

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CASCADE FALLS**

KNOW ALL MEN BY THESE PRESENTS:

RECITALS

Whereas, the undersigned (hereafter "Declarant") is the owner of certain real property located in Chubbuck, Bannock County, State of Idaho, identified as Cascade Falls at Harvest Springs, such property being more particularly described in Addendum A attached hereto and made a part hereof (hereafter "Property"); and

Whereas, Pursuant to Section 2.6 of the Harvest Springs Community Documents, Declarant may establish a separate owners association to administer additional covenants applicable to a particular area within Harvest Springs; and

Whereas, Pursuant to Section 16.1 of the Harvest Springs Community Documents, Declarant may expand the community, bringing CASCADE FALLS into the Harvest Springs Community and subject to the Harvest Springs Community Documents recorded under instrument #2201425; and

Whereas, Declarant intends to subdivide the Property into lots and shall cause such lots to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth in this Declaration of Covenants, Conditions and Restrictions (hereafter "Declaration").

DECLARATION

NOW THEREFORE, Declarant hereby declares that all of the Property described in Addendum A shall be held, sold, used, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of any neighborhood within the development, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions and restrictions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each such party. The acceptance of any deed to or conveyance of any lot, part or portion of the Property by the grantees named therein or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Declarant and with one another to accept, hold, improve, use and convey the property described and conveyed in such deed or conveyance subject to this Declaration.

ARTICLE 1 – DEFINITIONS

The following definitions control in this Declaration.

Section 1.1. Association means the Cascade Falls Association its successors and assigns.

Section 1.2. Board of Directors means the governing body of the Association. The board shall consist of the Declarant while Founder Class membership exists and when no Founder Class membership exists the board shall consist of 3 Lot Owners as elected by the Association. Those

elected shall serve annual terms from the time of election at which time they may be replaced or re-elected.

Section 1.3. Declarant means, jointly and severally, Harvest Springs JV, and the Declarant's heirs, successors and assigns.

Section 1.4. Declaration means this instrument, and any amendments thereto.

Section 1.5. Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Owner Class and Founder Class Members.

Section 1.6. Lot means the separately numbered and individually described plots of land shown on any plat or plats recorded with regard to the Property and designated for private or public ownership.

Section 1.7. Member means every person or entity who holds membership in the Association. The Owners of Lots constitute the Members of the Association. Owners of public lots within the Property shall not be Members.

Section 1.8. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.9. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the Property. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "Owner."

Section 1.10. Plat means any neighborhood development plat recorded and subject to this declaration.

Section 1.11. Property means that certain real property described on Addendum A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

Section 1.12. Directors means the members of the governing body of the Association.

ARTICLE 2 - PROPERTY RIGHTS

Section 2.1. Limited Application of Article The provisions of this Article 2 shall apply to private Lots within the Development.

Section 2.2. Rules. The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Association's property, if any. These rules of the Association shall be compiled, and copies shall be made available for inspection and copying by the Members.

Section 2.3. Lots. Each Lot is owned in fee simple by the Owner.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Lot Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Lot Owner to another person or entity.

Section 3.2. Voting Rights. The Association has two classes of voting membership:

OWNER CLASS. Owner Class Members shall be all Lot Owners with the exception of the Declarant, as defined in this Declaration. Owner Class Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a single Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

FOUNDER CLASS. The Founder Class Member shall be the Declarant (as defined in this Declaration) Founder Class Members are entitled to five (5) votes for each Lot owned. The Founder Class membership shall cease and be converted to Owner Class membership on the happening of any of the following events, whichever occurs earlier:

- (a) conveyance of seventy-five percent (75%) of all Lots to purchasers;
- (b) the expiration of ten (10) years from the first conveyance of any Lot to a purchaser; or Declarant.
- (c) the surrender of Founder Class membership status by the express written action of the Declarant

In the case of expansion (as provided under the Declaration) the Declarant's memberships appurtenant to the Lots in the expansion area shall be Founder Class memberships. If Declarant exercises its option to add additional Lots of any character, then at such time as additional Development plats are filed, the voting shall be adjusted accordingly, so that Declarant regains Founder Class voting status for all Lots owned, even if previously converted to Owner Class status in prior phases and according to the terms hereof.

ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1. Assessments. Assessments, above and beyond any Community Assessment as described in Section 12.6 of the Community Documents, may be put in place by the Neighborhood Association for the benefit of the Association if the need arises by recording an amendment to this document explaining the purpose of the assessment.

Section 4.2. Notice and Quorum for any Action Authorized Under Sections 4.1. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.1 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast

sixty percent (60%) of all the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.3. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

Section 4.4. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area;
- (c) All Lots owned by Declarant and, as long as the Declarant has Founder Class membership status.

ARTICLE 5 - INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Association may insure any property, whether real or personal, owned by the Association, against liability, loss, damage or hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Creation. The Declarant shall appoint a Neighborhood Architectural Control Committee (hereafter referred to as the "Committee") consisting of three persons, one of whom shall be knowledgeable in the area of residential development. The Declarant shall have the power to remove members of the Committee and fill vacancies on the Committee until the earliest of the following: (a) the Declarant relinquishes this power in writing; (b) ninety percent (90%) of all Lots on the Property have been sold; or (c) structures have been constructed on seventy-five percent (75%) of all Lots in all phases of the Cascade Falls neighborhood and such structures are legally occupied. When the Declarant ceases to have this power, it shall give written notice of this event to each property owner and thereafter the property owners in Harvest Springs Development shall, within sixty (60) calendar days, elect new members of the Committee. Each Lot Owner shall have one vote for each lot owned. The initial Committee members elected by the lot owners shall be elected for terms of three years. No member of the Committee shall receive any compensation or make any charge for services rendered. The Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties. The Committee may fix the time and place for its regular meetings and such other meetings as may be necessary. The Committee shall meet monthly, or more or less often, on a regular basis as determined by the Committee. Written minutes shall be kept of Committee meetings and such

minutes shall be open to lot owners for inspection at reasonable times upon request. The initial committee shall consist of representatives from the Harvest Springs JV.

Section 6.2. Approval of Plans. No construction, remodeling, addition or modification of any kind of any structure and no excavation, grading or modification of the topography of any lot within the Property may occur without the written consent of a majority of the Committee. Submission and approval of applications to engage in the above activities shall be governed by rules, regulations and standards adopted by the Committee. The initial rules and regulations, subject to amendment by the Committee, are attached as Addendum B. After termination of the right of the Declarant to appoint and remove Committee members as set forth in Section 6.1, any rule or regulation may be amended, adopted or repealed by majority vote of all lot owners, by one vote for each lot owned. The issuance of a permit or granting of any approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Committee to refuse to approve such matter. Applications for approval shall be passed upon by the Committee within thirty (30) days of submission. In the event the Committee has not acted upon an application within such thirty (30) day period, the application will be deemed to be approved.

Section 6.3. Immunity from Liability. The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Declaration. Any errors or omissions in the design, construction, improvement or landscaping of any structure or property, and any violation of this Declaration or of any law or regulation, are the sole responsibility of the lot owner and the applicable designer, architect, or contractor. The Committee's review of plans shall in no way be concerned with structural, engineering or mechanical integrity or soundness, nor compliance with applicable laws or regulations.

Section 6.4. Injunctive Relief. Purchasers or lot owners within the Cascade Falls neighborhood acknowledge that any construction, remodeling, addition or modification of any kind of any structure and any excavation, grading or modification of the topography of any lot which occurs without the written consent of a majority of the Committee will cause irreparable harm to other owners and purchasers within Cascade Falls. Based thereon, any violation of this Article 6 by any person shall entitle the Committee, the Declarant, or the purchaser or owner of any lot within any neighborhood or phase of the Harvest Springs Development, to enforce this provision through immediate injunctive relief through the appropriate court. By purchasing a lot within Cascade Falls, such purchaser or lot owner, for themselves and their agents, representatives, successors and assigns, waives any and all defenses to the granting of such injunctive relief. Additionally, any purchaser or lot owner of any lot within Cascade Falls, agrees that such injunctive relief is in addition to any other damages or claims which the Committee, the Declarant, or any purchaser or lot owner within Harvest Springs Development may have hereunder or pursuant to law.

ARTICLE 7 - USE RESTRICTIONS

Section 7.1. Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices.

Section 7.2. Land Use. Cascade Falls shall be used only for purposes consistent with the Master Plan, this Declaration and any Supplement. The owner of any property within the development may impose additional covenants on its property with such approval as may be required from the board. If the provisions of any such additional covenants are more restrictive than the provisions of this Declaration, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

Section 7.3. Exterior Building Materials. See Addendum B for Standards.

Section 7.4. RESERVED

Section 7.5. RESERVED

Section 7.6. RESERVED

Section 7.7. Landscaping and Park Strip. Landscaping of the front and side yards of lots must be completed within 60 days after occupancy unless significant weather limitations prohibit the planting or growth of vegetation under which the time shall be extended until 30 days after the beginning of the next growing season. Lots shall be landscaped such that all unpaved portions of street front or street side yards shall be planted in either grass, turf, other ground cover, or rock, all as acceptable to the Committee. Unless waived in writing by the Committee based upon special circumstances, front yard landscaping area shall be planted with a maximum of thirty percent (30%) desert or xeriscape landscaping and a minimum of forty percent (40%) of grass. Landscaping shall be maintained at a reasonable standard compatible with other homes in the Development. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner. Lots shall be kept free of all tall, noxious or offensive weeds and plant growth by the owner of said lots. Should excessive growth occur on any lot, the owner shall be notified by the Committee, in writing, of such condition and shall be given thirty (30) days to correct the same, after which time the Committee may order such correction affected, the expense of which shall be charged to the owner of the lot or lots. Homeowners are responsible for the maintenance of the park strip between the curb and the sidewalk, and are to plant, care for and maintain trees evenly spaced in the park strip. These trees are to be of the species Little Leaf Linden, Lacebark Elm, or Crimson sunset Maple. Trees shall be planted along with all other landscaping. The park strip is to be vegetated with grass. Flowers and other non-invasive, smaller vegetation may be planted around the potting circle of each tree, but in no case shall any other type of tree or shrub be planted in the park strip.

Section 7.8. Fences, Walls and Barriers. Walls, fences and other barriers shall be constructed of materials manufactured for such purposes and erected in a proper and safe manner. Wood, Vinyl, Concrete, poured concrete, concrete block, cinder block, stone, or stucco of a color which blends with the exterior of the structure on the lot and which is of a color which conforms with other colors used within the Development. Poured concrete or concrete sections are allowed only if such materials are constructed with a finished surface. All walls, fences and barriers shall be kept and maintained in a visually pleasing manner and in a state of good repair. No wire netting, chicken wire, barbed wire, or chain link fences will be allowed.

Section 7.9. Sight Distance at Intersections. No fence, wall, hedge, or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be

placed or permitted to remain on any corner lot within a triangle formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7.10. Slope and Drainage Control. No structure, planting or material shall be placed or permitted to remain and no activities shall be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. No change in the elevation of a lot shall be made and no change in the condition of the soil or level of the land of a lot shall be made which results in any permanent change in the flow and drainage of surface water which is detrimental to any other lot within the Property unless a drainage easement exists for such alteration. Construction of improvements and installation of landscaping shall be done in such a way that drainage water is retained on the lot and/or conveyed to appropriate drainage facilities and as not to detrimentally drain onto or across any other lot except for within the established drainage easements that run along each adjoining property line. The slope control areas of each lot and all improvements in them shall be maintained continuously by the Owner of the lot, except for those improvements for which a public authority or utility company is responsible. For those lots with a side slope, it will be the responsibility of the party that alters the existing grade, being the grade at the time of acceptance of the development by the City of Chubbuck, to insure the existing grade of any adjoining lots by means, if necessary, of a retaining wall, erosion resistant landscaping or other decorative structure on his/her property and provide means for lot drainage to flow according to the drainage plan.

Section 7.11. Sewage Disposal. No individual sewage disposal system shall be permitted on any lot, part or portion of the Property.

Section 7.12. Building Location. All buildings shall be located on all lots so as to comply with any requirements noted on the Plat and so as not to be in violation of Chubbuck City ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building including eaves or steps, encroach upon any other lot. All construction shall be made only within designated and approved building pads.

Section 7.13. RESERVED

Section 7.14. Signs. Street and neighborhood signs shall be installed as per the master plan narrative (See Design Book). One sign of not more than six (32) square feet on each side may be used for advertising the lot for sale or rent or identifying the property during construction. Any sign used for advertising the property thereon for sale or rent, or for identifying the property during construction, shall be of the style, size, color and design, and shall strictly conform in all respects with this section. Banners, flags or streamers may be used for a period of no more than 30 days continuously and may not be replaced until 30 days have past without banners, flags or streamers on the property. The above notwithstanding, signs used by the Declarant to advertise the development and/or initial sale of any lot, part or portion of the Property shall be excluded from this restriction. For storefront uses, signs and usage shall be approved by the ARC.

Section 7.15. Care and Maintenance. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's lot at all times in a safe, sound and sanitary condition and refrain from any activity which might interfere with the reasonable

enjoyment by other Owners of their respective lots. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

Section 7.16. Nuisances. No noxious or offensive activity shall be carried on, or be allowed to be carried on, upon any lot, part or portion of the Property, nor shall anything be done thereon which may become an annoyance to the neighborhood. This includes dogs or any other animals that are not kept within the boundaries of the owner's properties. No lot shall be used for any illegal purpose. Activities shall be permitted as per the zoning ordinance.

Section 7.17. RESERVED

Section 7.18. Garbage and Refuse Disposal. No lot, part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage, or other waste. All trash, garbage, rubbish, rubble, or other waste shall be kept in sanitary containers which are emptied on at least a weekly basis. No unsightly materials or other objects are to be stored on any lot in view of the general public or neighboring lot owners. No rubbish, trash, papers, junk, or debris shall be burned upon any lot, part or portion of the Property.

Section 7.19. Storage of Materials. No lot, part or portion of the Property shall be used or maintained as storage for building materials except during construction of improvements on the lot.

Section 7.20. RESERVED

Section 7.21. RESERVED

Section 7.22. RESERVED

Section 7.23. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon, in or under any lot or part or portion of the Property, nor shall any oil or gas well, tank, tunnel, mineral excavation or shaft be permitted upon, in or under such lot or part or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or part or portion of the Property.

Section 7.24. RESERVED

Section 7.25. Damages. Any damage inflicted upon existing improvements such as curbs, gutters, streets, sidewalks and such, by the purchaser or owner of any lot and/or their agents or builders, must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the lot purchaser or Owner.

Section 7.26. Code Compliance. Declarant and Owners are subject to, and shall abide by all federal, state and local regulations regarding the use and development of property, regardless of the provisions of this Declaration.

ARTICLE 8 – EXPANSION

Declarant reserves the right, at its sole election, to expand the Property to include additional

property more particularly described below, by unilateral action of Declarant without the consent of Owners, for a period of fifteen (15) years from the date of recording of this Declaration in the office of the Bannock County Recorder, County of Bannock, State of Idaho. The property, all or part of which may be included in one or more expansions, is located in Bannock County, Idaho, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY DESCRIBED IN ADDENDUM A, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

Expansion shall occur by the Declarant filing:

a. an additional Development plat or plats creating additional lots and/or common areas on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation: and

b. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, with the exception of churches, schools, municipal fire stations or other community oriented structures as allowed by Declarant, architecturally compatible to the existing development, similar to the homes already constructed, constructed out of similar materials, with similar lot size. Declarant's Founder Class ownership status shall extend to all lots in the expansion area. Otherwise, Lot Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments (if any) of each Lot and in any expansion area shall be equal to the liability of each Lot in the original Property.

ARTICLE 9 - GENERAL PROVISIONS

Section 9.1. Enforcement. The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Directors may levy a fine or penalty not to exceed fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 9.2. Declarant Immunity. By purchasing property within the Development, and unless otherwise stated in writing through a specific written warranty, the lot purchaser and