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CAMILLE LARSEN, RECORDER  
By C. Carter Deputy  
Franklin County, Idaho

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SADDLE CROSSING SUBDIVISION

A phased subdivision located in the City of Preston, Franklin County, State of Idaho

THIS DECLARATION is made as of the 24th day of September 2024 by Brandon M. Roberts, Laura A.N. Roberts, and Tricon Properties, LLC, an Idaho limited liability company, herein jointly referred to as "Declarant".

### RECITALS:

- A. Declarant is the owner of certain real property in Franklin County, State of Idaho, more particularly described as all of that certain real property included in the plat of Saddle Crossing Subdivision Phase 1, Instrument No. 297340, records Franklin County, Idaho, and/or has the legal authority to act on behalf of the owner of said property with respect to development matters, including this Declaration. The described parcel of real property is hereinafter referred to as the "Subject Property".
- B. Declarant desires to impose upon Subject Property certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of Subject Property and all present and subsequent owners thereof, and all conveyances of Subject Property or any part thereof shall be subject to this Declaration.

NOW, THEREFORE, Declarant hereby imposes upon Subject Property the following easements, conditions, covenants, restrictions, and reservations which shall run with Subject Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof.

### ARTICLE 1: DEFINITIONS.

The following capitalized terms shall, as used in this Declaration, have the following meanings:

- 1.01 "ADC" shall mean the Architectural Design Committee.
- 1.02 "ADC Design Standards" and "Architectural Design Standards" shall mean such standards promulgated by the Declarant and/or the ADC as authorized by Section 10.03, below.
- 1.03 "Annexed Property" shall mean and refer to any real property made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for the annexation of additional parcels of real property.
- 1.04 "Assessment" shall mean a payment required of Association members, including Regular, Special, or Limited Assessments as provided in this Declaration.
- 1.05 "Association" shall mean and refer to Saddle Crossing Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, its successors or assigns.
- 1.06 "Association Rules" shall mean such rules promulgated by the Declarant and/or the Association pursuant to Section 6.05(e), below.

- 1.07 "Board" shall mean the duly elected and qualified Board of Directors of the Association.
- 1.08 "Building" includes any Dwelling Unit, house, garage, or any other partially or fully enclosed building, shed, or other structure, consisting of one or more walls or roof. A building includes sheds, animal enclosures which have a partial or full roof impervious to water in whole or in part, and similar structures.
- 1.09 "Common Area" shall mean and refer to any Lot or parcel designated as Common Area in the final plat of the subdivision or in a Supplemental Declaration subjecting additional real property to this Declaration, which parcels' owners may or may not have access to depending upon the purpose of the particular Common Area. Said areas are intended to be devoted to the common benefit and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated to the public.
- 1.10 "Common Facilities" shall mean and refer to those physical improvements constructed by Declarant upon Common Area or upon the utility easements over each Lot including, without limitation, entryway walls and structures, benches, bridges, walkways, pedestrian paths and bicycle paths, streetlights, drainage facilities, streams, waterfalls, and waterways. Common facilities shall include the pressurized irrigation system unless and until it, or any portion thereof, is conveyed to the Irrigation District, together with an easement over each Lot and Common Area for the installation, operation and maintenance of the system by the Irrigation District.
- 1.11 "Declarant" shall mean the undersigned Brandon M. Roberts, Laura A.N. Roberts, and/or Tricon Properties, LLC, including any successor to the Declarant who succeeds to the ownership of substantially all of Grantor's interest in the whole of the Property.
- 1.12 "Declaration" shall mean this Declaration, as it may be amended from time to time.
- 1.13 "Dwelling Unit" shall mean any structure intended to be occupied as a single-family residence, together with the vehicular parking garage next to such dwelling unit and all projections therefrom.
- 1.14 "Drainage Swales" shall mean and refer to the city street drainage swales fronting each Lot located between the sidewalk and street curbing.
- 1.15 "Irrigation District" shall mean the Consolidated Irrigation Company.
- 1.16 "Exempt Property" shall mean all portions of the Subject Property which have been dedicated to, and accepted by, a local public authority and/or owned by a charitable or nonprofit corporation exempt from taxation, all of which properties shall be exempt from Assessments created herein.
- 1.17 "First Mortgagee" shall mean any Mortgagee possessing or holding a lien on a Lot or any part thereof prior to any other Mortgage.
- 1.18 "Limited Assessment" shall mean an Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subject Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.
- 1.19 "Lot(s)" shall mean and refer to the plots or tracts of land comprising the Subject Property, designated by Lot numbers on the Plat, or any resubdivision thereby excluding the Common Area.

- 1.20 "Member" shall mean any person who is an Owner of a Lot within the Subject Property.
- 1.21 "Mortgage" shall mean any mortgage, deed of trust, land sale contract, or other security instrument by which a Lot is encumbered.
- 1.22 "Mortgagee" shall mean any person or the successor to any person named as the mortgagee, beneficiary, seller, or creditor under a Mortgage.
- 1.23 "Nonconforming Building" includes any building legally existing and/or used as of the date of this Declaration which does not conform with the building restrictions set forth in Article 4 of this Declaration.
- 1.24 "Occupant" shall mean any person, association, corporation, or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Dwelling Unit on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors, and assigns.
- 1.25 "Owner" shall mean and refer to the record owner of fee simple title to any Lot, excluding those record owners having title merely for security for the performance of an obligation.
- 1.26 "Plat" shall mean and refer to the those certain plats of phases of Saddle Crossing Subdivision to be recorded in the Franklin County's Recorder's office, which plats cover and subdivide all of the Property.
- 1.27 "Pressurized Irrigation System" shall mean all pumps, pump houses, and related facilities, including electrical power, mainlines, connecting lateral pipelines, valves, services boxes, individual Lot delivery stub out lines, underground sprinkler systems on the Common Areas, and all related equipment, parts and materials, including but not limited to those items of personal property comprising the Pressurized Irrigation System as shown on the engineering record drawings prepared for the Subdivision. Specifically excluded from the Pressurized Irrigation System, as herein defined, are the buried sprinkler lines, heads and valves or other sprinkler facilities located on the individual Lots used for residential purposes.
- 1.28 "Property" shall mean the property defined as Subject Property in the recitals above, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for annexation of additional parcels of real property.
- 1.29 "Regular Assessment" shall mean an Assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.
- 1.30 "Special Assessment" shall mean an Assessment levied by the Association other than Limited Assessment.
- 1.31 "Subdivision" shall mean the whole of the Property and any additional land annexed thereto (sometimes referred to herein as the "Subject Property").
- 1.32 "Supplemental Declaration" shall mean an amendment to this Declaration in which additional property shall, for the purposes of this Agreement, be made subject to this Declaration all in accordance with Article 11 of this Declaration.
- 1.33 "Transition Date" shall mean the latter of the date the Declarant certifies in writing to the Association that no additional real property shall hereafter be made subject to this Declaration, and the

date when the Declarant no longer owns any Lot, which are part of the Subject Property and any additional property annexed thereto.

Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

## **ARTICLE 2: PURPOSE.**

2.01 The Subject Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use, and maintenance of the Subject Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use, and maintenance as shall protect and enhance the investment and use of all Lots and Buildings.
- (b) The prevention of the erection within the Subject Property and Buildings of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of quality and attractive improvements appropriately located within the Subject Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper setbacks from streets and open areas within the Subject Property and adequate open spaces.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ADC Design Standards from time to time.
- (f) Insuring attractive landscaping.

## **ARTICLE 3: PROPERTY USE RESTRICTIONS**

The following restrictions shall be applicable to Subject Property and shall be for the benefit of and limitation upon all present and future Owners of Lots, or any interest therein, and the Association, which is hereby empowered, in addition to each Owner, to enforce the same:

3.01 Use. Each Lot shall be used only for residential purposes. As used herein "residential" shall mean the use of the Dwelling Unit on a Lot for living accommodations for the principal occupants, which guests may reside therein on a temporary basis.

3.02 Easements. There is hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development, and maintenance of the Property, the following easements:

- (a) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for any portion of the Property.

(b) For the purpose of permitting the Declarant or the Association, their contractors and agent, to enter onto those portions of Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Common Facilities within the Common Area

(c) For the installation and maintenance of the secondary pressurized irrigation system.

(d) Any additional easements, if any, as shown and designated on a recorded Plat(s) for any portion of the Property.

No Buildings or improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

3.03 Subdivision. No Lot may be further subdivided, unless otherwise authorized herein.

3.04 Animals. No animals, livestock, birds, insect, or poultry of any kind shall be raised, bred, or kept on any Lot, except the following may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

(a) No more than two (2) domesticated dogs and/or cats or other small household pets which do not unreasonably bother or constitute a nuisance to others. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot behind fencing.

(b) No more than six (6) egg-laying chickens, which must be kept in a chicken coop hidden from public view behind fencing and must conform to ADC Design Guidelines and be approved by the ADC. No roosters or free-range chickens are allowed.

The Association shall have the authority to change or amend these animal restrictions or provide a variance on a case-by-case basis.

3.05 Trash. All garbage, refuse, and animal waste shall be properly and promptly cleaned and stored and appropriately removed from each Lot so as to prevent unsightliness, or unnecessary or unreasonable odors. Removal of animal waste is responsibility of the animal's owner and shall not be left on another Owner's Lot.

3.06 Equipment and Vehicles.

(a) No motor homes, trailers, boats, camper, recreational vehicles, and other mobile equipment, trailers, implements, and vehicles (excluding automobiles) of all kinds or nature shall be parked or stored on any Lot, unless such items are fully screened or enclosed from view, and unless the ADC has otherwise approved the location and/or screening of said items. A minimum of two off street parking spaces for automobiles shall be provided on each Lot, or as otherwise required by City of Preston code. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. The Owner shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Lot, which vehicles shall be kept within the garage other than for temporary purposes (as determined by the ADC). No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored upon any Lot or street within the subdivision.

(b) No truck, truck camper, tent, garage, barn, shack or other outbuilding or vehicle shall at any time be used as a residence or living place on any part of Subject Property.

(c) The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to Association Rules or ADC Design Standards, which may prohibit or

limit the use thereof within the subject property, provide parking regulations and other rules regulating the same.

3.07 Commercial Use Prohibited. Unless specifically admitted in a supplemental Declaration, no Lot shall be used at any time for commercial or business activity that disrupts the quiet enjoyment of surrounding Lots or increases traffic flow; provided, however, that the Declarant or other persons authorized by the Declarant may use Lot(s) for development and sales activities related to the Subject Property. Any Owner shall be permitted to rent the Owner's Lot and Improvements thereon for long-term residential purposes, provided the use is limited to Section 3.01, above, and otherwise in compliance with this Declaration. Any lease allowing occupancy or residence of any Lot, or use of any portion of any Lot within the Subject Property, shall be subject in all respects to this Declaration.

3.08 No Short-Term Rentals. No short-term housing rentals (fewer than 30 consecutive days) shall be allowed, unless otherwise regulated or approved by the Association and within accordance with City of Preston zoning and use regulations.

3.09 No Offensive Use. No noxious, offensive, or unsightly conditions, as determined by the ADC, shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

3.10 Agricultural Uses. The Owners have been made aware that the Subject Property has been developed in an agricultural community and that there will continue to be agricultural uses of some of the surrounding properties. The agricultural uses of the surrounding properties, including the use of agricultural machinery, burning and chemical weed control and fertilization, and the raising of livestock, although restricted from the Subject Property are not necessarily restricted from neighboring properties. This provision specifically puts the Owners on notice of such potential conditions.

3.11 Fires. No outside open burning of trash, leaves, debris, or other materials shall be permitted upon any part of any Lot, except for the use of outdoor fireplaces, barbecue pits, or grills, in preparing food or for recreational purposes, so long as the location of the fire is at least twenty-five (25) feet from the property line or any structures and conforms with the ADC Design Standards. The ADC shall have the authority to review and approve any outdoor fireplace, barbecue pits, or grills.

#### **ARTICLE 4: BUILDING RESTRICTIONS.**

4.01 Plans. No Dwelling Unit, building, fence, wall or other structure or substantial landscaping or screening planting shall be undertaken, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ADC.

4.02 Mobile Homes. No mobile home, prefabricated home, trailer, modular home, or other pre-built or premanufactured home shall be allowed on any Lot as the primary Dwelling Unit.

4.03 Setbacks. The ADC shall have the right to require greater front setbacks on certain Lots in order to create a staggered block building line. Notwithstanding the foregoing, all building setbacks shall comply with the City of Preston Code, Zoning Regulations.

4.04 Dwelling Unit Size. No Dwelling Unit shall be constructed or placed on any Lot containing a total floor area on all floors intended and suitable for use as living area, not including a garage, of less than 800 square feet measured from the outside of the exterior walls. This size requirement shall not be applicable for multi-unit dwellings. In computing floor area, any floor with a finished elevation more than three feet below the natural contour of the surrounding area shall not be included. The foregoing size limitations are absolute minimums but shall not be construed to permit Dwelling Units

meetings these minimum sizes. The Owner (or the Owner's builder) should review the ADC Design Standards. The ADC shall consider the adverse effect of Dwelling Unit size minimums and height restrictions on other Lots within a particular phase of the subdivision in granting or withholding its approval of the plans and specifications for the proposed improvements to a lot. Each Dwelling Unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) standard size automobiles. No carports shall be allowed.

4.05 Height Restrictions. All Dwellings are subject to any City of Preston building, zoning and/or subdivision ordinances in effect at the time a building permit is issued.

4.06 Access Restriction. None.

4.07 Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot, except as permitted in the ADC Design Standards or approved by the ADC, if required.

4.08 Exterior Energy Devices. All energy production devices including, but not limited to, generators of any kind and solar energy devices, shall not be constructed or maintained on any Lot or Dwelling Unit without the prior written approval of the ADC, except for heat pumps or similar appliances shown on the plans approved by the ADC. Devices must adhere to the standards set forth in the ADC Design Standards.

4.09 Lighting. If required or permitted by the ADC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be set forth in the ADC Design Standards.

4.10 Roofs. The type, pitch and roof covering materials(s) which shall be required on Buildings within the Property shall be as set forth in the ADC Design Standards. No gravel roofs shall be permitted.

4.11 Maintenance. The following provisions shall govern the maintenance of each Lot, its landscaping, and all improvements thereon:

(a) Each Owner of a Lot shall maintain all Buildings and improvements located thereon in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds controlled and otherwise maintain the same in a neat and aesthetically pleasing conditions.

(b) The Subdivision has been designed with sidewalks set back from the street curbs by a Drainage Swale approximately five (5) feet in width. Although the front lot lines are approximately one (1) foot from the edge of the sidewalk, landscaping and maintenance of the landscaped Drainage Swale in front of each owner's Lot shall be the responsibility of the Owner. Landscaping and/or maintenance of the Drainage Swale shall also comply with all City of Preston code. Owner shall install one or both of (1) irrigated sod, or (2) rock with irrigated plants in a matter that the ADC defines and approves. Current city code prohibits trees and weed barrier within the Drainage Swale. Although the Association shall not be responsible for maintaining the landscaped Drainage Swale, it shall have the authority to do so in the event an Owner fails to do so. In the event the Association provides any of the landscaping or elects to maintain any of the landscaped Drainage Swale, the Owner(s) of the Lot contiguous to such portion of the landscaped Drainage Swale shall reimburse the Association or Declarant for the costs of such landscaping and/or maintenance for the portion of the Drainage Swale in front of the Owner's Lot. The Association shall have the right to levy a Limited Assessment against the responsible Owner for the costs of landscaping and/or maintenance all in accordance with Article 9 herein.

(c) All damage to any Building or improvements shall be repaired as promptly as is reasonably possible.

(d) A Dwelling Unit which is vacant for any reason shall be kept locked and the windows glazed or covered with blinds in order to prevent entrance by vandals. Vacant Dwelling Units and unimproved Lots shall not be exempt from the provisions of this Declaration.

(e) All structures, facilities, equipment, objects, and conditions determined by the ADC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.

(f) No articles, goods, machinery, materials, or similar items shall be stored, kept, or maintained on a Lot in the required set back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.

(g) Any event or condition on a Lot which, in the sole discretion of the ADC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot.

(h) In the event that any Owner shall permit any Building or improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article 9 of this Declaration.

4.12 Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ADC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance, along with providing diversity. All exterior finishes and/or colors shall be approved by the ADC and shall be in accordance with the ADC Design Standards.

4.13 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Buildings. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ADC prior to installation. Notwithstanding the foregoing, the ADC shall have the right to adopt ADC Design Standards with respect to signs allowed within the Subject Property, which ADC Design Standards, if adopted, shall regulate signs within the Subject Property and shall control over the specific provisions of this Section.

4.14 Construction Time Frame. All construction work on Dwelling Units shall be diligently and continuously pursued, and shall be completed within twelve (12) months from the date construction started. Landscaping shall be completed in accordance to Section 4.17.



4.15 Outbuildings. Outbuildings, separate garages, sheds and shelters may be constructed only simultaneously with or after a Dwelling Unit has been constructed on the Owner's Lot. All such buildings shall be constructed only after written approval thereof by the ADC. All outbuildings shall be constructed of similar or compatible exterior materials with the Dwelling Unit so as to be aesthetically compatible therewith. All outbuildings constructed on a Lot shall be in compliance with the applicable ordinance of the City of Preston. The ADC may determine additional set back distances of outbuildings from neighboring Lot property lines.

4.16 Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefore, including the location, design, material and color thereof, have been approved in writing by the ADC prior to the construction or installation. All fences and/or walls constructed on a Lot shall be in compliance with the applicable ordinance of the City of Preston.

In addition to the requirements of the ADC Design Standards applicable to fences, all fences and walls shall be subject to the following restrictions:

(a) Fences and walls shall not extend closer to any sidewalk than twenty-five (25) feet nor project beyond five (5) feet back from the front façade of the Dwelling Unit or the front façade of neighboring Dwelling Units. No fence higher than six (6) feet shall be allowed without the prior written approval of the ADC.

(b) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.

(c) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded subdivision plat of the property.

(d) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Lots and streets, and shall not be allowed if, in the opinion of the ADC, the same constitutes an undesirable, noxious or nuisance effect upon neighboring Lots.

(e) All fences constructed or to be constructed on common Lot lines shall be constructed and maintained at the equal expense of the Owners of the two Lots on which they are located; provided, however, any Owner who constructs a fence on the common Lot line without procuring the consent and agreement of the neighboring Lot Owner shall not be entitled to reimbursement for any portion of the cost of construction. Although fences are not required, an Owner may delay construction of any common Lot line fence until the neighboring Lot Owners have built their residence.

The ADC shall have the authority to amend, modify, or provide variances for the restrictions defined in this section. ADC Design Standards may supersede this section.

4.17 Landscaping. The following provisions shall govern the landscaping of Lots and Drainage Swales within the Subject Property:

(a) A landscape plan is required to be submitted to the ADC for approval and the Owner is required to follow all guidelines and conditions set forth for landscaping by the ADC.

(b) The initial landscaping shall include, as a minimum, trees, sod (may be seeded), and flower beds all as more particularly required by the ADC Design Standards. All plants shall be selected from the ADC's approved plant list. The ADC shall have the authority to ban certain species of plants.

(c) The above-referenced required landscaping shall be installed within ninety (90) days after substantial completion of the Dwelling Unit on the Lot and within the Construction Time Frame (described in Section 4.14), with a reasonable extension allowed for weather.

(d) An underground automatic sprinkler system shall be installed sufficient to irrigate the entire Lot and the seven (7) foot wide landscaped Drainage Swale (if landscaped with plants).

(e) The seven (7) foot wide landscaped Drainage Swale area between sidewalk and curb of each Lot shall be landscaped by the Lot Owner as more particularly required by the ADC Design Standards and City of Preston code, as well as requirements outlined in Section 4.11(b).

4.18 Mailboxes. All mailboxes shall be constructed or installed only if in compliance with the ADC Design Standards. As required by the local USPS Post Office, cluster mailboxes shall be installed within the Property to service multiple Lots. The mailboxes (including any architectural enclosures) shall be deemed property of the Association and shall be properly maintained and updated as needed. The Association may, at its discretion, purchase and install additional mailboxes, package lockers, and drop boxes to service Lots within the Property.

4.19 Pet Waste Stations. The Association may install and maintain pet waste stations within the Property for the benefit of Lot Owners.

4.20 Basements. Basements shall be permitted in areas where groundwater levels allow and must comply with City of Preston code.

4.21 Multi-Unit Dwellings. All Lots, unless otherwise defined herein or through an addendum to this Declaration, shall only contain one single-family Dwelling Unit per Lot. The following Lots are hereby approved, and shall allow if desired by the Owner, for multiple dwelling units, up to what is allowed by Preston City zoning.

Approved Multi-Unit Dwelling Lots:

- Lot 1, Block 1, Saddle Crossing Subdivision Phase 1
- Lot 4, Block 1, Saddle Crossing Subdivision Phase 1
- Lot 5, Block 1, Saddle Crossing Subdivision Phase 1
- Lot 8, Block 1, Saddle Crossing Subdivision Phase 1
- Lot 12, Block 1, Saddle Crossing Subdivision Phase 1
- Lot 1, Block 2, Saddle Crossing Subdivision Phase 1
- Lot 8, Block 2, Saddle Crossing Subdivision Phase 1
- Lot 1, Block 3, Saddle Crossing Subdivision Phase 1
- Lot 2, Block 3, Saddle Crossing Subdivision Phase 1

**ARTICLE 5: WATER SYSTEMS.**

5.01 Domestic Water. Each Owner shall pay Preston City for the domestic water connection fee. Each Lot shall have access to a domestic water system to be owned and operated by the City of Preston. The domestic water system will provide water for culinary and other ordinary domestic household use and is not to be used to water a lawn, landscaped area or other similar areas except for Lots which do not have access to the Irrigation System (defined below) and for all Lots during those times of year when water is not being supplied by the Irrigation System. Water from the domestic water system for irrigation purposes will be subject to rules of the City of Preston and, in any event, is subject to availability. The Association may elect to receive water for irrigation of the Common Area from the City of Preston when water is not being supplied by the Irrigation System, which use shall be paid by the

Association from its Assessments revenue. Any Owner's use of water from the domestic water system shall constitute an agreement to pay the charges to the City of Preston.

5.02 Irrigation System. All Lots, including the Common Areas, shall have access to a pressurized irrigation water system ("Irrigation System") to be constructed by Declarant and owned and operated by the Association or the Irrigation District. Owners of Lots to which the system has been extended shall be required to pay either as part of the Regular Assessments or any specific assessment levied by the Irrigation District, a pro rata share of the cost of irrigation water and operation and maintenance of the Pressurized Irrigation System, regardless of actual use or nonuse of water from the Irrigation System. Use of the Irrigation System shall be subject to such rules and regulations of the Association or the Irrigation District and the right to receive water therefrom is, in any event, subject to availability for Lots and for the Common Area. The availability of pressurized irrigation water for any Lot shall be subject to a watering schedule for the subdivision. The individual Owners shall install valve controllers for their individual lots, and regulate the availability of pressurized irrigation water at any time within the time frame allocated to that Lot pursuant to the watering schedule. The point of delivery, connection size, construction plans, and installation details must be approved by the Association, ADC, Irrigation District, and City of Preston, if required. Each Owner is prohibited from making any cross connection or tie in between the irrigation water system and the domestic water system. Each Owner is required to install an underground sprinkler system for the Owner's Lot and to connect to the Pressurized Irrigation System stub-out service connection provided to each Lot. The repair and maintenance of the individual Lot Owner's sprinkler system will be the responsibility of the Lot Owner. The Association shall be entitled to access any Lot for the purpose of inspecting, servicing and maintaining any Pressurized Irrigation System components located on the Lots. Water from the Irrigation System is not drinkable. Each Lot Owner shall be responsible to ensure that Irrigation Water within the boundaries of their Lot is not consumed by any person or used for culinary purposes. Each Owner shall mark their individual sprinkler system and all surface features as "NON-POTABLE WATER – FOR IRRIGATION ONLY".

The Declarant shall cause sufficient shares of secondary water to be transferred and conveyed to the Association for use in the subdivision, namely 29 total shares of water in the Irrigation District, for Phase 1.

#### **ARTICLE 6: HOMEOWNERS ASSOCIATION.**

6.01 Formation. It is contemplated that the Association shall be organized by the Declarant as an Idaho nonprofit corporation. The Association will be incorporated and will adopt Bylaws for its governance. To the extent the Articles of Incorporation or Bylaws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

6.02 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The ownership of a Lot shall be the sole qualification for membership and shall automatically commence when a person becomes such Owner and shall automatically terminate when such ownership is conveyed or transferred. There shall be only one (1) membership for each Lot, with number of votes per membership defined below. If there are multiple Owners of a Lot, the Owners shall, by written instrument filed with the Association, designate the individual entitled to exercise the privileges of Membership.

6.03 Voting. Voting in the Association shall be carried out by Members who shall cast votes attributable to the Lots which they own, or attributable to the Lots owned by Declarant. The number of votes any member may cast on any issue is determined by the number of the Lots which the Member, including Declarant, owns. When more than one person holds an interest in any Lot, all such persons shall

be Members but shall share the votes attributable to the Lot. For voting purposes, the Association shall have two (2) classes of Members as described below:

(a) Class A Members. Owners other than the Declarant shall be known as "Class A Members". Each Class A Member shall be entitled to cast one (1) vote for each Lot owned by such Class A Member on the day of the vote.

(b) Class B Members. Declarant shall be known as the "Class B Member," and shall be entitled to twenty (20) votes for each Lot owned by such Class B Member on the day of the vote. The Class B Member shall cease to be a voting Member in the Association when one hundred percent (100%) of the Lots, including Lots in additional Annexed Property, have been sold to Owners other than the Declarant, or the Declarant's successor or assignee.

Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When a Member casts a vote, it will thereafter be presumed conclusively for all purposes that such Member was acting with authority and consent of all joint Owners of the Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Member may give a revocable proxy, or may assign such Member's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Lot concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

6.04 Association Control. Until the Transition Date, the Declarant, or the Declarant's successor or assignee, shall have the exclusive control of the Association and the Owners, excluding the Declarant, shall not have the right to vote on any matters involving the operation of the Association or the Association's exercise of its authority. On and after the Transition Date, the membership shall be franchised and each Member shall be entitled to one (1) vote for each Lot owned.

6.05 Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the Bylaws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, Bylaws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

(a) Assessments. The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.

(b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owners(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, Bylaws, Declaration or ADC Design Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.

(c) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.

(d) Liability of Board Members and Officers. Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any

damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ADC, provided that said Board Member, officer, manager, or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

(e) Association Rules. The power to adopt, amend and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area, Common Facilities and other property owned or controlled by the Association; provided, however, Association Rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws or this Declaration. The Association Rules cover the Owner's obligations in connection with constructing, operating, and connecting their individual underground sprinkler system to the Pressurized Irrigation System and to abide by the irrigation schedule set by the Association. The Association Rules cover the Owner's obligations to landscape and maintain the Drainage Swale. A copy of Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association Rule and any provision of the Articles, Bylaws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.

(f) Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.

(g) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

(i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.

(ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.

(iii) Any similar public or quasi-public improvements or facilities.

6.06 Dedication. The Association shall have the right to dedicate or transfer all or any part of the Common Area or Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-thirds of the members of the Association.

6.07 Duties of Association. In addition to the powers delegated to it by the Articles, Bylaws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

(a) Operation and Maintenance of Common Area. Perform, or provide for the performance of, the operation, maintenance and management of the Common Area, Common Facilities,

Drainage Swales, and landscape easement areas, if any, owned or controlled by the Association, including:

(i) to repair and replace property or improvements thereon damaged or destroyed by casualty loss

(ii) to maintain, repair, and replace facilities, if any, installed by the Declarant and/or an irrigation district for the delivery of irrigation water to the Lots or over the Lots

(iii) to maintain, manage, repair, or replace all other property owned or controlled by the Association

(iv) to remove, repair, and replace property, improvements, and landscape materials when necessary so that the City of Preston can perform maintenance work on the Drainage Swales located in the Subdivision

(v) to perform, or provide for the performance of, any warranty work on any Common Facilities installed by the Declarant until the expiration of any such warranty period.

(b) Maintenance of Landscaped Areas. The Association shall periodically, and on a regular basis during the growing season, care and maintain any and all landscaped areas on the Common Areas or otherwise subject to the control of the Association, including, but not limited to watering, mowing and fertilizing of grassed areas, as well as the watering, fertilizing and pruning of trees and shrubs as required on the Common Areas.

(c) Maintenance of Pressurized Irrigation System. The Association shall own and maintain the pressurized irrigation delivery system, up to the offset connection of each Lot. If a Lot Owner fails to maintain their connection and adversely affects the system, the Association shall have the right to remedy the situation and cause a fine to be issued or require the Lot Owner to reimburse the Association.

(d) Taxes and Assessments. Pay all real and personal property taxes and Assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

(e) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telecommunications, gas and other necessary services for the Common Area owned or controlled by the Association.

(f) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Subject Property, whether the same is located within or without the boundaries of the Subject Property.

(g) Rule Making. Make, establish, promulgate, amend and repeal Association Rules.

(h) Architectural Design Committee. Appoint and remove Members of the ADC (Architectural Design Committee), all subject to the provisions of this Declaration.

(i) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

(j) Improvements. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Irrigation System, Common Area, and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this declaration.

(k) Enforcement of Common Area Maintenance. Notwithstanding that the Association is obligated to maintain the Common Areas and Common Facilities contained therein as defined herein and within the Articles of Incorporation of the Association, it is hereby provided that the City of Preston and/or Franklin County and/or the Irrigation District (collectively the "Agencies") may elect to maintain any part or facility of the Common Areas defined herein should the Association or the Declarant fail to maintain the same. In the event an Agency determines, in its sole discretion, that the Association is not adequately maintaining the defined Common Areas or Common Facilities, the Agency shall, before undertaking maintenance of said Common Areas, provide written notice of its and/or their intention to begin maintenance of the defined Common Areas or Common Facilities within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by the Agency. In the event that the Association shall fail to commence and conclude maintenance of the defined Common Areas or Common Facilities, the Agency is hereby granted an irrevocable license and easement to enter upon any portion of the Common Areas to perform inspection and maintenance. Should the Agency engage in maintenance of the defined Common Areas or Common Facilities after having provided notice to the Association having provided the Association an opportunity to undertake said maintenance, the Agency shall be entitled to and empowered to file a ratable lien against all Lots within the Subject Property with power of sale as to each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subject Property pursuant to this Declaration, together with interest at the rate which accrues on judgments and all costs of collection which may be paid or incurred by the Agency in connection therewith. The Agency may exercise their rights under Idaho Code by assessing the Lot Owners and certifying those Assessments in the same manner as real property tax. This Section shall not be amended without prior written approval from the Agency. The Association shall not be dissolved or relieved of its responsibility to maintain the defined Common Areas and Common Facilities contained therein without the prior written approval from the Agency. The Association and all Lots Owners, by accepting title to a Lot, agree that all Lot Owners within the Subject Property are benefited property Owners for purposes of this Section.

#### **ARTICLE 7: HOMEOWNERS ASSOCIATION PROPERTIES.**

7.01 Use. Each Owner of a Lot, their family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties of which the Owner is a Member, subject to the following:

(a) Articles, etc. The provisions of the Articles and Bylaws of the Association applicable to the Lot, this Declaration and applicable Supplemental Declarations and the rules, regulation and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.

(b) Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner), for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of the Association Rules or the Association Rules and Standards.

(c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such

conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot.

7.02 Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article 9 of this Declaration.

**ARTICLE 8: RIGHTS RESERVED BY DECLARANT.**

8.01 Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

(a) Itself, its successors and representatives, contractors and their subcontractors easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by Declarant, or its successors or assigns;

(b) Itself, its successors and representatives, contractors and their subcontractors (including any district, company, unit of local government, association or other entity providing water, sewer, gas, oil, electricity, telecommunications, cable television, or other similar services), easements, access and rights-of-way on, over, under and across all or part of the Common Area and utility easements on, over and under all Lots and Common Area as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(c) Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof, and a nonexclusive easement on, over, under and across any utility easements as provided or created on any recorded subdivision plat for the construction and maintenance of the Pressurized Irrigation System.

**ARTICLE 9: ASSESSMENTS.**

9.01 Agreement to Pay Assessments. Each Owner, by acceptance of the deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay when due all Regular, Special and Limited Assessments made by the Association or the Declarant.

(a) Regular Assessments. An annual Regular Assessment shall be made by the Association in such amounts deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area, Common Facilities and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, including the Irrigation District, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).



The initial annual Regular Assessment shall be the amount of Two Hundred Forty Dollars (\$240.00) per Lot, until changed by the Association.

(b) Limited Assessments. The Association shall have the power to levy a Limited Assessment against Owners and Lots for maintenance and repair of any Lot or any improvement on a Lot, if such maintenance and repair is necessary to preserve the quality of the Subdivision; and/or to correct a violation of the Declaration or any amendment thereto or the ADC Design Standards. No such Limited Assessment shall be levied until (a) the Board or ADC has given written notice to the Owner of the maintenance or violation cure required; (b) the Owner has refused to perform the required maintenance or correct the violation within a reasonable time; and (c) the Association has incurred expenses for maintenance or correcting the violation. Thereupon, the Board shall have the power to levy a Limited Assessment against the Owner to pay for the costs of such maintenance and repair or correction of violation and any other costs or expenses, including attorney fees, arising out of or incident to such maintenance and repair of the Association.

(c) Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

(i) To defray, in whole or in part, the cost of any construction or reconstruction of Common Area or Common Facility, unexpected repair or replacement of a Common Area or any Common Facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.

(ii) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

(d) Irrigation Water Assessment. It is contemplated that the Irrigation District shall provide pressurized irrigation water services to all Lots. In addition to any Assessments made by the Irrigation District for irrigation water, Owners may be required to pay to the Association, or to the Irrigation District, an additional Assessment, for the operation, maintenance, repair and replacement of the pressurized irrigation water system ("Irrigation Assessment"). Some or all of the Irrigation Assessments may be included in the Regular Assessment

9.02 Purpose of Assessments. The Assessments levied by the Association or the Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of Property and to carry out the objectives and responsibilities of the Association, and for the improvements and maintenance of any Common Area, Common Facilities and all improvements constructed thereon, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and Common Facilities, and including without being limited thereto, the payment of taxes and insurance on all or any part of the Property.

9.03 Collection and Enforcement. The Regular, Special, Limited and Irrigation Assessments, together with interest thereon and costs of collection and reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorney fees shall also be the personal obligation of the Owner at the time when the Assessment fell due. The right to collect and enforce payment of the Assessments is vested in the Association.

If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the amount remaining unpaid, the name of the record Owner of the Lot, and a legal

description of the Lot. Such notice shall be signed by the President and Secretary of the Association, whose signatures shall be acknowledged by a notary public, and such notice shall be recorded in the office of the Franklin County Recorder. Thereupon, and upon the continuing failure of the Owner to pay an Assessment, the lien for Assessment herein created may be foreclosed upon as provided by law for foreclosure of a mortgage on real property and other real property liens. Notwithstanding anything to the contrary contained in the Declaration and any amendment thereof, no action may be brought to foreclose the lien of any Assessment until the expiration of thirty (30) days after written notice of default has been deposited in the United States mail, addressed to the Owner of the Lot at the street address of the Lot or the last known address of the Owner, or otherwise if shown on the books and records of the Association. Such notice shall specify the amount and due date of the unpaid Assessments and the legal description of the Lot.

9.04 Set Up, Transfer Fee and Initial Regular Assessment. Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Declarant. At each such closing, the Owner thereof shall pay the sum of Two Hundred Forty Dollars (\$240.00) and also such portion of the existing Regular Assessment pro rated for the remainder of the calendar year. These initial Assessments shall be paid to the Declarant to reimburse the Declarant the setup cost and the maintenance of the Common Area and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment will be paid to the Declarant for each closing that occurs prior to the Transition Date and only paid to the Association if the Association has conducted its first annual meeting, elected a Board of Directors and assumed the obligations and expenses of the Association. Until the Association has conducted its first meeting, the Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Association. The Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this Declaration. For each Lot that has been sold to a builder who subsequently conveys the Lot to a homeowner; or for each Lot that is purchased from the Declarant by a homeowner, there shall be assessed against such Lot a transfer fee in the sum of \$240.00, which fee shall be utilized by the Declarant to cover any management fees incurred in connection with the management of the affairs of the Association. The Association shall, upon its first meeting, initiate Assessments in accordance with this Article 9, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant.

9.05 Assessment Due Date. The due date for Regular Assessments shall be March 1, unless some other due date(s) is established by the board. Each Assessment shall be delinquent if not paid within thirty (30) days after the due date set forth in any notice of Assessment.

9.06 Interest and Penalties. Any Regular, Special, Limited or Irrigation Assessments levied on Lots if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of fifteen percent (15%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charged, the Board may, in accordance with Association Rules promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

9.07 Billing for Annual Assessment. The Regular Assessment may be billed on a monthly basis, 1/12th per month on a quarterly basis, 1/4th per quarter, or annually, in advance.

9.08 Notice and Quorum for Special Assessment. Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Association members not less than twenty (20) days in advance of such meeting. Such notice shall specifically indicate that a Special Assessment is to be considered at such meeting. A quorum of not less than a one-third majority of the voting power of the members entitled to vote shall be required at such meeting whether in person or by proxy.

9.09 Uniform Rate of Assessment. Special Assessments must be fixed in an equal amount for each Lot that has been sold by the Declarant. All Special Assessments shall equally apply to all Lots, and no special rate or reduction in Assessment rate shall be allowed because any Lot is unimproved or does not have a Dwelling Unit thereon, except that any Lots owned by the Declarant shall not be subject to any Assessments.

9.10 Subordination to the Lien of Mortgage. The lien of Assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot pursuant to a Mortgage foreclosure, if the Mortgage is held by any person other than a prior Owner of the Lot, shall extinguish the lien of such Assessments as to payments which have become due prior to such sale or transfer.

#### **ARTICLE 10: ARCHITECTURAL DESIGN COMMITTEE.**

10.01 Members of the Committee. The Architectural Design Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ADC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ADC may be removed at any time, with or without cause.

10.02 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ADC. Thereafter, all members of the ADC shall be appointed or removed by the Board. The ADC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ADC. In the absence of such designation, the vote of any two (2) members of the ADC shall constitute an act of the ADC.

10.03 Adoption of ADC Design Standards. Initially the Declarant and ultimately the ADC shall have the power to promulgate ADC Design Standards relating to the planning, construction, alteration, modification, removal or destruction of Buildings and other improvements within the Subject Property deemed necessary or desirable by the Declarant or the ACC, as the case may be, to carry out the purposes of this Declaration. All ADC Design Standards shall be consistent with the provisions of this Declaration. The ADC Design Standards may contain provisions not limited to design standards, exterior finishes and colors, fences, landscaping, exterior lighting, mailboxes, and the like. They may also include policies, procedures and rules, which in the discretion of the ADC are reasonable to maintain a quality subdivision and to protect property values. The Lot Owner shall review and be familiar with the current ADC Design Standards, copies of which are available from the Declarant, the Declarant's marketing representative and at various title and escrow companies.

10.04 Interpretation and Enforcement. The ADC shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lots improvements. The ADC shall have the authority to pursue whatever action or litigation required to cause any Owner to remove and replace any element that the ADC interprets as deficient or outside of this Declaration or the ADC Design Standards. This right of enforcement can include the ADC hiring any or all of such work to be done and encumbering the Lot on which said work takes place with a lien for the full amount of the cost of said work plus any other costs ADC may incur in such enforcement.

10.05 Certification by Secretary. The ADC shall, upon written request, certify that improvements upon any Lot comply with this Declaration and have been duly approved by the ADC, or in the event said building or other improvements do not so comply, specifying the extent of noncompliance.

10.06 Variances. The ADC may authorize variances from compliance with requirements of any conditions and restrictions contained in this Declaration, the ADC Design Standards, or any prior

approval when, in the sole discretion of the ADC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in writing signed by at least two (2) members of the ADC.

If a variance is granted as provided herein, no violation of this Declaration, ADC Design Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ADC Design Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing thereon.

The granting of a variance by the ADC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with applicable ordinances of the City of Preston.

10.07 Application. To request ADC approval for the construction, alteration, modification, removal or demolition of any improvements within the Subject Property, the Owner shall submit a written application in a form required by the ADC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "Plans and Specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ADC:

(a) Site Plan. A site plan showing the location of the Building(s) and all other structures and improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements.

(b) Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall include, by sample if required by the ADC, all exterior colors, materials and finishes, including roof shingles, proposed to be used.

(c) Landscaping Plan. A landscaping plan showing the location of landscaping features and specifies the plant species included.

10.08 Security Deposit. A security deposit is not required to submit a ADC design review application, unless otherwise determined by the ADC at a later date.

10.09 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ADC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Property as a quality residential development. The ADC may, in its discretion, require the Owner to furnish additional materials beyond those required herein.

Unless extended by mutual consent of the Owner and the ADC, the ADC shall render its decision with respect to an application within fourteen (14) days after the receipt of a properly submitted application. The decision of the ADC can be in the form of an approval, a conditional approval or denial. The decision of the ADC shall be in writing and supplied to the Owner.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or

blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

10.10 Inspection and Complaints. The ADC is empowered to inspect all work in progression on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ADC Design Standards or the approved plans and specifications.

Should the ADC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation: and/or
- (b) The Owner shall adhere to the correct measures set forth in the written notice.

Should the ADC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner.

10.11 Enforcement. The ADC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ADC Design Standards or the approved plans and specifications.

The ADC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ADC shall have the sole discretion to commence such proceedings.

The authority of the ADC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ADC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by said Owner, which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said Assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article 9 of this Declaration.

10.12 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article 9 of this Declaration.

10.13 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Section 10.11 and 10.12, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver or any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

#### **ARTICLE 11: ANNEXATION**

11.01 Procedure. Additional land contiguous to the subject property may be annexed by Declarant without the consent of the Owners or the Association at any time. Upon the earlier of recordation of a final plat of such additional land, or the certification by the Declarant describing additional land that the Declarant intends to plat, such additional property shall, for the purposes of this Agreement, be deemed Annexed Property. Amendment of the Declaration to include such Annexed Property, and to subject such Annexed Property to the rights, privileges, restrictions, covenants and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the additional property being annexed, and any supplemental or different covenants, conditions and restrictions applicable thereto, and any deletions or modifications to these covenants, conditions and restrictions as the Declarant may deem appropriate, and shall describe the Common Area and Common Facilities thereof. Upon the recordation of the Supplemental Declaration, the Annexed Property described therein, shall be subject to the term and provisions of this Declaration as though included originally in this Declaration, and the definitions of Property, Common Area and Common Facilities shall automatically be amended to conform to such supplement or supplements, as shall all the other definitions herein, including the definitions of Lot and Owner. All Owners of Lots located within the expanded Property shall be subject to all easements, restrictions and reservations set forth in this Declaration and shall have the privileges of use of Common Area and Common Facilities, except as otherwise provided herein and subject to the restrictions and reservations set forth in the Declaration as amended and supplemented from time to time. Upon such annexation, the Owners of the Lots within the Annexed Property, shall become Members of the Association with all rights, privileges, and obligations as all other Members.

11.02 Designation of Common Areas. Any Common Area and Common Facilities designated by Declarant as such on the plat of the newly annexed additional property or in the Supplement Declaration or conveyed to the Association by Declarant shall be subject to the same easements and other rights for the use and enjoyment of the Owners as for the other Owners of Lots subject to this Declaration.

#### **ARTICLE 12: GENERAL PROVISION**

12.01 Enforcement. The Association, the Declarant, any Owner, or any First Mortgagee shall have the right to enforce, by proceedings of law or in equity, the terms and provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

12.02 Severability. Invalidation of any one of these covenants or restrictions shall in no way affect other provisions which shall remain in full force or effect.

12.03 Term. This Declaration shall run with the land and shall inure to the benefit of the Association, the Owner of any Lot, and any First Mortgagee as provided herein, and their respective legal representatives, heirs, successors, grantees, and assigns, for a term of forty (40) years from the date of this Declaration.

12.04 Amendments. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted for utilities and water distribution facilities, may

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be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds (66 2/3) of the voting power of the membership. Any amendment must be recorded.


12.05 Conveyance of Common Area. The Common Area and Common Facilities in each phase of development of the Project may be conveyed to the Association by Declarant, free and clear of all encumbrances, prior to the First Mortgage in that phase being insured by IIUD. Until conveyed, Declarant shall be solely responsible for the maintenance and management of Common Area and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided for herein.


12.06 Contracts or Agreements. The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, the FHLMC, the FNMA or the 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 building Lots in the Project with dwelling structures thereon.

IN WITNESS WHEREOF, the Declarant has set their hands and seals as of the date and year first above written.

Declarant:

  
Brandon M. Roberts

  
Laura A.N. Roberts


  
Tricon Properties, LLC  
an Idaho limited liability company  
By: Brandon Roberts  
Its: President

State of Idaho  
County of Franklin

On this 30<sup>th</sup> day of September 2024, before me personally appeared Brandon M. Roberts and Laura A.N. Roberts, as well as Brandon M. Roberts identified as the President of Tricon Properties, LLC, an Idaho limited liability company, personally known to me to be the persons and agent named in the foregoing, and acknowledged to me that they executed the same.

  
Notary Signature



  
Notary Signature