

**Declaration of  
Covenants, Conditions and Restrictions**

**MARKS RANCH HOMEOWNERS ASSOCIATION, INC.**

Kootenai County, Idaho

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**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARKS RANCH HOMEOWNERS ASSICATION, INC.**

**ARTICLE 1. DECLARATION AND IMPOSITION OF COVENANTS**

The undersigned, MARKS RANCH INC., an Idaho corporation (hereinafter referred to as "Declarant"), is the current owner, in fee or as purchaser under contract of sale, a portion of the real property located in Kootenai County, Idaho, more particularly described on **Exhibit "A"** attached hereto and by this reference incorporated herein (hereinafter referred to as "the Property"). Declarant hereby adopts the following Covenants, Conditions, and Restriction for the Marks Ranch subdivision (hereinafter referred to as the "Project" located at the Property). It declares the following shall apply to the subject Property and any interest in that Property. These Covenants, Conditions and Restrictions ("Declaration") shall run with the land and with each estate therein and shall be binding upon persons having or acquiring any right, title or interest in said Property or any lot, parcel, or portion thereof; and shall ensure to the benefit of and be binding upon the Declarant, Declarant's successors in interest, purchasers, assigns, heirs and any party having acquired any right title or interest in or to any part of the subject property until the declaration is terminated.

This declaration is intended to regulate the project and use of the Marks Ranch subdivision for the mutual benefit of future owners and occupants. The project is to be an aesthetically pleasing family-oriented residential development. The Declarant has attempted to draft this declaration consistent with the ordinances and regulations of the City of Hayden, Kootenai County, Idaho. If restrictive provisions of this Declaration are inconsistent with such ordinance, the more restrictive provisions between this declaration and the City of Hayden's ordinance and regulations shall apply. THIS DOCUMENT DOES NOT AND CANNOT ALTER THE LAW OF THE GOVERNMENTAL AGENCIES HAVING JURISDICTION.

**ARTICLE 2. DEFINITIONS**

The following terms, as used in this Declaration, are defined as follows:

2.1. **Annual Assessment.** The assessment levied annually pursuant to Section 13.3.

2.2. **Articles or Articles of Incorporation.** The Articles of Incorporation of the Homeowner's Association, which have been filed with the Secretary of State of Idaho, as such Articles may be amended from time to time.

2.3. **Assessments**. Those payments are required of Owners or Association Members, including Annual, Special, Utility and Default Assessments levied pursuant to Article 13.

2.4. **Marks Ranch Documents**. The primary documents creating and governing Marks Ranch Homeowners Association, Inc., including, but not limited to, this Declaration, The Articles of Incorporation and Bylaws, the Design Guidelines, any other procedures, rules, regulations or policies adopted under such documents by the Association, all as may be amended from time to time.

2.5. **Marks Ranch Homeowners Association, Inc.** The Marks Ranch Homeowner's Association, Inc. ("Association"), an Idaho non-profit corporation, and any successor of that entity by whatever name.

2.6. **The Marks Ranch Residential subdivision**. The community created by this Declaration ("Community"), consisting of the Property and all of the improvements located on the Property, also referred to herein from time to time as "Project," pursuant to Section 2.38.

2.7. **The Marks Ranch Rules and Regulations**. The rules and regulations adopted by the Association from time to time as provided in Article 6.

2.8. **Board of Directors or Board**. The Board of Directors of the Association.

2.9. **Builder**. A person or entity who purchases a Lot to build a Dwelling Unit for resale and not for such Person's primary residence.

2.10. **Building**. A building or other structure constructed on a Lot.

2.11. **Building Set Backs**. Those setbacks identified in the Design Guidelines for front yard, side yard and rear yard setbacks from Lot Property Lines.

2.12. **Bylaws**. The Bylaws of the Association as such Bylaws may be amended from time to time

2.13. **City of Hayden**. The City of Hayden, Idaho.

2.14. **Common Area**. Such real property depicted as Common Area on the recorded Final Plat and any other property in which the Association owns an interest for the common non-exclusive use, benefit and enjoyment of some or all of the Members and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Association. Such interest owned by the Association may include, without limitation, estates in fee, estates for terms of years or easements.

2.15. **Common Expenses**. Common Expenses shall include the actual and



estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Owners. Common Expenses shall include reasonable reserves as the Board may find necessary and appropriate for deferred maintenance, repairs, replacements and improvements in accordance with the Marks Ranch Homeowners Association, Inc. Documents as well as: (i) Premiums for insurance carried by the Association under Article 16, (ii) all expenses, costs, and amounts of every kind and nature incurred by the Association in administering, servicing, conserving, managing, maintaining, operating, repairing or replacing the Common Area and any Improvements located on it; (iii) all expenses expressly declared to be Common Expenses by the Marks Ranch Homeowners Association, Inc. Documents; (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors; and (v) all expenses to allocated among the Owners as provided in Article 13.

2.16. **Declarant**. Marks Ranch, Inc., an Idaho Corporation, or its successors or assigns, including any Successor Declarant to the extent the rights of the Declarant are assigned to the Successor Declarant, as provided in Section 2.42.

2.17. **Default Assessment**. Any Assessment levied by the Association pursuant to Section 14.5 below.

2.18. **Default Rate**. An annual rate of interest that is the lesser of (i) five points above the prime rate charged by the Association's then-current bank and (ii) the maximum rate permitted by applicable law.

2.19. **Design Guidelines**. The guidelines and rules as published and amended or supplemented from time to time by the Design Review Committee.

2.20. **Design Review Committee**. The committee formed pursuant to Article 10 to maintain the quality and architectural harmony of Improvements in "The Marks Ranch" Residential subdivision.

2.21. **Development Rights**. Those rights of Declarant as set forth in Section 15.1.2.

2.22. **Director**. Member of the Board of Directors of the Association.

2.23. **Dwelling Unit**. A single-family residence.

2.24. **Final Development Plan**. The Final Development Plan of the Community as approved by the appropriate governmental agencies and the City of Hayden, Idaho, as amended and approved during the subdivision and final platting process.

2.25. **First Mortgage**. Any Mortgage that is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.

2.26. **First Mortgagee.** The holder of record of a First Mortgage.

2.27. **Improvement(s).** All buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings and any new exterior construction or exterior improvement which may not be included in the foregoing. The term "Improvement(s)" does include both original improvements and all later changes or improvements.

2.28. **Lot.** A parcel of land designated as a Lot on any Plat of the Property that the Declarant makes subject to this Declaration. The streets, roads, and Common Areas on any Plat shall not be considered separate Lots.

2.29. **Maintenance Fund.** The fund created by Assessments and fees levied pursuant to Article 14 below to provide the Association with funds required to carry out its duties under this Declaration.

2.30. **Manager.** Such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration and/or the Bylaws.

2.31. **Member.** Any person or entity holding membership in the Association.

2.32. **Mortgage.** Any mortgage, deed of trust, trust indenture, contract for deed, or other document which is recorded in the office of the Recorder of the City of Hayden or Kootenai County and which encumbers any portion of the Property or interest therein as security for the payment of a debt or obligation.

2.33. **Mortgagee.** Any person named as a beneficiary or Mortgagee under a Mortgage or any successor to the interest of any such person under such Mortgage. In case of a contract for deed, the seller shall be considered the "Mortgagee" for purposes of this Declaration.

2.34. **Owner.** The person or other legal entity, including Declarant, that holds fee simple title of record to any Lot or, if any Lot is subject to one or more contracts for deed, the buyer under the most recent contract for deed, provided, however, that if the seller under such contract notifies the Association in writing that the buyer under said contract is in default, then the seller under such contract shall be the Owner for purposes of this Declaration. The Association shall be entitled to rely on such notification without further inquiry. "Owner" does not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceeding.

2.35. **Period of Declarant Control.** The period begins on the date this Declaration is first recorded in the office of the Recorder of Kootenai County, Idaho, and ends on the earlier of (a) the date 20 years later. The period of Declarant Control may be reinstated or extended by agreement between Declarant and the Association, subject to terms, conditions and limitations as the Board of Directors may impose on the subsequent exercise by Declarant of the Special Declarant Rights. After the termination of the Period of Declarant Control, the Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Members and/or Owners under this Declaration.

2.36. **Person.** Whether or not in capitalized form, Person means a natural person, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or combination of the foregoing.

2.37. **Plat.** Any engineering survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the Recorder of Kootenai County, Idaho.

2.38. **Project.** Community pursuant to Section 2.6. of this Declaration.

2.39. **Property.** Includes the property described in Exhibit "A" attached hereto and incorporated herein and subjected to this Declaration.

2.40. **Site and Landscaping Guidelines:** A set of guidelines established for use by the Design Review Committee to ensure the quality and architectural harmony of Improvements in "The Marks Ranch" Residential subdivision are maintained.

2.41. **Special Assessment.** An Assessment levied pursuant to Section 13.4.

2.42. **Special Declarant Rights.** Those rights of Declarant as set forth in Article 15 below.

2.43. **Successor Declarant.** Any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 26.7 and evidenced by an assignment or deed of record in the office of the Recorder of Kootenai County, Idaho, designating such party as a Successor Declarant, signed by the transferor and transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document. All such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document.

2.44. **Supplemental Declaration.** Any Supplemental Declaration, including additional or further covenants, conditions, and restrictions that might be adopted from

time to time with respect to any portion of the Property or Improvements that may be made a part of the Property as provided herein.

### **ARTICLE 3. MARKS RANCH HOMEOWNERS RESIDENTIAL SUBDIVISION**

3.1 **Establishment of Residential Subdivision.** By this Declaration, Marks Ranch is established as a residential subdivision.

3.2 **Declaration of Lot Boundaries.** The boundaries of each Lot are delineated on the Plat, and each Lot is identified by the number or address noted on the Plat.

3.3 **Plat.** The Plat will be filed for record in the office of the Recorder of Kootenai County, Idaho. The Plat may be filed as a whole or as a series of Plats from time to time. Any Plat filed subsequent to the first Plat will be termed a supplement to the Plat, and the numerical sequence of each supplement will be shown on it.

### **ARTICLE 4. MARK RANCH HOMEOWNERS ASSOCIATION ORGANIZATION**

4.1 **Organization of the Marks Ranch Homeowner's Association.** The Marks Ranch Homeowners Association, Inc, shall be initially organized by the Declarant as an Idaho non-profit limited liability company under the provisions of the Idaho Code and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, the Design Guidelines and this Declaration. Neither the Articles, Bylaws nor Design Guidelines shall be amended or otherwise changed or interpreted to be inconsistent with this Declaration or any Supplemental Declaration that the Developer might adopt pertaining to Marks Ranch.

4.2 **Board of Directors and Officers.** Subject to the rights and obligations of Declarant as set forth in this Declaration and to the rights and obligations of the other Owners, the Association will be responsible for the administration and operation of the Property. The Board of Directors will exercise all powers, duties and authority of the Association not reserved to Declarant or the Members by this Declaration, the other Marks Ranch Homeowners Association, Inc. Documents, or other applicable law.

4.3 **Appointment of Officers and Directors by Declarant/Association.** Until the Period of Declarant Control expires, Declarant will retain the exclusive powers to appoint, remove and replace Directors and officers of the Association.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint, remove or replace Directors and officers of the Association before the end of the Period of Declarant Control by providing a notice to that effect to the Association. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, the Declarant may require that specified

actions of the Association or the Board, as described in an instrument executed and recorded by Declarant in the office of the Recorder of Kootenai County, Idaho, be approved by Declarant before those actions become effective.

After the expiration of the Period of Declarant Control or Declarant's voluntary surrender of the right to appoint, remove and replace Directors of the Association, the Board shall always retain the right to appoint, remove and replace the Directors of the Association.

4.4 **Manager**. The Association may employ or contract for the services of a Manager to act for the Association, the Board and the officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by a written instrument executed by or on behalf of the Board. The Manager may be the Declarant or a person related to the Declarant.

4.5 **Committees**. The Association may delegate any of its rights, duties or responsibilities to any committee or other entity (in addition to the Design Committee) that the Board may choose to form.

4.6 **Limitation**. Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirements that the Board, when so delegating, will not be relieved of its responsibilities under the Marks Ranch Homeowners Association, Inc. Documents.

## **ARTICLE 5 ASSOCIATION MEMBERSHIP**

5.1. **Membership**. By virtue of being an Owner, every Owner will be a Member of the Association for so long as he is an Owner. Membership will be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, will have more than one membership per Lot owned, but all of the persons owning each Lot will be entitled to rights of membership and of use and enjoyment appurtenance to such ownership.

5.2. **Voting Rights**. Each Member will be entitled to vote on Association matters based on the number of votes to which that Member is entitled based on such Member's membership class.

When more than one person holds interest in any Lot, all such persons shall be Members but shall share the vote attributable to the Lot. Fractional votes, however, shall not be allowed. If joint Owners cannot agree among themselves on how their vote shall be cast, they shall lose their right to vote on the matter being put to vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that

such Owner was acting with authority and consent of all joint Owners of the Lot 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 Owner may give a revocable proxy.

Any Owner of a Lot that is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right.

5.3. **Transfer of Membership.** An Owner may not transfer, pledge, assign or alienate its membership in the Association in any way except upon the transfer of its title in its respective Lot and then only to the transferee of such title. If the transfer is pursuant to a contract for deed, the Owner's membership shall transfer to the buyer under said contract subject to the provisions of Section 5.3 herein.

5.4. **Notice of Membership.** On becoming a Member, any Owner will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws, vesting the person with the interest required to make him a Member.

5.5. **Owner's and Association's Addresses for Notices.** At the same time that the Member provides Notice of Membership as set forth in the paragraph 5.4, the Member will provide the Association with the single name and address which shall be deemed the registered address for that Membership and for the Owners associated therewith. The registered address shall be the address to which any notices given pursuant to the Marks Ranch Homeowners Association, Inc. Documents shall be sent. The Member shall state the number of Lots owned by the new Member. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Association containing all of the information required to be provided in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

If no address is provided to the Association, or if all of the Owners cannot agree on a single address, then the address of the Lot will be deemed the registered address until another registered address is furnished as required by this Section 5.5.

If the address of the Lot is the registered address of the Owners, then any notice will be deemed duly given if delivered to any person occupying the Lot or sent to the Lot by any other means specified for a particular notice in any of the Marks Ranch Homeowners Association, Inc. Documents, or if the Lot is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

All notices and demands intended to be served upon the Board of Directors will be sent to the addresses of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

All notices given under this Declaration will be sent by personal delivery, which will be effective upon receipt; by overnight courier service, which will be effective one business day following timely deposit with a courier service; or by regular, registered or certified mail, postage prepaid, which will be effective three days after deposit in the U.S. Mail.

## **ARTICLE 6. POWERS AND DUTIES OF THE ASSOCIATION**

6.1. **Powers.** The Association shall have the powers of a corporation organized under the laws of the State of Idaho applicable to non-profit corporations, subject only to such limitations upon exercising such powers as are expressly set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Association's other assets, and the affairs and the performance of the other responsibilities herein assigned, including without limitation:

6.1.1. **Assessments.** The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

6.1.2. **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules, if any, adopted pursuant to this Declaration, and enforce by injunction or otherwise, all provisions hereof

6.1.3. **Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Areas by the Owners, their families, invitees, licensees, lessees, temporary renters or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner.

Upon such mailing or delivery, the Association Rules shall have the same force and effects as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any other provisions of this Declaration, or other Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

6.1.4. **Emergency Powers.** The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger of life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and the Association shall repair any damage caused thereby.

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

6.1.5.1. Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television, security and communication, or other purposes, and the above-ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services; and sewers, storm drains, underground irrigation pipes, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association.

6.2. **Implied Rights and Obligations.** The Association will perform all of the duties and obligations imposed on it expressly by the Marks Ranch Homeowners Association, Inc. Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Marks Ranch Homeowners Association, Inc. Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Marks Ranch Homeowners Association, Inc. Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Marks Ranch Homeowners Association, Inc. Documents, (iii) reasonably necessary to effectuate any such right or privilege.



## ARTICLE 7. COMMON AREAS

7.1. **Association's Responsibility for Common Area.** The Association, subject to the rights and obligations of the Owners set forth in this Declaration, will be responsible for the management and control of the Common Area and all improvements on the Common Area (including furnishings and equipment related thereto), and will keep it in good, clean and attractive condition and repair consistent with the standards of Community.

7.2. **Conveyance by Declarant.** On or before the date on which Declarant conveys any Lot to another party, Declarant will convey to the Association, by written instrument recorded with the Recorder of Kootenai County, Idaho, the Common Areas more fully described on the attached Exhibit "A," including any Improvements located on and the rights and easements appurtenant to such property. From time to time before the expiration of the Period of Declarant Control, Declarant may, but will not be obligated to, convey to the Association, by written instrument recorded with the Recorder of Kootenai County, Idaho, other parts of the Property

7.3. **Use of Common Area.** The Common Area generally is designated by this Declaration for the common use, benefit and enjoyment of the Owners and their families, tenants, employees, guests and invitees, and such other persons as may be permitted to use the Common Area by agreement established under Sections 7.2 or 7.7 below.

7.4. **No Dedication to the Public.** Nothing in this Declaration or the other Marks Ranch Homeowners Association, Inc. Documents will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

7.5. **Declarant's Right to Perform for the Account of the Association.** In the event the Association does not repair or maintain the Common Area, Declarant will have the right, but not the obligation, to perform such duties for the Association. In that event, Declarant will be entitled to reimbursement from the Association of all costs incurred by Declarant, such reimbursement being due within 30 days after the receipt by the Association of an invoice from Declarant, itemizing the costs incurred. After the 30-day period allowed for payment expires, interest shall accrue on such amount at the Default Rate.

7.6. **Declarant's Agreements Regarding Common Area.** Upon the transfer by Declarant to the Association of any Common Area as provided in this Declaration, Declarant may require as part of the terms of the transfer that the Association contract with organizations operating within or in the vicinity of Community to allow use of all or part of the Common Area under such terms and for such charges as may be acceptable to Declarant and such association or other organizations.

7.7. **Association's Agreements Regarding Common Area.** The Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the independent approval of the Owners. Without limiting the generality of the foregoing, the Association may grant such rights to suppliers of utilities serving the Property or property adjacent to the Property, and to developers or owners of property adjacent to the Property for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by Owners.

7.8. **Ownership of Personal Property and Real Property for Common Use.** Through the action of its Board of Directors, the Association may acquire, hold, or dispose of personal and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Community and conveyed to the Association by the Declarant.

## **ARTICLES 8. PUBLIC ROADS AND STREETS**

8.1. **Landscaping, grassy swales, and snow storage area.** The Association shall be responsible for maintaining the landscaping in the common areas.

8.2. **Conveyance by Declarant.** The Declarant shall convey the Common Area as set forth in Section 7.2. herein.

## **ARTICLE 9. BOOKS, RECORDS AND RESERVE ACCOUNTS**

9.1. **Books and Records.** The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Marks Ranch Homeowners Association, Inc. Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

9.2. **Reserve Account.** The Association will establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Section 13.3. below for maintenance, repair or replacement of the Common Area and Improvements located with the Common Area that must be replaced periodically and for any other facilities made available to the Association that must be replaced periodically with contribution from the Association.

9.3. **Working Capital Account.** In order to provide the Association with adequate working capital funds, the Association will collect at the time of the close of escrow of each Lot an amount equal to three months' installments of the Annual

Assessments at the rate in effect at the time of the close of such escrow. The Association will maintain such funds in a segregated account to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Payments to this fund from escrow closings are not and shall not be considered advance payments of Annual Assessments.

## **ARTICLE 10. DESIGN REVIEW COMMITTEE**

10.1. **Design Review Committee and Guidelines**. The Design Committee may amend, repeal and augment the Design Guidelines from time to time, in the Design Committee's sole discretion. The Design Guidelines as amended from time to time will be binding on all Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.1.1. Procedures for applying to the Design Committee for design review and approval, including documents to be submitted and time limits within which the Design Committee must act to approve and disapprove any submission.

10.1.2. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

10.1.3. Minimum square footage areas of living space that may be constructed on any Lot.

10.1.4. Landscaping regulations, with limitations and restrictions prohibiting the removal of existing trees or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Association.

10.1.5. General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the nature or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformer and meters.

10.2. **Committee Membership**. The Design Committee will be composed of a minimum of three (3) persons. The Design Committee need not include any member of the Association. All of the members of the Design Committee will be appointed, removed, and replaced by Declarant, in its sole discretion, until the expiration of the Period of Declarant Control or such earlier time as Declarant may elect to voluntarily

waive this right by notice to the Association, and at that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Design Committee.

10.3. **Purpose and General Authority**. The Design Committee will review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the Design Committee may establish from time to time to govern its proceedings. No Improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the Design Committee; provided, however, that Improvements that are entirely within a Building may be undertaken without such approval. All Improvements will be constructed only in accordance with approved plans. This Article shall not apply to Declarant's activities or activities of the Association prior to termination of the Period of Declarant Control.

10.3.1. **Design Committee Discretion**. The Design Committee will exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, styles, materials, color, location on the property, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Marks Ranch Homeowners Association, Inc. Documents. The Design Committee, at its sole discretion, may excuse compliance with such requirements when not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements.

10.3.2. **Binding Effect**. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, will be conclusive and binding on all interested parties.

10.3.3. **No Waiver of Future Approvals**. Each Owner acknowledges that the Persons reviewing proposed improvements pursuant to this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the Improvements involved, but the Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans shall not be deemed to be a waiver of the right to withhold approval as to any similar applications or plans subsequently or additionally submitted for approval.

#### 10.4. **Organization and Operation of Committee.**

10.4.1. **Term.** The term of office of each member of the Design Committee, subject to Section 10.2, will be one year, commencing January 1 of each year and continuing until his or her successor has been appointed. Should a Design Committee member die, retire or become incapacitated, or in the event of resignation, removal or temporary absence of a member, a successor may be appointed as provided in Section 10.2.

10.4.2. **Chairperson.** So long as Declarant appoints the Design Committee, Declarant will appoint the chairperson. At such time as the Board of Directors appoints the Design Committee, the chairperson will be elected annually from among the members of the Design Committee by a majority vote of the members. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or, if the absence is temporary, an interim chairperson.

10.4.3. **Operations.** The Design Committee chairperson will take charge of and conduct all meetings and provide reasonable notice to each member of the Design Committee before any meeting. The notice will set forth the time and place of the meeting, and any member may waive the notice.

10.4.4. **Voting.** The affirmation vote of a majority of the members of the Design Committee will govern its actions and be the act of the Design Committee.

10.4.5. **Expert Consultation.** The Design Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or consultants retained by the Design Committee. Upon the delegation, the approval or disapproval of plans and specifications by such member or consultant, excluding final review and approval, will be equivalent to approval or disapproval by the entire Committee.

10.5. **Expenses.** Except as provided in this Section below, all expenses of the Design Committee will be paid by the Association and will constitute a Common Expense. The Design Committee will have the right to charge a fee for each application submitted to it for review, in an amount to be established by the Design Committee from time to time, and such fees will be collected by the Design Committee and remitted to the Association to help defray the expenses of the Design Committee's operation. In the event the Design Committee engages outside consultants or other professionals to review submissions, in accordance with Section 10.4.5. the cost of such engagement shall be borne by the person or entity making the submission or request.

10.6. **Other Requirements.** Compliance with the Association design review

process is not a substitute for compliance with the Kootenai County building, planning, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Further, the establishment of the Design Committee and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and Improvements as otherwise required under the Marks Ranch Homeowners Association, Inc. Documents.

10.7. **Limitation of Liability.** The Design Committee will use its judgment to accept or disapprove all plans and specifications submitted to it. Neither the Design Committee nor any individual Design Committee member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications except to the extent the Design Committee or any individual Design Committee member acted with malice or harmful intent. Approval by the Design Committee does not necessarily assure approval by the appropriate governmental board for the City of Hayden, Idaho. Notwithstanding the Design Committee's approval of plans and specifications, neither the Design Committee nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense that may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Committee, any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Marks Ranch Homeowners Association, Inc. Documents, nor for any structural or other defects in any work done according to such plans, and specifications. In all events, the Design Committee will be defended and indemnified by the Association in any such suit or proceeding that may arise due to the Design Committee's review or decision. The Association, however, will not be obligated to indemnify each member of the Design Committee to the extent any such member of the Design Committee is adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the Design Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but given all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

10.8. **Enforcement.**

10.8.1. **Inspection.** Any member or authorized consultant of the Design Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements

constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with The Marks Ranch Homeowners Association, Inc. Documents and the plans and specifications are approved by the Design Committee.

10.8.2. **Estoppel Certificate**. Upon payment of a reasonable fee established from time to time by the Design Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Design Committee will issue an Estoppel Certificate as fully set forth in the Design Guidelines.

10.8.3. **Deemed Nuisances**. Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member will be applicable. Without limiting the generality of the foregoing, this Declaration may be enforced, without limitation, as provided below.

- (i) **Fines for Violations**. The Design Committee may adopt a schedule of fines for failure to abide by the Design Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee. Before imposing a fine, the Association shall comply with Idaho Code Section 55-3206 requirements or any successor code.
- (ii) **Removal of Nonconforming Improvements**. The Association, upon written request of the Design Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration. The Owner of the Improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the Default Rate from the date the Association incurred the expense through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in Article 13.

10.9. **Continuity of Construction**. All Improvements commenced on the Property will be prosecuted diligently to completion and will be completed within 18 months after commencement, unless as exception is granted in writing by the Design Committee. If an Improvement is commenced and construction is then abandoned for

more than 90 days, or if construction is not completed within the 18 months, then after notice and opportunity for hearing as provided by the Bylaws, the Association may impose a fine of not less than \$100.00 per day (or such other reasonable amount as the Association may set from time to time) to be charged against the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment and lien as provided in Article 13.

10.10. **Reconstruction of Common Area.** The reconstruction by the Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as built" plans for such Common Area will not require compliance with the provisions of this Article or the Design Guidelines.

## **ARTICLE 11. PROPERTY USE MAINTENANCE AND RESTRICTIONS**

11.1. **General Restriction.** The Property will be used only for the purposes set forth in this Declaration, as permitted by the applicable ordinances of the City of Hayden and Kootenai County, Idaho and the United States, as set forth in the Marks Ranch Homeowners Association, Inc. Documents or other specific recorded covenants affecting all or any part of the Property.

11.2. **Use of Lots.** Each Lot may be used only for the purpose permitted by the applicable zoning, including any applicable residential subdivision. In the event of a conflict between any provision of the applicable residential subdivision and any provision of this Declaration, the more restrictive provision shall control. Lease of a Dwelling Unit shall not be considered a business or trade within the meaning of this subsection.

11.3. **Motorized Vehicles.** No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers, or similar vehicles, other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less, or any other motorized vehicles will be parked, stored or in a manner kept or placed on any portion of the Property except in an enclosed garage. This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or to Declarant or the other Owners.

No snowmobiles or off-road vehicles will be allowed to operate anywhere in the Property, except for emergency purposes or in areas specifically designated for such purposes by the Board. Motorcycles may be used on roads in the Property only for transportation to and from a dwelling and shall be operated in a quiet manner and in compliance with the rules of the road.



Motorcycles are only permitted to leave from or arrive at the Property. All other starting and running of motorcycles on any Lot shall be strictly prohibited.

No unlicensed driver shall operate any motorized vehicle on the Property. Only current licensed vehicles shall be on the Property.

11.4. **Parking.** No overnight on-street parking shall be allowed in the Project, nor shall parking be allowed in cul-de-sacs.

11.5. **Automobile Repair, Abandoned, Inoperable or Oversized Vehicles.** No automobile or vehicle repair work will be performed in any visible or exposed portion of the Community except in emergencies. All repair work shall be done in the Owner's garage or off the Property. No abandoned or inoperable vehicles of any kind will be stored or parked on or any portion of the Property, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle that has not been driven under its own propulsion for three weeks or longer; however, this will not include vehicles parked by Owners while on vacation or residing away from the Community. The Association may personally serve a written notice describing the "abandoned or inoperable vehicle" and requesting its removal upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as provided in Section 13.5. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may not be stored on any property. "Oversized" vehicles, for purposes of this Section, will be vehicles that are too high to clear the entrance to the Owner's garage.

11.6. **Excavation.** No excavation will be made except in connection with Improvements approved as provided in these covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land that results in the removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

11.7. **Electrical, Television, and Telephone Service.** All electrical, television, and telephone service installations will be placed underground.

11.8. **Sanitary Sewer.** Each structure designated for occupancy will be connected to the City of Hayden Sewer System. No drain fields shall be permitted on any residential Lots.

11.9. **Water and Wells.** Each structure designated for occupancy will connect to the Avondale Irrigation District water system. No wells from which water, oil or gas is produced shall be permitted on any residential Lots.

11.10. **Signs**. Signs shall be limited to the size and number as allowed by the City of Hayden, Idaho.

11.11. **Animals and Pets**. All pets (animals, birds, reptiles or living creatures of any kind) kept within any Dwelling Unit or Lot in the Common Areas is subject to the following restrictions.

11.11.1. **Allowed Pets**. Raising or housing of any animal on a commercial basis, including, without limitation, kenneling and breeding, is prohibited. No animals, livestock, or poultry of any kind will be kept on any portion of the Property, other than domestic household pets. Provided however, hen chickens shall be considered domestic household pets. Rooster chickens are not allowed.

11.11.2. **Limitation of Number of Pets**. No more than three (3) domestic household pets are allowed per Dwelling Unit.

11.11.3. **Containment**. Domestic household pets shall be kept within the Owner's Lot and shall not be permitted to run at large at any time. Dogs that are leashed may not be left unattended. Underground electric fencing may be used around the perimeter of the Lot. Pets shall be managed and controlled so as not to become a nuisance due to excessive noise, odors, or any other characteristics that may impair the enjoyment of the Property by other Owners.

11.11.4. **Leashes**. Pedestrians within the Property whose dogs accompany them must have the dogs under the pedestrian's direct control by use of a leash not to exceed 10 feet in length.

11.11.5. **Right for Removal**. The Association may at any time require the removal of any pet which it finds to be disturbing other Owners unreasonably and may exercise this authority for specific pets even though other pets are permitted to remain.-

11.11.6. **Damage by Pets**. Owners and their guests are responsible for any damage to the Common Areas, to other real or personal property, or to individuals within the Property caused by their pets.

11.11.7. **Alterations to Common Area**. Nothing shall be altered or constructed in a Common Area to house or accommodate pets.

11.11.8. **Wildlife Attractants and Repellants**. The use of wildlife attractions such as salt licks is prohibited. Using devices intended to repel wildlife, such as deer whistles, etc., is also prohibited. If wildlife constitutes a nuisance or potential harm, appropriate animal control services may be utilized. This provision shall not include bird feeders.

11.12. **No Outside Clothesline**. No laundry or wash will be dried or hung outside any Dwelling Unit

11.13. **Antenna**. Standard TV antennas and satellite dishes that are one meter in diameter or less shall be permitted on the Property; however, such over-the-air reception devices shall comply with all Design Guidelines, screening requirements, and other applicable restrictions pertaining to the location and manner of installation

11.14. **Window Coverings**. Windows shall be covered by drapes, blinds, shades or shutters or as approved by Design Committee and shall not be covered with foil, cardboard or similar material.

11.15. **Noise**. No use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound-producing device so as to be audible to occupants of other Dwelling Units, except for security alarm device used exclusively for security purposes, will be permitted on any portion of the Property.

11.16. **Drainage**. No Owner will do or permit any work, place any landscaping or install any other Improvements or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Design Committee or the Board of Directors, and except for the right which is hereby reserved to Declarant to alter or change the drainage patterns.

11.17. **Construction Regulations of the Design Guidelines**. All Owners and Contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owner's representatives on the Property at any time; the conservation of landscape materials; and fire protection.

11.18. **Blasting**. If any blasting is to occur, the Association, Design Committee and Declarant will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Association, Declarant or the Design Committee will in any way release the person conducting the blasting from any liability in connection with the blasting, nor will such approval in any way be deemed to make Association, Declarant or Design Committee liable for any damage which may occur from blasting, and the person doing the blasting will defend, hold harmless and indemnify Association, Declarant and the Design Committee from any such expense or liability.

11.19. **Temporary Structures**. No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized

by the Design Committee, and except as necessary for the exercise by Declarant of the Special Declarant Rights.

11.20. **Trash.** No trash, ashes, garbage, construction materials or other refuse will be thrown or dumped on any land or area within the Property. The Association will cooperate in and encourage programs to recycle trash and other refuse. There will be no burning or other disposal of refuse out of doors. Each Owner will provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles will be screened from public view and protected from the wind and animal and other disturbance.

11.21. **Outside Burning.** There will be no exterior fires, except barbeques, outside fireplaces, and the like, which shall be contained within these facilities or receptacles and in areas designated and approved by the Design Committee. No Owner will permit any condition upon its portion of the Property that creates a fire hazard or violates fire prevention codes or regulations. All firewood of any kind shall be stored within the residence or garage. Stored firewood shall not be visible from any public street or common area.

11.22. **Fertilizers and Pesticides.** Application of fertilizers or pesticides within the Property should be minimized and may be applied to landscaping, provided care is taken to minimize runoff.

11.23. **Snow Clearance.** Snow clearance and/or removal is the responsibility of the City of Hayden (excluding private driveways). Owners shall not clear or remove snow from Owner's driveways or walkways onto Common Areas or roads within the Property.

11.24. **Compliance with Laws.** Subject to the rights of reasonable contest, each Owner will comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or portion of the Property.

Without limiting the generality of the foregoing, each Owner will abide by any wildlife regulations imposed by the Declarant, and/or the Association or any agency or authority having jurisdiction over the Property. Further, no Owner will dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

11.25. **Obstructions.** There will be no obstruction of any roads, walkways or paths or interference with the free use of those roads, walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests, and invitees are granted nonexclusive easements to use the walkways and paths within the Property, subject to rules that the Board may adopt from time to time. Basketball

hoops are only permitted within the Lot. No basketball hoops are permitted on roads, paths, or walkways.

11.26. **Camping and Picnicking**. No camping or picnicking will be allowed within the Property except in those areas designated for such purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

11.27. **Building Code**. All improvements shall be constructed in accordance with the then applicable building codes of the governmental entity having jurisdiction, or if no such building codes are in effect, then in accordance with the Uniform Building Code. At present, the City of Hayden, Idaho has adopted the Uniform Building Code. All development of the Property shall be in accordance with the City of Hayden building codes and building permits shall be obtained as provided by the City of Hayden, Idaho. All development of the Property shall also be in accordance with the City of Hayden zoning regulations applicable to the Property and the provisions of the Residential subdivision.

11.28. **Clear Vision Area and Cul-de-sacs**. Owners shall cooperate in creating and maintaining a triangular "clear vision" area to be established and maintained at all road intersections and curves, such that each of the two roads has a distance of 40 feet measured from the point of intersection (or the midpoint of the curve) along the road centerlines of each road. Cul-de-sacs shall be kept unobstructed at all times.

11.29. **Nuisance**. No obnoxious or offensive activity will be carried on within the Property, nor will anything be done or permitted that will constitute a public nuisance. No noise or other nuisance will be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

11.30. **General Practices Prohibited**. The following practices are prohibited at Marks Ranch:

11.30.1. Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Design Committee;

11.30.2. Removing any rock, plant material, top soil or similar items from any property of others;

11.30.3. Use of surface water for construction;

11.30.4. Careless disposition of cigarettes and other flammable materials;

or

11.30.5. Littering.

11.31. **Use of Property During Construction.** It will be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Committee and their representative employees, agents, independent contractors, successors and assigns involved in the construction of Improvements on or the providing of utility service to, the Property to perform such activities and to maintain upon portions of the Property as they deem necessary, such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes maintaining storage areas, construction yards, equipment, and signs without limiting the generality of the foregoing. However, no activity will be performed and no facility will be maintained on any portion of the Property so as to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants, employees, guests, or business invitees of and to his Lot. If any Owner's use under this provision is deemed objectionable by the Design Committee, then the Design Committee, in its sole discretion, may withdraw this permission.

Notwithstanding the foregoing, this Section will not operate to prevent the exercise of any Special Declarant Rights.

11.32. **Partition or Combination of Lots.** No part of a Lot which is restricted in use to a single family dwelling may be partitioned or separated from any other part thereof. No such Lots may be combined, but the Owner of two or more contiguous Lots may build one single family Dwelling Unit on the contiguous Lots upon complying with all applicable requirements of the City of Hayden, Idaho.

The fact that two or more contiguous Lots may be owned by one person and developed with one single family Dwelling Unit will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the City of Hayden, Idaho or any other governmental authority or by a Mortgagee to replat the Lots in order to construct improvements on them, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before the replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Area, and with the appropriate allocation of voting rights and liability for Assessments established for the Lots as provided in this Declaration.

11.33. **Common Area - Covenants to Apply.** The preceding provisions of this Article will apply to the Common Areas.

11.34. **Rental and Leasing.** The Owner of a Lot will have the right to rent or lease his Lot, subject to the following conditions:

11.34.1. All rentals must comply with the City of Hayden's ordinance regulating short-term rentals.

11.34.2. The lease or rental agreement shall be specifically subject to the Marks Ranch Homeowners Association, Inc. Documents, which shall be incorporated by reference therein, and any failure of a tenant to comply with the Marks Ranch Homeowners Association, Inc. Documents will be a default under the lease or rental agreement.

11.34.3. The Owner shall be liable for any violation of the Marks Ranch Homeowners Association, Inc. Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect from the tenant any sums paid by the Owner on behalf of the tenant.

11.35. **Enforcement**. The Association may take such actions as it deems advisable to enforce this Declaration. In addition, the Association will have a right of entry on any part of the Property to enforce this Article, and any costs incurred by the Association in connection with such enforcement which remains unpaid 30 days after the Association has given notice of the cost to the Owner and otherwise complied with this Declaration will be subject to interest at the Default Rate from the date of the advance by the Association through the date of payment in full by the Owner and will be treated as a Default Assessment enforceable as provided in Article 13.

## **ARTICLE 12. OWNERS' OBLIGATIONS FOR MAINTENANCE**

12.1. **Owner's Responsibility for Lot**. Except as provided in the Marks Ranch Homeowners Association, Inc. Documents or by written agreement with the Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the Owner of the Lot. Each Owner will maintain its Lot in accordance with the community-wide standard of the Community. The Association may, at the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner do not satisfy such standard. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so. If the Owner has not commenced and diligently pursued remedial action within thirty (30) days after receipt of such written notice, then the Association will assume such responsibilities. The expenses of the maintenance assumed by the Board must be reimbursed to the Association by the Owner within thirty (30) days after the Association notifies the Owner of the amount due. Any sum not reimbursed within that thirty (30) day period will bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment enforceable as provided in Article 13.

12.2. **Owner's Negligence**. If the need for maintenance, repair or replacement

of any portion of the Common Area (including Improvements located on it) arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest at the Default Rate from the date of the advance by the Association until payment by the responsible Owner in full, and all such expenses and interest will become a Default Assessment enforceable in accordance with Article 13.

## **ARTICLE 13. ASSESSMENTS**

13.1. **Creation of Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, be accepting a deed for a Lot, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to fund the Maintenance Fund and to generally carry out the functions of the Association, including, without limitation, the payment of Common Expenses; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; (3) Utility Assessments for any utility services provided by the Association; (4) Default Assessments which may be assessed against a Lot pursuant to the Marks Ranch Homeowners Association, Inc. Documents or because the Association has incurred an expense on behalf of or caused by the Owner under the Marks Ranch Homeowners Association, Inc. Documents; and (5) any other Assessments as the Board may impose from time to time.

Each such Assessment, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees, will also be the personal and individual obligation of the Owner of such Lot as of the time the Assessment becomes due, and two or more Owners of a Lot will be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessment by abandonment of his Lot or by waiver of the use or enjoyment of the Common Area. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment lien provided in this Declaration.

13.2. **Purpose of Assessments.** The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Community and to effect the provisions of the Marks Ranch Homeowners Association, Inc. Documents.

### **13.3. Annual Assessments:**

13.3.1. **Calculation of Annual Assessments.** The annual assessment shall not be less than One Thousand Dollars (\$1,000.00). At least 60 days before



the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts for funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments, and the amount to be generated the levy of Annual Assessments and Special Assessments. The Association is authorized to levy Annual Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Annual Assessment, the Board may consider any expected assessment income from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, and advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Annual Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget.

The Board annually, in its sole discretion, shall determine the budget. If any Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue until a new budget is determined.

13.3.2. **Apportionment of Annual Assessments.** Each Owner will be responsible for that Owner's share of the Common Expenses, which will be divided equally among the Lots subject to Assessment pursuant to the Declaration. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots platted before any combination of Lots and incorporated in *the* Project. Notwithstanding the preceding sentence, any Common expense or portion thereof benefiting fewer than all of the Lots will be assessed exclusively against the Lots benefited. Further, insurance costs may be assessed in proportion to risk.

13.3.3. **Collection.** Annual Assessments will be collected annually in advance on the tenth (10<sup>th</sup>) day of January of each calendar year. The omission or failure of the Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association will have the right, but not the

obligation, to prorate refunds of any Annual Assessment exceeding the actual expenses incurred in any fiscal year.

13.3.4. **Date of Commencement of Annual Assessments.** The Annual Assessments will commence on each Lot on a prorated basis for the current year on the first of the month following completion and transfer to the Association of any component of infrastructure serving such Lot. Such Annual Assessments will continue thereafter annually as set forth in Section 13.3.3. above. Declarant will pay the Annual Assessments for Lots not sold when such Assessments become due and payable. Upon sale of such Lot to an Owner, a prorated Annual Assessment for the year of sale, based on the number of months remaining in said year, shall be collected from the Owner and shall be reimbursed to Declarant to the extent Declarant has previously made payment thereof. Any amount not required to be reimbursed to Declarant shall be paid to the Association.

13.3.5. **Capitalization of the Association.** In accordance with Section 9.3., upon acquisition of record title to a Lot from Declarant or any seller after Declarant, each Owner will contribute to the working capital and reserves of the Association an amount equal to one-fourth of the amount of the Annual Assessment determined by the Board of Directors for the Lot for the year in which the Owner acquired the title. The Association will maintain the working capital funds in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund will not be considered advance payments of Annual Assessments.

#### 13.4. **Special Assessments.**

13.4.1. **Determination by Board.** The Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Association as may be required, to make up any shortfall in the current year's budget.

13.4.2. **Apportionment and Collection of Special Assessments.** The Board will apportion Special Assessments among the Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 13.3.2.

13.4.3. **Notice.** Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days before the due date

if due in a single payment, and at least 30 days before the first due date if payable in periodic installments.

13.5. **Default Assessments.** All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Marks Ranch Homeowners Association, Inc. Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the association on behalf of the Owner pursuant to the Marks Ranch Homeowners Association, Inc. Documents, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Association as a result of the failure of an Owner to abide by the Marks Ranch Homeowners Association, Inc. Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

13.6. **General Remedies of Association for Nonpayment of Assessment.** Any installment of an annual Assessment or a Special Assessment that is not paid within thirty (30) days after its due date will be delinquent. In the event that an Annual or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this Declaration, "The Marks Ranch" Homeowner's Association, as applicable, in its sole discretion, may take any or all of the following actions:

13.6.1. Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

13.6.2. Charge interest from the date of delinquency at the Default Rate;

13.6.3. Suspend the voting rights of the Owner during any period of delinquency;

13.6.4. Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;

13.6.5. Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

13.6.6. File a Notice of Lien with respect of the Lot and. foreclose as set forth in more detail below.

13.7. **Assessment Lien.** Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Association as applicable, may, but will not be obligated to, prepare and record, at the office of the Kootenai County Recorder a Notice of Lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association as applicable, and the delinquent Assessment amounts then owing. Any such notice will

be duly signed and acknowledged by an officer or Director of the Association, as applicable, or by the Manager of such entity, and will be served upon the Owner of the Lot by the personal service or by certified or registered mail to the last known address of the Owner or Owners of the Lot and any holder of a prior perfected security interest. Thirty (30) days following the mailing of such notice to the Owner or the Association, as applicable, may proceed to foreclose the lien in the manner provided under Idaho law. The association, as applicable, will have the power and the right to bid on a Lot as foreclosure sale and to acquire, hold, lease, mortgage, and convey such Lot.

13.8. **Successor's Liability for Assessment.** All successors to the fee simple title of a Lot, except as provided in Section 13.10., will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor will not be personal and will terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor will be entitled to rely on the statement of Assessments by or on behalf of the Association under Section 13.13.

13.9. **Waiver of Homestead Exemption; Subordination of the Lien.** The Assessment liens will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Idaho, and to all other liens and encumbrances except the following:

13.9.1. **Prior Liens.** Liens and encumbrances recorded before the date of recording the Declaration;

13.9.2. **Tax, Governmental and Statutory Lien.** Liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by an Idaho governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

13.9.3. **First Mortgage Liens.** The lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Association's lien.

With respect to Section 13.9., any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees, as provided

in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

13.10. **Reallocation of Assessments Secured by Extinguished Liens.** The sale or transfer of any Lot to enforce any of the liens to which the Assessment lien is subordinate will extinguish such Assessment lien as to installments that became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Board of Directors. However, no such sale or transfer will relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, Assessments made after the sale or transfer.

13.11. **Exempt Property.** The following portions of the Property will be exempt from the Assessments, charges, and liens created under this Declaration:

13.11.1. All utility lines and easements; and

13.11.2. Common Area.

13.12. **Statement of Status of Assessments.** The Association will furnish to an Owner or his designee or any Mortgagee a statement stating the amount of unpaid Assessments levied against the Lot in which the Owner, designee or Mortgagee has an interest. The Association will deliver the statement personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within 14 business days after the registered agent of the Association receives the request by personal delivery or by certified mail, first-class postage prepaid, return receipt requested. When signed by an officer or director of the Association or the Manager, the information contained in such statement will be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

13.13. **Failure to Assess.** The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE 14. PROPERTY RIGHTS OF OWNERS**

14.1. **Owners' Easements of Access and Enjoyment.** Every Owner has a perpetual, non-exclusive easement for access to and from his Lot and for the use and enjoyment of the Common Area by all Owners of said Lot, their families, guests, invitees, tenants and employees. Said easement is appurtenant to and will pass with the title to

said Lot, subject to the provisions set forth in this Article.

14.2. **Easements of Record and of Use.** The Property shall be subject to all easements shown on any recorded Plat and to any other easements of records or of use as of the date of recordation of this Declaration.

14.3. **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

14.4. **Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment between each Lot and any adjacent Common Area to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

14.5. **Easements for Utilities, Etc.** There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association, and the designees of each (including, without limitation, any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities, including but not limited to water, sewers, meter boxes, telephone, gas and electricity and to install any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under, or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonable interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically reserves the right to convey to Avondale Irrigation District, electric company, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not

extend to permitting entry into the Dwelling Unit on any Lot, not shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, the Board shall have the right to grant such easement over the Property without creating a conflict with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other validly recorded easement on the Property.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to any local, state or federal governmental or quasi-governmental entity.

14.6. **Right of Entry**. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance pursuant to Article 14 hereof, and to inspect to ensure compliance with this Declaration, as amended from time to time, and Supplemental Declaration, as amended from time to time, the Bylaws, the Design Guidelines, and any rules governed by this Declaration, which right may be exercised by any member of the Board, the Association, officers, agents, employees and managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Dwelling Unit without permission of the Owner except by emergency personnel acting in their official capacities.

## **ARTICLE 15. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS**

15.1. **General Provisions**. Until the expiration of the Period of Declarant Control, Declarant will have the following Special Declarant Rights:

15.1.1. **Completion of Improvement**. The right to complete Improvements as indicated on any Plat filed with respect to the Property;

15.1.2. **Development Rights**. The right to exercise all development rights in connection with the development of the Community (referred to here as "Development Rights"), including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (a) The right to create Lots and Common Area on the Property.

(b) The right to subdivide Lots and convert Lots into Common Area on any part of the Property.

(c) The exclusive right to modify road, water, sewer, dry utilities and fire systems in accordance with any requirements of the City of Hayden or any other governing agency having jurisdiction for such systems.

(d) The right to develop the Property in such phases as Declarant deems appropriate.

15.1.3. **Sales Activities.** The right to maintain sales and management offices, signs advertising the project and model residences on the Common Area and on Lots owned by Declarant.

15.1.4. **Easements.** The right to use easements through the Common Area on the Property for the purpose of making Improvements on the Property.

15.1.5. **Association Directors and Officers.** The right to appoint any officer or Director of the Association, as provided in this Declaration or the Bylaws.

15.1.6. The fact the Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property.

15.2. **Supplemental Provisions Regarding Declarant's Rights.** Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Right or any other Special Declarant Right, and Declarant also reserves the additional rights for the benefit of Declarant in this Article and in other provisions of this Declaration.

15.3. **Reservation for Construction.** Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Community a perpetual easement and right-of-way for access over, upon and across the Property for construction, utilities, drainage, ingress and egress, and for the use of the Common Area. Declarant or the Association may make the location of these easements and rights-of-way certain by instruments recorded in Kootenai County, Idaho.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Areas, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.



15.4. **Reservations of Easements, Exceptions, and Exclusions for Utilities, Infrastructure and Access.** Declarant reserves for itself and its successors and assigns and hereby grants to the Association, acting through the Board of Directors, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Association, in order to serve the Owners within Community as initially built.

Declarant also reserves for itself and its successors and assigns, and grant to the Association, the concurrent right to establish from time to time, by instruments recorded in Kootenai County, Idaho, such easements, permits or licenses over the Common Area for access by certain persons (other than Owners and Owners' families and guests) who may be permitted to use designated portions of the Common Area as contemplated under this Declaration.

15.5. **Maintenance Easement.** Declarant hereby reserves an easement for itself and its successors and assigns and granted to the Association, and any member of the Board of Directors or Manager, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Marks Ranch Homeowners Association, Inc. Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot, as required by the Marks Ranch Homeowners Association, Inc. Documents.

15.6. **Drainage Easement.** An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over in and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a sightly and usable condition as soon as reasonable possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval will not be unreasonably withheld.

15.7. **Declarant's Right Incident to Construction.** Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonable necessary or incident to the

construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonable interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invitees.

15.8. **Easements Deemed Created.** All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## **ARTICLE 16. INSURANCE AND FIDELITY BONDS**

16.1. **Authority to Purchase.** On behalf of the Association, the Board of Directors or its duly authorized agent will purchase all insurance policies relating to the Common Area. The Board of Directors, the Manager and the Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

16.2. **General Insurance Provisions.** The following provisions will govern all such insurance coverage obtained by the Board of Directors:

16.2.1. As long as Declarant owns any Lot, Declarant will be named as an additional insured on all such policies in the same manner as any other owner.

16.2.2. The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments, allocable to all of the Lots or ton only some of the Lots if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working capital reserves established by the Board of Directors. In its sole discretion, the Board of Directors shall determine the treatment and allocation of any deductible.

16.3. **Physical Damage Insurance on Common Areas.** The Association will obtain insurance for Improvements within the Common Area with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

16.4. **Liability Insurance.** The Association will obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages, limits, deductibles, and terms and conditions as the Board of Directors may from time to time determine. Such insurance shall provide coverage to each member of the Board of

Directors, the Association, the Manager, and their respective employees, agents, and all persons acting as agents against any liability to the public or the Owners, their guests, invitees, tenants, agents, and employees arising in connection with the ownership, operation, maintenance, or use of the Common Area, streets and roads and utilities within Community and any other areas under the control of the Association. Declarant will be included in the coverage as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

The Board of Directors will review the coverage limits from time to time, but generally, the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Community, and in no event will such coverage be less than \$1,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

16.5. **Fidelity Insurance.** The Association will maintain fidelity bonds or insurance coverage to protect against dishonest acts on the part of its officers and directors, as well as those responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage will be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

16.6. **Provisions Common to Physical Damage Insurance, Liability Insurance and Fidelity Insurance.** Any insurance coverage obtained by the Association under the preceding provisions of the Article will be subject to the following provisions and limitations:

16.6.1. **Named Insured.** The named insured under any such policies will include Declarant, until all of the Lots in the Community have been conveyed, and the Association has been deeded the Common Areas.

16.6.2. **Owner as Insured.** Each Owner will be an insured person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association.

16.6.3. **Authorized Representative.** The Association, or its authorized representative is hereby appointed as attorney-in-fact for the Owners and will have exclusive authority to negotiate losses on Owners behalf under such policies.

16.6.4. **Personal Liability Insurance of Officers and Directors.** To the extent obtainable at a reasonable cost, appropriate officers' and directors' personal liability insurance will be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in

acting as such officers and directors on behalf of the Association.

16.6.5. **Other Insurance.** The Association may obtain insurance against such other risks of a similar or dissimilar nature as it may deem appropriate with respect to the Association's responsibilities and duties.

16.6.6. **Insurance Obtained by Owners.** Each Owner will have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and Improvement, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board, otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right to subrogation against Declarant, the Board of Directors, the Association, the Manager, and other Owners.

## **ARTICLE 17. ASSOCIATION AS ATTORNEY-IN-FACT**

Each and every Owner hereby irrevocable constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead to deal with the Improvements on the Common Area upon damage or destruction as provided in Article 18 or a complete or partial taking as provided in Article 19 below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or any Owner will constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association will have full and complete authorization, right, and power to make, execute and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner that may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

## **ARTICLE 18. DAMAGE OR DESTRUCTION**

### **18.1 Damage or Destruction of Common Area.**

18.1.1. **Estimate of Damages or Destruction.** As soon as practical after an event causing damage to or destruction of any part of the Common Area, unless the Association, in its sole judgment, believes the cost to repair such damage or destruction will not exceed \$2,000, the Association will obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction," as used in this Article, will mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

18.1.2. **Repair and Reconstruction.** As soon as practical after obtaining estimates, the Association will diligently pursue the completion of the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner will be necessary. Assessments of the Association will not be abated during the period of insurance adjustments and repair and reconstruction.

18.1.3. **Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance will be used for the purpose of repair, replacements, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 13.4., levy, assess and collect in advance from all Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

18.1.4. **Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 13.4. constitute a fund for the payment of repair and reconstruction costs after casualty. It will be deemed that the first money disbursed in payment for the repair and reconstruction costs will be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance will be distributed to the Owners in proportion to the contribution each Owner made as a Special Assessment to the Association under Section 13.4., or, if no Special Assessments were made, the in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 13.3.2., first to any First Mortgagee that has paid any such Assessment pursuant to Section 20.1.2. below, and then to the Owners as their interests appear.

18.1.5. **Decision Not to Rebuild.** If Declarant elects, during the Period of Declarant Control, and at all other times, Owners representing at least 67% of the votes in the Association agree in writing not to repair and reconstruct damage to the Common Area and no alternative Improvements are authorized, then and in that event, the Property will be restored to its natural state and maintained as an undeveloped portion of the Common Area by Association in a neat and attractive condition. Any remaining insurance proceeds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses under Section 13.3.2., first to any First Mortgagee that has pad any such

Assessment pursuant to Section 20.1.2. below, and then to the Owners, as their interests appear.

18.2 **Danger or Destruction Affecting Lots.** In the event of damage or destruction to the Improvements located on any Lot, the Owner thereof will promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced and then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100.00 per day or such other rate imposed by the Board in compliance with the Bylaws, charged against the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine will be a Default Assessment and lien against the Lot as provided in Section 13.5. above.

## **ARTICLE 19. CONDEMNATION**

19.1. **Rights of Owners.** Whenever all or part of the Common Area is taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice of the taking, but the Association will act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

19.2. **Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking will be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvement have been constructed, then, unless, within 60 days after such taking, Declarant so elects, during the Period of Declarant Control, and, at all other times, Owners representing at least 67% of the votes in the Association so agree, the Association will restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the provisions in Article 18 above regarding the disbursements of funds with respect to casualty damage or destruction that is to be repaired will apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement in completed, then such award or net funds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses under Section 13.3.2., first to any First Mortgagee that has paid any such Assessment pursuant to Section 20.1.2. below, and then to the Owners as their interests appear.

19.3. **Complete Condemnation.** If all of the Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration will terminate, and the portion of the condemnation award attributable to the Common Area will be distributed as provided in Section 19.2.

## **ARTICLE 20. MORTGAGEE PROTECTIONS**

### **20.1. First Mortgagees' Rights.**

20.1.1. **Payment of Taxes and Insurance.** First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments will be owed immediate reimbursement from the Association.

20.1.2. **Cure of Delinquent Assessments.** A First Mortgage will be entitled to cure any delinquency of the Owner of the Lot encumbered by the First Mortgagee in payment of Assessments. In that event, the First Mortgagee will be entitled to obtain a release from any lien perfected by reason of such delinquency.

20.2. **Title Taken by First Mortgagee.** Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, will be liable for all Assessments which become due and payable on or after the date title to the Lots vests in the First Mortgagee under the statutes of Idaho governing foreclosures, whether judicial or nonjudicial. Except as provided in the Act, such First Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot which were due and payable prior to the date such title vests in the First Mortgagee.

## **ARTICLE 21. ENFORCEMENT OF COVENANTS**

21.1. **Violations Deemed a Nuisance.** Every violation of the Marks Ranch Homeowners Association, Inc. Documents, including, without limitation, the Declaration, is deemed to be a nuisance and is subject to all the remedies allowed at law or equity against any person responsible for such violation.

21.2. **Compliance.** Each Owner or other occupant of any part of the Property will comply with the provisions of this Declaration and the Marks Ranch Homeowners Association, Inc. Documents as the same may be amended from time to time.

21.3. **Failure to Comply.** Failure to comply with the Marks Ranch Homeowners Association, Inc. Documents will be grounds for an action to recover damages or for

injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

21.4. **Who May Enforce**. Any action to enforce the Marks Ranch Homeowners Association, Inc. Documents may be brought by the Declarant, the Board, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Marks Ranch Homeowners Association, Inc. Documents, then the aggrieved Owner may bring such an action.

21.5. **Nonexclusive Remedies**. All the remedies set forth herein are cumulative and not exclusive.

21.6. **No Waiver**. The failure of the Board of Directors, Declarant, the Manager, or any aggrieved Owner to enforce the Marks Ranch Homeowners Association, Inc. Documents in any one or more instances will not be deemed a waiver of the right to do so for any subsequent violation or of the right to enforce any other part of the Marks Ranch Homeowners Association, Inc. Documents at any future time.

21.7. **No Liability**. No member of the Board of Directors, the Declarant, the Manager or any Owner will be liable to any other Owner for failing to enforce any of the Marks Ranch Homeowners Association, Inc. Documents at any time.

21.8. **Recovery of Costs**. If legal assistance is obtained to enforce any of the provisions of the Marks Ranch Homeowners Association, Inc. Documents, or in any legal proceeding (whether or not suit is brought) for damages or the enforcement of the Marks Ranch Homeowners Association, Inc. Documents or the restraint of violations of the Marks Ranch Homeowners Association, Inc. Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees and legal assistants' fees as may be incurred, or if suit is brought, as may be determined by the court.

## **ARTICLE 22. RESOLUTION OF DISPUTES**

22.1. **Hearing**. If any dispute or question arises between Members, or between Members and the Association, or relating to the interpretation, performance or non-performance, violation, or enforcement of the Marks Ranch Homeowners Association, Inc. Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

22.2. **Arbitration**. All claims, disputes and other matters in question arising out of, or relating to this Declaration, which are not resolved in accordance with Section 22.1.,



or the breach of any provisions of this Declaration shall be decided by binding arbitration in accordance with the Idaho Uniform Arbitration Act. The agreement to arbitrate shall be specifically enforceable under Idaho law. The arbitration shall be held in Coeur d'Alene, Idaho, unless the parties agree otherwise. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matters in questions would be barred by the applicable statutes of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**22.2.1 Selection of Arbitrators.** Each party shall select one arbitrator within ten (10) days of the receipt of demand for arbitration. Within twenty (20) days after receiving a demand for arbitration, the two (2) selected arbitrators shall jointly select a third arbitrator to participate in the arbitration. If either party fails to select an arbitrator within the ten (10) day period, or if the two (2) selected arbitrators fail to agree on a third arbitrator, a party may make an immediate application to the District Court for the First Judicial District of the State of Idaho located in Kootenai County for appointment of a second or third arbitrator, as the case may be.

## **ARTICLE 23. DURATION OF THESE COVENANTS AND AMENDMENT**

23.1. **Term.** This Declaration and any amendments or supplements herein remain in effect until terminated.

23.2. **Amendment.** This Declaration, or any provision of it, may be terminated, modified, amended, or revoked as to the whole or any portion of the Property as follows:

**23.2.1 After Sale of Lots but During Period of Declarant Control.** After the sale of a Lot (excluding a sale to a Successor Declarant) but before the expiration of the Period of Declarant Control, Declarant (including Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owners' rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the Owner's address on the Association's records. Unless the Declarant receives written objection from Owners holding 80% or more of the votes within 30 days of mailing the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Kootenai County, Idaho, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that less than 80% of the Owners objected to the action.

23.2.2 **After the Period of Declarant Control.** After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding 67% or more of the votes in the Association. Any document will be immediately effective upon recording in the records of Kootenai County, Idaho, a copy of such executed and acknowledged by the necessary number of Owner, or alternatively, upon the recording in the records of Kootenai County, Idaho, of a copy of the document together with a certificate signed by an officer of the Association stating that the required number of consents of Owners were obtained.

23.3. **Declarant's Approval.** No termination, extension, modification, or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of the Declarant is first obtained.

23.4. **Effect of Amendments.** Amendments made pursuant to this Section will be appurtenant to each Lot and shall inure to the benefit of and be binding upon all Owners, their families, tenants, guests, invites and employees, and their respective heirs, successors, and assigns. Joinder of the First Mortgagees shall not be required in order to effect an amendment.

## **ARTICLE 24. MISCELLANEOUS PROVISIONS**

24.1. **Severability.** This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provisions of this Declaration found to be invalid or unenforceable by a court of competent jurisdiction will be ineffective to the extent of such invalidity or unenforceability without affecting the remainder of this Declaration, which shall continue in full force and effect the same as if the invalid or unenforceable provisions had not been included in the first instance.

24.2. **Construction.** In interpreting words in this Declaration, unless the context otherwise provides or requires, the singular will include the plural, the plural will include the singular, and references to the masculine, the feminine, or the neuter each include each other.

24.3. **Paragraph Headings.** Paragraph headings are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration.

24.4. **No Waiver.** No waiver by the Association or the Board shall be inferred from the failure of either, at any time or under any conditions, to give notice of default or to exercise or delay in exercising any right or remedy hereunder. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association. The fact that a condition or provision of this Declaration may

have been once waived does not preclude future enforcement of that condition or provision.

24.5. **Limitation of Liability.** Neither the Declarant nor the Association nor any partner, director, officer, manager, or member of either will be liable to any party for any action or for any failure to act with respect to any matter arising by, through, or under the Marks Ranch Homeowners Association, Inc. Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law in the Articles of Incorporation and Bylaws.

24.6. **Conflicts Between Documents.** In case of conflict between this Declaration and or the Bylaws, this Declaration will control. In case of conflict between the Organizational Documents and the Bylaws, the Organizational Documents will control.

24.7. **Assignment.** Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be indemnified, the particular right being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Recorder of Kootenai County, Idaho.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

DECLARANT:

MARKS RANCH, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Kootenai        )

This record was acknowledged before me on \_\_\_\_\_,  
2024, by \_\_\_\_\_ as  
\_\_\_\_\_ of Marks Ranch, Inc.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_