

Declarant to a public purchaser shall be made or done without the prior approval of the ARC, except as otherwise expressly provided in this Declaration. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made, or done without the prior written approval of the ARC. Pursuant to its rule making power, the ARC shall establish a procedure for the preparation, submission, and determination of applications for any such alteration or Improvement. The ARC shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARC. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARC. All decisions of the ARC shall be final, and no Owner or other parties shall have recourse against the ARC or any of its members, for or with respect to any decisions made in good faith. Notwithstanding anything contained in the Restrictions and unless otherwise permitted by applicable law, there shall be no covenant, restriction or condition that prohibits or unreasonably restricts any Owner from using a system for obtaining solar energy. "Unreasonably restricting the use of a system for obtaining solar energy" shall mean placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and comparable efficiency and performance.

11.4 OVERHANGS

No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or to otherwise encroach upon any other Lot.

11.5 UTILITY EASEMENTS

There is hereby created a blanket easement upon, across and under the Project for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines or systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Project and subject to Section 11.2, to affix and maintain wires, circuits, and conduits in the Project. Notwithstanding anything to the contrary contained in this Section 11.5, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Project except as initially developed and approved by Declarant or thereafter approved by the ARC, this easement shall in no way affect any other Recorded easements on the Project. This easement shall be limited to Improvements as originally constructed.

11.6 NUISANCES

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any Lot. The Board of Directors, in its sole

discretion, shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. The discharge of firearms, including without limitation, "B-B" guns and pellet guns, is prohibited. On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. All basketball hoops, bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on Lots so as to be visible from adjacent property when not in use. Barbeques are not to be visible from common area line-of-sight. Reflective window coverings are prohibited. Blinds and drapes shall be subject to regulation of the Association and ARC. No blankets or cardboard may be displayed in any window that is visible from the street or adjacent Lots.

11.7 DISEASES AND INSECTS

No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

11.8 DRAINAGE EASEMENT

There is hereby created a blanket easement for drainage of ground water on, over and across the Project. No Owner shall obstruct, divert, alter, or interfere in any way with the drainage of water upon, across or over any portion of the Project. Each Owner shall, at its own expense, maintain the drainage ways and channels on his Lot in proper condition free from obstruction.

11.9 EASEMENT FOR SUBSEQUENT CONSTRUCTION

There is hereby created an easement running in favor of Declarant and its agents, employees, or independent contractors, to enter upon any portion of the Project for the purpose of constructing or installing Improvements.

11.10 DECLARANT'S EXEMPTION

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of Improvements or signs necessary or convenient to the development or sale of Lots.

11.11 ANTENNAS

Antennas located within the Project shall be limited and restricted as set forth in the ARC Rules

11.12 VARIANCES

The ARC shall have the authority to grant variances from the Restrictions in this Article XI as is reasonably necessary for the health, safety, and welfare of the Owners.

11.13 MAINTENANCE

Each Owner shall, at such Owner's expense, keep his Lot and its landscaping, Improvements and appurtenances in good, clean, attractive, and sanitary order and condition, except for any Common Elements which are to be maintained by Declarant and/or the Association pursuant hereto.

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11.14 DISPLAY OF FLAG

Notwithstanding any provision of the Articles, Bylaws or this Declaration to the contrary, and except as otherwise provided in this section, an Owner is entitled to display the flag of the United States in a manner consistent with the Federal Flag Code from or on: (a) a flagpole or staff which is located on exterior property within the boundaries of the Unit or which is attached to an exterior Limited Common Element that forms a part of the boundaries of the Unit; or (b) a window, ledge, sill, railing, patio, terrace or balcony of the Unit or an exterior Limited Common Element that forms a part of the boundaries of the Unit, whether or not the flag is displayed from a flagpole or staff.

The Association may adopt rules that prohibit the display of the flag of the United States in a manner inconsistent with the Federal Flag Code. The Association also may adopt rules that prohibit the display of the flag of the United States if the flag exceeds 4 feet in its vertical dimension or 6 feet in its horizontal dimension. For the purposes of this provision, the horizontal dimension of the flag is the dimension that is parallel with the horizontal stripes of the flag, regardless of the position in which the flag is displayed. The Association may establish a maximum number of flags of the United States that may be displayed from, on or around the exterior of a Unit. The maximum number may be one. The Association may adopt rules that prohibit the display of the flag of the United States from a flagpole or staff that exceeds 25 feet in height. The Association also may adopt rules that prohibit the display of the flag of the United States in a manner that poses a real and substantial danger to health or safety.

As used in this section, "Federal Flag Code" means the rules and customs pertaining to the display and use of the flag of the United States which are codified in 4 U.S.C. sections 5 through 10 inclusive, as altered, modified, or repealed by the President of the United States pursuant to 4 U.S.C. section 10, and any additional rules pertaining to the display and use of the flag of the United States which are prescribed by the President pursuant to 4 U.S.C. section 10.

As used in this section, "flag of the United States" does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component or material. As used in this section, a "flag of the United States" must be made of cloth, fabric, or paper.

11.15 PARKING AND VEHICULAR RESTRICTIONS

Owners shall use their designated parking spaces for operable standard vehicles. For the purposes of this section, "operable standard vehicle" shall mean any passenger car, motorcycle, or truck of up to three quarter (3/4) tons used for everyday transportation, subject to the approval of the Board of Directors. No Owner shall park, store, or keep within the Project any inoperable, unlicensed, or unregistered vehicle, or any commercial vehicle, unless such inoperable, unlicensed, unregistered, or commercial vehicle is stored in Owner's garage. For the purposes of the foregoing, a "commercial vehicle" shall include any vehicle with a sign displayed on any part of the vehicle; any vehicle upon which a rack is mounted, or a ladder, tools or other materials are visible; any vehicle used as a dump truck, cement mixer truck, oil or gas truck or delivery truck; any vehicle with body type normally employed as a commercial vehicle, whether or not a sign is displayed thereon; any truck greater than one ton capacity; any van other than one used solely as a family passenger vehicle. A commercial vehicle may be defined as such without regard to whether such vehicle has a commercial license plate.

No Owner shall park, store or keep on his Lot any recreational vehicle, including, but not limited to, any camper, motor home, bus, trailer, boat, and any vehicle deemed by

the Board of Directors to be a recreational vehicle ("Recreational Vehicle"). The definition of Recreational Vehicle excludes trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday transportation purposes, subject to the approval of the Board of Directors. There is no recreational vehicle parking area in the Project.

The foregoing notwithstanding, no Owner shall park, store, or keep anywhere within the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors. The Board of Directors shall have the power to enforce all parking and vehicle use restrictions applicable to the Project, including but not limited to removing vehicles which violate the provisions of this section and levying fines as may be appropriate.

No Owner shall repair his vehicle anywhere, at any time, within the Project, except inside Owner's garage, with the garage door closed at all times.

11.16 PETS AND ANIMALS

Each and every Owner shall keep all pets and animals inside Owner's Unit unless such pet or animal is on a leash and supervised by Owner at all times. Owners may not keep any animal for any farm or commercial purpose within the Unit or the Project at any time. Owner shall not permit any pet or animal to urinate or defecate anywhere within the Project. Each and every Owner shall control noise caused by all pets and animals residing with Owner.

11.17 EXTERIOR IMPROVEMENTS

Owner must submit plans and specifications and obtain prior written approval from the ARC for the installation of any exterior Improvement, including but not limited to swimming pools, spas and patio covers. Amongst other requirements, Owner shall cause adjacent and impacted neighbors to be notified of such submission to ARC and submit a "Home Improvement Form", which includes an "Impacted Neighbor Notification Form" to the ARC before the installation of any exterior Improvement. ARC may impose such conditions as it deems necessary and appropriate to assure that the construction of any such exterior Improvement shall not adversely impact the Project or neighboring and adjacent Owners.

ARTICLE XII.

MISCELLANEOUS

12.1 TERM

The provisions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, successors and assigns, for a term of 50 years from the date of Recordation of this Declaration, after which time such provisions shall be automatically extended for successive periods of ten years unless a declaration of termination meeting the requirements of an amendment to this Declaration as set forth in Section 12.2 of this Article has been Recorded.

12.2 AMENDMENTS

(a) *By Declarant.* Prior to the transfer of all Lots to Owners other than Declarant the provisions of this Declaration may be amended or terminated unilaterally by Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination.

(b) *By Members.* After the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration, with the written consent of Declarant so long as Declarant owns any property in the Project or the Annexable Area, may be amended by the Recordation of a certificate, signed and acknowledged by the Declarant (if Declarant's consent is required) and

the president and secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by 67% of the voting power of the Association and the requisite percentage of holders and insurers of First Mortgages required hereunder, if any.

(c) *Approval of First Mortgages.* Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by the Record holders and insurers of the First Mortgages requesting in writing notice of amendments, based upon one vote for each Mortgage owned or insured:

(i) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to holders, insurers and guarantors of First Mortgages as provided herein;

(ii) Any amendment which would necessitate an encumbrance, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;

(iii) Any amendment which would or could result in an encumbrance being canceled by forfeiture or in the individual Lot not being separately assessed for tax purposes;

(iv) Any amendment relating to the insurance provisions or to the application of insurance proceeds as set out in Article X hereof or to the disposition of any money received in any taking under condemnation proceedings;

(v) Any amendment which would or could result in partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration;

(vi) Any amendment concerning voting rights, the method of allocation of interests in Common Elements, rights to use the Common Elements, responsibility for maintenance, repair, and replacement of the Common Elements, the right of annexation to the Project, boundaries of any Lot, the conversion of Lots into Common Elements or Common Elements into Lots, leasing of Lots and the establishment of self-management by the Association where professional management has been required by any institutional holder or insurer of a First Mortgage;

(vii) Any amendment resulting in an increase of more than 25% of the Common Assessment over the prior Assessment Year and any amendment affecting assessment liens or the priority thereof; and

(viii) Any amendment imposing Restrictions on the leasing of or right to sell or transfer Lots.

(d) *Other Amendments.*

(i) Anything in this Article XII to the contrary notwithstanding, Declarant reserves the right at any time to amend all or any part of this Declaration to such an extent and with such language (1) as may be requested by the FHA or the VA, (2) requested by any other federal, state or local governmental or public agencies which request such amendments as a condition precedent to such agency's approval of this Declaration, and (3) to bring any provision hereof into compliance with applicable law. Any provision contained in this Declaration, the Articles or Bylaws, or other governing document of the Association that violates any provision of Idaho Code shall be deemed to conform with that provision of Idaho Code by operation of law, and such document is not required to be amended to conform to that provision. Any such amendment shall be effectuated by the Recordation, by Declarant, of a certificate of amendment duly signed by an authorized agent or authorized officer of Declarant, as applicable, with

the signatures acknowledged, specifying the reason for such amendment and setting forth the amendment. Recordation of such a certificate shall be binding upon all of the Project and all Persons having an interest therein.

(ii) It is the desire of Declarant to retain certain controls over the Association and its activities during the anticipated period of planning and development of the Project. If any amendment requested pursuant to the provisions of this Section 12.2(d) deletes, diminishes, or alters such controls, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other, and different control provisions.

(iii) In the event this Declaration is Recorded or used for any purpose prior to having been approved by the FHA, the VA or any governmental or public agency with jurisdiction, Declarant shall have the absolute right to amend the provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly Recorded.

(e) Any action to challenge the validity of any amendment of the Declaration must be brought or filed within one year after the date of Recordation of such amendment or such amendment shall be conclusively presumed to have been validly made.

12.3 MORTGAGEE PROTECTION

Notwithstanding any other provision of this Declaration, except for the Priority Lien provided in Section 6.15, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any First Mortgage upon a Lot made in good faith and for value, and Recorded prior to the Recordation of such amendment, provided that after the foreclosure of any such First Mortgage such Lot shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce the FHA and the VA to participate in the financing of the sale of Residential Lots within the Project, the following provisions shall apply (and to the extent the provisions of this Section 12.3 shall conflict with any other provisions of this Declaration or any other of the Restrictions, the provisions of this Section 12.3 shall control):

(a) Each holder, insurer and guarantor of a First Mortgage encumbering any Lot, upon filing a written request for notification with the Board of Directors, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles or Bylaws, if such default is not cured within 30 days after the Association learns of such defaults.

(b) Except for the Priority Lien described in Section 6.15, each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to either judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges pursuant to this Declaration against such Lot which accrued prior to the acquisition of title by the First Mortgagee to such Lot.

(c) When professional management has been previously required by a holder, insurer or guarantor of a First Mortgage, any decision to undertake self-management by the Association shall require the prior approval of a majority of votes cast at a meeting of Members at which a Quorum is present and the holders of 51% of the First Mortgages on Lots that have filed a written request for notice with the Board of Directors.

(d) Unless at least 51% of the First Mortgagees that have filed a written request for notice with the Board of Directors have given their prior written approval, neither the Association nor the Owners shall:

(i) Subject to any provisions of the Idaho non-profit corporation law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or the improvements thereon which are owned, directly or indirectly, by the Association (the granting of licenses to a governmental entity or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) Change the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) Fail to maintain fire and extended coverage insurance on insurable Common Elements in the amount set forth in Section 10.1;

(iv) Terminate the Project as a common interest community (as defined in the Act) for any reason; or

(v) Amend this Declaration or the Articles or Bylaws in such a manner that the rights of any First Mortgagee will be adversely affected.

(e) All holders, insurers and guarantors of First Mortgages on Lots, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours, (ii) require from the Association the submission of an annual financial statement within 120 days after the end of each fiscal year (without expense to the holder, insurer or guarantor requesting such statement) and other financial data concerning the Association, (iii) receive written notice of all meetings of the Members, and (iv) designate in writing a non-voting representative to attend all such meetings.

(f) All holders, insurers and guarantors of First Mortgages of Lots who have a written request on file with the Association shall be given (i) 30 days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Project following a decision of the Owners to assume self-management of the Project; and (ii) immediate written notice as soon as the Board of Directors receives notice or otherwise learns of any damage to the Common Elements where the cost of reconstruction exceeds \$75,000, and as soon as the Board of Directors receives notice or otherwise learns of any condemnation or eminent domain proceedings for acquisition of any portion of the Project.

(g) Any First Mortgagee may, jointly or singly, pay taxes or other charges which are in default, and which may or have become a charge against any Common Elements and may pay any overdue premiums on hand insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and the First Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

(h) Any agreement between the Association and its professional Manager, or any agreement providing for services by Declarant to the Association, shall provide that the contract may be terminated for cause on not more than 30 days written notice, and may not be terminated without cause except upon 60 days written notice prior to the end of the then current two-year term, and shall become effective upon expiration of that term.

(i) If required by any holder, insurer or guarantor of a First Mortgage on a Lot, the Board of Directors shall secure and cause to be maintained in force at all times a fidelity bond for any Person or entity handling funds of the Association, including but not limited to, employees of any professional Manager.

(j) Any agreement for the leasing or rental of a Lot shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws; All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Declaration, the Articles and Bylaws shall be a default under the agreement.

(k) In addition to the foregoing, the Board of Directors may, in its sole discretion, enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHA, VA, FHLMC, FNMA, GNMA or any similar entity so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of First Mortgages encumbering Lots with Residences thereon. Each Owner hereby agrees that it will benefit the Association and the Membership of the Association as a class of potential Mortgage borrowers and potential sellers of their respective Lots if such agencies approve the Project as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board of Directors concerning the status of any Mortgage encumbering a Lot.

(l) Any termination of the Project as a "common interest community" (as defined in the Act) shall require the approval of (i) Declarant, so long as Declarant owns any portion of the Project or Annexable Area, and (ii) 67% of the total voting power of the Association.

12.4 MORTGAGEE APPROVAL

Notwithstanding anything to the contrary herein, any approval of any Mortgagee or any other holder, insurer or guarantor of any Mortgage required under this Declaration (excluding approval by the FHA or VA) shall be deemed given if no written notice of disapproval is received by the Association within 30 days following written request for approval by the Association to such Mortgagee or other holder, insurer or guarantor of a Mortgage, which request shall be sent by certified mail.

12.5 NOTICES

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally, by mail or by telecopy. For the purposes of this provision, personal delivery shall include service by a reputable overnight carrier which provides a receipt indicating date and time of delivery, location of delivery and person to whom transmitted. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. If delivery is made by telecopy, it shall be deemed to have been delivered when sent. Any notice sent by telecopy must be confirmed within 48 hours by letter mailed or personally delivered in accordance with the foregoing. Notwithstanding anything to the contrary herein, each Person entitled to notice under this Declaration shall be entitled to specify only one address, telecopy number or combination thereof at which to receive notice, which address, and number shall be ~~had~~ in the United States.

12.6 ENFORCEMENT AND NON-WAIVER

(a) *Right of Enforcement.* Except as otherwise expressly provided herein, the Association, any Owner and Declarant (so long as Declarant shall own any portion of the Project or the Annexable Area), shall have the right to enforce any or all of the provisions of the Restrictions against any property within the Project and the Owners thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of the Restrictions. Each Owner and Declarant (so long as Declarant shall own any portion of the Project or the

Annexable Area) shall have a right of action against the Association for its failure to comply with the Restrictions.

(b) *Violations and Nuisance.* Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Person entitled to enforce the Restrictions.

(c) *Violation of Law.* Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

(d) *Remedies Cumulative.* Each remedy provided herein and by the Restrictions is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien, bring a suit at law to enforce each assessment obligation.

(e) *Non-Waiver.* The failure of the Association to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions.

(f) *Attorneys' Fees.* Any judgment rendered in any action, arbitration or proceeding in connection with this Declaration shall include a sum for attorneys' fees in such amount as the court or arbitrator may deem reasonable, in favor of the prevailing party, as well as the amount of delinquent payment (if applicable), interest thereon, late charges (if any) and court or arbitration costs.

12.7 MANDATORY DISPUTE RESOLUTION

Notwithstanding anything to the contrary herein, prior to bringing any action or proceeding relating to *this* Declaration or the Association to which Idaho Code Title 9 Chapter 8 applies, the Association and all Owners shall comply in all respects with the requirements of Idaho Code 9-801 *et seq.*

12.8 INTERPRETATION

(a) *Restrictions Construed Together.* All of the provisions of this Declaration shall be independent and several and shall be liberally construed with the other provisions herein to promote and effectuate the fundamental concepts of the Project as set forth in this Declaration. This Declaration shall be construed and governed by the laws of the State of Idaho. The inclusion in this Declaration, the Articles, the Bylaws, or any other governing document of the Association of a provision that violates any provision of Idaho Code does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions of the governing document can be given effect in accordance with their original intent and the provisions of Idaho Code.

(b) *Singular Includes Plural; Gender Specification.* Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) *Captions.* All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

(d) *Scope.* All references to sections, schedules and exhibits are to sections, schedules, and exhibits in or to this Declaration unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when

used in this Declaration shall refer to this Declaration as a whole and not to any particular provision of this Declaration.

12.9 NO PUBLIC DEDICATION

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project to the public, or for any public use.

12.10 CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, Restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Project, or any portion thereof.

12.11 NO PRESENTATIONS OR WARRANTIES

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Project or any portion of the Project, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance or taxes, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Agency or with any other governmental or public authority having jurisdiction thereof. Nothing in this Declaration shall obligate the Declarant to develop any portion of the Project or the Annexable Area as currently planned or to annex all or any portion of the Annexable Area.

12.12 NON-LIABILITY AND INDEMNIFICATION

Except as specifically provided in the Restrictions or provided by law, no right, power, or responsibility conferred on the Board of Directors or the Architectural Review Committee by this Declaration, the Articles or Bylaws shall be construed as a duty, obligation or disability charged upon the Board of Directors, the Architectural Review Committee, any member of the Board of Directors or of the Architectural Review Committee, or any other officer, employee, consultant or agent of the Association. No such Person shall be liable to any party for injuries or damage resulting from such Person's acts or omissions, either within what such Person reasonably believes to be the scope of his Association duties, or actually within the scope of such duties, except to the extent that such injuries or damage result from such Person's willful or wanton misfeasance or gross negligence. The Association shall indemnify and hold harmless any such Person for all losses, claims, damages, obligations, fines and penalties, and pay all costs of defense, arising from such Person's acts or omissions either when acting within what such Person reasonably believed to be within the scope of his Association duties, or when actually acting with the scope of such duties, unless and until it is proven in a court of appropriate jurisdiction that such Person acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association shall no longer be liable for the cost of defense and may recover from such Person costs previously expended by Association on such Person's behalf. The Declarant, the Association, the members of the Board of Directors and the members of the Architectural Review Committee and all other officers, employees, consultants and agents of any of them are not liable to the victims of crimes occurring on or about the Project. Punitive damages may not be recovered against the Association but may be recovered from Persons who caused such damages to the extent provided by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

12.13 FHA/VA APPROVAL

In the event Declarant obtains VA or FHA approval of the Project, for so long as Declarant has effective control of the Association, the following actions will require the prior approval of the FHA and the VA, as applicable: (a) annexation of any Annexable Area that is intended to include Lots encumbered by Mortgages insured or guaranteed by the FHA or VA, (b) dedication, conveyance or Mortgage of Common Elements; (c) any amendment of this Declaration materially affecting or impairing the interests of the FHA or VA, and (d) any merger, consolidation or dissolution of the Association.

12.14 PRIORITIES AND INCONSISTENCIES

If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

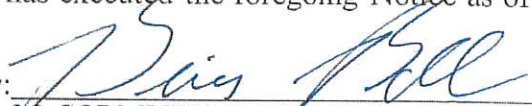
12.15 INTERPRETATION OF RESTRICTIONS

All questions or interpretation of the Restrictions, shall be resolved by Declarant, for so long as Declarant owns any property in the Project or Annexable Area, and thereafter by the Board of Directors, and their decision shall be final, binding and conclusive on all the parties affected.

12.16 SEVERABILITY

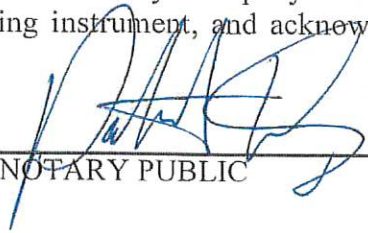
Invalidation of any provision in this Declaration by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

IN WITNESS THEREOF, Brian Ball has executed the foregoing Notice as of the date and year first written above.

By: 
McCORMICK RANCH, LLC

STATE OF IDAHO }
COUNTY OF BANNOCK } ss.

On this 18th day of October, in the year 2022 before me, Patrick J. Davis, a Notary Public in and for said State, personally appeared BRIAN BALL known or identified to me to be the Managing Member of the Limited Liability Company known as McCORMICK RANCH, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name


NOTARY PUBLIC

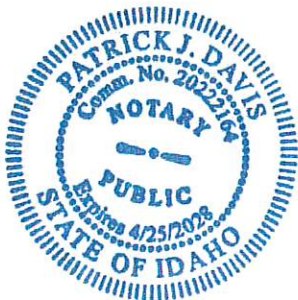


EXHIBIT A
LEGAL DESCRIPTION OF THE
INITIAL PROPERTY

EXHIBIT B
LEGAL DESCRIPTION OF THE
ANNEXABLE AREA

- **S21-T6S-R34E TR NE4SE4 TAX 241 16.38 AC ; TR SE4SE4 TAX 240 6.14 AC ; TR SW4SE4 TAX 238 2.90 AC**
- **S21-T6S-R34E TR SW4SE4 TAX 231 12.62 AC**
- **S28-T6S-R34E TR NE4NW4 TAX 98 18.42 AC NW4NE4 40.00 AC**
- **S28-T6S-R34E TR SW4NE4 TAX 1 4.96 AC**

EXHIBIT C
DEFINITIONS

Act means only those sections of the Idaho Code to which the Project is subject.

Agency shall mean the Idaho Real Estate Commission, or any other such governmental agency which administers the sale of subdivided lands pursuant to Idaho Code or common interest communities pursuant to the Act, or any similar statutes or ordinances hereinafter enacted.

Annexable Area shall mean the real property described in Exhibit B, all, or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article II.

Annexed Territory shall mean portions of the Annexable Area from time to time added to the Initial Property covered by this Declaration.

Approved Units shall mean the Residential Lots created by the map and more particularly described on Exhibits A and final map(s)

Architectural Review Committee or ARC shall mean the Architectural Review Committee created pursuant to Section 7.1

ARC Rules shall have the meaning ascribed to such term in Section 7.4.

Articles shall mean the Articles of Incorporation of the Association to be filed in the Office of the Secretary of State of the State of Idaho, as such Articles may from time to time be amended,

Assessment Unit shall mean the Assessment Unit allocated to each Lot in accordance with Section 6.3.

Assessment Year shall mean the calendar year, or such other 12 consecutive calendar month period selected by the Board of Directors for the levying, determining, and assessing of Common Assessments under this Declaration.

Assignment and Assumption Agreement shall have the meaning set forth in Section 9.2(h) and in Exhibit E.

Association shall mean TRAIL CREEK FOUR-PLEX Homeowners Association, an Idaho non-profit corporation, formed under the laws of the State of Idaho, its successors, and assigns.

Beneficiary shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust and the assignees of such Mortgagee or Beneficiary.

Board of Directors shall mean the Board of Directors of the Association, elected in accordance with the Articles and the Bylaws of the Association and this Declaration.

Budget shall mean the annual budget for the Association for each Assessment Year, as prepared pursuant to Section 6.4.

Bylaws shall mean the Bylaws of the Association as such Bylaws may from time to time be amended.

Capital Improvement Assessment shall mean a charge against each Owner and each Owner's Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize pursuant to the provisions of this Declaration.

Common Assessment shall mean an annual charge to fund Common Expenses, including without limitation, all costs of administering and enforcing this Declaration (excluding Special Assessments assessed against and paid by particular Owners), all costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements and all costs of operating, managing, and administering the Association.

Common Elements shall mean all the real property, together with the Improvements located thereon and personal property located within the Project now or hereafter owned by the Association, or with respect to which the Association has an easement, license or other right or obligation for the use, care or maintenance thereof, held for the common benefit, use and enjoyment of all of the Owners, as further provided in Article III. The Common Elements shall include those areas designated as such on the Final Map.

Common Expenses shall include, without limitation, the actual and estimated costs of

(a) Maintenance, management, operation, repair, reconstruction, and replacement of the Common Elements;

(b) Unpaid Special Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment, together with all costs incurred in connection with enforcement thereof,

(c) Management and administration of the Association, including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys, and other employees;

(d) All utilities, water and sewer service, gardening, trash pick-up and disposal, and other services benefiting the Common Elements or the Association;

(e) Fire, casualty and liability insurance, workers' compensation insurance, and other insurance, including fidelity bonds;

(f) any other insurance obtained by the Association;

(g) bonding the members of the management body, any professional managing agent or any other Person handling the funds of the Association;

(h) taxes paid by the Association;

(i) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements, or portions thereof;

(j) prudent reserves;

(k) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Project, whether or not conveyed to the Association as part of the Common Elements;

(l) subject to applicable law and the Restrictions, judgments against and payable by the Association;

(m) any other item or items designated by the Association for any reason whatsoever in connection with the Common Elements, the Association, or this Declaration.

Control Termination Date shall mean the date of termination of the period in which Declarant is entitled to appoint all or a majority of the members of the Board of Directors as provided in Section 4.2(b).

Declarant shall mean McCormick Ranch, LLC, an Idaho limited liability company, its successors, or other Person to which it shall have assigned any Declarant rights hereunder by an express written and Recorded assignment as provided herein. Any such assignment may include all or only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion.

Declaration shall mean this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for TRAIL CREEK FOUR-PLEX Homeowners Association, as amended, or supplemented from time to time.

Developmental Rights shall mean any right or combination of rights reserved by Declarant under this Declaration to (a) add real property to the Project, (b) create Lots or Common Elements within the Project, (c) subdivide Lots or convert Lots into Common Elements, or (d) withdraw real property from the Project.

Family shall mean (a) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural Persons not all so related, who maintain a common household in a Residence on a Lot.

FHA shall mean the Federal Housing Administration.

FHLMC shall mean the Federal Home Loan Mortgage Corporation.

FNMA shall mean the Federal National Mortgage Association.

Final Map shall mean, collectively, those Maps recorded in the Official Records of Bannock County, in the Office of the County Recorder of Bannock County, Idaho, recorded on August 7, 2008, September 2, 2019, June 19, 2020, and January 26, 2022, respectively, as Instrument Nos. 20817671, 21913215, 22010374, and 22201533, respectively, which describes therein the Lots, Common Elements and any easements encumbering the Project.

First Mortgage shall mean a Mortgage or Deed of Trust with first priority over other Mortgages or Deeds of Trust on a Residential Lot.

First Mortgagee shall mean the holder of a First Mortgage.

First Security Interest shall mean a first priority interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation, including a lien created by a Mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title as security for an obligation.

GNMA shall mean the Government National Mortgage Association.

I.C. or Idaho Code shall mean the Idaho Statutes.

Improvements shall mean all original and later changes to buildings, Improvements, structures, equipment, fixtures, and appurtenances thereto of every type and kind placed in the Project. including but not limited to buildings, outbuildings, walkways, sprinkler pipes, grading, excavation, demolition, garages, swimming pools jacuzzi spas and other recreational facilities, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment and other exterior equipment, fixtures and apparatus.

Initial Property shall mean the real property described in Exhibit A to this Declaration.

Lot shall mean any Lot or parcel of land shown upon the Recorded final subdivision map of the Project, together with the Improvements, if any, thereon, including without limitation, a Residential Lot. If two or more Lots are merged, they shall remain as two or more Lots for the purposes of Articles IV and VI.

Manager shall mean the Person, whether an employee or independent contractor, employed by the Association pursuant to the Bylaws, and delegated the authority to implement the duties, powers, or functions of the Association as the same may be limited by the Restrictions.

Member shall mean every Person holding a Membership in the Association pursuant to Section 4.3 hereof.

Membership shall mean a Membership in the Association pursuant to Section 4.3.

Mortgage shall mean any unreleased mortgage or deed of trust or other similar Recorded instrument, given voluntarily by the Owner of a Residential Lot, encumbering the Residential Lot to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage." "Mortgage" shall also mean any executory land sales contract, whether or not Recorded, in which the FHA, the VA, or the Secretary of the VA is identified as the seller, whether such contract is owned by or has been assigned by the FHA, the VA, or the Secretary of the VA. "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien or other similarly involuntary lien or encumbrance on a Residential Lot.

Mortgagee shall mean a Person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. The term "Beneficiary, shall be synonymous with the term "Mortgagee."

Mortgagor shall mean a Person who mortgages such Person's property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Notice of Annexation shall mean a Notice of Annexation as described in Section 2.4(b).

Notice of Lien shall mean a Notice of Lien as described in Article VI.

Notice and Hearing shall mean written notice and a hearing before the Board of Directors, a committee appointed by the Board of Directors, the Architectural Review Committee, or a committee appointed by the Architectural Review Committee, as applicable, at which the Owner concerned shall have an opportunity to be heard in person, or, at the expense of the Owner, by counsel, in the manner further provided in the Bylaws.

Owner shall mean the Person(s), including Declarant, holding (a) a fee simple interest to a Lot, or (b) a long-term ground leasehold interest of Record to a Lot, which is a part of the Project, excluding those Persons holding title as security for the performance of an obligation other than sellers under executory contracts of sale. For purposes of this Declaration, a "long-term ground leasehold interest" shall mean a leasehold interest having a term at the time of creation of such interest of 20 or more years.

Person shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Phase of Development shall mean (a) the Phases of Development in the Initial Property described in Exhibit A; and (b) as determined or approved in writing by Declarant in its sole and absolute discretion, each portion of the Project designated as a Phase of Development in a Notice of Annexation Recorded pursuant to Section 2.4. The Phases of Development described

in the documents referenced in (a) and (b) in this definition may be changed or amended from time to time by Declarant.

Priority Lien shall have the meaning provided in Section 6.15.

Project shall mean the Initial Property, together with such portions of the Annexable Area annexed to the property subject to this Declaration and to the jurisdiction of the Association pursuant to Article II.

Quorum shall mean (a) the presence in person or by proxy at the beginning of any meeting of the Members (whether or not such Members remain present throughout the meeting) of Persons entitled to cast at least 20% of the total votes, in person or by proxy, or (b) the presence at the beginning of any meeting of the Board of Directors (whether or not such members of the Board of Directors remain present throughout the meeting) of Persons entitled to cast at least 50% of the votes of the Board of Directors.

Record. Recorded. Filed and Recordation shall mean the Recordation or Filing of any document in the Office of the County Recorder of the County of Bannock, State of Idaho.

Residence shall mean a dwelling on a Residential Lot, intended for use and occupancy by as a residence.

Restrictions shall mean this Declaration, the Articles, the Bylaws, the ARC Rules, the rules, and regulations adopted by the Association and any agreement referred to herein or incorporated herein by reference.

Residential Lot shall mean a Lot containing or intended to contain a single building with four units ("Four Plex"), together with the Improvements, if any, thereon.

Special Assessment shall mean the Assessments described in Section 6.8.

VA shall mean the U.S. Department of Veterans Affairs of the United States of America and any department or agency of the United States that succeeds to the VA's functions of issuing guaranties of notes secured by Mortgages on residential property.

IN WITNESS THEREOF, _____ has executed the foregoing Notice as of the date and year first written above.

By: _____
McCORMICK RANCH, LLC

STATE OF IDAHO
COUNTY OF BANNOCK } ss.

On this ____ day of _____, in the year 20__ before me, _____, a Notary Public in and for said State, personally appeared _____ known or identified to me to be the Managing Member of the Limited Liability Company known as McCORMICK RANCH, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name

NOTARY PUBLIC

EXHIBIT D

FORM OF NOTICE OF ANNEXATION

Recording Requested By,
And When Recorded Return To:

ECHO HAWK & OLSEN, PLLC
Attn: Patrick J. Davis, Esq.
505 Pershing Avenue, Ste. 100
Pocatello, ID 83205

NOTICE OF ANNEXATION

This Notice of Annexation ("Notice") is made on this ___ day of 20___, by
_____ ("_____") with reference to the following facts:

RECITALS

A. _____ is the Owner of the following real property located in the County
of Bannock, State of Idaho:

described herein as the "Annexed Territory."

B. On ___, 20___, a Declaration of Covenants, Conditions Restrictions and
Reservation of Easements for _____ (the "Declaration") was Recorded in the office of

the Recorder of Bannock County, Idaho, as Instrument No. _____ in Book _____, covering certain real property described therein and referred to herein as the "Project".

C. Article II of the Declaration provides for the annexation of the Annexed Territory to the Project.

Now, THEREFORE, _____ hereby declares that the Annexed Territory shall be held, sold, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the provisions, covenants, conditions, restrictions, reservations and limitations contained in the Declaration and this Notice (collectively, the "CC&Rs"), all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Annexed Territory and every part and portion thereof, as follows:

1. Establishment of Restrictions and Enforcement All of the CC&Rs in the Declaration and this Notice are hereby established and imposed upon the Annexed Territory for the benefit of the Annexed Territory and each and every portion thereof and each and every Owner of an interest of any kind or character therein. Each and all of the CC&Rs shall run with the land in the Annexed Territory and shall be binding on all parties (whether Owners, occupants or otherwise) having or acquiring a right, title or interest in the Annexed Territory or any part thereof. Every Person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Annexed Territory is and shall be conclusively deemed to have consented and agreed to each and all of the CC&Rs, whether or not any reference to the CC&Rs or this Notice is contained in the instrument by which such Person acquired an interest in the Annexed Territory. Each and all of said CC&Rs shall be enforceable by _____, any Owner, and the Association, as provided in the Declaration.

2. Construction of Instruments The provisions of the Declaration and this Notice shall be liberally construed to effectuate the purposes contained herein. To the extent that any provision of this Notice conflicts with the provisions of the Declaration, the latter shall control. Any capitalized term used herein not otherwise defined herein shall have the meaning assigned thereto in the Declaration.

3. Phase of Development _____ hereby declares that the above-described Annexed Territory constitutes a separate Phase of Development (as defined in the Declaration).

(this portion of this page intentionally left blank)

4. Consent. _____ hereby consents to this Notice and the annexation of the above-described Annexed Territory.

IN WITNESS THEREOF, _____ has executed the foregoing Notice as of the date and year first written above.

COMPANY:

By: _____

STATE OF IDAHO }
COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By,
And When Recorded Return To:

ECHO HAWK & OLSEN, PLLC
Attn: Patrick J. Davis, Esq.
505 Pershing Avenue, Ste. 100
Pocatello, ID 83205

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is entered into as of this ___ day of ___, 20___, by and between _____ an Idaho LLC/corporation ("Assignor"), and _____ Homeowners Association, an Idaho non-profit corporation ("Assignee").

RECITALS

WHEREAS Assignor is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Elsinore recorded _____, 20___, in Book as Instrument No. _____, in the Official Records of Bannock County, Idaho ("Declaration"); and

WHEREAS, the Declaration provides for, among other things, the right of Declarant to assign the Maintenance Obligations (as hereinafter defined) in connection with the Common Elements (as defined in the Declaration) to the Assignee and the obligation of the Assignee to assume the Maintenance Obligations.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby irrevocably assigns, sets over, transfers and conveys to Assignee all of Assignor's rights and obligations to maintain the Common Elements as set forth in the Declaration (collectively, the "Maintenance Obligations") and Assignee hereby accepts this assignment and expressly assumes the Maintenance Obligations. Furthermore, Assignee agrees to keep, perform and fulfill all of the Maintenance Obligations which are required to be kept, performed and fulfilled thereunder, effective from and after the date hereof.

2. This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which when so executed, shall be deemed an original but all such counterparts shall constitute one and the same instrument.

3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

4. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

ASSIGNOR:

_____ an Idaho LLC/corporation

By: _____

ASSIGNEE:

_____ HOMEOWNERS ASSOCIATION
An Idaho non-profit corporation

By: _____

STATE OF IDAHO }
COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

STATE OF IDAHO

COUNTY OF BANNOCK } ss.

This instrument was acknowledged before me on _____ by _____ as
_____ of _____, LLC/Inc.

NOTARY PUBLIC

EXHIBIT F

**ARTICLES OF INCORPORATION FOR
TRAIL CREEK FOUR-PLEX HOMEOWNERS ASSOCIATION**

EXHIBIT G
BYLAWS FOR
TRAIL CREEK FOUR-PLEX HOMEOWNERS ASSOCIATION