



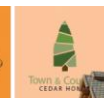
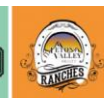
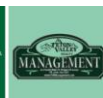
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DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR BEAR CREEK ESTATES

TETON COUNTY, IDAHO

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made this 2nd day of MARCH, 1984, by TETON VALLEY RANCHES, INC., a Nevada corporation qualified to do business in the State of Idaho, with its principal place of business of 312 East South Temple, Salt Lake City, Utah (hereinafter designated "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of real property, located in the County of Teton, State of Idaho, which is described in Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant desires to enhance and protect the value, desirability and attractiveness of the real property described in Exhibit A, and any additional real property which may be annexed thereto pursuant to this Declaration, by establishing the following covenants, conditions, restrictions, and easements; and

WHEREAS, Declarant intends to create a non-profit Idaho corporation, to be known as Bear Creek Estates Homeowners Association, to maintain and oversee the use of the Common Area (as defined below), administer and enforce this Declaration, and collect and disburse funds pursuant to the provisions set forth below.

NOW, THEREFORE, Declarant hereby covenants and declares that the real property described in Exhibit A and such additions thereto as may hereafter be made pursuant to Article IX hereof shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements:

ARTICLE I

DEFINITIONS

The following terms, as used throughout this Declaration, and any supplementary declaration recorded pursuant to Article IX hereof, shall have the following meanings:

"Association" shall mean and refer to Bear Creek Estates Homeowners Association, and Idaho nonprofit corporation and its successors and assigns, which corporation will be created by Declarant.

"Board" or "Board of Trustee" Shall mean the Board of Trustees of the Association, as established by the By-Laws of the Association.

"Common Area" shall mean all areas so designated on any current or future recorded plat of the Bear Creek Estates, including any facilities, improvements and landscaping thereon, as well as any streets reflected on

said plat which have not been dedicated to any public entity, and any street fixtures on such streets.

"Conveyance" shall mean and refer to conveyance of a fee simple title to any Lot.

"Declarant" shall mean and refer to Teton Valley Ranches, Inc., its successors and assigns.

"Deed of Trust" shall mean the conveyance of any lot or other portion of the Estates to secure the performance of an obligation.

"Estates" shall mean and refer to that certain real property described in Exhibit A and such additions thereto as hereafter may be made subject to this Declaration, and excluding any real property that hereafter may be withdrawn from the Bear Creek Estates pursuant to this Declaration.

"Lot" shall mean any parcel of property shown as a separate numbered lot on the recorded plat of the Bear Creek Estates, with the exception of the Common Area.

"Member" shall mean and refer to every person or entity who holds membership in the Association.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract sellers and buyers, but excluding those having such interest merely as security for the performance of an obligation.

ARTICLE II

MEMBERSHIP

2.01. Membership. Every Owner shall be a Member of the Association, and, as such, shall be subject to the provisions of the Articles of Incorporation and the By-Laws of the Association, as well as the provisions of this Declaration. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of Lot shall be the sole qualification for membership.

2.02. Transfer. Memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of a Lot, and then only to the purchaser or Deed of Trust holder of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his name to a purchaser of his Lot, the Association shall nevertheless have the right to record the transfer upon the books of the Association.

2.03. Voting Rights. All Members, with the exception of the Declarant, shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 2.01. Notwithstanding the foregoing, when more than one person or entity holds such interest in any Lot, all such persons or entities shall be members, provided, however, that the vote for such Lot shall be exercised as such interest holders determine among themselves, but

in no event shall more than one (1) vote be cast with respect to any Lot. In the event that such joint interest holders are unable to agree among themselves as to how such vote shall be cast, such interest holders shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot. The Declarant shall be entitled to three (3) votes for each Lot in which it holds an interest. All voting rights shall be subject to the restriction and limitations provided herein and in the Articles of Incorporation and By-Laws of the Association.

ARTICLE III

THE COMMON AREA: PROPERTY RIGHTS AND MAINTENANCE

3.01. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, if any, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, or for any period during which any infraction of this Declaration continues, it being understood that any suspension for either non-payment of any assessment or breach of this Declaration shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, and to mortgage said property, provided that the rights of any mortgagee shall be subordinate to the right of the Members.

(d) The right of the Association to allow parties that are not Members of the Association to use the Common Area under such terms and conditions as may be established by the Association.

(e) The right of the Association to dedicate or transfer all or part of the Common Area to any public entity, provided that no such dedication or transfer shall be effective unless made pursuant to a two-thirds majority vote of Members (including proxies entitled to vote) present at a meeting duly called for such purpose, and unless 10 days prior written notice of the proposed action is sent to every Member. The Declarant reserves the right, however, to grant easements for utility purposes over any part of the Common Area and designated utility easement areas without obtaining the consent or approval of the Association or its Members.

(f) The right of Declarant (and its agents and representatives) to the non-exclusive use of the Common Area for display and exhibit purposes in connection with the sale of any real property, which right Declarant hereby reserves. No such use by Declarant or its agents or representatives shall otherwise restrict the Members in their use and enjoyment of the Common Area.

3.02. Delegation of Use. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants or contract purchasers who reside on the Estates.

3.03. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment of his Lot other than by sale thereof.

3.04. Title to the Common Area. The Declarant may retain legal title to the Common Area, in the event it designates any portion of the Estates as Common Area, until such time as it has completed initial improvements, if any, thereto and until such time as, in the sole judgment of the Declarant, the Association is able to maintain the same. Notwithstanding the foregoing, the Declarant hereby covenants for itself, its successors and assigns, that in the event it designates any portion of the Estates as Common Area, it will, not later than seven (7) years after the filing of any subdivision plat designating such Common Area, convey fee simple title or rights-of-way to such Common Area to the Association, free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration.

3.05. Maintenance. Until or unless all or any part of the Common Area (specifically including without limitation any streets as reflected on the current or future recorded plat of the Bear Creek Estates which have not already been so dedicated) is dedicated to any public entity, the Association shall be responsible for maintenance of the Common Area.

ARTICLE IV

ARCHITECTURAL CONTROL

4.01. Appointment of Design Committee. The Declarant shall appoint a Design Committee of not less than three (3) members. In the event of the death or resignation of any member of the Committee at any time after five years from the date hereof, the Board, with the approval of the Declarant, shall appoint such member's successor, provided, however, that prior to such time the successor shall be appointed by the Declarant.

4.02. Approval by Design Committee. No major improvement, including any dwelling structure, garage, shed, greenhouse, wall, fence or other structure, and major exterior alterations, additions or changes to any such improvement, shall be commenced, erected or maintained, and no major planting or removal of trees, shrubs, bushes or toher foliage, or any other major alteration of landscaping, shall be commenced, upon any Lot unless a written application for such action including two complete sets of plans and specifications, together with a Fifty Dollar (\$50.00) processing fee, is submitted to and approved by the Design Committee. At a minimum, such plans and specifications shall contain, to the extent applicable, the following:

(a) A legal survey (if the proposed improvements include a fence or wall located on a Lot property line, or if they include a building);

(b) A site plan, showing all existing and proposed improvements, including:

- (i) property lines
- (ii) setback lines
- (iii) existing and proposed site grading
- (iv) existing and proposed landscape elements
- (v) existing and proposed fence landscape
- wall locations and heights
- (vi) primary building footprint
- (vii) accessory building footprint(s)
- (viii) driveway location and intersection with street
- (x) water and septic tank system layout and design

(c) Floor plans of each floor level of primary building and/or accessory buildings (as permitted pursuant to Section 5.01(c) herein);

(d) Elevations of all sides of buildings and fences/landscape walls showing design elements, wall and roof materials, heights of all structures and pitch of roofs;

(e) Material And Color Board showing all exterior wall, roof and fence/landscape wall materials and colors to be used;

(f) Proposed time schedule for construction commencement and completion;

(g) Any other information requested by the Design Committee in writing within 30 days following the Design Committee's receipt of an application.

4.03. Standards for Approval. The Design Committee shall not approve any application submitted pursuant to Section 4.02 above unless, in the opinion of the Design Committee, the improvement is properly designed and the design, contour, materials, shapes, colors and general character of the improvement is in harmony with existing structures on Lot and on neighboring Lots and in harmony with the surrounding landscape, the improvement is designed and located upon the lot so as to minimize the disruption to the natural land forms and vegetation cover, and any changes in landscaping utilize local or locally adapted plant materials conforming with the natural character of the creeks, mountains and valleys in Teton County, Idaho. The Design Committee shall have the right to disapprove any application if such application, and the plans and specifications submitted with it, are not of sufficient detail, or are not in accordance with the provisions of this Declaration, or for any other reason the Design Committee may deem in the best interests of the Association or the Estates.

4.04. Procedure for Approval; Disapproval Binding. In order to obtain approval of any application submitted pursuant to Section 4.02 above, the Owner must submit such additional details and information with relation to the contemplated action as the Design Committee shall reasonably request. If the Design Committee fails to approve or disapprove such application within thirty (30) days after receiving said application or after receiving any additional details or information, that application shall be deemed to have been automatically approved. In the event of disapproval, the Design Committee will inform the applicant Owner in writing of the reasons for such decision and any possible changes the Owner may make in his application in order to gain future approval. If at any time the Design Committee determines it in the best interest of the Estates that any Lot Owner employ professional assistance, to design any improvement involved in the proposed work, such assistance, as approved by the Design Committee, shall be obtained by the Owner. Upon approval or disapproval or an application, one set of plans and specifications shall be returned to the Lot Owner and one set shall be retained by the Design Committee. The decision of the Design Committee shall be final, binding, and conclusive on all of the parties affected.

4.04. Non-Waiver. The approval of the Design Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Design Committee under these restrictions, including the granting or variances pursuant to Section 4.08 herein, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

4.06. Design Committee Rules. The Design Committee may, from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as "Design Committee Rules" which, among other things interpret or implement the provisions of Section 4.02. A copy of the Design Committee Rules as they may from time to time be adopted, amended or repealed, shall be available from the Design Committee.

4.07. Liability. Neither the Design Committee nor any of its members or agents shall be liable to any Owner or third person for any damage, loss or prejudice suffered or claimed an account of (a) the approval or disapproval of any application, plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved applications, plans, drawing and specifications, (c) the development or manner of development of any property within the Estates. The Design Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or performance with building or other codes.

4.08. Variances. The Design Committee may, in its sole discretion, by an affirmative vote of a majority of its members, allow reasonable variances as to any of the covenants and restrictions contained in this Declaration, on such terms and conditions as the Design Committee shall require. Such variances must be evidenced in writing, must be signed by a majority of the members of the Design Committee, and shall become effective upon recordation in the office of the County Recorder of Teton County. If such variances are granted, no violation of any of the provisions of this Declaration or any Supplementary Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted.

4.08. Design Committee Meetings. The Design Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Committee may from time to time by resolution unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the Design Committee, except the granting of variances pursuant to Section 4.08 herein. In the absence of such designation, the vote of any two members of the Design Committee, or the written consent of any two members of the Design Committee taken without a meeting, shall constitute an act of the Design Committee.

4.10. General Provisions. The members of the Design Committee shall not be entitled to any compensation for services performed pursuant to this Declaration, but shall be entitled to reimbursement for expenses, such as travel expenses, incurred in performing such services. The Design Committee shall be entitled to employ and provide compensation for such professionals as it deems necessary to assist it from time to time in performing its duties. The powers and duties of such Committee shall be in force for a period of forty (40) years from the date of the recording of this Declaration. Such powers and duties shall continue following the forty year period until a written instrument has been executed and duly recorded by the then record Owners of majority of the Lots appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee. Said representatives may be the members of the Board of Trustees of the Association.

ARTICLE V

USE RESTRICTIONS

5.01. Land Use and Building Type. The primary use of all Lots shall be for single-family residential purposes, provided, however, that nothing contained in this Declaration shall prevent the rental of any Lot by the Owner thereof for residential purposes, on either a short or long-terms basis. With the exception of those accessory buildings and structures set forth in Section 5.01(c) below, no building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed thirty (30) feet in height.

(a) Single-story dwellings erected or placed on any Lot shall contain at least 1,000 square feet of floor space excluding garage, carpet and patio.

(b) Multiple-story dwellings shall contain at least 700 square feet of floor space on the ground floor level, excluding garage, carpet and patio.

(c) All single-family dwellings may include the following accessory buildings and structures not used for residential occupancy:

(i) A private garage for the storage of not more than four automobiles or a carport for storage of not more than three automobiles;

(ii) Greenhouses for private use only;

(iii) Private swimming pools (indoor and outdoor);

(iv) Pergolas and arbors; and

(v) Horse stables.

5.02. Building Setback. No building shall be located on any Lot nearer than thirty (30) feet to the front, rear, or side Lot line.

5.03. Height Requirements. No building shall be erected to a height greater than thirty (30) feet above a point representing the average existing grade at the building footprint.

5.04. Recontouring of Lot. No overlot recontouring in excess of two (2) vertical feet shall be permitted without the written approval of the Design Committee. Recontouring to create landforms in conjunction with landscaping elements building siting and screening is encouraged. Land forms and berming shall not alter the general overlot drainage by channeling onto any adjacent public or private property. After construction, any topsoil stripping or recontouring shall be revegetated. Recontouring in excess of two (2) vertical feet shall not be permitted without prior written approval of the Design Committee, which approval shall be given only after submittal of a landscape plan showing trees, shrubs, and ground vegetation reestablishment.

5.05 Dwelling Construction and Fence Restrictions. In order to promote a harmonious community development and protect the character of the Estates, the following guidelines shall be applied:

(a) Dwelling style, design, alterations or additions will conform to standards determined by the Design Committee.

(b) The primary exterior walls shall be of one or more of the following materials:

- (i) cedar shingles
- (ii) natural wood siding
- (iii) log or timber
- (iv) stone
- (v) stucco
- (vi) concrete
- (vii) brick
- (viii) glass

In addition, the primary exterior walls may be of aluminum or vinyl siding, provided that the specific written approval of the Design Committee is first obtained.

(c) Roof materials shall be one of the following:

- (i) cedar shakes
- (ii) cedar shingles
- (iii) heavyweight asphalt shingles
- (iv) flat shingle-type concrete or clay tile
- (v) slate
- (vi) sod

Roof slopes of less than a 4 in 12 pitch shall not be permitted without the specific written approval of the Design Committee.

(d) The primary exterior walls and roof colors shall be subdued in the earth-tone range. Samples of all finish exterior wall, trim and roof materials showing final color and texture shall be submitted to the Design Committee for approval.

(e) The primary materials for fences or landscape walls shall be of materials listed in Section 5.05(b) above. Chain link or wire mesh are not allowed unless specifically approved in writing by the Design Committee. Fences or landscape walls shall not exceed 6 feet in height. Fences or landscape walls greater than 24 inches in height shall be visible-through if located within 30 feet of the Lot property line. Notwithstanding the foregoing, no fence, wall hedge or other barrier shall be placed within 12 feet of the bank of any stream, creek or other waterway which may run from time to time over, across or through any Lot.

(f) All accessory buildings and structures, as permitted in Section 5.01(c) above, shall, to the extent applicable, comply with the provisions of Sections 5.05(a) through 5.05(e) herein.

(g) Location of utility pipes or equipment, air conditioning equipment, etc. must be placed in a service yard, screened by approved plantings or fencing so as to be concealed from the view of adjacent properties and streets.

(h) Any site lighting used for any purpose shall be designed to reflect light away from adjacent residences and away from the vision of passing motorists.

5.06 Temporary Structures. No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, provided, however, that occasional use of a trailer, mobile home or tent for guests when the primary residence is occupied will be permitted. No temporary structure or non-permanent outbuilding shall ever be placed or erected on any Lot except with the approval of the Design Committee and only then during construction. No dwelling house on any lot shall be occupied in any manner prior to its completion without a written approval of the Design Committee.

5.07 Time Restrictions on Construction. The construction of all single family dwellings shall be completed within a period of eighteen (18) months following commencement of construction. The construction of all accessory buildings and structures, as permitted in Section 5.01(c) herein, shall be completed within one year following commencement of construction.

5.08 Sewage Disposal. Until such time as a central sewage disposal system may be made available, the Owner of each Lot shall provide and maintain a septic tank or tanks sufficient to meet all sewage disposal needs of said Lot. All septic tanks shall be in compliance with state law at all times, and shall be installed only after approval by all governmental authorities having jurisdiction thereof. No individual sewage disposal system, other than a septic tank system shall be permitted on any Lot and outhouses, outbuildings and other similar sewage disposal systems are hereby specifically forbidden. Nothing contained herein shall abrogate the Declarant, the Association or any other party to construct and maintain a central sewage disposal system within the Estates for the benefit of any Lot.

5.09 Water Wells. Subject to any applicable laws or regulations, and any required permits or approvals by any governmental authority having jurisdiction thereof, the Owner of each Lot may construct and maintain a water well or wells sufficient to meet the water needs of said Lot.

5.10 Ancillary Uses. Subject to all other provisions of this Declaration and to any applicable zoning ordinances, whether now existing or hereinafter enacted, of any governmental authority having jurisdiction thereof, any Lot may be used for business purposes which are merely ancillary to and compatible with the primary use of the Lot as a single family residence, provided that: (a) the primary use of such Lot continues to be for single family residential living purposes only, (b) the business or businesses are such that they are capable of being unobtrusively operated on the Lot, (c) an appreciable increase in traffic within the Estates does not occur as a result of customers coming upon the Lot for such business purposes, (d) the operation of any such business or businesses is conducted exclusively within the residence building and/or any accessory buildings or structures, as permitted pursuant to Section 5.01(c) herein, (e) signs advertising such business satisfy the restrictions of Section 5.16, below, and (f) the general character and appearance of the Lot and any improvements thereon does not become other than that of a Lot used exclusively for single family residential purposes. Notwithstanding the foregoing, the Declarant or its duly authorized agent may use any Lot owned by Declarant as a sales office, sales model, or property office or rental office, and, furthermore, any Owner or his duly authorized agent may rent or lease said Owner's residential building from time to time.

5.11 Sight Distance at Intersection. No fence, wall, hedge or shrub planting which obstructs sight-lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within

the triangular area formed by the street property lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines.

5.12 Underground Utility Lines. All water, gas, electrical, telephone and television cables, other electronic pipes and lines and all other utility lines within the Estates must be buried underground and may not be exposed above the surface of the ground. All fuel tanks, water tanks, or similar storage facilities shall be constructed as an integral part of the residence structure, installed or constructed underground, or screened by approved planting or fencing so as to conceal them from the view of neighboring street, Lots, and Common Areas.

5.13 Service Yards. All equipment, permanent storage areas for boats, mobile homes or trailers, service yards or storage piles on any portion of any Lot shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring streets, Lots and Common Area.

5.14 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, rubbish, garbage or other waste shall not be kept upon any Lot except in covered sanitary containers. Such containers shall be kept within an enclosed structure or otherwise appropriately screened from view. No rubbish, trash, papers, junk or debris shall be burned upon any lot except that trash may be burned inside homes that are properly equipped with inside incinerator units.

5.15 Vacant Lots. All Owners possessing vacant Lots shall be responsible for keeping such Lots clean in appearance and free from all refuse and potential fire hazards. No vacant Lot shall be used for storage of any kind except during the construction period.

5.16 Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than two square feet, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

5.17 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other similar household pets, and no more than three (3) horses, may be kept provided that they are not kept, bred, or maintained for any commercial purposes, and further provided that they not be allowed to leave the Lot of their owner unless they are under the immediate and direct supervision and control of said owner. Such owner shall exercise proper care and control of their animal or animals to prevent them from becoming a nuisance. For purposes of this Section 5.17, "nuisance" means any noisy animal, any vicious animal or any animal which chews, tears, digs in or scratches, litters or soils, destroys or in any manner enters clothing, washing, garbage containers, flower beds, lawns, trees, shrubbery, or any other personal or real property within the Estates. Excessive, continued or untimely barking, molesting passersby, chasing vehicles, habitual attacking of other animals, or trespassing upon private property in such a manner as to damage real or personal property shall also be deemed a nuisance.

5.18 Vehicles; Parking. Vehicles of any description shall not be operated on any lands with the Estates except on streets, private driveways and designated Common Area routes. Driveways and other parking areas shall be designed so as to permit sufficient off-street parking in order that the flow of street traffic shall not be obstructed or impeded and that snow removal may be facilitated.

5.19 No Hazardous Activities. No activities shall be conducted on any Lot, and no improvements shall be constructed on any Lot, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Estates, and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within safe and well-designed interior or exterior fireplaces.

5.20 Maintenace of Property. Every Owner of a Lot by the acceptance of a deed for the same, or by acceptance of title as devisee of heir, covenants that he, she or it will not permit the Lot or any improvements (including, but not limited to the grass, shrubs, trees, driveways, walks and fences) thereon to be otherwise maintained than in good repair and in a safe and neat condition. In the event any Owner shall fail to so maintain his Lot, and such neglect, in the judgement of the Board of Trustees, should result in a condition of unsightliness adversely affecting the value or enjoyment of neighboring Lots, or constituting a hazard to persons or property, the Board of Trustees, or the Design Committee, may give notice of such conditions to the Owner of the Lot, demanding that such condition be abated within sixty (60) days from the date of such notice. If the Lot Owner does not rectify the condition at the end of such period, the Association may cause such work to be performed as is necessary to rectify the condition. The cost of such work shall be assessed against the Lot upon which the servies are performed and shall be added to and become part of the regular assessment to which such Lot is subject under Article VI herein, and, as part of such regular assessment, it shall be a lien and obligation of the Owner in all respects as provided in Acticle VI herein. For the purpose of performing such necessary maintenace work, the Association, through its authorized agents, servant, employees, or contractors, shall have the right to enter upon any Lot, at reasonable hours, except Sundays and Legal Holidays.

5.21 No Unsightliness. No unsightliness shall be permitted upon any Lot. Without limiting the generality of the foregoing, (a) any unsightly structures, facilities, equipment, tools, vehicles other than automobiles, objects of conditions shall be enclosed within a approved building or appropriately screeded from view, except equipment and tools when in actual use for maintenance or repairs, and vehicles temporarily in use on the Lot as permitted under Section 5.06 above, (b) no vehicle, boat or equipment shall be constructed reconstructed or repaired upon any Lot except in service yards meeting the requirements of Section 5.13 herein, (c) no vehicle, boat or equipment shall be abandoned upon any Lot, and (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any Lot except in service yards meeting the requirements of Section 5.13 herein.

5.22 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

5.23 Weeds. The Owner of each Lot shall control the spread of and eradicate noxious weeds on such lot, and shall otherwise comply with any applicable ordinance, law, rule or regulation pertaining to the removal and control of noxious weeds. Noxious weeds shall mean those plants which are injurious to public health, crops, livestock, land or other property.

5.24 Re-Subdivision; Change in Lot Dimensions. No Lot shall be re-subdivided, and only one single family residence shall be constructed or allowed to remain per Lot. Notwithstanding the foregoing, Declarant reserves the right to change at any time the bounds and area of any Lot owned by it provided such change does not adversely affect the access to any Lot sold to a third party, and that such change has been approved and is in accordance with the various county, state and/or federal regulations controlling the Estates. Nothing contained in this Section 5.24 shall prevent the transfer of sale of any Lot to more than one person to be held by such persons as tenants-in-common, joint tenants, tenants by the entirety, or as community property. In addition, nothing contained in this Section 5.24 shall prevent the Owner of two or three adjoining lots, which share a common boundary or boundaries of at least 100 feet, from combining such lots into one Lot for purposes of this Article V only.

5.25 Zoning Regulations. The Estates, and any portion thereof, shall never be occupied or used by or for any building or purpose or in any manner which is contrary to any applicable zoning regulations.

5.26 Private Area; Uses, Restrictions. The Association, the Board, the Design Committee and their duly authorized agents, shall have the right, at any time, and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon any private area for the purpose of (1) removing any improvement constructed, reconstructed, ~~refinished~~, altered, or maintained upon such private area in violation of this Declaration, (2) restoring or otherwise reinstating such private areas, and (3) otherwise enforcing without any limitation, all of the restrictions set forth in this Declaration. No improvements, excavation or other work which in any way alters any private area from its natural or improved state existing on the date such private area was first sold shall be made or done except upon strict compliance with this Declaration.

5.27 Rules and Regulations. No Owners shall violate the rules and regulations for the use of the Lots as may be adopted from time to time by the Association. No such rules and regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot by the Owner thereof.

ARTICLE VI

ASSESSMENTS

6.01 Creation of the Lien and Personal Obligation of Assessments. Each member is deemed to covenant and agree to pay to the Association all regular and special assessments as herein provided, whether or not such covenant and agreement is expressed in any real estate contract or deed to any Lot. Such assessments, together with any interest or collection costs, as provided herein, shall be a continuing lien upon the Lot against which each such assessment, together with any interest or collection costs, as provided herein, shall be a continuing lien upon the Lot against which each such assessment is made, and shall be the personal obligation of each Lot Owner at the time such assessments fall due. Such personal obligation shall not pass to any Lot Owner's successors unless expressly assumed in writing by such successors. No

membership may be transferred to a subsequent purchaser until all assessments, interest penalties and other charges that are due have been paid in full to the Association.

6.02 Purpose of Assessments. The assessments levied by the Association shall be used for promoting the recreation, health, safety, pleasure and welfare of the Members, and for the improvement and maintenance of the Common Area.

6.03 Regular Assessments. At least thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the current operation and maintenance costs and future needs of the Association. Regular assessments shall be based upon such estimates. The Board shall cause written notice of the amount and due date of a regular assessment to be sent to every Owner. If the estimate of the Board proves inadequate for any reason, including nonpayment by any Owner or Owners, the Board may, at any time, levy a further assessment upon each Lot Owner.

6.04 Special Assessment for Capital Improvements. In addition to the regular assessments, the Association may levy special assessments to fund, in whole or in part, the cost of acquiring additional Common Area or the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of all the votes eligible to be cast by all of the Members, and the assent of a majority of all the non-Declarant votes eligible to be cast, whether cast in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. Upon such approval, the Board shall cause written notice of the amount and due date of such special assessment to be sent to every Owner.

6.05 Uniform Rate of Assessment. Both regular and special assessments shall be fixed at a uniform rate for all Lots and may be collected monthly or at such other times as the Board may determine.

6.06 Certification of Payment. Upon request and payment of a reasonable charge, the Association shall furnish to any Owner a certificate, signed by an officer of the Association, stating whether the assessments on a specified Lot have been paid, and the amount of delinquency, if any. Such certificate shall be conclusive evidence of the payment or non-payment of such assessment.

6.07 Exempt Property. All properties dedicated to and accepted by a local public authority, all properties owned by charitable or nonprofit organizations exempt from taxation under Idaho law, and the Common Area, if any, shall be exempt from the assessments created under this Declaration.

6.08 Non-Payment of Assessments. Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. Any assessment not paid within fifteen (15) days after its due date shall be subject to a \$20.00 late fee. Any such assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or bring an

action to foreclose the lien (provided for in Section 6.01 hereof) against the Lot, and there shall be added to the amount of such assessment and interest, the late fee, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include reasonable attorneys' fees and court costs. Each Owner vests in the Association or its assigns; the right and power to bring all actions, including lien foreclosure, at law or in equity against all proper parties for the collection of delinquent assessments.

(a) Foreclosure Sale. Any lien foreclosure and subsequent sale provided for above shall be conducted in accordance with the laws of the State of Idaho relating to liens, mortgages, and/or trust deeds. For the purpose of the foreclosure of the lien as a trust deed, each Owner hereby grants, abrogates, sells and conveys to First Security Bank of Idaho N.A., as trustee, with the power of sale, for the benefit of the Association, as beneficiary, all of said Owner's right, title and interest in and to said Owner's Lot or Lots for the purpose of securing the payment of all assessments becoming due pursuant to the provisions of this Article VI. The Association, through its duly authorized agents, shall have the power to bid on any Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(i) Curing of Default. Upon timely curing, under Idaho law, of any default for which the Association has filed a notice of lien, the officers of the Association are hereby authorized to file or record a release of such notice, provided that the defaulting Owner shall first pay to the Association the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

(ii) Subordination of Assessment Liens. If any Lot is subject to both an assessment lien, as created under this Declaration, and a lien of a Deed in Trust, the foreclosure of one lien shall not affect or impair the other lien, except that all charges which have accrued under the assessment lien up to the time of foreclosure (or acceptance of a deed in lieu of foreclosure) shall be subordinate to the lien of the Deed of Trust, with the foreclosure-purchaser (or grantee under a deed in lieu of foreclosure) taking title to the Lot free of the assessments and associated charges which have accrued up to the time of foreclosure (or granting of a deed in lieu of foreclosure), but subject to such assessments and charges accruing subsequent to foreclosure (or granting of a deed in lieu of foreclosure).

6.09 Cumulative Remedies. The assessment lien and the right to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

ARTICLE VII

EASEMENTS

7.01 Recreational Easements. In addition to any easements set forth in the recorded Bear Creek Estates subdivision plat, easements for purposes of ingress and egress on 12 feet of either bank of all streams, canals and other waterways running over, across or through the Lots are hereby reserved by the

Declarant for the benefit, use and recreational enjoyment of the members of the Association. No Lot Owner shall be permitted to take any action which would deny or impede access to such waterway by any Member. No Lot Owner shall be permitted to alter or otherwise affect the normal or flood flow of water through any waterway running over, across of through said owner's lot as such water now, or from time to time, does flow. As provided in Section 5.05(e) hereof, no Lot Owner shall construct a fence, wall or other similar barrier within 12 feet of any bank of such waterway running over, across or through said Lot.

7.02. Utility Easements. Easements for installation and maintenance of utilites, including without limitation, water, electricity, gas telephone and cable television lines and all other utility lines and connections and drainage facilities, are hereby reserved by Declarant for the benefit of the Association and its Members over, upon, across and under all streets and other Common Area within the Estates and the front, rear and side five feet of each Lot. Within these easements, no structure, planting or other materials shall be place or permitted to remain which may damage or interfere with the installation and maintenance of utilites, or which may change the direction of flow of drainage channels in the easements. The easement area of each Lot and all improvements in or on it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Wherever any such utilities are installed within the Estates, which utilities or any portion thereof lie in or upon Lots owned by Owners other than the Owner of a Lot served by said utilities, the Association and the Owners of any Lot served by said utilites shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter, or to have the utility companies enter, upon the Lots in or upon which said utilities or any portion thereof lie to repair, replace and generally maintain the same as and when necessary.

ARTICLE VIII

DUTIES AND POWERS OF THE ASSOCIATION

In addition to the duties and powers enumerated in this Declaration and in its Articles of Incorporation and By-Laws, the Association shall:

- (a) Own, maintain and otherwise manage the Common Area and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Area.
- (c) Have the authority to obtain, for the benefit of the Common Area, all water, gas and electric services and refuse collection.
- (d) Grant easements where necessary for utilities over the Common Area to serve the Common Area and the Lots.
- (e) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- (f) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.
- (g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board.
- (h) Have the power to adopt, amend and repeal rules and regulations governing the use of the Lots and the Common area.
- (i) Enforce the covenants, conditions, restrictions and easements set forth in this Declaration.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTY

9.01. Annexation by Declarant. Declarant may without the approval or consent of the Association or any owner or Member, annex any real property to the Estates, and thus cause such additional real property to become subject to this Declaration and to the jurisdiction of the Association, provided that:

(a) Prior to conveying title to any lots within the real property to be annexed, fee simple title or right-of-way to any proposed common area within such property shall be conveyed to the Association subject only to current real property taxes, which taxes shall be prorated to the date of conveyance, and easements, covenants, conditions and restrictions then of record.

(b) A Supplementary Declaration of Covenants, Conditions, Restrictions and Easements described in Section 9.03 herein, shall be executed and recorded by Declarant.

9.02. Other Annexations. Upon approval in writing of the Association, pursuant to a two-thirds vote of Members (including proxies who are entitled to vote) present at a meeting duly called for the purpose contemplated by this Section 9.02, any owner of real property who desires to add such property to the plan of this Declaration and to subject such property to the Jurisdiction of the Association, may file of record a Supplementary Declaration, as described in Section 9.03 herein.

9.03. Supplementary Declarations. The additions authorized under Sections 9.01 and 9.02 herein shall be made by filing of record a Supplementary Declaration of Covenants, Conditions, Restrictions and Easements with respect to such additional property which shall extend the operation and effect of this Declaration to such additional property.

Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions, restrictions and easements contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration. ~~In no event, however, shall any such Supplementary Declaration.~~ In no event, however, shall any such Supplementary Declaration revoke, modify or add to the provisions of this Declaration as to the existing property.

The recordation of a Supplementary Declaration pursuant to this Article IX shall constitute and effectuate the annexation of real property described therein, making such real property subject to this Declaration and subject to the jurisdiction of the Association, and thereafter all the owners of lots within such real property shall automatically be Members of the Association.

9.04. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, as provided in the Association's Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated associations or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions, restrictions and easements established by this Declaration within the existing property, together with the covenants and restrictions established upon any other property, as one plan.

ARTICLE X

GENERAL PROVISIONS

10.01. Enforcement. The Association, any Owner, or Teton County, Idaho, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, easements and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding any provision contained in this Declaration to the contrary, only Declarant, the Association, the Board, or the duly authorized agents of any of them may enforce by self-help is proceeded by notice to the Owner.

10.02. Term. The provisions of this Declaration shall run with they land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time such provisions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said provisions in whole or in part.

10.03. Notice. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

10.04. Limited Liability. Neither Declarant, the Association, the Board, the Design Committee, nor any member, agent, representative, officer, director, or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter pertaining to or contemplated by this Declaration.

10.05. Mortgage Protection Clause. No breach of covenants, conditions or restrictions herein contained nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Deed of Trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure of trustee's sale, or otherwise.

10.06. Interpretation. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine. The captions, headings and tabel of contents contained in this Declaration shall have no effect on its interpretation. This Declaration shall be construed and governed in accordance with the laws of the State of Idaho.

10.07. Severability. Invalidation of any provision herein contained by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

