

2021-075005

RECORDED

10/29/2021 02:59 PM

CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=31 MKEYES

\$100.00

TYPE: MISC

DINIUS LAW

ELECTRONICALLY RECORDED

**AMENDED
DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
LAVA FALLS SUBDIVISION**

NOTICE

THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH POTENTIAL RESIDENT AND OWNER OF PROPERTY WITHIN THE LAVA FALLS SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS AND RESPONSIBILITIES OF ALL LAVA FALLS SUBDIVISION PROPERTY OWNERS.

THE GRANTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY GRANTOR. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING THE TOTAL OR THE TYPES OF ASSESSMENTS TO BE LEVIED AGAINST AN OWNER TO PAY FOR ANY ASPECT OF THE LAVA FALLS SUBDIVISION SHOULD BE DISREGARDED IN THEIR ENTIRETY AND IN ALL EVENTS THE TERMS AND CONDITIONS OF THIS DECLARATION SHALL CONTROL.

POTENTIAL RESIDENTS AND OWNERS ARE ADVISED TO REVIEW THIS DECLARATION WITH THEIR LEGAL AND OTHER ADVISORS PRIOR TO ACQUIRING A LOT.

Table of Contents

	Page
ARTICLE I - DECLARATION	1
ARTICLE II - DEFINITIONS.....	2
ARTICLE III - PURPOSE.....	5
ARTICLE IV - RESTRICTIONS, CONDITIONS AND EASEMENTS	5
4.1 Easements	5
4.2 Nuisances.....	9
4.3 Use.....	9
4.4 Buildings	9
4.5 Fences	9
4.6 Prohibited Buildings and Activities; No Unscreened Boats, Campers, and Other Vehicles	10
4.7 Setbacks.....	10
4.8 Commercial Use	10
4.9 Animals	10
4.10 Signs	10
4.11 Maintenance	11
4.12 Exterior Energy Devices/Antennae	11
4.13 Exemption of Grantor.....	11
ARTICLE V - ARCHITECTURAL CONTROL	12
5.1 Architectural Control Committee	12
5.2 Approvals	12
5.3 Submissions.....	13
5.4 Rules and Regulations	13
5.5 Fees.....	13
5.6 Variances	14
5.7 Waiver	14
ARTICLE VI - LAVA FALLS HOMEOWNERS ASSOCIATION, INC.....	14
6.1 Organization of Association	14
6.2 Members.....	14
6.3 Voting.....	14
6.4 Board of Directors and Officers	15
6.5 Powers of Association	15
6.6 Duties of Association.....	16
6.7 Budgets and Financial Statements	18
6.8 Effective Date.....	18
ARTICLE VII - ASSESSMENTS & FINES.....	18
7.1 Covenant to Pay Assessments and Fines	18
7.2 Initial Assessments	19
7.3 Regular Assessments	19
7.4 Special Assessments	19
7.5 Limited Assessments	19
7.6 Uniform Rate of Assessment	20
7.7 Interest	20
7.8 Fines for Violations	20
7.9 Assessment Period.....	20
7.10 Notice and Assessment Due Date.....	20
7.11 Estoppels Certificate.....	21
7.12 Enforcement of Assessments.....	21

7.13	Notice of Assessment	22
7.14	Enforcement	22
7.15	Notice Required.....	22
7.16	Term of Assessment	22
7.17	Non-Exclusive Remedy	22
7.18	Rights of Mortgagees.....	22
ARTICLE VIII - MISCELLANEOUS		23
8.1	Term	23
8.2	Amendment	23
8.3	Non-Waiver	23
8.4	Banks and Records	23
8.5	Enforcement - Costs	23
8.6	Acceptance	23
8.7	Severability.....	24
8.8	Interpretation	24
ARTICLE IX - ANNEXATION		24
9.1	Annexation	24
9.2	Additional Covenants and Easements.....	24
9.3	Contiguous Land	24
9.4	Application of Declaration to Annexed.....	24
9.5	Procedure.....	24

THIS AMENDED DECLARATION OF CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAVA FALLS SUBDIVISION (“Declaration”) made effective as of this 29th day of October, 2021, by SAWTOOTH LAND ACQUISITION, LLC, an Idaho limited liability company (“Grantor” or “Class B Member”).

RECITALS

A. The Grantor is the owner of certain land in Canyon County, Idaho, more particularly described on Exhibit A attached hereto and incorporated herein (hereafter “Property” or “Subdivision”).

B. The property potentially subject to this Declaration includes, but is not limited to, the property legally described on Exhibit A attached hereto and made a part hereof by this reference (“Lava Falls Subdivision”).

C. Grantor intends to develop Lava Falls Subdivision in multiple development phases. Each phase, and any other property otherwise annexed into Lava Falls Subdivision shall be subject to this Declaration through a Supplemental Declaration and all property made subject to this Declaration shall be referred to as “the Property.” Unless and until a Supplemental Declaration is filed with the Canyon County Recorder’s Office, none of the property identified on Exhibit A or otherwise shall be subject to this Declaration. The Property shall consist of single family residential lots defined in Article II hereof as the “Residential Property.”

D. The Grantor desires to subject the Property and each subdivided Phase to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions, and equitable servitudes (collectively “Restrictions”) that apply to a phase. The Restrictions are designed to preserve the Property’s value, desirability, and attractiveness, to ensure a well-integrated high-quality development, and to guarantee adequate maintenance of the Common Area, and the Improvements located thereon, in a cost effective and administratively efficient manner.

E. To achieve the objectives and desires of the Grantor, the Grantor will control the management and government of the Property and the non-profit association of Owners of the Property to be created until such time as the Owners take over the management functions of the Association at the time provided in this Declaration.

ARTICLE I DECLARATION

The Grantor hereby declares that the Residential Property, and each subdivided Residential Lot (as herein defined) shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions and limitations (hereafter collectively called “covenants and restrictions”), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, improvement and sale of the Subdivision and each Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and conditions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring

any right, title or interest in the Subdivision or any Lot therein; shall inure to the benefit of every Lot in the Subdivision and any interest therein; and shall inure to the benefit of and be binding upon each Owner; and may be enforced by the Grantor, the Association and by any Owner, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor's right to complete development of the Subdivision in accordance with the plan therefor as the same exists or may be modified from time to time by the Grantor, nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion.

In the event of a conflict between the provisions of this Declaration and the governmental entity(ies) having jurisdiction over the Property, the more restrictive shall control.

ARTICLE II DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

"Architectural Control Committee." Architectural Control Committee (or ACC) shall mean the committee created by the Grantor or an Association pursuant to Article V hereof.

"Assessments." Assessments shall mean those payments required of Owners or other Association Members, including Initial Assessment, General Assessments, Special Assessments, and Limited Assessments as each are described in Article VIII hereof, together with and including any and all late charges, interest, and costs incurred in collecting and enforcing the same, including attorneys' fees.

"Association." Association shall mean the Idaho profit or non-profit corporation, and its successors and assigns, established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration. Grantor shall have the power, in its discretion, to name the Association the "Lava Falls Homeowners Association, Inc.," or any similar name which fairly reflects its purpose.

"Association Rules." Association Rules shall mean those rules and regulations promulgated by an Association governing conduct upon and use of the Property under the jurisdiction or control of an Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of an Association.

"Board." Board shall mean the duly elected and qualified Board of Directors or other governing board or individual, if applicable, of an Association.

“Building.” Building shall mean a structure constructed on a Lot, including residential dwellings and accessory or outbuildings, and shall include all other appurtenances and improvements thereto or used in connection therewith.

“Building Lot.” Building Lot shall mean one or more lots within a phase as specified or shown on any Plat and/or by Supplemental Declaration, upon which Improvements may be constructed.

“Bylaws.” Bylaws shall mean the Bylaws of the Association, including any amendments thereto duly adopted.

“Common Area.” Common Area shall mean all real property in which the Association holds an interest or which is held or maintained, permanently or temporarily, for the common use, enjoyment, and benefit of the entire Subdivision and each Owner therein, and shall include, without limitation, all such parcels that are designated as private streets or drives, common open spaces, common landscaped areas, and waterways. The Common Area may be established from time to time by Grantor on any portion of the Property by describing it on a Plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration or any Supplemental Declaration. The Common Area may include easement and/or license rights.

“Declaration.” Declaration shall mean this Declaration as it may be amended from time to time.

“Design Guidelines.” Design Guidelines shall mean the construction guidelines approved by the Architectural Committee.

“Development.” The project to be undertaken by the Grantor resulting in the improvement of the Subdivision, including landscaping, amenities, construction of roadways, utility services and other improvements.

“Grantor.” Grantor shall mean SAWTOOTH LAND ACQUISITION, LLC, an Idaho limited liability company, and its successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor or its successor.

“Improvement.” Improvement shall mean any structure, facility, or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, or placed upon, under, or in, any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, and fixtures of any kind whatsoever.

“Landscape Easements.” Landscape Easements shall mean the landscape easements designated on the Plat or in a Supplemental Declaration as referenced in Section 4.1(k) of this Declaration.

“Limited Assessment.” Limited Assessment shall mean a charge against a particular Owner and such Owners Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including, without limitation, damage to or maintenance, repair, replacement and

operation activities performed for any Common Area or the failure of an Owner to keep the Owner's Building Lot in proper repair, including interest thereon as provided in this Declaration or a Supplemental Declaration or for any goods or services provided by the Association benefiting less than all Owners.

"Lot." A portion of the Subdivision which is a legally described Lot within the Subdivision as shown on the recorded plat of the Subdivision and any future Lot annexed into the Subdivision.

"Member." Any person(s) who is an Owner of a Residential Lot within the Subdivision.

"Occupant." Any person or other legal entity who or which is legally entitled to occupy and use any Building on a Lot.

"Owner." Owner shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgages or other security holder by purchase at foreclosure sale or otherwise.

"Person." Person shall mean any individual, partnership, corporation, or other legal entity.

"Phase." A legal portion of the overall Development as shown on the Plat of such Phase.

"Plat." Plat shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Canyon County, Idaho, as the same may be amended by duly recorded amendments thereof.

"Project Documents." The Project Documents consist of this Declaration, the Articles of Incorporation, By-laws, Association Rules, Design Guidelines, and Plats.

"Property." Property shall mean the real property described in Exhibit A, including each lot, parcel, and portion thereof and interest therein, including all water rights associated with or appurtenant to such property, which are brought within the jurisdiction hereof by Supplemental Declaration or otherwise. The Property also may include, at Grantor's sole discretion, such additional property in addition to that described in Exhibit A as may be annexed by means of Supplemental Declaration as provided herein.

"Regular Assessment." Regular Assessment shall mean the portion of the cost of maintaining, improving, repairing, managing, and operating the Common Area and all Improvements located thereon, and the other costs of an Association which is to be levied against the Building Lot of and paid by each Owner to the Association, pursuant to the terms of this Declaration or a Supplemental Declaration.

"Residential Lot." A portion of the Residential Property which is a legally described Lot, except the Common Areas.

“Residential Property.” All Lots shown on the Plats as single family Residential Lots.

“Special Assessment.” Special Assessment shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association, pursuant to the provisions of this Declaration or a Supplemental Declaration.

“Subdivision.” The entirety of all of the Property described above and including all existing and future phases of Lava Falls Subdivision located in Canyon County, Idaho and as recorded in the office of the Canyon County Recorder.

“Terrace Lot.” A portion of the Residential Property which is one of the legally described Residential Lots more particularly depicted in Exhibit A attached hereto and incorporated herein.

“View Lot.” A portion of the Residential Property which is one of the legally described Residential Lots more particularly depicted in Exhibit A attached hereto and incorporated herein.

ARTICLE III PURPOSE

The Subdivision, and each Lot therein, are hereby made subject to the covenants, conditions and restrictions contained in this Declaration, all of which shall run with the land, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, for the purpose of ensuring Owners and Occupants of quality of design, development, improvement, use and maintenance of the Lots and Improvements thereon and shall protect and enhance the investment and use of all Lots within the Subdivision.

ARTICLE IV RESTRICTIONS, CONDITIONS AND EASEMENTS

Section 4.1 Easements. There is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant of a Lot, and for the use and benefit of the Association, and their successors and assigns for the purposes to such use, development and maintenance of the Property, the following easements:

(a) Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the Restrictions set forth in this Declaration, as supplemented and amended from time to time.

(b) Ingress, Egress and Parking. Grantor hereby establishes, declares and grants, subject to the terms contained in this Declaration, a perpetual, non-exclusive easement for the passage and parking of vehicles on, over and across the parking and driveway areas of those portions of each Lot designated as Common Area, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway and sidewalk areas of those portions of each Lot designated as Common Area, as the same may from time to time be constructed and

maintained for such use for the benefit of each Lot within the Property and for the use of the Owners thereof and their Permittees, in common with others entitled to use the same. This easement shall not be terminated without the express consent of the City of Nampa.

(c) Permanent Access Easement. In addition to the foregoing, Grantor hereby establishes, declares and grants, subject to the terms contained in this Declaration, a perpetual, non-exclusive access easement for vehicular and pedestrian ingress and egress over and across the Common Area as shown on the Site Plan, which shall be referred to as the "Permanent Access Easement" for the benefit of each Lot within the Property and for the use of the Owners thereof and their Permittees, in common with others entitled to use the same. The Association will be responsible for all maintenance, repair or replacement of such Permanent Access Easement, and the cost and expense of such maintenance, repair and replacement shall be assessed as a Regular Assessment against all Owners. This easement shall not be terminated without the express consent of the City of Nampa.

(d) Adjacent Property Cross-Access Easement. Grantor hereby declares and grants to the owner(s) of the property located adjacent to and to the east of the Property, and such owner or owners' successors and assigns, for their use and for the use of their Permittees, in common with others entitled to use the same, a nonexclusive easement for the passage of vehicles over and across the Permanent Access Easement, and for the passage and accommodation of pedestrians over and across the parking, driveways, and sidewalk areas of the Property designated as Common Area, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the provisions contained in this Declaration. This easement shall not be terminated without the express consent of the City of Nampa.

(e) Blanket Utility Easement. A blanket utility easement is hereby granted for all utilities, including telephone, cable television and electrical systems, on, over, across, under and through the Common Area for the provision of services to each Lot. All such utility systems shall be located underground. The Owners of Lots may not construct any Improvements on the Common Area that would interfere with or otherwise prevent the easement from being used for its intended purpose, other than the drive aisles, parking spaces and related Improvements. Any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Association and the Association may impose a Special or Limited Assessment therefore.

(f) Drainage and Utility Easements. Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies for the installation, repair and maintenance of utility and drainage facilities as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Lot in the Property. Such additional easements shall include but not be limited to drainage easements as depicted in any Plat of any phase of the Subdivision and recorded in the records of Canyon County, Idaho.

The Owners of Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage or utility easement areas as shown on the Plat(s) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose; provided, however that any damage sustained to

Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Association and the Association may impose a Special or Limited Assessment therefore.

(g) Rights and Duties Concerning Utility Easements. Wherever utility connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary. Whenever utility connections are installed within the Property, which connections serve more than one Lot the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Lot. In the event any installation, construction, maintenance, operations, repair or replacement ("Installation and Repair") of the easements granted herein disturbs or damages any landscaping or other Improvement(s), the Association shall restore the Improvements to a condition reasonably comparable to their condition prior to the Installation and Repair and shall charge all costs associated therewith as a Limited Assessment against the Owner performing the Installation and Repair.

(h) Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto, or as between adjacent Lots, due to the unwillful placement or settling or shifting of the Improvements including, without limitation, structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as the encroachment exists, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments within and over adjoining Lots that existed prior to the destruction may be reconstructed pursuant to the easement granted by this Section.

(i) Maintenance and Use Easement Between Walls and Property. Whenever the wall of a structure, a fence, eave or overhang constructed on a Lot is located within three (3) feet of the property line of such Lot, the Owner of such Lot is hereby granted an easement over and on the adjoining Lot (not to exceed three (3) feet from the property line of the Lot) for purposes of maintaining, repairing or replacing such wall, fence, eaves or other overhangs, and the Owner of such adjoining Lot is hereby granted an easement for landscaping purposes over and on the area lying between the property line and such structure or fence so long as such use does not cause damage to the structure or fence.

(j) Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair, replacement or maintenance of any Improvement or utility connections, or with respect to the sharing of the cost therefor, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall

decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

(k) Landscape Easement. An easement is hereby reserved to the Association, its contractors, employees, and agents, to enter those portions of Lots designated as Common Area, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time.

(l) Slope Easement-Landscape. An easement is hereby reserved to the Association; its contractors, employees, and agents, to enter that certain slope area (the "Slope Area") as may be more particularly depicted and described in any Plat of the Subdivision and recorded in the records of Canyon County, Idaho, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time. This Slope Easement grants exclusive control to the Association to perform all said landscape related activities in the Slope Area. No fencing shall be allowed within the Slope Area or along or parallel to any rockery wall as constructed, installed and maintained therein (the "Rockery Wall").

(m) Grantor's Rights Incident to Construction. Grantor, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Grantor; provided, however, that no such rights shall be exercised by Grantor in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or such Owner's, tenants, employees, guests, or invitees.

(n) Reservation for Expansion. Grantor hereby reserves to itself and for Owners of Lots of the Property a perpetual easement and right-of-way for access over, upon, across and through the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way must be approved and may be documented by Grantor by recorded instruments.

(o) Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

(p) Maintenance Easement. An easement is hereby reserved to Grantor, which may be granted to the Association, and any member of their Board or their manager, if any, and their respective officers, agents, employees, and assigns, upon, across, over,

in, and under the Lots and a right to make such use of the Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Project Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot as required or permitted by the Project Documents.

Section 4.2 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area and or vacant Lots, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No trash, refuse pile, vehicles, or other unsightly objects shall be allowed to group, accumulate or remain on any Lot so as to be a detriment to the neighborhood or become a fire hazard. No car bodies, discarded appliances or unsightly materials may be stored upon the Property. No Lot shall be used as a dumping ground for rubbish or trash. No business or home occupation, no noise, no obstructions of pedestrian walkways, no unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity or to its occupants or residents, as determined by the Association, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Design Committee), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Design Committee. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers and/or shielded from adjacent property. Trash, garbage and other waste shall be kept in sanitary containers and shielded from adjacent property.

Section 4.3 Use. The Residential Lots within the Subdivision shall be used exclusively for single family residential purposes and such uses as are customarily incidental thereto.

Section 4.4 Buildings. New construction on a Lot must begin within 6 months of purchase of said Lot. No Lot shall be improved except with one (1) single-family, single-story dwelling and garage for not less than two (2) motor vehicles. No accessory or outbuildings shall be allowed. No vinyl siding shall be allowed on any Building. All Buildings on Lots shall contain living space (not including a garage) of not less than 1,600 square feet. All roofs on Buildings on all Lots shall have a minimum of 4/12 pitch. Additional design, height, dimension, space, set back, architectural, and other requirements as provided in writing by the ACC (the "Design Guidelines") which may be amended from time to time by the ACC as provided herein, shall apply.

Section 4.5 Fences. All fences in the Subdivision shall be constructed of 6 foot tan vinyl or subject to the approval of the ACC, except where city requires a lower fence on corner lots etc. Any fence along a common area shall be constructed of 3 rail or 6 foot tan vinyl. No fence shall exceed 6 feet in height and no fence shall be constructed within the Slope Easement

or parallel to the Rockery Wall or any retaining wall in the subdivision. Any additional requirements related to fencing provided in the Design Guidelines shall also apply to construction and installation of fences.

Section 4.6 Prohibited Buildings and Activities; No Unscreened Boats, Campers, and Other Vehicles. No trailer or other vehicle, tent, shack, garage, accessory building or out building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which maybe or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. No building shall be moved onto a Lot. Boats, recreational vehicles, all-terrain vehicles and similar recreational equipment, trailers, riding lawn mowers, and haulers may not be parked on any road within the Subdivision and may only be parked in a driveway on a temporary basis, no longer than seventy-two (72) hours. Any such vehicles or equipment may only be stored on a lot if said vehicle or equipment is stored behind a fence and behind the back elevation and the side elevation of a home. Any such vehicle or equipment must be in good working condition and appearance.

Section 4.7 Setbacks. In addition to complying with the setbacks required by the applicable ordinances of any municipal entity having jurisdiction of the Property, any Building constructed on a Lot shall be set back in accordance with the setback requirements provided in the Design Guidelines. In addition, the ACC may impose additional setback requirements as a condition of approval of any Building for the purpose of protecting the quality and value of the homes built on the Lots.

Section 4.8 Commercial Use. No Lot shall be used at any time for commercial or business purposes, except for such “in-home” commercial or business purposes allowed by law and as shall be conducted and maintained solely within a residential dwelling unit on a Lot, provided that (i) no signs relating to said commercial or business activity shall be displayed where visible from any road within the Subdivision, (ii) such business or commercial activity does not require customer or client traffic, and, (iii) the principal use of each Lot shall be as provided for in Section 4.3 above. Notwithstanding the foregoing, the Grantor, or persons authorized by the Grantor, may use a Lot for development and sales activities relating to the Subdivision, model homes or real estate marketing and sales.

Section 4.9 Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except on any Lot domesticated dogs, cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and that any outside kennels or pens where such animals are housed are located and constructed so as to protect other Owners and Occupants of the Residential Property from any nuisance or disturbance. Without limiting the generality of the foregoing, all domesticated dogs shall be kept in an enclosed fence or on a leash and shall not be allowed to run free in the Subdivision.

Section 4.10 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Lot for sale by displaying a single, neat and reasonably sized sign on a Lot. Owners shall not advertise a Lot for rent.

Section 4.11 Maintenance. The following provisions shall govern the maintenance of Lots and all improvements thereon:

(a) Maintenance of Improvements. All Improvements located on a Lot (except the Slope Area as defined in Section 4.1(I)) shall be maintained by each Owner of such Lot in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.

(b) Repair of Damage. All damage to any Improvements shall be repaired as promptly as is reasonably possible.

(c) Trash and Debris. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view. Trash and debris shall be removed from the Lot at regular intervals and shall not be allowed to accumulate.

(d) Other Prohibited Conditions. Any event or condition on a Lot which, in the sole discretion of the Board creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner(s) or Occupants) of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

(e) Failure to Maintain – Remedy. All lots require 100% landscaping and shall be fully fenced with a 6' tan vinyl fence, per Section 4.5. In the event that any Owner(s) of a Lot shall permit any Lot or Improvement thereon, including any landscaping, which is the responsibility of such Owner(s) to maintain, to fall into disrepair as to create a dangerous, unsafe or unattractive condition, or otherwise permit the Lot or Improvement thereon to fall into a state of non-compliance with this Declaration, the Association Rules, or the Design Guidelines, the Board, upon thirty (30) days prior written notice to the Owner(s) of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing same, and such Owner(s) shall promptly reimburse the Association for the costs thereof. The Owner(s) of the offending Lot shall be personally liable, and such Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. The Owner(s) of the offending Lot shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts, and any fines imposed as a result of such failure to maintain, may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments as set forth in Article VII of this Declaration.

Section 4.12 Exterior Energy Devices/Antennae. No energy production device including but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot, without the prior written approval of the ACC (defined below), except for heat pumps and similar appliances.

Section 4.13 Exemption of Grantor. Notwithstanding anything to the contrary contained herein, the Grantor shall have the fullest latitude to develop the Property without reservation

except as imposed by applicable zoning, subdivision or other ordinances. Nothing herein contained shall limit the right of the Grantor to grant licenses, reservations, rights-of-way or easements to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Grantor, or to alter the foregoing and its Development, plans and designs, or to construct additional Improvements as Grantor deems advisable in the course of Development of the Subdivision. This Declaration shall not limit the right of Grantor at any time prior to the acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies or to others, as may from time to time be reasonably necessary.

ARTICLE V ARCHITECTURAL CONTROL

Section 5.1 Architectural Control Committee. In order to protect the quality and the value of the homes built on the Lots, and for the continued protection of the owners thereof, an ACC is hereby established consisting of not less than three (3) nor more than five (5) members to be appointed by Grantor. Grantor shall have the sole right and authority to appoint members to the ACC so long as the Grantor owns at least one (1) lot within the subdivision; thereafter, the members of the ACC shall be appointed by the Board of the Association.

Section 5.2 Approvals. No Building, including garage and accessory or outbuildings, fence, wall, patio cover, window awning or other structure or landscaping improvement of any type shall be commenced, built, constructed or placed upon any Lot, nor shall the exterior of any such building or other structure be changed until the plans and specifications, including exterior elevations, showing the nature, kind, shape, configuration, height, materials and location of such building, structure or landscaping shall have been submitted to the ACC and the ACC has approved such plans and specifications as being architecturally and aesthetically compatible with the other buildings and structures in the subdivision. The ACC shall approve or disapprove, with reasons specified, of such plans and specifications within thirty (30) days after their submission to the Architectural Control Committee. Failure of the ACC to approve or disapprove of such plans and specifications within such thirty (30) day period shall be deemed the Architectural Control Committee's disapproval thereof.

The ACC may, but shall not be obligated to, establish construction styles or motifs allowed on the Lots consistent with any applicable Design Guidelines or condition of the City of Nampa ("Approved Styles"). The ACC shall have the right to refuse to approve any design plan or color for such building, improvements or alterations which, in its opinion, are not suitable or architecturally or aesthetically harmonious with the other buildings and improvements in the subdivision or note in conformance with any Approved Styles. In approving or disapproving such plans and specifications, the ACC may consider all reasonable factors, including, without limitation, whether the design or proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from the adjacent or neighboring property, and the desirability of the proposed improvement, structure or alteration. The construction of all improvements within the subdivision shall be substantially in conformance with plans and specifications approved by the Architectural Control Committee.

Section 5.3 Submissions. Requests for approval of the ACC shall consist of such documents and materials as may be reasonably requested by the Architectural Control Committee, including, without limitation, the following:

(a) Site Plan. A site plan showing the location of the buildings and other structures and improvements, including fences and walls on the lot, lot drainage and setbacks and other pertinent information.

(b) Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of all four sides of the building, detailed exterior specification for each building, which shall indicate, by sample if required by the Architectural Control Committee, all exterior colors, materials and finishes, including the roof. Garage or accessory outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to the style and exterior colors and shall not be higher than the roofline of the principal building on the Lot.

(c) Landscape Plan. A complete landscape plan for that portion of the Lot to be landscaped which shall show the location, type and size of trees, plants, groundcover, shrubs, berms, grading, drainage, sprinkler systems, fences, free-standing exterior lights, driveways, parking areas and walkways. Cross lot-drainage shall not be allowed. Any landscape plan shall include at least the minimum landscape standards required by the Design Guidelines. Regardless of compliance with the minimum landscape standards, all landscape plans must first be approved by the ACC.

Section 5.4 Rules and Regulations. The ACC is hereby authorized to adopt reasonable rules and regulations to govern its procedures and the requirements for making submissions and obtaining approvals as the ACC deems appropriate and in keeping with the spirit of the due process of law. The ACC is also hereby empowered to adopt and incorporate into the Design Guidelines, such architectural guidelines as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors and aesthetic compatibility (“Design Guidelines”). The Design Guidelines are minimum adopted guidelines and the ACC shall have discretion to apply additional rules, regulations or requirements as provided herein. Any or all of such rules and regulations promulgated by the ACC may be amended from time to time by majority vote of the ACC. Failure of the ACC to adopt or apply any such rules, regulations or guidelines shall not form a basis for an attack upon the exercise of the ACC’s discretion, it being the intent of this Declaration to provide the ACC with as broad of discretion as reasonably permissible under the law.

Section 5.5 Fees. The ACC shall charge \$250 for an architectural review fee to be paid by each owner submitting plans and specifications for approval for ANY construction changes to properties, exterior color or hardscape changes. Said fee shall be collected at the time of the Lot closing for initial ACC permit builds.

The ACC may adjust, by majority vote, the amount of the fee for an architectural review. No submission for approval will be considered complete until such fee has been paid. Any such fee shall not exceed such reasonable amount as may be required to reimburse the ACC for costs of professional review of plans and specifications submitted and the services of a consultant or to administer matters to their completion, including inspection as required.

Section 5.6 Variances. The ACC may authorize variances from compliance with any of the provisions of this Article V, including the restrictions upon height, size, floor area or placement of structures or similar restrictions when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Any variances granted by the ACC must be evidenced in writing and must be signed by at least two members of the ACC and shall be effective upon recordation in the real property records of Ada County, Idaho. No violation of covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to any matter for which a variance has been granted. Granting of any such variance shall not operate to waive any terms, covenants or conditions of this Declaration for any purpose except as to the particular Lot and the particular provision covered by such variance, nor shall such variance affect, in any way, the Owner's obligation to comply with all governmental laws, rules and regulations affecting such Owner's use of such Lot.

Section 5.7 Waiver. The approval of any plan or specifications for any building, structure, improvement or alteration or any other matter requiring the approval of the ACC shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing or specification on matters subsequently submitted for approval.

ARTICLE VI LAVA FALLS HOMEOWNERS ASSOCIATION, INC.

Section 6.1 Organization of Association. Lava Falls Homeowners Association, Inc., shall be organized by the Grantor as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its Bylaws and this Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The By-Laws shall provide that the Members will not dissolve or terminate the Association without the prior written consent of the City.

Section 6.2 Members. Each Owner (including the Grantor) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association and no Owner of a Lot shall have more than one (1) membership in the Association, but shall have such voting rights as hereafter set forth. For the purposes of this Article VI, the term "Owner" shall mean the Owner of a Lot. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

Section 6.3 Voting. The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all Owners of Lots within the Subdivision, with the exception of the Grantor, and shall be entitled to one (1) vote for each Lot owned,

CLASS B. Class B Members shall be the Grantor. Upon the first sale of a Lot to an Owner, the Grantor shall thereupon be entitled to ten (10) votes for each Lot owned by the Grantor. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following events: (i) the date Grantor has deeded the last Lot in the Subdivision owned by Grantor to an Owner other than Grantor; (ii) the date on which Grantor may elect in writing to terminate the Class B Membership; or (iii) the expiration of ten (10) years from the date on which the first Building Lot is sold to an Owner.

Fractional votes shall not be allowed. If the Owner of a Building Lot shall be more than one (1) Person, all such Persons shall be deemed Members, but the voting rights in the Association attributable to that Building Lot may not be split and shall be exercised by one representative selected by such Persons as they, among themselves, may determine. In the event that such joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary, or contract purchaser of the Building Lot concerned, for the term of the lease, mortgage, deed of trust, or contract. Any sale, transfer, or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

Section 6.4 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles of Incorporation and By-Laws, as the same may be amended from time to time.

Section 6.5 Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles of Incorporation, the By-Laws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles of Incorporation, By-Laws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of other responsibilities including, but not limited to, the following:

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

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

(c) Right to Perform Maintenance of Defaulting Owner. The power and authority to perform any obligations of any Owner to maintain, replace or repair the improvements on such Owner's Lot as provided in Section 7.5(b) and Section 4.11(e).

(d) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager.

(e) Liability of Board Members and Officers. Neither any member of the Board nor any offices of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

(f) Association Rules. The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable ("Association Rules"). Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property owned or controlled by the Association; provided, however, Association Rules shall not discriminate among Owners and shall not be inconsistent with the Articles of Incorporation, By-Laws or this Declaration. A copy of Association Rules as they may from time to time be adopted, amended or repeated, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between the Association Rules or any provision of the Articles of Incorporation, By-Laws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.

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

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

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

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

(h) Fiscal Year. The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

Section 6.6 Duties of Association. In addition to the powers delegated to it by the Articles of incorporation, By-Laws and this Declaration, without limiting the generality thereof,

the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

(a) Operation and Maintenance Of Common Area, Inclusive of Storm Water Facilities. To perform, or provide for the performance of, the operation, maintenance, repair and management of the Common Area, common lots and Slope Area including the maintenance, repair and replacement of the all improvements located thereon, including the operation, maintenance and management of the use of the drainage being used for park areas during times when there is no standing water. The Association shall conspicuously post signs on the drainage areas stating when they cannot be used as park areas and shall maintain all park equipment in good condition. The foregoing duties are subject to and include the following:

(i) Grading. The owner of any Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of the Nampa City Code or by the Association, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Nampa Highway District, or other public agency, and planting and ground cover installed or completed thereon.

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

(c) Insurance. Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:

(i) Comprehensive public liability insurance insuring the Association, the Board, officers, the Grantor and the individual owners and agents and employees of each of the foregoing against any liability incident to the ownership, control and/or use of the Common Area owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board.

(ii) Full coverage directors and officers liability insurance in an amount determined by the Board.

(iii) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.

(iv) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.

(v) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

(d) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Subdivision, if any, whether the same be located within or without the boundaries of the Subdivision.

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

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

Section 6.7 Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

(a) Budget. A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.

(b) Balance Sheet - Annual Operating Statement. Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

Section 6.8 Effective Date. The provisions of this Article VI shall become operative upon the conveyance to the Association of a fee simple or easement estate to any Common Area within or outside of the Subdivision, or the vesting in the Association of the right to control such Common Area. Until the creation and organization of the Association and the conveyance of fee simple title to any Common Area to the Association, the Grantor shall have the right to exercise all of the powers of the Association set forth in this Declaration.

ARTICLE VII ASSESSMENTS & FINES

Section 7.1 Covenant to Pay Assessments and Fines. Each Owner of a Lot hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due (without deduction, setoff, abatement, or counterclaim of any kind whatsoever) all Assessments and fines made against such owner pursuant to this Declaration.

Assessments shall be a charge upon the land and shall be a continuing lien upon the Lot against which the Assessments are made, whether or not ownership of such Lot is transferred. Assessments against a Lot are also the personal obligation of the Owner of the Lot when the

Assessments become due and payable. Such personal obligation shall remain with such Owner regardless of whether such Owner remains the owner of the Lot. Provided however, that the personal obligation for such delinquent Assessments related to a Lot may pass to such Owner's successors in title if expressly assumed by such successors, in which case such Assessments shall be the joint and several personal obligation of the Owner and the Owner's successors until paid in full.

Section 7.2 Initial Assessments. Each Owner of a Lot shall be charged a one-time initial setup assessment of \$250.00 (the "Initial Assessment").

Section 7.3 Regular Assessments. There shall be a regular assessment for each Lot in the amount of \$720.00 annually ("Regular Assessments"), unless changed by the Association. Regular Assessments may be changed by the Association based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, including professional management of the Association, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

Section 7.4 Special Assessments. In addition to Regular Assessments, the Association may levy at any time special assessments ("Special Assessments") payable over such period as the Board may deem appropriate for the following purposes:

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

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

Section 7.5 Limited Assessments. In addition to Regular Assessments and Special Assessments, the Association shall levy limited assessments ("Limited Assessments") as follows:

(a) Fines. For any fines assessed in compliance with Section 7.8 hereof; and

(b) Maintenance and Repair. To reimburse the Association for: (i) any costs incurred by the Association to bring the Owner's Lot or any Improvement thereon into compliance with this Declaration, the Association Rules, and the Design Guidelines, if the

Owner fails to bring such Lot or Improvements thereon into compliance after being given notice in compliance with Section 4.11(e) hereof; and for ii) any costs incurred by the Association in repairing any damage caused by the Owner or its Occupants, guests, tenants, invitees, or contractors to any Common area or Improvements owned or maintained by the Association, if the Owner fails to cause such repairs to be made to the satisfaction of the Association after sixty (60) days written notice by the Board notifying the Owner of the necessity of such repairs.

Section 7.6 Uniform Rate of Assessment. Except as expressly provided to the contrary in this Declaration, Regular Assessments and Special Assessments of the Association shall be fixed at a uniform rate for all Residential Lots.

Section 7.7 Interest. All Assessments, or installment payments thereof, if not paid when due, shall bear interest at the rate of eighteen percent (18%) per annum. Such interest shall commence on the date the Assessment becomes due and payable and shall continue until paid in full, inclusive of the date payment is received by the Association. In addition, the Board may assess a late charge equal to ten percent (10%) of each payment not paid within ten (10) days of its due date. The right of the Board to charge interest and assess late charges shall be, in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

Section 7.8 Fines for Violations. The Association shall have the power to levy fines on any Owner for a specific violation(s) of this Declaration and any related or referenced Design Guidelines or Association Rules, provided that:

(a) A majority of the Board votes in favor of imposing the fine on the Owner for such violations;

(b) Written notice by personal service or certified mail of the meeting during which such vote is to be taken shall be made to the Owner at least thirty (30) days prior to the meeting;

(c) In the event the Owner begins resolving the violation prior to the meeting, no fine shall be imposed so long as the Owner continues to address the violation in good faith until fully resolved; and

(d) No portion of any fine may be used to increase the remuneration of any Board member or agent of the Board.

No part of this Section 7.8 shall affect any statute, rule, covenant, bylaw, provision or clause that may allow for the recovery of attorney's fees.

Section 7.9 Assessment Period. Unless otherwise provided in the Project Documents, the Assessment period for the Association shall be determined by the Board. The first General Assessment shall be prorated according to the number of months remaining in the fiscal year and shall be payable in equal installments or in a single payment due at closing on the sale of a Lot, at the discretion of the Board.

Section 7.10 Notice and Assessment Due Date. Except with regard to the first General Assessment, thirty (30) days prior written notice of Regular Assessments and Special

Assessments shall be sent to the Owner of every Lot subject thereto, and to any Person in possession of such Lot by the Association. The Association shall determine if payments for General Assessments and Limited Assessments shall be due and payable annually, or due and payable in equal monthly, quarterly, or semi-annual installments, or at such other time as the Board may determine. If due annually, the Assessments are due and payable in full on the first day of January of each year. If Assessments are due and payable in equal monthly installments, then each such installment is due on the first day of each month; if Assessments are payable due and payable in quarterly installments, then each such installment is due on the first day of January, April, July, and October of each year; if Assessments are due and payable in semi-annual installments, then each such installment is due on the first day of January and June of each year; if Assessments are due and payable annually then such payment is due the first day of January of each year. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Lot as more fully provided herein.

Section 7.11 Estoppels Certificate. The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a written statement stating whether or not a particular Owner is in default under the provisions of this Declaration and the amount of any Assessments due or previously paid as to such Lot and such other matters as the Board deems reasonable to respond. The Association shall have the right to charge a reasonable fee for the certification herein provided.

Section 7.12 Enforcement of Assessments.

(a) Right to Enforce. The Association has the right to collect and enforce its Assessments created hereby and pursuant to the provisions hereof. Each Owner of a Lot, upon becoming an Owner of such Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

(b) Creation of Assessment Liens. There is hereby created a continuing claim of lien on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subdivision pursuant to this Declaration, together with interest thereon. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Residential Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a Mortgage or Deed of Trust, duly recorded in Canyon County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the

Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

Section 7.13 Notice of Assessment. If an Owner of a Lot fails to pay an Assessment within thirty (30) days of its due date, the Association may prepare a written Notice of Assessment setting forth (i) the type of Assessment, (ii) the amount of the Assessment, (iii) the due date thereof, including the amount and due date of installments (if the same are permitted), (iv) the amount remaining unpaid at the time of filing, (v) the name of the record Owner of the Lot, and (vi) a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Canyon County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

Section 7.14 Enforcement. Upon the failure of an Owner of a Lot to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be foreclosed by appropriate action in court or, at the election of the Association, by means of a non-judicial foreclosure and use of a trustee's sale in the same manner as foreclosure pursuant to a deed of trust under Idaho law.

Section 7.15 Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

Section 7.16 Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

Section 7.17 Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

Section 7.18 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the beneficiary under any deed of trust or a mortgagee under any mortgage upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust or mortgage such Lot shall remain subject to this Declaration as amended.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1 Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2030, and shall automatically extend for successive periods of ten (10) years each.

Section 8.2 Amendment. This Declaration may be amended as follows:

(a) By Grantor. Until title to a Lot within the Subdivision is conveyed by the Grantor to an Owner, this Declaration may be amended or terminated with respect to the Subdivision by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination.

(b) By Owners. Except where a greater percentage is required herein, the provisions of this Declaration may be amended by an instrument in writing, signed and acknowledged by the Owners, including the Grantor, owning at least two-thirds (2/3) of the Lots within the Subdivision, provided, that so long as the Grantor owns a Lot within the Subdivision, such amendment is approved in writing by the Grantor.

(c) Section 8.2. Any amendment to this Section 8.2 shall require the vote or written consent of all Owners.

Section 8.3 Non-Waiver. The failure of the Grantor or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

Section 8.4 Banks and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

Section 8.5 Enforcement - Costs. This Declaration may be enforced by the Board or by any Owner (including the Grantor) of a Lot within the Subdivision. If suit or other action is filed to interpret or enforce this Declaration, or any provision hereof; the prevailing party shall be awarded reasonable attorney's fees, in addition to the costs and disbursements allowed by law, including the same with respect to appeal.

Section 8.6 Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

Section 8.7 Severability. Each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 8.8 Interpretation. The provisions of this Declaration shall be liberally construed to affect the purposes hereof and shall be construed and governed in accordance with the laws of the State of Idaho. The singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

ARTICLE IX ANNEXATION

Section 9.1 Annexation. Grantor hereby reserves the right to annex any portion of the real property identified in Exhibit A until the entirety of the Phases are built out in the Subdivision or December 31, 2023, whichever is earlier. Nothing in this Declaration shall be construed to require Grantor to annex or develop the remainder of the Subdivision in any manner whatsoever. Such annexation shall not require the consent of voting members. Such annexation shall be effective upon recording of a Supplemental Declaration or similar instrument.

Section 9.2 Additional Covenants and Easements. Grantor may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants, conditions, restrictions and/or easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants, conditions, restrictions and/or easements shall be set forth in a Supplemental Declaration recorded either concurrently with or after the annexation of the property.

Section 9.3 Contiguous Land. Grantor hereby reserves the right to annex any abutting, adjoining or contiguous real property into the Subdivision by recording a Notice of Annexation or Supplemental Declaration, particularly describing the real property to be annexed and added to the Subdivision created by this Declaration, pursuant to the provisions of this Article.

Section 9.4 Application of Declaration To Annexed. Upon the recording of a Notice of Annexation, Supplemental Declaration or similar instrument containing the provisions set forth in this Article, the covenants, conditions and restrictions contained in this Declaration shall apply to the added property or Lots in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Subdivision; and thereafter the rights, privileges, duties and liabilities of the Owners to this Declaration with respect to the added land shall be the same as with respect to the original property, and the rights, privileges, duties and liabilities of the Owners and Lots within the added land shall be the same as in the case of the original land.

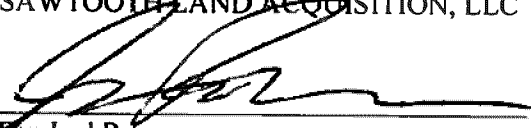
Section 9.5 Procedure. Any part of the real property described in Exhibit A may be annexed into the Subdivision by recordation of a Notice to Annex or Supplemental Declaration executed by the Grantor and containing the following information:

- (A) A reference to this Declaration, which reference shall state the date of recordation hereof and the recorder's instrument number or the book and page of the official records of Canyon County where this Declaration is recorded.
- (B) An exact legal description of the added Lots and/or land.
- (C) A statement that the provisions of this Declaration shall apply to the added Lots and/or land, except as set forth therein.
- (D) A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

IN WITNESS WHEREOF the Grantor has executed this Declaration as of the day and year first above written.

GRANTOR:

SAWTOOTH LAND ACQUISITION, LLC


 By: Joel Petersen

STATE OF IDAHO)
 : ss.
 County of Canyon)

On this 29 day of October, 2021, before me, a Notary Public in and for said State, personally appeared Joel Petersen, known or identified to me to be the Manager of SAWTOOTH LAND ACQUISITION, LLC, an Idaho limited liability company, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



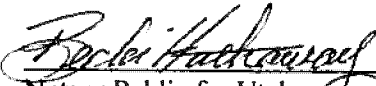

 Notary Public for Utah
 My commission expires: 10/16/23

EXHIBIT A
Description of Property

PARCEL 1: Proposed Lava Falls Subdivision No. 1 more particularly described as follows:

A parcel of land located in the SE1/4 of the SE1/4 of Section 2, T.2N., R.2W., B.M., Nampa, Canyon County, Idaho, more particularly described as follows:

Commencing at the E1/16 corner of said Section 13 from which the SE corner of said Section 2 bears North 89°58'21" East, 1325.86 feet;

thence along the West boundary line of the SE1/4 of the SE1/4 of said Section 2 North 00°16'36" East, 50.00 feet to a point on the North right-of-way line of E. Locust Lane, said point also being the REAL POINT OF BEGINNING;

thence along the West boundary line of the SE1/4 of the SE1/4 of said Section 2 and the exterior boundary line of Indian Village Subdivision No. 4 as filed in Book 20 of Plats at Page 36, records of Canyon County, Idaho, North 00°16'36" East, 696.47 feet;

thence leaving said West boundary line South 89°43'24" East, 102.00 feet;

thence South 63°18'40" East, 55.83 feet;

thence South 89°43'24" East, 280.68 feet to a point on the centerline of the Arron Lateral as shown on Record of Survey Instrument No. 2010-010909, records of Canyon County, Idaho;

thence along the said centerline of the Arron Lateral the following 6 courses and distances:

thence South 02°05'06" West, 82.45 feet;

thence South 04°07'54" West, 54.13 feet;

thence South 00°18'37" East, 56.31 feet;

thence South 03°42'20" West, 64.88 feet;

thence South 00°49'32" West, 222.51 feet;

thence South 00°56'21" West, 189.43 feet to a point on the North right-of-way line of E. Locust Lane;

thence leaving said centerline and along said North right-of-way line South 89°58'21" West, 418.82 feet to the REAL POINT OF BEGINNING.

EXHIBIT A (continued)

PARCEL 2: Proposed Lava Falls Subdivision No. 2 more particularly described as follows:

A parcel of land located in the SE1/4 of the SE1/4 of Section 2, T.2N., R.2W., B.M., Nampa, Canyon County, Idaho, more particularly described as follows:

Commencing at the E1/16 corner of said Section 13 from which the SE corner of said Section 2 bears North 89°58'21" East, 1325.86 feet;

thence along the West boundary line of the SE1/4 of the SE1/4 of said Section 2 and the exterior boundary line of Indian Village Subdivision No. 4 as filed in Book 20 of Plats at Page 36, records of Canyon County, Idaho, North 00°16'36" East, 746.47 feet to the REAL POINT OF BEGINNING;

thence continuing along exterior boundary line of said Indian Village Subdivision No. 4 North 00°16'36" East, 575.32 feet;

thence continuing along the exterior boundary line of said Indian Village Subdivision No. 4 and along the exterior boundary line of Indian Village Subdivision No. 1 as filed in Book 19 of Plats at Page 17, records of Canyon County North 89°52'56" East, 380.12 feet;

thence leaving said exterior boundary line and along the centerline of the Arron Lateral as shown on Record of Survey Instrument No. 2010-010909, records of Canyon County, Idaho South 08°51'26" East, 303.70 feet;

thence continuing along said centerline of the Arron Lateral the following 4 courses and distances:

thence South 19°22'27" East, 13.51 feet;

thence South 01°06'23" East, 106.11 feet;

thence South 00°56'18" West, 153.28 feet;

thence South 02°05'06" West, 30.87 feet;

thence North 89°43'24" West, 280.68 feet;

thence North 63°18'40" West, 55.83 feet;

thence North 89°43'24" West, 102.00 feet to the REAL POINT OF BEGINNING.