second Amendment Date**”), by Evans Development LLC, an Idaho limited liability company (“**Developer**”).

RECITALS

- A. Reference is made to that certain Declaration of Covenants, Conditions, Restrictions, and Easements for the Whitehurst Community recorded in the real property records of Ada County, Idaho as Instrument No. 2022-065705, as previously supplemented and amended (the “**Declaration**”). Capitalized terms not otherwise defined herein will have the meaning given to them in the Declaration.
- B. Article 3.1 of the Declaration provides that Developer has the exclusive right, during the Development Period, to amend the Declaration at any time by executing a written instrument setting forth the amendment, and the same will be effective upon the recording thereof in the real property records of Ada County;
- C. Article 4.4 of the Declaration includes design guidelines for fences;
- D. Developer desires to amend the Declaration to amend Article 4.4 to modify the maximum top rail height of fences and specify fencing allowed on Lots abutting Common Area or streets.

AGREEMENT

NOW, THEREFORE, Developer hereby declares as follows:

- 1. **Deletion and Replacement of Article 4.4.** Article 4.4 is hereby deleted in its entirety and replaced with the following (with the added / deleted language indicated in bold and underlined / strikeout text):

1.1 **Fences.** Subject to the approval required by Section 4.3, each Owner will be responsible for the construction, maintenance, and replacement of all fences desired on the Owner’s property, and specific approval from the Committee will be required prior to constructing any gate that opens to Common Area. **All fencing abutting Common Area or located on the street side of a corner Lot shall be open fencing style such as wrought iron, extruded aluminum, or other similar decorative style of durable open fencing material.** All fences must be a post and rail design with a maximum top rail height of 42” **72”** and a bottom rail height of 18”. No fences, hedges, or retaining walls shall be installed

or maintained on any lot unless approved by the Committee. To the extent a fence has been constructed by Grantor on an Owners Lot, then such Owner shall maintain such fence in good condition and repair, and shall likewise replace such fence at the end of its useful life with the type of fencing materials originally constructed thereon or with such substitutes as will, in all respects, be equal to such original materials in quality, appearance, and durability

2. **Effect of Second Amendment.** Except as expressly provided in this Second Amendment, all of the terms and conditions of the Declaration remain in full force and effect. To the extent there is a conflict between the terms and conditions of the Declaration and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment will control.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Developer has executed this Second Amendment effective as of the Second Amendment Date.

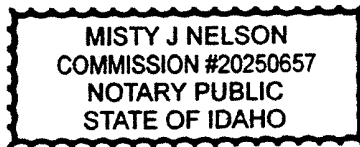
DEVELOPER:

EVANS DEVELOPMENT LLC, an Idaho limited liability company

By: Benjamin Evans
Name: [Signature]
Title: Authorized Agent

STATE OF IDAHO)
)ss.
County of Ada)

This record was acknowledged before me on April 23, 2025 by
Ben Evans as an Authorized Agent of Evans Development LLC.



[Signature]
Notary Signature
exp 2/21/31