

The amount of such fines shall be set by the Board and shall be imposed in accordance with Idaho law, including Idaho Code Title 55, Chapter 32 and any successor statutes thereto. The Board shall have the authority to adjust and revise such fines.

(g) **Employment of Agents, Advisors, and Contractors.** The Association may hire a Manager or other employees to manage, conduct, and perform the business, obligations, and duties of the Association and employ professional counsel from Persons such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project.

(h) **Litigation.** The Board may instigate litigation on behalf of the Association to enforce the provisions of the Governing Documents or any other common law or statutory right which the Association is granted.

5.8 Liability. Members of the Board and officers of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. If a member of the Board or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the director or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his duties.

5.9 Dissolution. After the Period of Declarant Control, the Association may be dissolved by the affirmative assent in writing of 90% of the Owners.

Article 6 - BUDGET AND ASSESSMENTS

6.1 Annual Budget. The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide for the maintenance of the Common Areas and Public Parks, for the administration, management, and operation of the Association, and for the payment of debt incurred by the Association. The Board may revise the Budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted.

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

6.3 Capital Improvements. The Board may incur debt on behalf of the Association to make capital improvements to Common Area upon the affirmative vote of at least two-thirds of the Members present at a meeting called for that purpose.

6.4 Covenant to Pay Assessments. Each Owner of a Lot or Unimproved Lot, by accepting a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees to pay the Association all Assessments and other fees, charges, levies, or fines imposed in accordance with the Governing Documents.

6.5 Purpose of Assessments. Assessments shall be used for the purpose of promoting the health, safety, and welfare of the Owners and enhancing the value, desirability, and attractiveness of the Property. The Association may use the Assessments to, among other things, pay the cost of taxes and insurance on the Common Areas, maintain, repair, and improve the Common Areas and Public Parks, establish and fund a reserve to cover major repairs or replacement of improvements within the Common Areas and Public Parks, pay for any litigation expenses, and to pay any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

6.6 Regular Assessments. Regular Assessments shall be made on a monthly basis, or any alternative frequency as the Board may establish. The amounts and allocations of each Regular Assessment, along with the dates for payment of such Regular Assessments, shall be established by the Board. The Board has discretion to determine the appropriate allocation among Owners for each Regular Assessment, including whether to determine such allocation based on square footage of each Lot or otherwise. Regular Assessments shall be charged against each Lot or Unimproved Lot from the date of closing by the Owner. If Owner's closing on a Lot or Unimproved Lot occurs after the monthly Regular Assessment is due, then the Regular Assessment for that month only shall be pro-rated, with full Regular Assessments owing thereafter.

6.7 Special Assessments. The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part, any expense or expenses not reasonably capable of being fully paid with funds generated by Regular Assessments. Notice in writing of the amount of any Special Assessments and the time for their payment shall be provided to the Owners by the Board as soon as is reasonably practicable. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

6.8 Individual Assessments. In addition to the Regular and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot or Unimproved Lot and its Owner for (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents, Restrictions, and Rules against the Owner or the Occupants of the Owner's Lot or Unimproved Lot, (b) costs associated with the maintenance, repair, or replacement of Common Areas or Public Parks caused by the actions of an Owner or the Occupants of the Owner's Lot or Unimproved Lot, (c) any charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Residence or its Owner into compliance with the Governing Documents, (d) costs of providing services to the Lot or Unimproved Lot upon request of the Owner, and (e) attorneys' fees, court or collection costs, fines, and any other charges relating to any of the foregoing, regardless of whether a lawsuit is filed.

6.9 No Offsets. All Assessments shall be payable in the full amount specified by the Association. No Owner shall offset or withhold any portion of such amount for any reason.

6.10 Declarant's Exemption from Assessments. Notwithstanding anything contained in the Governing Documents or this Declaration to the contrary, Declarant shall not be obligated to pay Assessments on any Lot or Unimproved Lot owned by Declarant. In addition, Declarant may exempt Lots or Unimproved Lots owned by affiliates of Declarant, such as Developer, from the payment of Assessments during the Period of Declarant Control.

6.11 Personal Obligation and Lien. All Assessments, together with any interest, late fees, collection costs, and attorneys' fees, shall constitute and remain: (a) a charge and continuing lien upon the Lot or Unimproved Lot with respect to which such Assessment is made, and (b) the personal obligation of the Person that is the Owner of the Lot or Unimproved Lot at the time the Assessment falls

due. No Owner may exempt himself or such Owner's Lot or Unimproved Lot from liability for payment of Assessments by waiver of such Owner's rights concerning the Common Areas or Public Parks or by abandonment of such Owner's Lot or Unimproved Lot. Upon transfer or conveyance of a Lot or Unimproved Lot, the transferee shall be jointly and severally liable with the transferor for all unpaid Assessments, interest, late fees, collection costs, and attorneys' fees applicable to such Lot or Unimproved Lot at the time of such transfer or conveyance, without prejudice to the transferee's right to recover from the transferor the amounts paid by the transferee therefore.

6.12 Billing and Collection. The Board shall have the authority to adopt Rules setting forth procedures for the billing and collection of Assessments. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until such Owner has been given at least thirty (30) days' written notice of the Assessment or charge and of the amount so owed.

6.13 Due Dates, Delinquency, and Collection Charges. The Board shall have authority to adopt Rules regarding the due dates for payment of Assessments, the time before a payment becomes past due and delinquent, and the late fees to be charged for delinquent payments.

6.14 Late Fees and Interest. If the Board does not otherwise adopt billing and collection procedures, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, fees, and costs) is paid in full. Interest shall accrue on all unpaid balances at the rate of ten percent (10%) per annum. Collection charges, interest, and late fees shall constitute a part of the Assessment lien until paid in full.

6.15 Collection Actions. The Association may exercise any or all of the following remedies to collect delinquent Assessments:

(a) The Association may suspend such Owner's voting rights.

(b) The Association shall have a lien against each Lot or Unimproved Lot for any Assessment levied against the Lot or Unimproved Lot and any fines or other charges imposed under the Governing Documents against the Owner of the Lot or Unimproved Lot from the date of which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. In accordance with any relevant provision of the Idaho Code, when an Assessment, fine, or charge is past due, the Association may file a notice of lien in the records of Bannock County against the applicable Lot or Unimproved Lot. Once filed, such lien shall accumulate all future Assessments, fines, or charges and any other costs chargeable to the Lot or Unimproved Lot or such Lot's or Unimproved Lot's Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as permitted by applicable law. The lien of the Association shall be superior to all other liens and encumbrances except (1) a lien or encumbrance recorded before this Declaration, (2) a first or second security interest on the Lot or Unimproved Lot secured by a mortgage or deed of trust recorded before the Association's notice of lien, and (3) a lien for real estate taxes or other governmental assessments against the Lot or Unimproved Lot. The Association, through its duly authorized agents, may bid on the Lot or Unimproved Lot at any foreclosure sale, and may acquire, hold, lease, mortgage, and convey the Lot or Unimproved Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above.

(d) The Association may terminate a delinquent Owner's right to use the Common Areas.

(e) In any action to collect delinquent Assessments, all fees and expenses incurred by the Association, including but not limited to attorney fees, shall be added to the delinquent Assessment and lien and shall be collected simultaneously with, and in the same manner as, the delinquent Assessment. In the event the delinquent Assessment is placed with a licensed collection agency, Owner agrees to pay a collection fee equal to fifty percent (50%) of the outstanding balance of the delinquent Assessment at the time the account is placed with the collection agency, which shall be added to the delinquent Assessment and lien and shall be collected simultaneously with, and in the same manner as, the delinquent Assessment.

(f) The Association shall have any other remedy available to it, whether provided in the Governing Documents, at law, or in equity.

(g) Any payments or amounts received on delinquent Assessments or other charges shall be credited first to collection costs (including attorneys' fees), then to interest and late fees, then to the oldest Assessments, and finally to the most recent Assessments.

6.16 Power of Sale. The Association shall have all rights of foreclosure granted by the Idaho Code, both judicially and non-judicially.

6.17 Association Responsibility After Foreclosure. If the Association takes title to a Lot or Unimproved Lot pursuant to a foreclosure, the Association shall not be bound by any of the provisions related to the Lot or Unimproved Lot that are otherwise applicable to any other Owner.

6.18 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph may be relied upon by any prospective purchaser or mortgagee of the Owner's Lot or Unimproved Lot. Reliance on such certificate may not extend to any default as to which the signor shall have had no actual knowledge.

Article 7 - EASEMENTS AND RIGHTS IN COMMON AREAS

7.1 Utility Easement. The Project is subject to a utility easement over, across, above, and under all road rights-of-way, Common Areas and Public Parks for ingress, egress, installation, maintenance, repair, and replacement of utilities installed by Declarant or Developer, such as water, sewer, gas, phone, internet, electricity, data, video, and cable. Utility easements may be dedicated to the City of Chubbuck or other third-parties as Declarant or Developer so elects. After dedication Declarant or Developer shall have no continuing maintenance, repair, or replacement obligation for the installed utilities.

7.2 Fence Easement. Whenever a fence or retaining wall constructed on a Lot or Unimproved Lot under plans and specifications approved by the ACC is located within five feet of the boundary line of such Lot or Unimproved Lot, the Owner of such Lot or Unimproved Lot is hereby

granted an easement over and on the adjoining Lot or Unimproved Lot (not to exceed five feet from the Lot line) for the limited purpose of maintaining and repairing such wall or fence. The Owner of such easement shall promptly repair and remediate any damage to the adjoining Lot or Unimproved Lot caused by the maintenance or repair of such wall or fence.

7.3 Use of Common Areas. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas, if Developer elects to designate Common Areas on the Plat or other recorded instrument. Such right shall be appurtenant to and shall pass with title to each Lot or Unimproved Lot and in no event shall be separated therefrom. A Member's right for the use and enjoyment of the Common Areas shall be subject to the following:

(a) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Project for purposes of providing any governmental or municipal service.

(b) The right of the Association to suspend the right to use the Common Areas by an Owner for (1) any period during which any Assessments against such Owner's Lot or Unimproved Lot remain unpaid or (2) violation of any of the Rules or Regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water, or storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Board.

Article 8 - MAINTENANCE

8.1 Association Maintenance.

(a) The Association shall maintain, repair, and replace the Common Areas and Public Parks, together with all improvements thereon and all easements appurtenant to the Common Areas including, but not limited to, common landscaped areas, sprinkler maintenance on the non-pressurized portion of the Public Park sprinkler system, and personal property owned by the Association. The Association shall have no obligation to perform any maintenance and/or repair of any part of a Lot or Unimproved Lot, Residence, or any other landscaping installed by an Owner.

(b) The Association shall landscape and maintain the Public Parks.

(c) The Association shall landscape and maintain the Common Areas.

(d) The Association may provide for snow removal on any Common Areas.

(e) The Association has the right to remove any personal property, debris, or trash from the Common Areas and Public Parks in order to fulfil its maintenance obligations as detailed herein.

8.2 Owner Maintenance.

(a) Each Owner shall have the obligation to provide interior and exterior maintenance of their Lot and Residence, including but not limited to the maintenance, repair, and replacement of sidewalks, driveways, structural elements of the Residence, foundations, windows, doors, and utility lines that solely service the Lot or Residence.

(b) Each Owner shall paint, repair, and otherwise maintain the exterior of his Residence in compliance with Association standards set by the ACC and shall maintain, repair, and replace all appurtenant mechanical devices, including but not limited to, electrical, plumbing, and heating, ventilating and air conditioning systems.

(c) Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Unimproved Lot.

(d) In general, Owners must keep their landscaping in good and presentable condition that does not distract from or diminish the value of other Lots or Unimproved Lots. The landscaping responsibilities of each Owner for their applicable Lot or Unimproved Lot shall include, but not be limited to, regular mowing and trimming of the lawn, general weed control, proper care of all plants, trees, shrubs, flowers, etc., and proper watering. A pressurized secondary irrigation system is being provided by the City of Chubbuck for the Project which Owners are encouraged to utilize for their Lot or Unimproved Lot watering needs. This secondary irrigation system is more efficient and less expensive than the municipal water system.

(e) Owners shall be responsible to maintain, repair, replace, and remove (upon ACC approval) fences which mark the boundaries of their Lots or Unimproved Lots. When such fences serve, benefit, or otherwise mark a boundary of two or more Lots or Unimproved Lots, the responsibility and cost to maintain, repair, replace, and remove the shared portion of such fences shall be borne pro rata by all Owners bounded thereby.

8.3 Owner Maintenance Neglect. Without any liability for trespass, damage, or otherwise, in the event an Owner violates the Governing Documents, Restrictions, or Rules by failing to properly maintain or repair such Owner's Lot or Residence or Unimproved Lot, the Association shall have the power and authority to enter upon such Lot and Residence for the purpose of maintaining and repairing such Lot or Residence or Unimproved Lot or any improvement thereon. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance or repair obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide the applicable Owner with reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance or repair neglect shall be an Individual Assessment against the Owner's Lot or Unimproved Lot. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Governing Documents, Restrictions, and Rules, or to enforce by mandatory injunction or otherwise all the provisions of the Governing Documents, Restrictions, and Rules.

Article 9 - ENFORCEMENT

The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). Declarant shall have the right to enforce even after the Period of Declarant Control expires. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure

to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

Article 10 - ANNEXATION OF ADDITIONAL LAND

10.1 By Declarant. During the Period of Declarant Control, Declarant may at any time, in its sole discretion, annex Additional Land into the Project, without the approval of any Owner or the Association. Declarant's right to annex Additional Land shall not expire until the Declarant records in the real property records of Bannock County, Idaho, a declaration stating that Declarant elects to not add any further Additional Land to the Project.

10.2 By Association. Following the Period of Declarant Control, the Association may annex Additional Land into the Project upon the approval by at least two-thirds (66.6%) of the votes of the Association.

10.3 Method of Annexation. The annexation of Additional Land shall be accomplished by recording an Annexation Declaration executed by Declarant or the Association, as the case may be, and by the owner of the Additional Land. Thereupon the Additional Land shall be part of the Property and shall be subject to this Declaration and encompassed within the general plan of the Project, subject to any modifications set forth in the Annexation Declaration.

10.4 Annexation Declaration. Each Annexation Declaration shall (i) reference this Declaration, (ii) state that the provisions of this Declaration apply to the Additional Land, and (iii) include a legal description of the Additional Land. Each Annexation Declaration may limit or modify the functions, powers, and jurisdiction of the Association over the Additional Land, and may establish additional or different land classifications, lot sizes, assessment rates, use restrictions, building types, ACC guidelines, covenants, conditions, restrictions and easements for the Additional Land that is subject thereto. There is no limitation on the number of Lots, Unimproved Lots, or Common Areas that Declarant may annex into the Property, except as may be established by applicable ordinances of Bannock County. The Association along with all Owners, Members, and Occupants waive the right to publicly protest or oppose any annexation of Additional Land into the Property as provided herein.

10.5 Rights and Obligations of Owners of Annexed Land. Upon the recording of an Annexation Declaration, all provisions contained in this Declaration shall apply to the Annexed Land in the same manner as if it were originally subject to this Declaration, subject to such modifications, changes, and deletions as are specifically provided in the Annexation Declaration. The Owners of Lots or Unimproved Lots located in the Annexed Land shall become members of the Association, shall be entitled to voting rights in the Association as set forth in Article 3, and shall become liable for their appropriate share of Assessments. Title to Common Areas which are to be owned and managed by the Association within said Additional Land shall be conveyed to the Association, free and clear of all encumbrances except for encumbrances of record and those set forth in this Declaration or the Annexation Declaration applicable to such Additional Land.

10.6 Withdrawal of Land. During the Period of Declarant Control, Declarant may withdraw all or any portion of the Property, including previously annexed Additional Land, from the Project, this Declaration, applicable Annexation Declarations, and from the jurisdiction of the Association so long as Declarant is the owner of the withdrawn Property and provided that a Declaration of Withdrawal is recorded in the Office of the Bannock County Recorder in the same manner as an Annexation Declaration. Following the Period of Declarant Control, the Association may withdraw all or any portion of the Property from the Project upon the approval of seventy-five percent (75%) of all members of the