

Owners, the business will not result in the increase of the cost of the Association's insurance, and that the activities would not be in violation of applicable local ordinances.

3.4 New Construction. All improvements shall be newly constructed on the Property. No pre-built, pre-fabricated, or modular structures are permitted without prior written ACC approval.

3.5 Commencement and Completion of Construction. For the purpose of promoting the health, safety, and welfare of the Owners and to ensure the value, desirability, and attractiveness of the Project, construction of a Residence by an Owner of an Unimproved Lot must be accomplished as follows:

(a) Within two years after Developer sells any Unimproved Lot, the Owner shall obtain a building permit from the applicable government agency and commence construction of a Residence. If an Owner has failed to secure a building permit within such a period, then the Association may impose a penalty, not to exceed five hundred dollars (\$500.00) per month for every month until the building permit is issued and construction commences, levied against such Unimproved Lot and its Owner as an Individual Assessment.

(b) Each Residence must be completely constructed within three years after Developer sells any Unimproved Lot, or, within one year of the issuance of a building permit, whichever occurs sooner. If an Owner has not completed construction within such a period, then the Association may impose a penalty, not to exceed one thousand dollars (\$1000.00) per month for every month the Residence is not completed, levied against such Unimproved Lot and its Owner as an Individual Assessment. For the purposes of this section, construction is deemed completed upon the issuance of a Certificate of Occupancy or a substantially similar authorization document from the applicable government agency.

(c) Owners may petition the ACC for a hardship waiver to waive or modify the Individual Assessments imposed above. The ACC shall have the sole and absolute discretion and authority to grant an Owner such a waiver, and nothing shall compel or obligate the ACC to grant such a waiver. The scope of the waiver relief and the decision to grant a waiver shall be made by the ACC on a case-by-case basis.

(d) The construction commencement and Residence competition requirements of this section shall not apply to Declarant or Developer, or their duly authorized agents. This right shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control.

3.6 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, Unimproved Lot, Residence, or Common Area, nor shall anything be done or placed on any Lot, Unimproved Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Residences, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or Unimproved Lot or any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot or Unimproved Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.

3.7 Pets. Domestic pets may be kept in Residences or in a backyard that is screened from view from any street or adjoining Lot or Unimproved Lot. Domestic pets must be kept in conformance with local government requirements but may not be bred or commercially boarded. All pets must be kept and contained on the Owner's Lot or Unimproved Lot via fence or leash at all times. No animals may create a nuisance to the neighborhood, hazard to people, or be allowed to be at large. No livestock (pigs, goats, cows, horses, etc.) shall be kept in, on, or about the Project. Pets may not create a nuisance, either by way of causing damage to property, creating unsanitary conditions, barking or making disturbing noises in an excessive, continuous, or untimely fashion, or otherwise.

3.8 Vehicles and Sports Recreation Vehicles. Operational vehicles or other sport recreational vehicles, such as motorcycles, ATVs, UTVs, RVs, trailers, etc. are permitted to be stored on the Lot, provided that the parking area for said vehicle or sports recreational vehicles is surfaced. Concrete, asphalt or gravel are automatically approved for surfacing material; other materials must be approved by the ACC. Under no circumstance may the surfaced area exceed the driveway access width limitations described in Section 4.9 of the Declaration. No inoperable or non-working vehicles, motorcycles, ATVs, UTVs, RVs, trailers, etc. are permitted unless enclosed inside a garage, shop, accessory building with doors shut (except for ingress and egress), or otherwise shielded from view from the front of the Residence. No junk yards, unsightliness, blight, or nuisance.

3.9 Nuisances. No Owner or Occupant shall create, maintain, or permit a nuisance in, on or about the Property. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs, or interferes with other Owners or Occupants or interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole and absolute discretion and authority to determine if an activity or condition constitutes a nuisance.

3.10 Signs. The Board may regulate and restrict signs in the Project to the extent permitted by law. Unless otherwise designated in the Rules, "For Sale" or "For Rent" signs not exceeding 5 square feet may be placed on Lots or Unimproved Lots. Declarant and Developer shall not be subject to any sign restrictions adopted by the Board.

3.11 Trash Containers. All garbage and trash containers must be kept in good repair and slightly appearance and must be stored near the Residence unless they are being used for collection.

3.12 Parking. Vehicles shall not be parked on a roadway at an entrance to or in front of driveways or walkways or at any other location within the Project which would impair vehicular or pedestrian access or snow removal. The Board or ACC may, in its sole and absolute discretion and authority, determine if a parked vehicle constitutes a nuisance or impairs vehicular or pedestrian access or snow removal. Any vehicles parked in violation of the restrictions contained herein may be towed by the Association at the expense of the vehicle's owner.

3.13 Leases. An Owner is permitted to lease such Owner's Residence. All costs incurred by the Association to enforce the terms of the Governing Documents against a tenant shall be assessed to the Owner as an Individual Assessment.

3.14 Water and Sewer Service. Each Lot or Unimproved Lot shall connect to and pay for water and sewer service provided by the City of Chubbuck in accordance with the terms and conditions of all agreements between Developer and the City of Chubbuck thereof.

3.15 Variances. The Board or ACC may, at its option and in extenuating circumstances, authorize variances from the Restrictions set forth in this Article, the architectural provisions of this Declaration, or any Rules adopted by the Board or ACC. Such variances must be in writing and must

be signed by all of the members of the Board or ACC. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate as a waiver, continuing or otherwise, of any Restrictions of the Governing Documents or Rules, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

Article 4 - ARCHITECTURAL CONTROLS

4.1 Purpose. The purpose of Restrictions contained in this Article related to architectural designs and controls is to preserve and maintain a consistent, desirable, and attractive appearance of the Lots and Residences throughout the Project in order to maintain and improve the property value of all such Lots and Residences for the mutual benefit of all Owners.

4.2 Architectural Control Committee. The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC. Declarant and/or Developer shall act as the ACC during the Period of Declarant Control.

4.3 Review of Proposed Construction.

(a) No building or other structure of any nature may be built, placed, altered, or permitted to remain on any Lot or Unimproved Lot without the prior written construction approval of the ACC. Approval from the ACC will be necessary for the construction of a Residence, any exterior additions or remodeling of an existing Residence, the construction of shops, garages, sheds, greenhouse, or other outdoor building, and all fencing and landscaping. All construction must be done in accordance with all applicable laws, regulations, and ordinances, including zoning ordinances and setback regulations. Any proposals for new construction must be approved in writing by the ACC. The ACC shall approve proposals, plans, and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby will (1) comply with the Governing Documents, including the Restrictions contained herein and any Rules adopted by the Board or the ACC, (2) be in harmony with the overall appearance of the Project and the other Lots and Residences therein, and (3) not be detrimental to the Project or require upkeep and maintenance that could become a burden on the Association.

(b) The ACC may condition its approval of proposals or plans and specifications upon such changes or modifications as it deems appropriate and may require submission of additional plans and specifications or other information before approving or disapproving such proposal.

(c) The ACC may establish Rules setting forth procedures for the required content of applications and plans submitted for approval. Such Rules may require a fee to accompany each application for approval.

(d) The ACC may establish Rules setting forth specific guidelines and regulations regarding design and style elements, landscaping, fences, and other architectural guidelines.

(e) The ACC may require such detail in plans and specifications submitted for its review as it deems proper. Along with any additional plans or specifications requested by the ACC, each Owner seeking construction approval from the ACC shall be required to submit the

following documents: (1) one complete set of construction plans, which shall include floor plans, elevations, and exterior material specifications; (2) elevations of structures in relation to existing and finished grades; (3) a plot plan showing the location of all structures on the Lot or Unimproved Lot; and (4) a site grading plan depicting a storm water drainage plan which shall depict how all post construction drainage will be retained on the Lot or Unimproved Lot, with said grading plan in accordance with the City Code of Chubbuck.

(f) The ACC approval or disapproval shall be in writing. If the ACC, or its designated representatives, fail to approve or disapprove proposed construction within thirty (30) days after sufficient plans and specifications have been submitted to the ACC, or if no suit to forbid the construction has been initiated by the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

(g) Developer and/or Declarant, and their duly authorized agents, are not required to seek or secure ACC approval of proposed construction. This right shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control.

4.4 ACC Guidelines. In addition to such Rules as may be adopted by the Board, all Residences and improvements within the Project shall conform to the guidelines adopted by the ACC in its sole discretion related to architectural and landscape designs, construction, and materials.

4.5 Solar Panels. Owners are authorized to construct or install solar panels on their Residences. However, any such solar panels must be on the back of the applicable Residence and hidden from view from the street whenever possible, unless such position does not orient south or within forty-five (45) degrees east or west of due south. The ACC shall determine the specific location where solar panels and collectors shall be installed in accordance with Idaho Code § 55-3208 and any successor statutes or regulations thereto. All solar panels and collectors must be parallel to the roof line, conform to the slope of the roof, and any frame, support bracket, or visible piping or wiring must be painted to coordinate with the roofing material.

4.6 Fencing. All fences shall be constructed out of white vinyl or such other material, type, and color as approved in advance by the ACC. Owners are not required to seek and secure ACC approval for fences constructed out of white vinyl. Fencing setbacks shall be in conformity with all applicable codes and regulations. The ACC shall determine and approve permitted materials and installation of fences, with the exception of the white vinyl construction material which is automatically approved. Any removal of fences must also be approved by the ACC.

4.7 Detached Structures. The construction of any exterior detached structures on a Lot, including any shops, garages, sheds, or greenhouses, must be approved in advance by the ACC. Unless otherwise approved by the ACC, any such structure must match the same general appearance as the Residence on the same Lot, including use of the same or similar colors, building materials, and general architecture design. No detached structure is to be used for sleeping or living purposes.

4.8 Exteriors. All roofs and all exteriors for all structures must be approved in advance by the ACC.

4.9 Driveways. All access driveways in front of garages shall have a wearing surface of concrete and shall be graded to assure proper drainage. Asphalt and gravel are not approved for the driveway surfacing. Driveways shall not exceed twenty-five (25) feet in width at the point of road access which is from the road to the back edge of the sidewalk.

4.10 Drainage Swale. Each Lot or Unimproved Lot shall be constructed with a drainage swale along the frontage of each Lot or Unimproved Lot, in accordance with the design criteria established in the City Code of Chubbuck. Drainage swales shall be finished with concrete only over the driveway access portion of the drainage swale and grass must cover the remaining portion of the drainage swale. Owners are required to maintain the drainage swales, with the center of such swales being twelve (12) inches deep and sloped to match the ribbon curb and sidewalk. Alteration of the grass surface of the drainage swale by the Owner shall be allowed only with written approval from the ACC.

4.11 Towers and Antennas. No tower, satellite dish, or other separate structure for the transmission or reception of radio or television signals shall be erected which will exceed the height of the house, shop, or accessory building constructed on that Lot. The use of satellite dishes less than thirty-nine (39) inches in diameter is permitted. Any tower built for the reception or transmission of radio or television signals shall first be approved by the ACC.

4.12 Utilities. All gas, electrical, telephone, television, and other new utility lines installed by Declarant or any Owner are to be underground except for minor above-grade appurtenances. No propane tanks or oil tanks may be installed on any Lot or Unimproved Lot except for temporary heat during construction.

4.13 Landscaping and Sprinkler Systems. Owners are required to install a sprinkler system, complete with all landscaping, and connect to the pressurized secondary irrigation system of the City of Chubbuck for the front yard area of the Lot within nine months of Owner's purchase of a Lot, or, within nine months of the issuance of a Certificate of Occupancy for a Residence constructed on an Unimproved Lot. This term is only applicable if Developer did not complete the sprinkler system installation and landscaping prior to sale of the Lot to the Owner. If the Owner fails to comply with the foregoing, the Association may impose a penalty, not to exceed one hundred dollars (\$100.00) per month for every month the landscaping and sprinkler system remain incomplete, levied against such Lot or Unimproved Lot and its Owner as an Individual Assessment.

4.14 No Waiver. The approval by the ACC of any proposals or plans shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, or specifications.

4.15 Non-liability. Neither the ACC nor any member thereof, nor its duly authorized representatives, shall be liable to the Association or any Owner, Occupant, or applicant for any loss, damage, or injury arising out of or in any way connected with the performance of the ACC's duties hereunder. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be construed in any way to relate to structural safety of building and improvements or their conformance with buildings or other codes.

4.16 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or Developer, or their duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Residences, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant, Developer, and/or other persons engaged in the construction of residences within the Project. Declarant and Developer may use Lots or Unimproved Lots and other areas for parking in connection with the showing of model homes or for vehicles necessary for development and construction activities.

Article 5 - BROOKSTONE ESTATES WEST HOMEOWNERS ASSOCIATION

5.1 Organization. The Association may be incorporated as a nonprofit corporation or such other entity structure at the determination of the Board. The Association shall have all rights and powers granted to it by applicable law, the Governing Documents, and this Declaration.

5.2 Purpose. The Association shall serve as the governing body for all Owners and shall provide for the maintenance, repair, replacement, administration, and operation of the Common Areas and Public Parks.

5.3 Membership. Each Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to, and never separated from, the Lot or Unimproved Lot in which the Owner has the necessary interest. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot or Unimproved Lot to which it is appurtenant, and then such transfer shall be automatic to the new Owner. Any attempt to make a prohibited transfer is void.

5.4 Record of Ownership. The secretary of the Association or other Person designated by the Board shall maintain a record of ownership of the Lots or Unimproved Lot. Upon the transfer of any Lot or Unimproved Lot, the new Owner shall promptly notify the Association of the change in ownership and provide the requisite conveyance documents showing the change of ownership.

5.5 Voting Rights. Except as otherwise disallowed or limited in this Declaration or by the Special Declarant Rights, each Member shall be entitled to one vote for each Lot owned by the Member on the day of the vote.

(a) **No Fractional Votes.** Fractional votes shall not be allowed. If an Owner is more than one (1) Person, all such Persons shall be deemed Members, but the voting rights in the Association attributable to that Lot or Unimproved Lot may not be split and shall be exercised by one representative selected by such Persons as they, among themselves, may determine. In the event that such joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint owners of the Lot(s) or Unimproved Lot(s) from which the vote derived.

(b) **No Transfer of Voting Rights.** The right to vote may not be severed or separated from the ownership of the Lot or Unimproved Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary, or contract purchaser of the Lot concerned, for the term of the lease, mortgage, deed of trust, or contract. Any sale, transfer, or conveyance of such Lot or Unimproved Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

5.6 Board of Directors. The governing body of the Association shall be the Board. The Board shall act in all instances on behalf of the Association. The Bylaws shall set forth all matters related to the composition, structure, and procedures of the Board, including without limitation the procedures for electing a director, the terms of each director, the number of directors on the Board, and the requirements for serving on the Board. Notwithstanding the foregoing or anything to the contrary contained herein or in the Governing Documents, during the Period of Declarant Control, Declarant

and Developer shall have the sole and exclusive authority to act as the Board, or to appoint and remove Board members.

5.7 Powers and Duties. The Association shall have, exercise, and perform powers, duties, and obligations granted to the Association by Idaho law, the Governing Documents, and this Declaration, including but not limited to the following:

(a) **Common Areas.** The Association shall maintain, repair, and replace Common Areas and Public Parks as the Board sees fit.

(b) **Insurance.** The Association shall obtain and maintain in force the following policies of insurance from reputable insurance companies authorized to do business in the State of Idaho:

(i) A blanket policy of property insurance covering the Common Areas and all buildings, fixtures, and equipment thereon that are the obligation of the Association to maintain.

(ii) Comprehensive general liability insurance insuring the Association and its agents and employees against liability incident to the use, ownership, or maintenance of the Common Areas or as the Board may otherwise deem necessary to carry out the Association's functions or to insure the Association against loss.

(iii) Directors and Officers liability insurance protecting the Board, the officers, the ACC, and the Association.

(iv) Liability, casualty, or other insurance as the Board may deem necessary to carry out the Association's functions or to insure the Association against loss.

(v) Such other insurance, including but not limited to workers compensation insurance to the extent necessary to comply with applicable laws.

(vi) The Association shall be the named insured under any policy of insurance. The Association shall have no obligation to obtain or maintain any insurance covering the personal or real property of any Owners, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance. The Association shall further have no obligation to obtain or maintain any insurance covering the Public Parks.

(c) **Rules.** The Association, through its Board, shall make and establish Rules as the Board deems necessary or appropriate in order to provide for a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project.

(d) **Budgets & Assessments.** The Association shall adopt budgets and impose and collect Assessments.

(e) **Governing Documents.** The Association shall perform such acts, whether or not expressly authorized by the Governing Documents, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

(f) **Enforcement.** The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents, including the provisions of this Declaration.