

ADA COUNTY RECORDER Phil McGrane
BOISE IDAHO Pgs=67 LINDSAY WHEELER
WINSTEAD PC - AUSTIN

2022-084168
10/04/2022 02:17 PM
\$208.00

After Recording Return To:

Robert D. Burton
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
email: rburton@winstead.com

VALOR
TRACT DECLARATION
[RESIDENTIAL]

City of Kuna, County of Ada, State of Idaho

Declarant: M3 ID FALCON CREST, LLC, an Arizona limited liability company

NOTE: NO PORTION OF THE ANNEXABLE LAND DESCRIBED ON EXHIBIT "A" OF THE COVENANT (DEFINED HEREIN) IS SUBJECT TO THE TERMS OF THIS TRACT DECLARATION UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE ANNEXABLE LAND IS RECORDED IN THE OFFICIAL RECORDS OF ADA COUNTY, IDAHO, IN ACCORDANCE WITH *SECTION 10.04* BELOW.

Cross reference to that certain Valor Maintenance Covenant, recorded as Document No. 2022-017810 in the Official Records of Ada County, Idaho.

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This Valor Tract Declaration [*Residential*] (the “**Tract Declaration**”) is made by **M3 ID FALCON CREST, LLC**, an Arizona limited liability company (the “**Declarant**”), and is as follows:

RECITALS

A. Declarant previously Recorded that certain Valor Maintenance Covenant, recorded as Document No. 2022-017810 in the Official Records of Ada County, Idaho (the “**Covenant**”).

B. Pursuant to the Covenant, the Declarant served notice that portions of the Annexable Land may be made subject to one or more Tract Declarations upon the Recording of one or more Notices of Applicability in accordance with *Section 12.05* of the Covenant, and once such Notices of Applicability have been Recorded, the portions of the Annexable Land described therein will constitute a Tract and will be governed by and fully subject to the Tract Declaration in addition to the Covenant.

C. Upon the further Recording of one or more Notices of Applicability, portions of the Annexable Land identified in such notice or notices will be subject to the terms and provisions of this Tract Declaration. The Annexable Land made subject to the terms and provisions of this Tract Declaration will be referred to herein as the “**Tract.**”

A Tract is a portion of Valor which is subject to the terms and provisions of the Covenant. A Tract Declaration includes specific restrictions which apply to the Tract, in addition to the terms and provisions of the Covenant.

NOW, THEREFORE, it is hereby declared that: (i) all of the Tract will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with the Tract and will be binding upon all parties having right, title, or interest in or to such portions of the Tract, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; (ii) each contract or deed conveying the Tract which is made subject to this Tract Declaration will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) this Tract Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

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ARTICLE 1 DEFINITIONS

Any capitalized terms used but not defined in this Tract Declaration will have the meanings given to such terms in the Covenant. Unless the context otherwise specifies or requires, the following words and phrases when used in this Tract Declaration will have the meanings hereinafter specified:

“Articles” means the Articles of Incorporation of the Association, filed with the Secretary of State for the State of Idaho, as the same may be amended from time to time.

“Assessment” or **“Assessments”** means assessments levied by the Association under this Tract Declaration.

“Assessment Unit” has the meaning set forth in *Section 6.09(b)*.

“Association” means the Valor Villages Homeowners’ Association, Inc., an Idaho nonprofit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Tract Declaration. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Tract Declaration, the Articles, the Bylaws, and Applicable Law.

“Benefited Common Area” means any interest in real property or improvements which is designated by Declarant in a Notice of Applicability Recorded pursuant to *Section 10.04* and in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Benefited Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefited Common Area Assessments attributable thereto, to one or more, but less than all of the Lots or Owners, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability or other written notice will identify the Lots or Owners assigned to such Benefited Common Area and further indicate whether the Benefited Common Area is assigned to such parties for the purpose of exclusive use and the payment of Benefited Common Area Assessments, or only for the purpose of paying Benefited Common Area Assessments attributable thereto. By way of illustration and not limitation, Benefited Common Area may include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

“Benefited Common Area Expenses” means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Benefited Common Area, which may include a reasonable reserve for capital repairs and replacements.

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“Board” means the Board of Directors of the Association.

“Bulk Rate Contract” or “Bulk Rate Contracts” means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Tract.

“Bylaws” means the bylaws of the Association, which may be initially adopted by Declarant or the Board of the Association as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. During the Development Period, Declarant must approve any amendment to the Bylaws. After the Development Period, a Majority of the Board may amend the Bylaws.

“Common Area” means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. No portion of the Tract may be designated as Common Area or otherwise conveyed or transferred to the Association without the advance written consent of Declarant during the Development Period, and thereafter a Majority of the Board. If requested by the Declarant, the Association will execute any instrument or document required by any applicable governmental authority to evidence the Association’s acceptance of all or any portion of the Tract for maintenance. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Tract being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Tract identified therein will be considered Common Area for the purpose of this Tract Declaration. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

“Community Manual” means the community manual, which may be initially adopted by the Declarant as part of the initial project documentation for the benefit of the Association. The Community Manual may include the Articles, the Bylaws, Rules and other policies governing the Association. The Community Manual may be amended or supplemented, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

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“Community Systems” means any and all irrigation systems, cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennas, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by the Declarant pursuant to any grant of easement or authority by the Declarant within the Subject Property and/or the Tract.

“Declarant” means M3 ID FALCON CREST, LLC, an Arizona limited liability company, its successors or assigns. Notwithstanding any provision in this Tract Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Tract Declaration to any person. Declarant may also, by Recorded written instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant’s privileges, exemptions, rights and duties under this Tract Declaration.

“Development Period” means the period of time beginning on the date when this Tract Declaration has been Recorded, and ending fifty (50) years thereafter, unless earlier terminated by a Recorded instrument executed by the Declarant. The Development Period is for a term of years and does not require that Declarant own any portion of the Subject Property or Annexable Land.

“Documents” means, singularly or collectively, as the case may be, this Tract Declaration, the Covenant, any applicable Notice of Applicability, Design Guidelines, and the Club Documents, as each may be amended and/or supplemented from time to time, as well as the Articles, the Bylaws, the Community Manual and any Rules and Board resolutions promulgated by VMC pursuant to the Covenant and/or the Association pursuant to this Tract Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See Table 1 at the end of this Article for a summary of the Documents.

“VMC” means the Valor Maintenance Corporation, an Idaho nonprofit corporation.

“VMC Assessments” means any assessment levied by VMC, pursuant to the Covenant or other Applicable Law.

“VMC Board” means the Board of Directors of VMC.

“Lot” means any portion of the Tract designated by Declarant in a Recorded instrument or as shown as a subdivided Lot on a Plat other than Common Area or Benefited Common Area.

“Manager” has the meaning set forth in *Section 3.08(h)*.

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“Members” means every person or entity that holds membership privileges in the Association.

“Mortgage” or **“Mortgages”** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or **“Mortgagees”** means the holder(s) of any Mortgage(s).

“Occupant” means a resident, occupant, tenant, or other similar non-Owner of a Lot.

“Owner” means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot and in no event shall mean any Occupant. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners.

“Plat” means a Recorded subdivision plat of any portion of the Tract, and any amendments thereto.

“Representative System of Voting” means the method of voting which may be established by Declarant pursuant to *Section 3.06* below.

“Residential Developer” refers to any Owner who acquires raw land, one or more Lots, or any portion of the Tract for the purpose of resale to a Homebuilder.

“Rules” means any instrument, however denominated, which the Declarant may adopt as part of the Community Manual, or the Board may subsequently adopt for the regulation and management of the Tract, including any amendments to those instruments. Until expiration or termination of the Development Period, the Declarant must approve any amendment to the Rules.

“Service Area” means a group of Lots designated as a separate Service Area pursuant to this Tract Declaration for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 3.15*.

“Service Area Expenses” means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a designated Service Area, which may include a reasonable reserve for capital repairs and replacements.

“Tract” refers to all or any portion of the Subject Property made subject to this Tract Declaration by the Recording of a Notice of Applicability.

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“Village” has the meaning set forth in *Section 3.02*.

“Village Delegate” means the representative elected by the Owners of Lots in each Village pursuant to the Representative System of Voting (as further defined herein) which may be established by the Declarant to cast the votes of all Lots in the Village on all matters requiring a vote of the Members, except for the following situations in which this Tract Declaration specifically requires Members to cast their vote individually: (i) changes to the term of this Tract Declaration as described in *Section 8.01*; (ii) amendments to this Tract Declaration as described in *Section 8.03*; and (iii) initiation of any judicial or administrative proceeding as described in *Section 8.05*. Notwithstanding the foregoing, the Documents may set forth additional circumstances in which the Members are required to cast their vote individually, and voting by Village Delegates is prohibited.

“Voting Group” has the meaning set forth in *Section 3.07* below.

TABLE 1: DOCUMENTS	
Tract Declaration (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of the Tract.
Notice of Applicability (Recorded)	Describes the portion of the Subject Property being made subject to the terms and provisions of this Tract Declaration (the Tract).
Covenant (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of the Subject Property.
Articles of Incorporation (filed with Secretary of State for the State of Idaho and included in Community Manual)	Establishes the Association as a nonprofit corporation under Idaho law.
Bylaws (included in Community Manual)	Governs the Association’s internal affairs, such as elections, meetings, etc.
Community Manual (adopted by Declarant)	Establishes rules and policies governing the Association.

**ARTICLE 2
CONSTRUCTION & USE RESTRICTIONS**

All of the Tract will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 Approval Required by Valor Reviewer. PURSUANT TO THE COVENANT, ALL “IMPROVEMENTS” (AS DEFINED IN THE COVENANT) MUST BE APPROVED IN ADVANCE AND IN WRITING BY THE VALOR REVIEWER. NO IMPROVEMENTS SHALL BE CONSTRUCTED ON THE TRACT OR ANY LOT UNTIL SUCH APPROVAL IS OBTAINED PURSUANT TO THE COVENANT.

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2.02 Variance. The Tract is subject to the restrictions contained in this Tract Declaration, and subject to the Rules. The Declarant may grant a variance or waiver of a restriction or Rule during the Development Period. After expiration or termination of the Development Period, the Board may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by the Declarant and/or a Majority of the Board, as applicable. The grant of a variance shall not constitute a waiver or estoppel of the right to deny a variance in other circumstances.

2.03 Use Restrictions. The Tract shall be used solely for single-family residential purposes. The Tract may not be used for any other purposes without the prior written consent of the Declarant during the Development Period, which consent may be withheld by the Declarant in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the Tract, except an Owner or Occupant may conduct business activities within a residence so long as: (i) such activity complies with Applicable Law; (ii) participation in the business activity is limited to the Owner(s) or Occupant(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, *i.e.*, no sign may be erected advertising the business within the Subject Property, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Subject Property; (v) the business does not, as determined by a Majority of the VMC Board, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Subject Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Tract and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subject Property as may be determined by a Majority of the VMC Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than an Owner or Occupant and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

2.04 Rentals. "Lease", "Leasing", and "Leased" shall refer to the occupancy of a Lot by a person other than the Owner, for which the Owner receives any consideration or benefit. Any Lot that is Leased shall be leased only in its entirety; separate rooms, floors or other areas within a Lot may not be separately Leased. Subleasing of Lots or the assignment of a Lease is prohibited without Declarant's written approval. All Leases of Lots must be for a minimum term of not less than six (6) months, unless otherwise approved in advance and in writing by the Declarant. No Lot may be rented for transient or hotel purposes. Notwithstanding the

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foregoing, the Declarant may permit a Lot to be Leased for a term of less than six (6) months, may permit renting or Leasing of a Lot for transient or hotel purposes, and may adopt additional rules and regulations related to such Leases. All Leases shall be in writing and shall disclose that the tenants and all Occupants of the Lot are bound by and obligated to comply with the Documents and any rules associated with Leasing adopted from time to time by the Declarant. The Owner of the Lot shall notify the Declarant in writing of any Lease and provide any additional information the Declarant may require. Notwithstanding any term or provision herein to the contrary, Declarant may also permit the Leasing or occupancy of Lots for less than six (6) months and for transient or hotel purposes in conjunction with the sale and marketing of the Lots and/or use of the Social Club or Golf Club.

2.05 Trash Containers. Unless it is within twelve (12) hours before or after the designated trash and recycling pickup time, trash containers and recycling bins must be stored inside the garage of the single-family residence constructed on the Lot or in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Lot. The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

2.06 Unightly Articles; Vehicles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, all commercial vehicles, including passenger automobiles or pick-up trucks with commercial signage or other commercial advertising displayed thereon, other commercial vans, delivery trucks or other commercial vehicles, and all recreational vehicles and equipment, including inoperable vehicles, trailers, graders, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles, machinery and garden maintenance equipment, must be kept at all times except when in actual use, concealed in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing (other than minor emergency repairs), except in enclosed garages or other structures; provided however, that non-commercial passenger automobiles and passenger pick-up trucks may be parked in the driveway of a Lot. Commercial delivery vehicles are permitted for the period of time reasonably necessary to make deliveries to a Lot. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be kept at all times within a fenced yard or otherwise appropriately concealed or screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Tract except within enclosed structures or appropriately screened from view. No: (a) racing vehicles; or (b) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Tract. Motorcycles shall be operated in a quiet manner. Recreational vehicles, including but not limited to boats, trailers and motor homes, may be temporarily loaded and unloaded in the Tract for a time period not to exceed twenty-four (24)

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hours. Any vehicle or other equipment stored, parked, or maintained in violation of this *Section 2.06* shall be subject to towing or removal at the sole cost and expense of the owner of the vehicle or equipment (or, if the owner of the vehicle or equipment is a guest, invitee or licensee of an Owner, then at the sole cost and expense of such Owner). Any expense incurred by the Association in connection with towing or removal shall be paid to the Association upon demand by the owner of the vehicle or equipment or, if applicable, the Owner. If the vehicle or equipment is the property of an Owner or an Owner's guest, invitee or licensee, any cost or expense incurred by the Association to effect towing or removal may be assessed, collected and enforced by the Association in the same manner as Assessments. Mobile homes are prohibited. Notwithstanding any term or provision herein to the contrary and subject to *Section 2.06* of the Covenant, golf carts are permitted.

2.07 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on a Lot (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner or Occupant may keep on a Lot more than three (3) cats and dogs in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic household pets will be allowed on the Tract other than within the residence, or the fenced yard space associated therewith, unless confined to a leash. The Board may restrict pets to certain areas within the Tract. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on a Lot, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. All pets not confined to a residence must wear collars with appropriate identification tags. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Occupant, upon written notice, may be required to remove the pet from the Tract.

2.08 Garages. Garages shall be used only for the parking of vehicles and shall not be permanently enclosed or be used or converted for living or recreational activities. Notwithstanding the foregoing, garages may be used for the storage of material so long as the storage of material does not restrict the use of the garage for the parking of motor vehicles.

2.09 Antennas.

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(a) Prohibited Antennas; Permitted Antennas. Except as expressly provided below, no exterior radio or television antennas or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the Valor Reviewer; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Valor Reviewer, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant during the Development Period and the VMC Board thereafter, will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Annexable Land or Subject Property.

(b) Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Benefited Common Area, or any other portion of the Subject Property. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Subject Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Valor Reviewer are as follows:

- (i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

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The Valor Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.10 Signs. Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Valor Reviewer, except for:

- (i) signs which are permitted pursuant to the Design Guidelines or Rules;
- (ii) signs installed by the Declarant or installed with the advance written consent of the Declarant;
- (iii) one (1) "For Sale" sign and sign rider placed on the Lot, subject to approval by the Valor Reviewer. The design and content of the sign and sign rider must be approved by the Valor Reviewer. The Valor Reviewer may require the use of a specific sign and sign rider, which must be obtained from the Valor Reviewer for placement on the Lot. The sign must be removed within two (2) business days following the sale of the Lot;
- (iv) one small security service sign per Lot, provided that the sign has a maximum face area of two square feet (2' x 1') and is located no more than five feet (5') from the front elevation of the principal residence constructed upon the Lot;
- (v) a "no soliciting" and "security warning" sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five square inches (5" x 5"); and
- (vi) signs or permits as may be required by Applicable Law, a governmental entity, or legal proceedings.

2.11 Solar Energy Device. A Solar Energy Device may be installed with the advance written approval of the Valor Reviewer. A "**Solar Energy Device**" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, and may also have the capability of storing such energy for future utilization; and provided that passive systems shall clearly be designed as a Solar Energy Device such as a trombe wall and not merely a part of a normal structure such as a window.

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(a) Application. To obtain the Valor Reviewer approval of a Solar Energy Device, the Owner shall provide the Valor Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the “**Solar Application**”). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 9* of the Covenant.

(b) Approval Process. The Valor Reviewer will review the Solar Application in accordance with the terms and the provisions of *Article 9* of the Covenant; provided, however, that nothing herein should be construed to effectively prohibit the installation of the Solar Energy Device.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Valor Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

- (i) The Solar Energy Device must be located on the roof of the residence located on the Owner’s Lot, entirely within a fenced area of the Owner’s Lot, or entirely within a fenced patio located on the Owner’s Lot.
- (ii) If the Solar Energy Device will be located in the fenced area of the Owner’s Lot or patio, no portion of the Solar Energy Device may extend above the fence line.
- (iii) If the Solar Energy Device will be located on the roof of the principal residence located on the Owner’s Lot, then unless otherwise approved in writing by the Valor Reviewer: (A) the Solar Energy Device is oriented to the south or within forty-five (45) degrees east or west of due south; (B) the Solar Energy Device may not extend higher than or beyond the roofline; (C) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; and (D) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be bronze or black.

2.12 Flags. The advance written consent of the Valor Reviewer is required prior to installing any flagpole.

2.13 Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed within or upon the Tract, without the prior written approval of the Valor Reviewer. Sales and construction trailers or other temporary structures

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associated with the sale and/or construction of residences and Improvements associated therewith are permitted if approved in advance by the Declarant.

2.14 Compliance with Documents. Each Owner and Occupant of a Lot and their guests and invitees shall comply strictly with the Documents as the same may be amended from time to time. Failure to comply with any of the Documents shall constitute a violation of the Documents and may result in a fine against the Owner in accordance with *Section 6.14*, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board, the VMC Board, or by an aggrieved Owner. Without limiting any rights or powers of the Association or VMC, the Board and/or the VMC Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the Documents, and the Owner whose violation has been so remedied shall be personally liable to the Association and VMC for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association or VMC, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Tract Declaration and the Covenant for Assessments and may be collected by any means provided in this Tract Declaration and/or the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH SUCH OWNER AND OCCUPANT SHALL RELEASE AND HOLD HARMLESS THE ASSOCIATION AND VMC AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION OR VMC'S ACTS OR ACTIVITIES UNDER THIS SECTION 2.14 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION OR VMC'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION OR VMC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

2.15 Liability of Owners for Damage to Common Area or Benefited Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area or the Benefited Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area, the Benefited Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Occupant, or their guests or invitees. The full cost of all repairs of such damage shall

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be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot.

2.16 Party Wall Fences. A fence or wall located on or near the dividing line between two (2) Lots and intended to benefit both Lots constitutes a "Party Wall". To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions will apply thereto. Party Walls will also be subject to the following:

(a) Encroachments & Easement. If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) Right to Repair. If the Party Wall is damaged or destroyed from any cause, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the other Owner or Owners that the wall serves will thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, subject however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions. The Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the Valor Reviewer in accordance with *Article 9* of the Covenant.

(c) Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Records of Ada County, Idaho, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title.

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(d) Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the Valor Reviewer.

(e) Dispute Resolution. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section (the "**Dispute**"), the parties must submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board, the Board will appoint a mediator. If the Dispute is not resolved by mediation, the Dispute will be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board, the Board will appoint an arbitrator. The decision of the arbitrator will be binding upon the parties and will be in lieu of any right of legal action that either party may have against the other. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) implement the decision of the mediator or arbitrator, as applicable, the Board may implement said mediator's or arbitrator's decision, as applicable. If the Board implements the mediator's or arbitrator's decision on behalf of an Owner, the Owner otherwise responsible therefor will be personally liable to the Association for the cost of obtaining the all costs and expenses incurred by the Association in conjunction therewith. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in this Tract Declaration for Assessments and may be collected by any means provided in the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s).

2.17 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Valor Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Valor Reviewer.

2.18 Hazardous Activities. No activities may be conducted on or within the Tract and no Improvements constructed on any portion of the Tract which, as determined by a Majority of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any

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portion of the Tract unless discharged in conjunction with an event approved in advance by the Board. There shall be no open fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Valor Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Tract which creates a fire hazard or otherwise violates Applicable Law. Unless otherwise approved by the Declarant, no portion of the Tract may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.19 Mining and Drilling. No portion of the Tract may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted or approved by the Declarant.

2.20 Noise. No noise which constitutes a nuisance, as determined by a Majority of the Board, shall be permitted to exist or operate upon any portion of the Tract so as to be offensive or detrimental to any other portion of the Subject Property or the Owners or Occupants thereof. However, typical residential equipment installed on a Lot, e.g., heating and cooling equipment and pool equipment, operating at normal noise levels in accordance with the manufacturer's specifications, as determined by the Board, shall not be deemed a nuisance.

2.21 Rubbish and Debris. As determined by a Majority of the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Tract, and no odors will be permitted to arise therefrom so as to render all or any portion of the Subject Property unsanitary, unsightly, offensive, or detrimental to any other property or the Owners or Occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity, VMC, or the Association.

2.22 Diseases and Insects. No Owner or Occupant shall permit anything or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

2.23 Maintenance. Commencing on the date an Owner takes title to such Owner's Lot, the Owners of each Lot shall jointly and separately have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. A Majority of the Board shall determine whether a violation of the maintenance obligations set

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forth in this *Section* 2.23 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing, tree and shrub pruning, landscape irrigation facilities, and maintaining the lawn and garden areas alive, free of weeds, and attractive.
- (iii) Keeping mechanical facilities in working order.
- (iv) Keeping sidewalks and driveways in good condition and repair.
- (v) Repainting of Improvements.
- (vi) Repair of exterior damage, and wear and tear to Improvements.
- (vii) Complying with Applicable Law.

2.24 Street Landscape Area-Owner's Obligation to Maintain Landscaping.

Commencing on the date an Owner takes title to such Owner's Lot, each Owner will be responsible, at such Owner's sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right-of-way, street or alley, if such area (the "**ST Landscape Area**") exists, unless the responsibility for maintaining the ST Landscape Area is undertaken by VMC or the Association in a Recorded written instrument.

2.25 Stormwater Protection Plan. Commencing on the date an Owner takes title to such Owner's Lot, each Owner shall be responsible, at its sole cost and expense, for adhering to State and Federal stormwater runoff protection and prevention requirements that may be applicable to such Owner's Lot and to obtain proper permits as may be required.

ARTICLE 3

VALOR VILLAGES HOMEOWNERS' ASSOCIATION, INC.

3.01 Organization. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of an Idaho nonprofit corporation. Neither the Articles nor the Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Tract Declaration.

3.02 Villages. Every Lot will be located within a "Village". A Village may be comprised of any number of Lots and may include Lots of more than one type, as well as Lots that are not contiguous to one another. Each Notice of Applicability may initially assign the portion of the Tract described therein to a specific Village which may then exist (being

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identified and described in a previously Recorded Notice of Applicability) or may be newly created. Any Lot not assigned to a Village shall constitute a single Village. Declarant may Record an amendment to any previously Recorded Notice of Applicability to designate or change Village boundaries.

3.03 Membership.

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

(b) Easement of Enjoyment – Common Area. Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Member's right to use the Common Area for such periods of time as determined by the Board for violations of any provisions of the Documents;
- (ii) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (iii) The right of the Declarant, during the Development Period, and the Board thereafter to grant easements or licenses over and across the Common Area;
- (iv) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (v) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

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- (vi) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

(c) Easement of Enjoyment – Benefited Common Area. Each Owner of a Lot which has been assigned use of a Benefited Common Area in a Notice of Applicability, Tract Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Benefited Common Area, and an access easement, if applicable, by and through such Benefited Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot, subject to *Section 3.03(b)* above and subject to the following restrictions and reservations:

- (i) The right of the Declarant, during the Development Period, and the Board thereafter, to cause such Improvements and features to be constructed upon the Benefited Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;
- (ii) The right of Declarant during the Development Period to grant additional Lots use rights in and to Benefited Common Area in a subsequently Recorded Notice of Applicability, Tract Declaration or other Recorded instrument;
- (iii) The right of the Association to suspend the Owner's rights to use the Benefited Common Area for any period during which any Assessment against such Owner's Lot remains past due;
- (iv) The right of the Declarant, during the Development Period, and the Board thereafter, to grant easements or licenses over and across the Benefited Common Area;
- (v) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Benefited Common Area to any public agency, authority or utility for any purpose;
- (vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Benefited Common Area and, in furtherance thereof, mortgage the Benefited Common Area;

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- (vii) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Benefited Common Area and any Improvements thereon; and
- (viii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

3.04 Governance. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Tract Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until expiration or termination of the Development Period.** Upon the expiration or termination of the Development Period or earlier, by the Recordation of a termination notice executed by Declarant, Declarant may terminate its right to appoint and remove one (1) or more of the Board members and call for the election of the Board members by the Owners. At such time as Declarant no longer has the right to appoint and remove any members of the Board, the President of Association will call a meeting of the Owners at which the Owners will elect one (1) Board member for a three (3) year term, one (1) Board member for a two (2) year term, and one (1) Board member for a one (1) year term. Upon expiration of the term of a Board member elected by the Owners as provided herein, his or her successor will be elected by the Owners for a term of two (2) years. A Board member takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

3.05 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 3.04*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) Owner Votes. The Owner of each Lot will have one (1) vote for each Lot so owned.

(b) Declarant Votes. In addition to the votes to which Declarant is entitled by reason of *Section 3.05(a)*, for every one (1) vote outstanding in favor of any other Owner, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) Co-Owner Votes. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot determine among themselves and advise the Secretary of the

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Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled pursuant to this *Section 3.05(c)*.

3.06 Representative System of Voting. The Representative System of Voting shall only be established if the Declarant first calls for election of a Village Delegate for a particular Village. The Declarant shall have no obligation to establish the Representative System of Voting. In addition, Declarant may terminate the Representative System of Voting at any time prior to expiration of the Development Period by Recorded written instrument.

(a) Election of Initial Village Delegate. In the event that the Declarant chooses to establish a Representational System of Voting, the Owners of Lots within each Village shall elect a Village Delegate and an alternate Village Delegate, in the manner provided below, to cast the votes of all Lots in the Village on matters requiring a vote of the Members, except where this Tract Declaration specifically requires the Members to cast their votes individually as more particularly described in the definition of "Village Delegate" in *Article 1* of this Tract Declaration. In the event that a quorum is not met to elect a Village Delegate and an alternative Village Delegate by the Owners of Lots within each Village, during the Development Period, Declarant shall have the right to appoint a Village Delegate until the next election is held as provided in *Section 3.06(b)* below. Notwithstanding the foregoing or any provision to the contrary in this Tract Declaration, as provided in *Section 3.04* above, Declarant will be entitled to appoint and remove all members of the Board until expiration or termination of the Development Period.

(b) Term. The Village Delegate and the alternate Village Delegate shall be elected on a biennial basis (once every two years), by electronic or absentee ballot without a meeting of Members, or at a meeting of the Members within each Village where written, electronic, and absentee ballots (or any combination of the foregoing) may also be utilized, as the Board determines. If the Board determines to hold a meeting for the election of the Village Delegate and the alternate Village Delegate, the presence, in person or by absentee or electronic ballot, of Members representing at least ten percent (10%) of the total votes in a Village shall constitute a quorum at such meeting. Notwithstanding the foregoing provision, the Declarant during the Development Period, and the Board thereafter, may elect to extend the term of a Village Delegate and alternate Village Delegate to the extent Declarant or the Board, as applicable, determines that such extension will result in administrative efficiencies by allowing elections within different Villages to occur in close proximity to one another; provided, however, that the

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term of an existing Village Delegate and alternate Village Delegate shall not be extended for more than twelve (12) months.

(c) Election Results. At any Village election, the candidate for each position who receives the greatest number of votes shall be elected to serve as the Village Delegate and the candidate with the second greatest number of votes shall be elected to serve as the alternate Village Delegate. If only one candidate runs for Village Delegate, the Declarant during the Development Period, and a Majority of the Board thereafter, shall have the power to appoint the Village Delegate and an alternate Village Delegate, who need not be the candidate. The Village Delegate and alternate Village Delegate shall serve until his or her successor is elected. If the Village Delegate and/or the alternate Village Delegate resigns, the Declarant during the Development Period, and after expiration or termination of the Development Period, a Majority of the Board, shall appoint a replacement Village Delegate and/or alternate Village Delegate.

(d) Voting by the Village Delegate. The Village Delegate or, in his or her absence, the alternate Village Delegate, attends the Association meetings and casts all votes allocated to Lots in the Village that he or she represents on any matter as to which such Village Delegate is entitled to vote under this Tract Declaration. A Village Delegate may cast all votes allocated to Lots in the Village in such delegate's discretion and may, but need not, poll the Owners of Lots in the Village which he or she represents prior to voting. Neither the Village Delegate nor the alternative Village Delegate may cast votes allocated to Lots not owned by such Village Delegate in the Village that he or she represents for the purpose of amending this Tract Declaration.

(e) Qualification. Candidates for election as the Village Delegate and alternate Village Delegate from a Village shall be Owners of Lots in the Village, spouses of such Owners, Occupants of the Village, or an entity representative where an Owner is an entity.

(f) Removal. Any Village Delegate or alternate Village Delegate may be removed, with or without cause, upon the vote or written petition of Members holding a Majority of the votes allocated to the Lots in the Village that the Village Delegate represents or by the Declarant, until the expiration or termination of the Development Period. If a Village Delegate is removed in accordance with the foregoing sentence, the alternate Village Delegate shall serve as the Village Delegate unless also removed.

(g) Subordination to the Board; No Simultaneous Positions. Village Delegates shall be subordinate to the Board and their responsibility and authority does not extend to policy making, supervising, or otherwise being involved in Association governance. Further, in such event, an Owner may not simultaneously hold the position of Village Delegate and be a member of the Board and a Village Delegate running for the Board

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shall resign his or her position prior to casting any vote for a member of the Board. Upon such occurrence, the alternate Village Delegate shall serve out the remainder of the term of the resigning Village Delegate, and an alternate Village Delegate shall be appointed by the Declarant during the Development Period, and after expiration or termination of the Development Period, a Majority of the Board.

3.07 Voting Groups. Declarant, during the Development Period, may designate voting groups consisting of one or more Village as determined by the Declarant in its sole and absolute discretion, for the purpose of electing members of the Board (the “**Voting Groups**”). The purpose of Voting Groups is to afford representation on the Board by various portions of the Tract. If Voting Groups are established then each Owner of a Lot shall only vote on the slate of Board candidates assigned to such Owner’s Voting Group.

(a) Voting Group Designation. Declarant shall establish Voting Groups, if at all, not later than the expiration or termination of the Development Period or the earlier termination of its right as to the appointment and removal of the Board members by Recording a written instrument identifying the Villages within each Voting Group (the “**Voting Group Designation**”). The Voting Group Designation will assign the number of members of the Board which the Voting Group is entitled to exclusively elect.

(b) Amendment of Voting Group Designation. The Voting Group Designation may be amended unilaterally by the Declarant at any time prior to expiration or termination of the Development Period or the earlier termination of its right as to the appointment and removal of the Board members. Thereafter, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board and approval of Village Delegates representing a Majority of the Villages. Neither Recordation nor amendment of such Voting Group Designation shall constitute an amendment to this Tract Declaration, and no consent or approval to modify the Voting Group Designation shall be required except as stated in this paragraph.

(c) Single Voting Group. Until such time as Voting Groups are established, all of the Tract constitutes a single Voting Group for purposes of this *Section 3.07*. After a Voting Group Designation is Recorded, any and all portions of the Tract which are not assigned to a specific Voting Group shall constitute a single Voting Group.

3.08 Powers. The Association will have the powers of an Idaho nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Tract Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

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(a) Rules, Bylaws and Community Manual. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules, policies, Bylaws and the Community Manual not in conflict with this Tract Declaration, as it deems proper, covering any and all aspects of the Tract (including the operation, maintenance and preservation thereof) or the Association. Any Rules, and any modifications to existing Rules, or the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period. To the extent such Rules expand upon or conflict with the terms of the Covenant or the Rules established by the VMC Board, the proposed Rules must be approved in advance and in writing by the VMC Board.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect Assessments, as provided in *Article 6* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Occupant, upon any Lot and into any Improvement thereon for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than

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Common Area or Benefited Common Area in enforcing these Documents before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND OCCUPANT WILL INDEMNIFY AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION, THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.08(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Benefited Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Documents or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or

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conveyance under this *Section 3.08(g)* must be approved in advance and in writing by the Declarant.

(h) Manager. To retain and pay for the services of a person or firm (the “**Manager**”), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon sixty (60) days written notice to the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE DECLARANT, THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Subject Property, Common Area, Benefited Common Area, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

(k) Construction on Common Area and Benefited Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Benefited Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

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(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

(n) Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Benefited Common Area, and any Improvements thereon.

3.09 Acceptance of Common Area and Benefited Common Area. Declarant and its assignees reserve the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant or a third party for the benefit of the Association, in the sole and absolute discretion of the Declarant. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area or Benefited Common Area, as applicable, for the purpose of this Tract Declaration and the Association shall have an easement over and across the Common Area or Benefited Common Area necessary or required to discharge the Association's obligations under this Tract Declaration, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Tract, for the Tract and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Recordation, and without further action by the Association, and shall be considered Common Area or Benefited Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area or Benefited Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant any real property that Declarant originally conveyed to the Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Benefited Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements in the Tract, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an

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easement over and across the Common Area and the Benefited Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

3.10 Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (1) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

3.11 Insurance. The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

3.12 Bulk Rate Contracts.

(a) Authority. Without limitation on the generality of the Association powers set out in *Section 3.08*, the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers the Board chooses (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. Notwithstanding the foregoing, during the Development Period, the Declarant must approve all Bulk Rate Contracts.

(b) Bulk Rate Contract Charges. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that,

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if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Tract Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Tract Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner (or Occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.13 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or any portion of the Annexable Land owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

3.14 Administration of Common Area and Benefited Common Area. The administration of the Common Area and Benefited Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Documents, and any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or the Benefited Common Area.

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3.15 Provision of Benefits and Services to Service Areas.

(a) Designated by Declarant. Declarant, in a Notice of Applicability Recorded pursuant to *Section 10.04* or in any written Recorded notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Tract. Declarant may unilaterally amend any Notice of Applicability or any written Recorded notice to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) Petitioned by Owners. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

3.16 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design or construction of Improvements on a Lot (whether one or more). This *Section 3.16* may not be amended or modified without Declarant's written and acknowledged consent and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the Recorded amendment instrument.

**ARTICLE 4
CLUB PROPERTY**

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4.01 Mandatory Social Club Sub-Membership. Pursuant to *Section 4.01* of the Covenant, each Owner is a Mandatory Social Club Sub-Member and is responsible for all financial obligations associated therewith, which shall be discharged through Social Club Assessments levied against the Lots by the Social Club Owner in accordance with the Covenant. **EACH OWNER, BY ITS ACCEPTANCE OF A DEED TO A LOT, HEREBY COVENANTS TO COMPLY WITH AND BE BOUND BY THE TERMS OF THE SOCIAL CLUB DOCUMENTS.**

Notwithstanding any term or provision herein to the contrary, as to any Lot owned by Declarant, a Homebuilder, or Residential Developer, a Social Club sub-membership will not be required unless a certificate of occupancy has been issued for the residence constructed on the Lot and either of the following conditions are met: (i) the Lot (other than Lots being used as model homes, sales, or development offices) is not being marketed for sale to third parties; or (ii) the Lot is occupied for residential purposes. For purposes of this *Section 4.01*, a Lot is deemed "occupied" if it is occupied for any duration whatsoever, no matter the length, except for occupancy as a model home or sales or development office in the ordinary course of development and marketing by Declarant, a Homebuilder, or Residential Developer.

4.02 Club Disclosures. Each Owner is advised to review *Article 4* of the Covenant, which includes certain rights and obligations pertaining to the Golf Club and the Social Club and establishes easements over and across the Annexable Land and Subject Property, including the Tract, for the benefit of the Golf Club and the Social Club.

ARTICLE 5 INSURANCE AND RESTORATION

5.01 Insurance. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability, property damage, and pollution insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance. During the Development Period, Declarant reserves the right to satisfy the insurance obligations of the Association with a master insurance program controlled by Declarant.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

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5.02 Restoration. In the event of any fire or other casualty, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in this Tract Declaration for Assessments and may be collected by any means provided in this Tract Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION AND THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE DECLARANT AND/OR THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

5.03 Restoration - Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement or clean-up and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement or clean-up, such

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Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.01 Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 6* will be levied against each Lot in amounts determined pursuant to *Section 6.09* below.

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and upon recordation of this Tract Declaration will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements, unless otherwise set forth in *Section 6.12* below. The Association may enforce payment of such Assessments in accordance with the provisions of this Article and Applicable Law.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. Any subsidy and the characterization thereof will be disclosed as a line item in the annual budget prepared by the Board and attributable to such Assessments. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years. Unless otherwise approved by the Declarant in writing, or unless the Declarant subsidy is characterized as a loan to the Association, in the event a Declarant subsidy in any given fiscal year results in an excess in revenue for the Association's fiscal year, the excess revenue shall be paid to Declarant; provided, the amount of excess revenue paid to Declarant shall not exceed the Declarant subsidy for the fiscal year.

6.02 Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Tract Declaration. The funds of the Association may be used for any purpose authorized by the Documents and Applicable Law, which may include, without limitation, using the funds to reimburse VMC for any delinquent Social Club Assessments and/or Golf Club Assessments that are paid by VMC pursuant to *Section 7.01(b)* or *Section 8.01(b)* of the Covenant.

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6.03 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association ("**Regular Assessments**") which sets forth: (a) an estimate of expenses the Association will incur during such year in performing its functions and exercising its powers under this Tract Declaration, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, but excluding (c) the operation, maintenance, repair and management costs and expenses associated with any Service Area and Benefited Common Area. Regular Assessments sufficient to pay such estimated expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable annually at the beginning of each fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

6.04 Working Capital Contribution. Upon the transfer of a Lot (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital contribution ("**Working Capital Contribution**") in an amount determined by the Declarant during the Development Period, and a Majority of the Board thereafter will be paid by the transferee of the Lot to the Association. Such Working Capital Contribution shall be used by the Association to fund operating expenses and reserves and to maintain, repair and replace the Common Area as necessary. The levy of any Working Capital Contribution will be effective only upon the Recordation of a written notice, signed by the Declarant during the Development Period, or a duly authorized officer of the Association thereafter, setting forth the amount of the Working Capital Contribution. The Working Capital Contribution may be modified, from time to time, by the Declarant during the Development Period, or a Majority of the Board; provided, however, that during the Development Period, any modification to the Working Capital Contribution payable on the transfer of a Lot must be approved in advance and in writing by the Declarant. The Working Capital Contribution need not be uniform among all Lots. The Declarant, during the Development Period, and the Board thereafter, may, from time to time, notify the Manager of the Working Capital Contribution applicable to a Lot.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer

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by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who is a Homebuilder or Residential Developer will not be subject to the Working Capital Contribution; however, the Working Capital Contribution will be payable by any Owner who acquires a Lot from a Homebuilder or Residential Developer for residential living purposes or by any Owner who: (i) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Contribution to a particular Owner, the decision of the Declarant during the Development Period, and the Board thereafter, regarding the application of the exception will be binding and conclusive without regard to any contrary interpretation of this *Section 6.04*. The Working Capital Contribution will be in addition to, not in lieu of, any other assessments levied in accordance with this *Article 6* and will not be considered an advance payment of such assessments. The Working Capital Contribution hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power, in its sole and absolute discretion, to waive the payment of any Working Capital Contribution attributable to a Lot (or all Lots) by written waiver notice, which waiver may be temporary or permanent.

6.05 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Documents. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Benefited Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Benefited Common Area will be levied against all Owners who have been assigned the obligation to pay Benefited Common Area Assessments based on Assessment Units.

6.06 Individual Assessments. In addition to any other Assessments, the Board may levy individual assessments against an Owner and the Owner's Lot ("**Individual Assessments**"). Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in

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bringing an Owner or the Owner's Lot into compliance with this Tract Declaration; fines for violations of the Documents; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

6.07 Benefited Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Benefited Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Benefited Common Area including a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and surplus from the prior year's fund. The level of assessments levied to pay for expenses associated with a Benefited Common Area (the "**Benefited Common Area Assessments**") will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non-payment of any individual Benefited Common Area Assessment, the Association may at any time, and from time to time, levy further Benefited Common Area Assessments in the same manner as aforesaid. All such Benefited Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. Benefited Common Area Assessments will be allocated uniformly against each Assessment Unit allocated to a Lot that has been assigned the obligation to pay Benefited Common Area Assessments for specified Benefited Common Area.

6.08 Service Area Assessments. The operation, maintenance, repair and management costs and expenses associated with any Service Area shall not be included in the budget for Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of assessments levied to pay for Service Area Expenses for each Service Area ("**Service Area Assessments**") will be allocated: (a) equally among Lots within the Service Area; (b) based on Assessment Units assigned to Lots within the Service Area; or (c) based on the benefit received among all Lots in the Service Area.

6.09 Amount of Assessment.

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(a) Assessments to be Levied. The Board will levy Assessments against each “**Assessment Unit**” (as described in *Section 6.09(b)* below). Unless otherwise provided, Assessments levied pursuant to *Section 6.03* and *Section 6.05* will be levied uniformly against each Assessment Unit.

(b) Assessment Unit. Each Lot will be allocated one (1) Assessment Unit, unless otherwise provided in *Section 6.09(c)*, *Section 6.09(d)*, or in a Notice of Applicability attributable to such Lot. Declarant will determine such Assessment Units in its sole and absolute discretion. Declarant’s determination regarding the number of Assessment Units applicable to each Lot will be final, binding and conclusive.

(c) Assessment Exemption. Notwithstanding anything in this Tract Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Tract or any Lot from any Assessments levied or charged pursuant to this *Article 6*; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Tract, or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Tract, Lot. Declarant or the Board may also exempt any portion of the Annexable Land which is dedicated and accepted by public authority from Assessments.

6.10 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board’s election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

6.11 Owner’s Personal Obligation; Interest. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent (1½%) per month), together with all costs and expenses of collection, including reasonable attorney’s fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner. Attorney’s fees and costs and expenses of collection shall not accrue and shall not be

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assessed or collected by the Association until the Association has complied with *Section 6.14* and the Owner has failed to address the violation.

6.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this *Article 6* is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, with the exception of fines for violations of the Documents as provided in *Section 6.14*, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.01(b)* above and as further set forth below, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns; provided however, that although fines which have been assessed against an Owner for any violation of the Documents pursuant to *Section 6.14* shall be the personal obligation of such Owner, such fines shall not otherwise be secured by the lien set forth in *Section 6.01(b)*. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) liens for real estate taxes or other governmental assessments or charges; (ii) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent assessment became due; (iii) Golf Club Assessments; (iv) Social Club Assessments; and (v) VMC Assessments. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer, agent or attorney of the Association. The Association shall prepare a written notice or claim of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, the name of the Association, and a description of the Lot. Such notice or claim shall be verified by the oath of an individual having knowledge of the facts therein and shall be Recorded. Within five (5) days after Recording the notice or claim, the Association shall serve, by personal delivery to the Owner, a true and correct copy of the Recorded notice or claim by certified mail to the last known address of the Owner. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Tract Declaration will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment lien and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Tract Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-

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due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.12*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer, agent, or attorney of the Association. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Tract Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Idaho or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts.

6.13 Exempt Property. The following area within the Tract will be exempt from the Assessments provided for in this *Article 6*:

- (a) All area dedicated and accepted by a public authority;
- (b) The Common Area and the Benefited Common Area; and
- (c) Any portion of the Tract or Lot owned by Declarant.

No portion of the Annexable Land will be subject to the terms and provisions of this Tract Declaration, and no portion of the Annexable Land (or any owner thereof) will be obligated to pay Assessments hereunder unless and until such Annexable Land has been made subject to the terms of this Tract Declaration by the Recording of a Notice of Applicability in accordance with *Section 10.04* below.

6.14 Fines and Damage Charges. Before levying any fine or damage charge, the Association shall provide an Owner with a written violation notice and an opportunity to be heard at a Board meeting. At least thirty (30) days prior to such Board meeting, the Association shall provide written notice to such Owner by personal service or certified mail providing the time, date, place and subject matter of such Board meeting. In the event the Owner begins resolving the violation prior to such Board meeting, no fine shall be imposed as long as such Owner continues to address the violation in good faith until full resolved. If the

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Owner does not begin to resolve the violation prior to such Board meeting, the Board upon a Majority vote may assess fines against an Owner for violations of the Documents which have been committed by an Owner, an Occupant, or the Owner or Occupants guests, agents or invitees pursuant to the procedure set forth below. Any fine and/or charge for damage levied in accordance with this *Section 6.14* will be considered an Individual Assessment pursuant to this Tract Declaration, subject to the limitations set forth in *Section 6.12* above. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or Benefited Common Area or any facilities located by the Owner, Occupant, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

6.15 Suspension of Voting Rights. In addition to any and all remedies set forth in this *Article 6*, if any Owner fails to pay any Assessment or other amounts due under the Documents within thirty (30) days after such payment is due or if the Owner violates any other provision of the Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of such violation, the Board shall have the right to suspend such Owner's right to vote until such time as all Assessments and payments, including interest, late charges, fines and attorney's fees, are paid in full or until all violations are cured or the Owner is otherwise deemed in compliance of the Documents in the sole discretion of the Board.

6.16 Collection of VMC Assessments, Social Club Assessments, and/or Golf Club Assessments Under the Covenant. Unless directed in writing otherwise by the VMC Board, the Association will collect from each Owner the allocated share of VMC Assessments attributable to such Owner's Lot, and the allocated share of Social Club Assessments and/or Golf Club Assessments. VMC Assessments, Social Club Assessments, and/or Golf Club Assessments, as applicable, shall be paid by each Owner of a Lot together with all Assessments levied hereunder by the Association. If, for any reason, the Association fails to collect VMC Assessments, Social Club Assessments, and/or Golf Club Assessments, as applicable, in conjunction with the Assessments as set forth in this *Article 6*, then the Association shall collect VMC Assessments, Social Club Assessments, and/or Golf Club Assessments, as applicable, from each Owner, and remit such VMC Assessments, Social Club Assessments, and/or Golf Club Assessments, as applicable, to VMC in such manner as deemed proper by VMC; provided however, that, in any event, each VMC Assessment, Social Club Assessments, and/or Golf Club Assessments, as applicable, will be remitted to VMC on or before the date when payment thereof is required by the terms and provisions of the Covenant.

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**ARTICLE 7
MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Tract. The provisions of this *Article 8* apply to this Tract Declaration and the Bylaws of the Association.

7.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an “**Eligible Mortgage Holder**”)), shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Tract or which affects any Lot on which there is an eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portions of the Tract.

**ARTICLE 8
GENERAL PROVISIONS**

8.01 Term. Upon the Recording of a notice pursuant to *Section 10.04*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Tract Declaration will run with and bind the portion of the Annexable Land described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Tract Declaration is Recorded, and continuing through and including January 1, 2095, after which time this Tract Declaration will be automatically

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extended for successive periods of ten (10) years unless a change (the word "change" meaning an early termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to a change as contemplated in this *Section 8.01*, it being understood and agreed that any change must be approved by a vote of the Members casting their vote individually.

8.02 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Benefited Common Area for any public purpose during the period this Tract Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot. In the event any proceeds attributable to acquisition of Benefited Common Area are paid to Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

8.03 Amendment. This Tract Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to a change as contemplated in this *Section 8.03*, it being understood and agreed that any change must be approved by a vote of the Members casting their vote individually. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the Development Period. Each Owner is advised that, in accordance with this *Section 8.03*, Declarant has the unilateral right to amend this Tract Declaration for any purpose. The Annexable Land will be developed over many years. Changes in the Declarant's plans for the Tract, the Subject Property and the Annexable Land will occur. The Declarant may also elect to

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modify, remove or add to the terms and provisions of this Tract Declaration to respond to such changes and actual or perceived changes in market or other conditions. Accordingly, each Owner and the Association should anticipate and expect that modifications, amendments and/or changes will be made to the terms and provisions of this Tract Declaration unilaterally by the Declarant as determined in Declarant's sole and absolute discretion and judgment.

8.04 Interpretation. The provisions of this Tract Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Tract, provided, however, that the provisions of this Tract Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Tract. This Tract Declaration will be construed and governed under the laws of the State of Idaho.

8.05 Enforcement. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Documents. Failure to enforce any right, provision, covenant, or condition set forth in the Documents will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

8.06 Higher Authority. The terms and provisions of this Tract Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Tract Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

8.07 Severability. If any provision of this Tract Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Tract Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

8.08 Conflicts. If there is any conflict between the provisions of this Tract Declaration, the Articles, the Bylaws, or any Rules adopted pursuant to the terms of such documents, the provisions of this Tract Declaration, the Articles, the Bylaws, and the Rules, in such order, will govern.

8.09 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

8.10 Acceptance by Grantees. Each grantee of a Lot or other real property interest in the Tract, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Tract Declaration or to whom this Tract Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission

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of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Tract, and will bind any person having at any time any interest or estate in the Tract, and will inure to the benefit of each Owner in like manner as though the provisions of this Tract Declaration were recited and stipulated at length in each and every deed of conveyance.

8.11 Damage and Destruction.

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Benefited Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 8.11(a)*, means repairing or restoring the Common Area or Benefited Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area or Benefited Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Benefited Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Benefited Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area or Benefited Common Area by the Association in a neat and attractive condition.

(d) Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Special Assessment for Benefited Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Benefited Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board may levy a Special Assessment against all Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited

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Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots.

(g) Proceeds Payable to Owners Responsible for Benefited Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Benefited Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Benefited Common Area Assessments attributable to such Benefited Common Area and the holders of first Mortgages or deeds of trust on their Lots.

8.12 Notices. Any notice permitted or required to be given to any person by this Tract Declaration will be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

8.13 View Impairment. Although certain Lots in the Tract at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. Notwithstanding any oral or written statement made by any person or contained in any sales materials or brochures, no representation or warranty whatsoever, express or implied, is made by Declarant, the Association, VMC, or the Club Parties concerning the view that any Lot will have whether as of the date this Tract Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot may be impaired or obstructed by further construction within or outside the Tract, including by construction of Improvements (including landscaping) by Declarant, the Golf Club Owner, or the Social Club Owner, construction by third parties (including Owners and Occupants) and by the natural growth of landscaping. No third party, including any broker, salesperson or Owner, has any right to bind Declarant, the Association, VMC, the Golf Club Owner, or the Social Club Owner with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

8.14 Construction Activities. This Tract Declaration will not be construed or applied so as to interfere with or prevent normal construction activities related to the completion of the

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residences and associated Improvements. Such construction may, from time to time, produce certain conditions on the Tract, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) temporary interruption of utilities; and/or (vii) other conditions customarily experienced during development and construction activities. Such conditions resulting from construction and development activities shall not be deemed a nuisance or violation of the terms and provisions of this Tract Declaration.

ARTICLE 9 EASEMENTS

9.01 Right of Ingress and Egress. Declarant hereby reserves for itself, the Association, VMC, and their agents, employees and designees, the right of ingress and egress over and the right of access to the Common Area and the Benefited Common Area to the extent necessary to use the Common Area and the Benefited Common Area and the right to such other temporary uses of the Common Area and the Benefited Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Annexable Land, the Subject Property, and the Tract. The Tract shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant, the Association, and VMC. Declarant, the Association, and VMC shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Tract. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through VMC and/or the Association and paid for as part of the Assessments or directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to VMC, the Association or to any Person. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. The rights of the Declarant with respect to the Community Systems installed by the Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by the Declarant without the prior written consent of the Declarant. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described

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above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services. Declarant hereby reserves for itself, the Golf Club Owner, and their agents, employees and designees, the right of ingress and egress over and the right of access to the Common Area and the Benefited Common Area to the extent necessary, required, or reasonably desirable (as determined by Declarant in its sole discretion) to operate and maintain the Golf Club.

9.02 Entry and Fencing Easement. Declarant reserves for itself, VMC, and the Association, an easement over and across the Tract for the installation, maintenance, repair or replacement of certain entry facilities and fencing which serves the Tract, the Subject Property, the Annexable Land, and/or any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the entry facilities and/or fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the entry facilities and/or fencing as Common Area or Benefited Common Area or a Service Area by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot for its intended purpose.

9.03 Landscape and Monument Sign Easement. Declarant hereby reserves for itself, VMC, and the Association, an easement over and across the Tract for the installation, maintenance, repair or replacement of landscaping or monument signs which serves the Tract, the Subject Property, the Annexable Land, and/or any property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice, which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant reserves the right to designate the easement areas reserved hereunder as Common Area, Benefited Common Area, or Service Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot for its intended purpose. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Benefited Common Area, or Service Area.

9.04 Solar Equipment Easement. Declarant hereby reserves for itself, VMC and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over and across the Tract for the installation, maintenance, repair or replacement of a solar electric generating system designed to deliver electric power to any portion of the Subject Property or Annexable Land. Declarant will have the right, from time to time, to Record a written notice which identifies the solar equipment to which the easement reserved hereunder applies. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party.

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9.05 Easement to Inspect and Right to Correct. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and/or Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct and relocate any structure, Improvement or condition that may exist on any portion of the Tract, including the Lots, and a perpetual nonexclusive easement of access throughout the Tract to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This *Section 9.05* may not be construed to create a duty for Declarant, VMC, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Tract, including without limitation, all Common Areas, Benefited Common Areas, and the Owner's Lot, and all Improvements thereon for the purposes contained in this *Section 9.05*.

9.06 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Tract Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Tract Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Common Area and/or Benefited Common Area, any such agreements, documents, amendments or supplements to the Documents which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area and/or Benefited Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area and/or Benefited Common Area.

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9.07 Governmental Easements. Notwithstanding the foregoing provisions of this *Article 9* or any other provision of this Tract Declaration to the contrary, Declarant, the Association, and VMC may not in any way grant or affect any easements in a manner that violates or is contrary to easements granted by or to the City or any other local government or municipal authority.

ARTICLE 10 DEVELOPMENT RIGHTS

10.01 Development by Declarant. It is contemplated that the Tract, Annexable Land, and Subject Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots, Common Areas, and Benefited Common Areas, and to subdivide with respect to any of the Tract, the Subject Property or Annexable Land. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

10.02 Special Declarant Rights. Notwithstanding any provision of this Tract Declaration to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Tract; (b) to maintain Improvements upon Lots, including the Common Area and Benefited Common Area, as sales, model, management, business and construction offices or visitor centers at no charge; and (c) to maintain and locate construction trailers and construction tools and equipment within the Tract. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

10.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Tract and remove and exclude from the burden of this Tract Declaration and the jurisdiction of the Association any portion of the Tract. Upon any such withdrawal and renewal this Tract Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Tract withdrawn. To withdraw lands from the Tract hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (a) A reference to the Tract Declaration, which reference will state the document number or volume and initial page number of the Official Records of Ada County wherein the Covenant is recorded;
- (b) A statement that the provisions of this Tract Declaration will no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

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10.04 Notice of Applicability. Upon Recording, this Tract Declaration serves to provide notice that at any time, and from time to time, Declarant, acting alone, may subject all or any portion of the Annexable Land or Subject Property to the terms, covenants, conditions, restrictions and obligations of this Tract Declaration. If a Notice of Applicability is Recorded subjecting a portion or portions of the Annexable Land or Subject Property to this Tract Declaration, such Annexable Land or Subject Property will be considered a part of the Tract and will be subject to the terms, covenants conditions, restrictions and obligations of this Tract Declaration. A Notice of Applicability will include:

- (a) A reference to this Tract Declaration, which reference will state the Recording information thereof;
- (b) A statement that all of the provisions of this Tract Declaration will apply to such portion of the Annexable Land or Subject Property;
- (c) A legal description of such portion of the Annexable Land or Subject Property;
- (d) If applicable, a description of any Benefited Common Area which benefits the Annexable Land or Subject Property, as applicable, and the beneficiaries of such Benefited Common Area; and
- (e) If applicable, a description of any Service Area which benefits the Annexable Land or Subject Property, as applicable, and the beneficiaries of such Service Area.

NOTICE TO TITLE COMPANY

NO PORTION OF THE ANNEXABLE LAND OR SUBJECT PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS TRACT DECLARATION AND THIS TRACT DECLARATION DOES NOT APPLY TO ANY PORTION OF THE ANNEXABLE LAND OR SUBJECT PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH ANNEXABLE LAND OR SUBJECT PROPERTY AND REFERENCING THIS TRACT DECLARATION HAS BEEN RECORDED.

10.05 Assignment of Declarant's Rights. Notwithstanding any provision in this Tract Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Tract Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

**ARTICLE 11
DISPUTE RESOLUTION**

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This Article 11 is intended to encourage the resolution of disputes involving the Tract. A dispute regarding the Common Area, Benefited Common Area, and/or Improvements thereon can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of the Common Area and Benefited Common Area, this Article 11 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

11.01 Introduction and Definitions. The Association, the Owners, Declarant, Homebuilders, Residential Developers, and all persons subject to this Tract Declaration, and each person not otherwise subject to this Tract Declaration who agrees to submit to this *Article 11* by written instrument delivered to the Claimant, which may include, but is not limited to, a Homebuilder, a Residential Developer, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Common Area, Benefited Common Area, or any Improvements thereon (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Annexable Land and/or Subject Property and the Common Area or Benefited Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. Notwithstanding anything contained in this *Article 11*, any Claim brought by an Owner related to a residence that is subject to a warranty agreement provided by the Declarant, Homebuilder, or Residential Developer will not be subject to this *Article 11* and will be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this *Article 11*. This *Article 11* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

- (a) "**Claim**" means:
 - (i) Claims relating to the rights and/or duties of Declarant, the Association, VMC, the Golf Club, the Social Club, the Golf Club Owner, the Social Club Owner, or the Valor Reviewer, under the Documents.
 - (ii) Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association,

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and any claim asserted against the Valor Reviewer, the Golf Club, the Social Club, the Golf Club Owner, and/or the Social Club Owner.

(iii) Claims relating to the design or construction of Improvements located on the Common Area or Benefited Common Area.

(b) “**Claimant**” means any Party having a Claim against any other Party.

(c) “**Respondent**” means any Party against which a Claim has been asserted by a Claimant.

11.02 Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 11.08* below, a Claim must be resolved by binding arbitration. Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim against the Golf Club, Social Club, Golf Club Owner, or Social Club Owner.

11.03 Claim Affecting Common Areas. In accordance with *Section 3.16* of this Tract Declaration, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design or construction of Improvements on a Lot (whether one or more). Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area. Each Owner, by accepting an interest in or to title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area and/or Benefited Common Area. In the event the Association asserts a Claim related to the Common Area and/or Benefited Common Area, as a precondition to providing the Notice defined in *Section 11.05*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim related to the Common Area, the Association must:

(a) Obtain Owner Approval of Engagement.

The requirements related to Owner approval set forth in this Section 11.03(a) are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction

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of the Common Area or Benefited Common Area. The engagement agreement between the Association and the law firm or attorney may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between the Association and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association and the law firm or attorney is terminated or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association and the law firm or attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Benefited Common Area or execute a written agreement between the Association and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area or Benefited Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 11.03(a).

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Benefited Common Area if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

The approval of the Members required under this *Section 11.03(a)* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to

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be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area, Benefited Common Area, or Improvements on the Annexable Land or Subject Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether use of the Common Area or Benefited Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area or Benefited Common Area affected by such testing and the estimated costs thereof. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

(b) Provide Notice of the Inspection. As provided in *Section 11.03(c)* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas and/or Benefited Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(c) Obtain a Common Area Report.

The requirements related to the Common Area Report set forth in this Section 11.03(c) are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.

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Obtain a written independent third-party report for the Common Area and/or Benefited Common Area (the “**Common Area Report**”) from a professional engineer licensed by the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors with an office located in Ada County, Idaho (the “**Inspection Company**”). The Common Area Report must include: (i) a description with photographs of the Common Area and/or Benefited Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area and/or Benefited Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area and/or Benefited Common Area performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area and/or Benefited Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Ada County, Idaho, and each such contractor providing the estimate must hold all necessary or required licenses from the Idaho Contractors Board or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this Section and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association’s agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. For avoidance of doubt, an “independent” report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Association.

(d) Provide a Copy of Common Area Report to all Respondents and Owners.
Upon completion of the Common Area Report, and in any event no later than three (3)

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days after the Association has been provided a copy of the Common Area Report, the Association will provide a full and complete copy of the Common Area Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which will include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

(e) Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 9.05* above, the Declarant has an easement throughout the Tract for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, Residential Developer other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

(f) Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 11.05*, initiate the mandatory dispute resolution procedures set forth in this *Article 11*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or

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will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 11.05*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

(g) Provide Officer Certification. Within ten (10) days after a vote of Members called pursuant to this *Article 11*, the secretary or another officer of the Association will provide to Declarant and any Respondent (if different than Declarant): (i) a true and correct copy of the meeting notice provided to Members, for the meeting at which such vote was taken; (ii) copies of the ballots cast at such meeting (whether in person, electronic, or by proxy); (iii) a certification, executed by the issuing officer of the Association that: (a) the information set forth in (i) and (ii) hereinabove is true and correct; (b) the meeting notice provided to Members was provided in accordance with this *Article 11*; and (c) the vote was held in accordance with the Bylaws and this *Article 11*.

11.04 Claim by Lot Owners. Pursuant to *Section 11.03* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Benefited Common Area, such Owner shall be required, since a Claim affecting the Common Area and/or Benefited Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 11.05*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 11.03(b)* (Provide Notice of Inspection), *Section 11.03(c)* (Obtain a Common Area Report), *Section 11.03(d)* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 11.03(e)* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 11.03(f)* (Owner Meeting and Approval), *Section 11.03(g)* (Officer Certification), and *Section 11.05* (Notice). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Tract Declaration.

11.05 Notice. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (iii) what

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Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. If a Claim is subject to Idaho Code §§ 6-2501--2504, the Claimant and Respondent are advised, in addition to compliance with *Section 11.06*, to comply with the terms and provisions of Idaho Code §§ 6-2501--2504. Failure to comply with the time periods or actions specified in Idaho Code §§ 6-2501--2504 could affect a Claim if the Claim is subject thereto. The one hundred and twenty (120) day period for mediation set forth in *Section 11.07* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 11.07* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Common Area and/or Benefited Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area and/or Benefited Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 11.03(a)*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 11.03(f)* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas and/or Benefited Common Areas, the Notice will also include a true and correct copy of the Common Area Report.

11.06 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Annexable Land or Subject Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Annexable Land or Subject Property that is subject to the Claim for the purposes of inspecting the Annexable Land or Subject Property.

11.07 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise

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appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Respondent will submit the Claim to mediation in accordance with this *Section 11.07*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 11.08*.

11.08 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 11.08*.

(a) Governing Rules. If a Claim has not been resolved after mediation in accordance with *Section 11.07*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 11.08* and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this *Section 11.08*, this *Section 11.08* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(b) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(c) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(d) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(e) Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 11.08* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies

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relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(f) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 11.08*.

(g) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 11.08* and subject to *Section 11.09* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Idaho law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble, consequential, or punitive damages for any Claim.

(h) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Ada County, Idaho. Unless otherwise provided by this *Section 11.08*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Idaho Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

11.09 Allocation Of Costs. Notwithstanding any provision in this Tract Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings

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described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

11.10 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

11.11 Period of Limitation. The exclusive period of limitation for any of the Parties to bring any Claim is the applicable statute of limitations for such Claim under Applicable Law.

11.12 Funding the Resolution of Claims. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 11*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

11.13 Severability. The provisions of this Article shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion herein shall not affect the validity or enforceability of any other provision or portion herein.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED to be effective on the date the foregoing instrument is Recorded.

DECLARANT:

M3 ID Falcon Crest, LLC,
an Arizona limited liability company

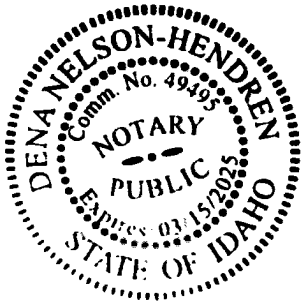
By: **M3 Builders, L.L.C.,**
an Arizona limited liability company
its Manager

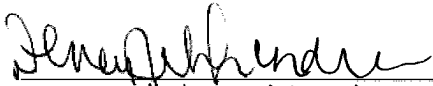
By: **The M3 Companies, L.L.C.,**
an Arizona limited liability company
its sole member

By: 
William I. Brownlee, Manager

STATE OF Idaho)
)
COUNTY OF Ada)

This instrument was acknowledged before me on 22nd day of September
2022, by William I. Brownlee, Manager of The M3 Companies, L.L.C., an Arizona limited
liability company, sole member of M3 Builders, L.L.C., an Arizona limited liability company,
Manager of M3 ID Falcon Crest, LLC, an Arizona limited liability company, on behalf of said
limited liability companies.



Notary: 
Print Name: Dena Nelson-Hendren
Notary Public, State of Idaho
My commission expires: 3.15.2025

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