

**MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PAYETTE RIVER ORCHARDS SUBDIVISION  
EMMETT, IDAHO  
(also known as "Highland")**

THIS DECLARATION is made effective on January 4, 2021, by **210 Main, LLC**, an Idaho limited liability company, hereinafter referred to as "Declarant."

WHEREAS, this Subdivision (defined below) was approved pursuant to the Second Amended and Restated Development Agreement recorded as instrument number 325251 on February 5, 2020, Gem County, Idaho ("Development Agreement") and the City of Emmett approved the preliminary subdivision plat application as represented in the Decision and Order for Approval dated January 6, 2020 ("Preliminary Plat"). The overall project approved in the Preliminary Plat is approved as Payette River Orchards Subdivision ("PROS"). The project is marketed and known as "Highland" and referred to as "Highland" in the Design Standards.

WHEREAS, Declarant is the owner of certain real property in the County of Gem, State of Idaho, hereinafter referred to as the "Property," more particularly described as follows:

**PAYETTE RIVER ORCHARDS SUBDIVISION NO. 1**, according to the official plat thereof, recorded January 4, 2021, in Book 6 of Plats at Pages 42 through 42 as Instrument No. 2021-331352, records of Gem County, State of Idaho.

("PROS No. 1").

**PREAMBLE**

NOW, THEREFORE, Grantor hereby declares that the Property and each Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, reservations, easements and restrictions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot, parcel or portion thereof; shall inure to the benefit of every Lot, parcel or portion of the Property and interest therein, and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each Grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's (or its successors or assigns) right to complete development of the Property and to construct improvements thereon, nor Grantor's (or its successors or assigns) right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Grantor's (or its successors or assigns) right to post signs incidental to construction, sales or leasing.

**Instrument # 331357**  
EMMETT, GEM, IDAHO  
1-4-2021 02:57:23 PM No. of Pages: 27  
Recorded for : DAVID LITTLE  
SHELLY TILTON Ex-Officio Recorder Deputy **Fee: 88.00**  
Index to: COVENANTS *John Alarado*

## ARTICLE 1 - DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation of the Association.

1.2 "Assessments" shall mean those payments required of Owners and Association Members including Regular, Special, Limited, Enforcement, Initial Regular and Special, Transfer, Setup, ACC and Construction Deposit Fee Assessments of the Association as further defined in this declaration.

1.3 "Association" shall mean and refer to Emmett Highland Owners Association, Inc., an Idaho non-profit corporation, its successors and assigns.

1.4 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon the use of the Property under the jurisdiction or control of the 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 the Association.

1.5 "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.

1.6 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

1.7 "Building Lot" shall mean and refer to any plot of land showing upon any recorded plat of the Property (includes Church Lots), except excludes Common Area (defined below) and City Lots (defined below).

1.8 "Bylaws" shall mean the bylaws of the Association.

1.9 "Church Lots" shall mean and refer to Lots 2 and 3, Block 7.

1.10 "City Lots" shall mean and refer to Lot 6, Block 1 (booster station) and Lot 4, Block 7 (above ground storage tank lot). Notwithstanding anything to the contrary, the City Lots are not subject to the restrictions contained herein and the owner of the City Lots, the City of Emmett, is not subject to assessments by the Association or a member in the Association.

1.11 "Committee" shall mean the Architectural Committee described in Article 5 hereof.

1.12 "Common Area" shall mean all real property (including all the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area in PROS No. 1 to be owned by the Association at the time of conveyance of the first Lot is described as follows: Lots 1 and 7, Block 1; Lots 9 and 18, Block 2; Lot 1, Block 3; Lot 1, Block 4; Lot 11, Block 5; Lot 1, Block 6; and Lot 1, Block 7. The Common Area Lots are reserved for landscaping, irrigation, utilities, fiber, mailboxes, and Association recreation facilities. Said Lots are covered by blanket public utility and irrigation easements. These Lots are to be owned and maintained by the Association, or its assigns subject to easements identified in Article 6 and other restrictions contained herein.

1.13 "Declaration" or "Supplemental Declaration" shall refer to this declaration as hereafter amended and supplemented from time to time.

1.14 "Declarant" shall mean and refer to **210 Main, LLC**, an Idaho limited liability company, and its successors and assigns, if such successors and assigns should acquire more than one (1) undeveloped Lot from

the Declarant for the purpose of development and as part of such conveyance and the Declarant expressly assigns and transfers in writing to such transferee the “Declarant's rights as declarant of the PROS Declaration with respect to such Lots.”

1.15 “Fine” shall mean and refer to a penalty imposed and levied by the Board of Directors of the Association against an Owner for a violation of any of the general covenants, conditions and restrictions described in this Declaration, which fine shall be subject to the provisions of Idaho Code § 55-115.

1.16 “Grantor” shall mean and refer to the Declarant.

1.17 “Improvement” (and “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, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, swimming pools and other recreational facilities and fixtures of any kind whatsoever.

1.18 “Lot” (without reference to a “Block”) shall mean and refer to a Building Lot (defined above).

1.19 “Member” shall mean each person or entity holding a membership in the Association.

1.20 “Mortgage” shall mean and refer to any mortgage or deed to trust and “Mortgagee” shall refer to the mortgagee, or beneficiary under a deed of trust, and “Mortgagor” shall refer to the mortgagor, or grantor of a deed of trust.

1.21 “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.22 “Plat” shall mean the recorded Plat of **PAYETTE RIVER ORCHARDS SUBDIVISION NO. 1**, according to the official plat thereof, recorded January 4, 2021, in Book 6 of Plats at Pages 42 through 42 as Instrument No. 2021-331352, records of Gem County, State of Idaho, and the recorded Plat of any other Properties annexed hereto.

1.23 “Properties” or “Property” shall mean and refer to the real property hereinbefore described, and such additions thereto as may hereafter be annexed and brought within the coverage of this declaration as more particularly provided for herein.

1.24 “Set Back” means the minimum distance established by law between the dwelling unit or other structure referred to and a given street, road or Lot line.

1.25 “Subdivision” shall have the same meaning as “Properties” or “Property” and refer to the real property hereinbefore described, and such additions thereto as may hereafter be annexed and brought within the coverage of this declaration as more particularly provided for herein.

1.26 “Unit” shall mean one residence, which shall be situated upon a Lot.

## **ARTICLE 2 - GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS**

2.1 **Land Use and Building Type.** All Lots shall be used for single-family residential purposes and such uses as are customarily incidental thereto (except see Section 2.1.6). No Lot shall be used at any time for commercial or business purposes except for such commercial or business purposes as shall be conducted and

maintained solely within a residential dwelling Unit; provided that no signs relating to said commercial or business activities shall be displayed where visible from any public or private road within the Subdivision; and further provided that such commercial or business purposes shall not generate more than an average of three customer visits per day calculated over a five day work week; and further provided that such commercial or business purposes shall not cause or result in the parking of vehicles on any public or private road within the Subdivision; and further provided that such business does not employ at the Lot any person not living within the dwelling Unit constructed on the said Lot. Notwithstanding the foregoing, the Declarant, or persons authorized by the Declarant, may use a Lot or Lots for development and sales activities relating to the Subdivision, including but not limited to use of Lots for model homes or a real estate marketing and sales office. The prohibition of use of any Lot or any structure thereon for the conduct of any trade or business or professional activities includes and prohibits use of any Lot or any structure thereon for a "half-way house," treatment center, shelter home, school, day-care center or other similar use, including use for the care or the residence of unrelated physically or mentally handicapped persons (notwithstanding the provisions of Section 67-6530 and 67-6531, Idaho Code). Notwithstanding the foregoing, the Board may, in its discretion and upon request by an Owner, allow an Owner to conduct a "garage sale" upon such Owner's Lot.

2.1.1 **Size Requirements.** All Units shall have the following minimum square feet of interior finished floor area, exclusive of porches and garages determined based on the following standards:

(a) Units on Lots with a maximum width less than sixty feet (60') shall have not less than 1,400 square feet of interior floor area.

(b) Units on Lots with a maximum width equal or greater than sixty feet (60') but less than sixty-two feet (62') shall have not less than 1,500 square feet of interior floor area.

(c) Units on Lots with a maximum width equal or greater than sixty-two (62') feet shall have not less than 1,700 square feet of interior floor area.

2.1.2 **Garages.** Each Unit constructed with the Property shall include at least a two (2) car attached, enclosed garage, which is an integral part of the Unit structure as specified in Design Standards, detached garages may only be permitted by Committee in writing with design criteria similar to the Unit. RV garages are permitted, subject to a more detailed review.

2.1.3 **Storage Buildings.** No outbuilding shall be constructed, erected or placed until the same has been approved by the Committee as to size, location and exterior design. It is Declarant's intent that the design of any outbuilding, which the Committee may approve, must be consistent with the dwelling unit existing or to be constructed on the said Lot and the placement of any outbuildings are located to minimize potential negative aesthetic impact on adjoining property and the Subdivision. No outside storage building may be constructed to be neither larger than 8' x 10' nor taller than 8' without approval of the Committee and any applicable government authority with jurisdiction over same. All outbuildings, regardless of size, must be approved in writing by the Committee and any applicable government authority with jurisdiction over same.

2.1.4 **Roofing.** The roof of each Unit shall be constructed of 30 year or better architectural asphalt shingles, or such other material as may be approved by the Committee in writing, as provided in the Design Standards. The roof pitch on the street side of each Unit shall be 6/12 or greater and on other sides of each Unit 5/12 or greater, unless as may be otherwise approved by the Committee in writing.

2.1.5. **Siding.** The Unit siding shall be of a material and color approved by the Committee and comply with the Design standards and not be cottage lap, steel, aluminum, vinyl or concrete.

2.1.6 **Church Lot.** The City of Emmett has approved a Special Use Permit Application (SUP 19-005) for the Community Bible Church, Inc. of Emmett, Idaho, an Idaho non-profit corporation, for the Church Lots. Notwithstanding this Section 2.1, the Church Lots are permitted to be used for a church and affiliated uses associated with the church permitted under the SUP 19-005. The requirements of 2.1.1 and 2.1.2 do not apply to the Church Lots. The remaining requirements of the Declaration and Committee approval apply to the Church Lots.

2.2 **Architectural Control.** No improvements which will be visible above the ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered, including without limitation, change of exterior colors or materials, on the Property or Building Lots, unless and until the building plans, specifications, and plot plan have been reviewed in advance by the Committee and the same have been approved by the Committee according to the Design Standards. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, exterior color and materials, elevation variation to nearby lots, physical or artistic conformity to the terrain and the other improvements on the Property, which the Committee, in their reasonable discretion, deems relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the improvements. This Declaration is not intended to serve as authority for the Committee to control the interior layout of design of buildings except to the extent incidentally necessitated by use and size requirements.

2.3 **Exterior Maintenance: Owner's Obligations.** No improvements, including landscaping, shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair. Owners shall be responsible for regular weed removal, irrigation, and maintenance. Owner shall be responsible for repair and maintenance of any sidewalk that Owner's Lot fronts. In the event that any Owner shall permit any improvement, including trees, landscaping or the over-growth of weeds, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damage to Property or facilities on or adjoining their Lot which would otherwise be the Associations' responsibility to maintain, the Board, upon thirty (30) days prior written notice of a meeting of the Board to the Owner of said Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein.

2.4 **Improvements Location.** No improvements shall be constructed in violation of set-back requirements established by law, this Declaration, or as set forth on the Plat.

2.5 **Nuisances.** No noxious or offensive activity, including without limitation, those creating an offensive odor or noise, shall be carried out upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

2.6 **Temporary Structures / Manufactured Homes.** No improvements of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time as a residence either temporarily or permanently. No mobile or manufactured homes shall be placed or used on any Lot at any time as a residence either temporarily or permanently.

2.7 **Signs/Flags.** All signs, flags, or similar displays to the public view on any Lot shall be subject to the prior written approval of the Committee which may be denied in its sole discretion, except the following which do not require prior approval: (1) one sign of not more than five (5) square feet advertising the Property for sale or rent and consistent with the Emmett market; (2) Political signs (as defined in I.C. § 55-115) no more than 3'x2' may be displayed for a period up to one month before Election Day and shall be removed from the Lot on the day immediately following Election Day; (3) Flags identified in Idaho Code § 55-115(6)(a) (U.S.A, state of Idaho, POW/MIA, and branch of U.S. armed forces) and maintains the most restrictive requirements of I.C. § 55-

115(6)(b) and the City of Emmett's dark sky ordinance. The Committee may permit entrance or other signage in Common Areas for the Subdivision, the Church Lots, and signs used by a builder or the Declarant to advertise the Property during the construction and sales period, and the design.

**2.8 Oil, Gas and Mining Operations.** No oil or natural gas drilling, oil or natural gas development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon the Property, nor shall oil or natural gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Property without the prior written authorization of Declarant which may be withheld in Declarant's sole discretion. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property without the prior written authorization of Declarant which may be withheld in Declarant's sole discretion.

**2.9 Livestock and Poultry.** Livestock, including, without limitation, roosters, horses, cattle, goats, sheep, swine, pot-bellied pigs, llamas, alpacas or any other species of farm animal or livestock, shall not be permitted to be raised, kept or bred on any Lot. Laying hens may be kept in an Owner's fenced back yard but are not allowed if the odor is a nuisance to the neighborhood. Domestic dogs, cats or other household pets may be kept on any Lot provided that the Owner of such domestic pets complies with all city and county laws, rules and regulations, and does not allow pets to roam. Such domestic pets may be kept only for personal and recreational purposes and shall not be kept, bred, or maintained for any commercial purpose. Owner is responsible to ensure neither odor nor noise is a nuisance to the neighborhood.

**2.10 Garbage and Refuse Disposal.** No rubbish, trash, garbage, refuse, debris or recycling materials shall be placed or allowed to remain on the Property except trash and recycling materials kept and maintained within the interior of a Unit or behind a fence. All such material shall only be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean, neat and sanitary condition, and shall be appropriately screened and kept out of view from any street except as necessary for trash pickup days.

**2.11 Foundation.** The Owner has been provided notice of and is responsible to review the Geotechnical Investigation by American Geotechnics dated September 16, 2019 prior to constructing any Unit. All foundations shall be stem wall rather than slab on grade. Owner shall take all necessary steps in setting the foundation elevation to ensure that drainage onto neighboring properties will be eliminated. All drainage from Owner's Building Lot will be retained on site.

**2.12 Domestic Water Supply and Sewage Disposal.** No individual domestic or irrigation water supply system shall be permitted on any Lot. No individual sewage disposal system shall be permitted on any Lot. All Lots shall be subject to all domestic water and sewer requirements and charges of the City of Emmett. Each Owner shall submit to inspection by the Department of Public Works, the Department of Building, or other Department whenever a subdivided Lot is to be connected to the domestic water or sewage system constructed and installed on and within its Property. The Declarant/Owner of this Subdivision, or Lot or Lots therein, shall and hereby does vest in the City of Emmett the right and power to bring all actions against the Owner of the premises hereby conveyed or part thereof for the collection of any charges herein stated. A monthly domestic water and sewer charge, connection fee, and impact or latecomer fee must be paid after connecting to the City of Emmett public domestic water and sewer system, according to the ordinances and laws of City of Emmett.

**2.13 Sight Distance at Intersections/Driveways.** All landscaping, trees, and fences must, at all times comply with City of Emmett laws, rules and regulations. Emmett City Code 9-7-2 provides:

On a corner lot, nothing shall be erected, placed, planted or allowed to grow above a height of three feet (3') within sight triangle areas, as defined below:

1. Road/Road Intersections: The boundaries of a sight triangle at the intersection of two (2) roads are defined by measuring from the projected intersection of the roadway edge a

distance of forty feet (40') along each roadway edge and connecting the two (2) points with a straight line.

2. Road/Driveway Intersections: The boundaries of a sight triangle at the intersection of a road and a driveway are defined by measuring from the intersection of the property line and the edge of the driveway twenty feet (20') along the roadway and ten feet (10') along the driveway and connecting the two (2) points with a straight line. In any required front yard, no fence or wall shall be permitted which materially impedes vision across such yard between the height of three feet (3') and ten feet (10'). All fences on any street side of a commercial or industrial zoned property shall not be over three feet (3') high; all fences on the side property line shall not be over three feet (3') in height for a distance of fifteen feet (15') measured from back of sidewalk.

2.14 **Declarant's Rights.** Declarant reserves the rights to: construct residences and other improvements upon any Lot and to offer the same with completed structures thereon for sale to individual Owners (including model or spec homes); sell any Lot to any builder to construct residences and other improvements upon any Lot and to offer the same with completed structures thereon for sale to individual Owners (including model or spec homes); sell any Lot to any individual Owners to construct residences and other improvements upon any Lot; and to replat and adjust lot lines on any Lot owned by Declarant.

2.15 **Boats, Campers, and Other Vehicles.** No boats, trailers, tractors, recreational vehicles, (i.e., any trailers, campers, motor homes, automobile campers or similar vehicle or equipment) dilapidated, un-repaired, broken-down or unsightly vehicles, or similar equipment, off-road vehicles (ATVs or side-by-sides), motorcycles, snowmobiles, personal watercraft, commercial vehicles or trucks (working or non-working) greater than one ton in size shall regularly or as a matter of practice be parked or stored on any portion of the Property (including streets and driveways) for more than forty-eight (48) consecutive hours unless enclosed by a structure or screened from view in a manner approved, in writing, by the Committee. None of the previously identified items and no cars or trucks shall be parked on lawns or landscaped areas of the Property for any period of time.

2.16 **Bathrooms.** All bathrooms sink and toilet facilities shall be inside residence buildings and shall be connected by underground pipes directly with the sewer system.

2.17 **Antennae.** No television antennae, satellite receivers, or radio aerials shall be installed on the Property, with a diameter larger than 24" and shielded from street view. Antennae with 24" diameter or less must have Committee approval as to location on premises.

2.18 **Hazardous Activities.** No activity shall be conducted on or in any Unit or Lot, which is or might be unsafe or hazardous to any person or Property. Nothing shall obstruct sidewalks or streets. Without limiting the generality of the foregoing, no firearms shall be discharged upon said Property; no open fires shall be lighted or permitted on any property except in a self-contained barbecue unit or fire-pit while attended and in use for cooking or recreational purposes, or with a safe and well-designed interior fireplace.

2.19 **Unsightly Articles.** No unsightly articles shall be permitted to remain on any Lot as to be visible from any other portion of the Property. Without limiting the foregoing, no clothing or household fabrics shall be hung, dried or aired in such a way as to be visible from any other portion of the Property. No lumber, grass, shrub or tree clippings or plant waste, compost piles, metals, building or other materials or scrap or other similar material or articles shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view as approved, in writing, by the Committee. "Screened" is defined as being concealed or made non-visible from eye level, at grade, from all points within the Property.

2.20 **Light, Sound - General.** No light shall be emitted from any Lot which light is unreasonably bright or causes unreasonable glare and all lighting shall comply with the City of Emmett's dark-sky ordinance. No sound shall be emitted from any Lot, which is unreasonably loud, or annoying, and no odors shall be emitted on

any property, which are noxious or offensive to others.

2.21 **Construction.** During the course of actual construction of any permanent improvements, the restrictions contained in this Declaration and any supplemental declarations shall be deemed waived to the extent necessary to permit such construction, provided that during the course of such construction nothing shall be done which will result in a violation of these restrictions upon completion of construction and all construction shall be diligently prosecuted to completion, continuously and without delays consistent with Design Standards.

2.22 **Re-Construction.** In any case where it is necessary to reconstruct a Unit said re-construction shall be prosecuted diligently, continuously and without delays from time of commencing thereof until such structure is fully completed and painted, unless prevented by causes beyond control and only for such time that such causes continue.

2.23 **Maintenance, Repair, Restoration, Reconstruction.** In the event the improvements on any Lot shall suffer damage, destruction or disrepair from any cause, the Owner thereof shall undertake the repair, restoration and reconstruction thereof within thirty (30) days of such damage or destruction and diligently prosecuted to completion. In the event the restoration or reconstruction requires more than thirty (30) days to commence, the Owner may request an extension from the Board by providing schedule and efforts to complete and the Board may impose reasonable requirements on scheduling and completion. If after ninety (90) days the repair, restoration or reconstruction of such damaged or destroyed improvements has not taken place, the Association, upon thirty (30) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon Owners Lot for the purpose of doing so and such Owner shall bear all costs incurred by the Association, a lien shall be applied to the Lot.

2.24 **Fences.** All fences must comply with all applicable City of Emmett provisions and regulations and must be approved in writing by the Committee in accordance with the procedures and provisions of section 2.2 and 2.13 above. All fencing shall be 6' sand vinyl or wrought iron fence as approved by the Committee. Fences for flag lots and lots neighboring common lots or corner lots near the sight triangle shall be wrought iron fencing, unless otherwise approved by the Committee. All Owners shall construct a side yard fence from the edge of the Unit (setback 4' from the front edge of Unit or neighboring Unit) to the neighboring Lot property line, within thirty days of occupancy permit. All Owners shall construct side and rear yard fencing within sixty (60) days of transfer of the Unit from the builder to the Owner. For coordination of construction, Declarant will coordinate with Owner and pay fencing contractor for initial construction of fencing, and Owner will reimburse Declarant within 30 days for ½ the cost of back yard and ½ the cost of each side yard fence and 100% of the cost of the fencing from the side of the house to side property line and any gates.

2.25 **Dog Runs and Kennels.** No dog run or kennel shall be constructed, erected or placed until the same has been approved by the Committee as to size, location and exterior design. It is Declarant's intent that the placement of any dog run or kennel be located to minimize potential negative aesthetic impact on adjoining property and the Subdivision. All dog runs or kennels, regardless of size, must be approved in writing by the Committee. No dog run or kennel shall be permitted to be kept or placed within five (5) feet of a set-back line and outside of any easement, where applicable. Dog runs or kennels shall only be permitted to be placed and maintained to the rear of dwellings and in no event shall such structure be visible from a street. All such dog runs or kennels shall comply with all applicable laws and rules.

2.26 **Plat Conditions.** All covenants, conditions and restrictions, notes, easements and other matters set forth on all Plats are hereby incorporated by reference as material terms of this Declaration and notice is hereby given to the same.

2.27 **Landscaping.** Subject to the Committee's prior approval of a landscape plan submitted by an Owner consistent with the Committee's landscape guidelines, the front yard of each Lot, and the side yard of any Lot



which is adjacent to a street and visible, must be landscaped and planted with sod within thirty (30) days of issuance of the Certificate of Occupancy for a residential dwelling Unit on any Lot, except between December 1<sup>st</sup> and February 15<sup>th</sup>, and then as soon thereafter as the weather permits, together with a minimum of two (2) ten-gallon trees, eight (8) five-gallon bushes, and an underground automatic sprinkler system attached to the pressurized irrigation system (the Church Lots are subject to a landscaping requirement that must be approved by the Committee). All irrigation risers and valve boxes connected to the pressurized irrigation system shall be clearly labeled on the surface "Non-Potable Water. Do Not Drink." All pressure irrigation systems services shall be in a fiberglass valve box installed level and straight with surrounding ground service and each valve box shall provide one connection for residential irrigation use.

All remaining portions of the yard area of each Lot must be planted with sod, seeded and/or landscaped, within ninety (90) days of issuance of the Certificate of Occupancy, or as soon thereafter as weather permits. Alternatives to grass lawns require Committee's prior approval. The failure of the Owner to timely comply with this paragraph shall constitute a failure to perform exterior maintenance and the Association and/or the Grantor shall have all rights and remedies provided in Section 2.3 or any other provision of this Declaration, including, without limitation, the right to landscape the Lot as required hereunder, and the Board, upon thirty (30) days prior written notice of such meeting to the Owner of said Lot, shall have the right to correct such condition, and to enter upon Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein. The Owner of the offending Lot shall be personally liable, and his Lot may be subject to a mechanic's lien for all costs and expenses including attorney's fees incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owners as Regular, Limited and Enforcement Assessments.

2.28 **No Dumping.** No excavation material, grass or yard clippings, rubbish, trash, garbage, refuse or debris shall be placed or allowed to remain on any vacant or unimproved Lot, without the prior written Approval of the Declarant or the Committee. The Owner of any Lot who dumps such material shall be liable for the cleanup and/or removal costs.

#### 2.29 **Risks of Canal, Pool, Stormwater Drainage, and Irrigation Drainage.**

##### **NOTICE REGARDING RISK OF DROWNING OR INJURY**

##### **DO NOT UNDER ANY CIRCUMSTANCES SWIM IN THE CANAL.**

**Water is (or may be) located in or nearby the Subdivision. There are stormwater swales that may fill from time to time. There is a drainage swale for excess irrigation water and irrigation water facilities. There is an irrigation canal located next to the Subdivision. There may be an Association pool constructed in the Subdivision. Any water poses a risk of drowning. Owner is responsible to ensure Owner and Owner's children and guests are aware of the risks and Owner accepts these risks and responsibility to remain safe and supervise children and guests from these risks. Owner shall indemnify, defend, and hold Declarant and Association harmless from failing to take these precautions and advise their guests of such risks.**

2.30 **Lot Grading and Drainage.** There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Committee and City of Emmett, if necessary. Each Owner is responsible for installation, maintenance, and minimizing runoff and seepage from such Owner's Lot. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on

any plans approved by the Committee and/or City of Emmett, which may include drainage from Common Area over, any Lot in the Property. The Owner of any Lot within the Property shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures and devices including, without limitation, the drainage facilities, or any other means or devices, which are not the responsibility of a public agency, and plantings and ground cover installed or completed thereon to the specifications and requirements set forth in the Emmett City Code (by reference to adopted international building code ECC 8-1-1). Drainage directed to the adjacent road right of way shall be limited to that area as depicted on the approved Civil Grading Plan for PROS No. 1, if any. Retaining walls may be permitted by the Committee and shall be constructed on the lower elevation Lot to retain grading and drainage on the upper elevation Lot and to improve the visual appeal of the retaining walls the street end of the retaining wall may blend into the slope of the upper elevation Lot.

2.31 **Rentals.** Any Owner that rents a Lot shall be responsible for renter's compliance with this Declaration and any rules or requirements of the Association and be responsible for any fines for violations by the renters. Short-term rentals (less than thirty (30) days) shall be limited to less than a total of thirty-one (31) days per Lot in any calendar year. In the event an Owner violates the terms of these restrictions the Association may impose a fine equal to the greater of \$100.00 per day of violation or the Owner's proceeds from such rental that violated this provision and such Owner shall be prohibited from further renting such Lot for a period of five (5) years.

2.32 **Water Rights Appurtenant to Subdivision Lands; Pressurized Urban Irrigation System.** This Subdivision is within the Emmett Irrigation District (the "Irrigation District"). The Declarant has made provisions to provide irrigation water to the individual Lots from the Irrigation District in compliance with Section 31-3805(b), Idaho Code. Lots within the Subdivision will be entitled to irrigation water as set forth below and in the Association and will be obligated through the Association for assessments from the Irrigation District and costs, fees, and assessments associated with such water. The Association owns and shall maintain the pressurized urban irrigation system (the "PUIS") located on the Property for the delivery of non-potable (non-drinkable) water to Owners for irrigation of the landscaped areas on their Lots, and to the Association for irrigation of the Common Areas. The construction, ownership, operation and maintenance of the PUIS may be pursuant to the terms and conditions of an agreement for pressurized urban irrigation system, if any, including any amendments, addendums or supplements thereto (collectively, the "PUIS Agreement"), entered into or to be entered into between the Declarant and/or the Association and/or the Irrigation District and/or other property owners in the area. A copy of the PUIS Agreement, if any, shall be available to any Owner at the offices of the Association. Each Lot shall be subject to the Irrigation District's, other entities providing the water services, and/or the Association's assessments for the cost and expense of water, water delivery, and operation, maintenance, repair or replacement of the PUIS in accordance with the PUIS Agreement, if any.

The PUIS shall not include any distribution lines or other improvements beyond the water service taps installed on the Lots. The Irrigation District and/or the Association shall have no duty, obligation or responsibility for any portion of the irrigation system or underground sprinkler system located on a Lot from the point of connection to the PUIS water service taps installed on the Lots, and the maintenance, repair and replacement of same shall be the responsibility and duty of the Owner of the Lot. Further, the Owner of each Lot across which passes an irrigation drainage ditch or pipe shall be responsible for the maintenance thereof unless such responsibility has been assumed otherwise pursuant to the PUIS Agreement. Each owner of a Lot waives any claim against the Association, Declarant, and the Irrigation Districts for interruption, unavailability, contamination, or inadequate water to or through the PUIS.

2.33 **PUIS Rules, Regulations and Information Guide.** The PUIS Rules, Regulations and Information Guide shall mean and include the guide and/or operation and maintenance manual, if any, available at the office of the Association containing the rules and regulations for the use, operation and maintenance of the PUIS for the Subdivision adopted or to be adopted by the Association, as may be promulgated by the Association

and/or the Declarant and/or the Irrigation District, or provided for or contained in the PUIS Agreement, and as may be amended from time to time by the Association and/or the Declarant and/or the Irrigation District. Each Lot shall be subject to the PUIS Rules, Regulations and Information Guide. The Association and/or the Declarant and/or the Irrigation Districts may establish rules regarding scheduling for utilization of the PUIS, including but not limited to establishing alternate day irrigation schedules, time limitations and volume limitations for irrigation water, pursuant to the PUIS Agreement, the PUIS Rules, Regulations and Information Guide, if any, or any other notice or publication of rules regarding the PUIS.

### **NOTICE REGARDING PRESSURIZED URBAN IRRIGATION SYSTEM**

**Water from the PUIS is unfit for human consumption. It contains untreated surface water which may contain disease causing organisms and/or other contaminants. If you drink PUIS water it is likely that it will make you sick and, while less likely, it is possible that the illness will result in your death or permanent disability. Surface water can also contain agricultural chemicals that can be hazardous to your health.**

**DO NOT UNDER ANY CIRCUMSTANCES DRINK WATER FROM THE PUIS.**

**Homeowners should ensure that all irrigation water faucets and risers are adequately marked. Do not remove tags or other warning markings from the PUIS risers. If you should find a riser that is unmarked, please notify the Association and/or the Irrigation Districts.**

**Homeowners should also satisfy themselves that no cross-connections between the potable water system and the PUIS were made by previous owners. Never interconnect your drinking water and the PUIS.**

**If you have any questions or concerns about the PUIS in this Subdivision please contact the Association, the Irrigation Districts, the Southwest District Health Department, and/or the Department of Environmental Quality.**

2.34 **Solar Panels.** Prior approval from the Committee is required prior to installation of any solar panels or solar collectors. The Committee has discretion to determine the specific location where solar panels or solar collectors may be installed on the roof as long as installation is permitted within an orientation to the south or within forty-five (45) degrees east or west of due south. All installations must comply with Emmett City Code and relevant building codes and panels or collectors must be parallel to a roof line, conform to the slope of the roof, and any frame, support bracket, or visible piping or wiring must be painted to coordinate with the roofing material.

2.35 **Government Rules and Ordinances.** This Declaration and the provisions hereof are subject to all rules, regulations, laws and ordinances of all applicable government agencies, entities and authorities having jurisdiction over the Property. In the event that any of the provisions of this Declaration are less restrictive than any applicable governmental rule, regulation or ordinance, then the more restrictive governmental rule, regulation or ordinance shall apply. In the event that any governmental rule, regulation, law or ordinance would render any provision of this Declaration unlawful, then such provision of this Declaration shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.

2.36 **Imposition of Fines for Violation of General Covenants Conditions and Restrictions.** Consistent with the provisions and requirements of Idaho Code § 55-115, the Board of Directors of the Association shall have the authority to impose and levy fines against an Owner for the violation of any general covenant, condition or restriction described in this Declaration. The nature and purpose of a fine authorized by this section shall be that of a penalty imposed and levied by the Board of Directors against an Owner to discourage

violation of the general covenants, conditions and restrictions described in this Declaration. Violations of the general covenants, conditions and restrictions described in this Declaration are deemed to frustrate the intents, objectives and purposes of the Master Declaration that, as set forth in the Preamble above, the covenants, conditions and restrictions “... ***are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property.***” The Board of Directors of the Association shall have the authority to determine, schedule and publish the amount and frequency of fines for violations of any of the general covenants, conditions and/or restrictions described in this Declaration. At the time of recording this Declaration, which may be amended by the Board, the Board is authorized to issue fines not to exceed the greater of \$100.00 per day for the violation or the consideration obtained by an Owner in violating the restriction. All fines imposed and levied under this Declaration shall be separate from and in addition to any assessment authorized under Article IV of this Declaration, including, without limitation, limited and enforcement assessments levied under Article IV, sections 4.2.3 and 4.2.4 below. Fines for violations of the general covenants, conditions and/or restrictions described in this Article II and Declaration shall be a charge on the land and shall be a continuing lien upon the property against which each fine is charged. Each fine, together with interest, shall also be the personal obligation of the person who was the Owner of the property at the time when the fine fell due. The Association shall have the same remedies for non-payment of fines as it does for non-payment of assessments under Article IV, section 4.7 below. The Board of Directors of the Association shall comply with the provisions and requirements of Idaho Code § 55-115 in imposing and levying fines for violations of the general covenants, conditions and/or restrictions described in this Article 2. No portion of any fine may be used to increase the remuneration of any Board member or agent of the board.

### **ARTICLE 3 – EMMETT HIGHLAND OWNERS ASSOCIATION, INC.**

3.1 **Organization of Association.** The Emmett Highland Owners Association, Inc. (“Association”) is an Idaho nonprofit corporation formed under the provisions of the Idaho Nonprofit Corporation Act and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.2 **Membership.** Each Owner of a Lot subject to this Declaration (including the Declarant) 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 shall have more than one membership in the Association, except as hereinafter set forth with respect to voting. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the Lot owned by such Owner. The memberships 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 membership transfer shall be void and will not be reflected on the books of the Association.

3.3 **Voting.** The Association shall have two (2) classes of memberships.

3.3.1 **Class A.** The “Class A Members” shall be the Members of the Association who are all Owners of Lots within the Property, with the exception of the Declarant. The Class A Members shall be non-voting Members of the Association until such time as the Class B Member’s voting rights are granted and transferred to the Class A Members as provided below. Upon the Class B Member’s grant and transfer of voting rights to the Class A Members, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

3.3.2 **Class B.** The “Class B Member” shall be the Declarant. The Class B Member shall be the

only voting Member of the Association until such time as the Class B Member's voting rights are specifically and expressly granted and transferred to the Class A Members and the Class B membership is terminated in a writing recorded in the records of Gem County, Idaho. If Declarant has not specifically and expressly granted and transferred such Class B voting rights in such a recorded writing, the Owner of a Lot (other than Declarant) shall be a Class A Member without voting rights. The Class B membership and the Class B Member voting rights shall cease and be converted to Class A membership and Class A voting rights when the Declarant (including a transferee who becomes Declarant) specifically and expressly grants and transfers the Class B Member's voting rights to the Class A Members, terminates the Class B membership and relinquishes its rights as Declarant under the Master Declaration in a writing recorded in the records of Gem County, Idaho. The Declarant may assign and transfer its Class B membership and Class B voting rights to its successors in title to Lot(s) who become Owners and Members of the Association in a writing recorded in the records of Gem County, Idaho. Owners recognize that the Declarant shall be the Class B Member and the only voting Member of the Association as long as Declarant owns property subject to the Development Agreement, Preliminary Plat, or property subject to annexation into this Declaration.

**3.4 Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles, Bylaws, and this Declaration as the same may be amended and supplemented from time to time. For so long as the Declarant, or its successors or assigns, is the Class B Member and holds the Class B voting rights, or owns one (1) or more Lots, the Declarant alone shall have the unilateral right to appoint and/or elect all of the Directors to the Board as set forth in the Articles of Incorporation and/or the Bylaws of the Association consistent with Idaho Code § 30-30-604. The number of directors of the Association shall be fixed by the Bylaws and may be increased or decreased from time to time in the manner specified therein.

### **3.5 Powers and Duties of the Association.**

**3.5.1 Powers.** The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any and all lawful things, which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws.

**3.5.1.1 Assessments.** The power to levy assessments (Annual, Special, Limited, Enforcement, Initial Regular and Special, and Transfer, Setup and ACC Fee) on the Owners of Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.

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

**3.5.1.3 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. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power to delegate.

**3.5.1.4 Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules, and regulations as the Association deems reasonable and which are consistent

with this Declaration (the Association Rules).

3.5.1.5 **Emergency Powers.** The Association or any person authorized by the Association may enter upon any Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.

3.5.1.6 **Fines.** The power to impose and levy fines against the Owners of Lots and to force payment of such fines for violations of any of the general covenants, conditions and restrictions described in Article II subject to the provisions of Idaho Code § 55-115, and in accordance with the provisions of this Declaration.

3.5.2 **Duties of the Association.** In addition to power delegated to it by the Articles, without limiting the generality thereof, the Association or its 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:

3.5.2.1 **Right-Of-Way Maintenance.** Maintain repair and replace the sidewalks, landscaping, including the sprinkler system installed on any Common Area and such other landscaping located within the Properties, as the Board deems necessary or appropriate.

3.5.2.2 **Common Area Maintenance.** The Association shall perpetually maintain the landscaping and improvements in the Common Area located within the Subdivision.

3.5.2.3 **Street Lights.** The Association shall maintain, repair and replace streetlights within the Property to the extent such streetlights are not operated, maintained, repaired and replaced by the City of Emmett.

3.5.2.4 **Storm Water Maintenance.** The Association shall maintain the storm water drainage system located within the Subdivision for the benefit of the Subdivision and City of Emmett in accordance and compliance with this Declaration, the covenants, conditions and restrictions contained herein, or any manual for the light maintenance of the storm water drainage system by the Association, and all other applicable requirements of the City of Emmett.

3.5.2.5 **Insurance.** The Association may obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance.

3.5.2.5.1 Commercial general liability insurance insuring the Association's activities upon, in and about the Property against claims of personal injury, bodily injury or death or property damage or loss. The limits of liability of all such insurance shall be not less than \$1,000,000.00 for personal injury or bodily injury or death of any one person, \$1,000,000.00 for personal injury or bodily injury or death of more than one person in one occurrence, and \$1,000,000.00 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$1,000,000.00 per occurrence.

3.5.2.5.2 Full coverage directors and officers liability insurance with a limit of One Million Dollars (\$1,000,000.00), if the Board so elects.

3.5.2.5.3 Such other insurance including Worker'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 functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

3.5.2.5.3 The Association shall be deemed trustee of the interests of all Members of the Association 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.

3.5.2.5.4 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.

3.5.2.6 **Rule Making.** Make, establish, promulgate, amend and repeal the Association rules.

3.5.2.7 **Architectural Committee.** Appoint and remove members of the Committee, all subject to the provisions of this Declaration.

3.5.2.9 **Subdivision Approval Responsibilities.** Perform all continuing duties and responsibilities imposed upon the Grantor pursuant to any governmental approvals relating to the Property including, without limitation, those set forth in the preliminary plat approval and development agreement for the Subdivision.

3.6 **Personal Liability.** No member of the Board or any committee of the Association or the Committee or any officer of the Association, or the Declarant, or the manager, if any, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Declarant or the Committee, any other committee or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

## **ARTICLE 4 - COVENANT FOR MAINTENANCE AND ASSESSMENTS**

4.1 **Creation of the Lien and Personal Obligation of Assessments.** Except for Declarant, each Owner of any Lot, by acceptance of a deed to the Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

4.1.1 Regular annual assessments or charges.

4.1.2 Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

4.1.3 Limited assessments as hereinafter provided;

4.1.4 Enforcement assessments and fines as hereinafter provided; and

4.1.5 Initial Regular and Special Assessment, and Transfer, Setup, ACC and Construction Deposit Fee assessments as hereinafter provided.

The Regular, Special, Limited, Enforcement, Initial Regular and Special Assessment, and Transfer, Setup and ACC Fee assessments, together with interest, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

#### 4.2 **Purpose of Assessments.**

4.2.1 **Regular Assessments.** The regular annual assessments levied by the Association shall be used exclusively to promote the recreation, health, fiber service, safety and welfare of the residents in the Properties and for the improvement and maintenance of any landscaped areas maintained by the Association, to pay property taxes, insurance and other assessments, to pay the annual assessments by the Irrigation District (or other associated entities) for delivery of irrigation water, and operation, maintenance and repair of the PUIS, and to pay any assessments by the City of Emmett for the maintenance and repair of the storm water drainage system, management fees for an HOA management company, and to pay such other reasonable costs and expenses which are incurred by the Association in carrying out the duties, and business of the Association.

- (a) As summarized in Section 6.5.1 and provided in the Bulk Service Agreement, the regular annual assessments levied by the Association on each Lot shall include a base monthly recurring charge for fiber (internet) services of \$34.95 (\$419.40 annually) (the Church Lots assessment will be an additional \$30.00 per month). (See Section 6.5.1 and Exhibit "A" for additional information.)
- (b) The Declarant and Association reserve the right to construct a recreational facility and/or pool in the Subdivision. In the event such recreational facility or pool is constructed, the regular assessments will include the costs to operate and maintain such facilities including budgeted repairs. The Assessment for fees and expenses of the recreational facility or pool shall not be assess on the Owner of the Church Lots and Owner of the Church Lots will not have the right to use such facility or pool. The owners of Declarant and their families shall have a right similar to an Owner of the Lots to use the recreational facility and/or pool in the Subdivision, if constructed. The Association reserves the right to set reasonable use rules for any recreational facility or pool, including limits on guests or renters of Lots and limits or prohibitions on use by short-term renters.

4.2.2 **Special Assessments for Capital Improvement.** In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, costs and expenses of the Association which exceed the regular assessments, provided that any such assessment shall be approved by a two-thirds (2/3) vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, for so long as Declarant owns one (1) or more Lots or has the right to elect and/or appoint the Board of Directors of the Association, the Declarant alone, without requiring a meeting or a vote of the membership of the Association or the consent of any other party, may unilaterally declare and levy a special assessment for the purpose of defraying, in whole or in part, costs and expenses of the Association which exceed the regular assessments.

4.2.3 **Limited Assessments.** The limited assessments may be levied against any owner in an amount equal to the costs and expenses incurred by the Association, including legal fees for corrective action necessitated by such Owner, without limitation, costs and expenses incurred for the repair and



replacement of any property maintained by the Association damaged by negligent or willful acts of any Owner or occupant of a Lot who is occupying the Lot with the consent of such Owner, or for maintenance of landscaping performed by the Association which has not been performed by Owner as provided herein. The nature and purpose of limited assessments are to reimburse the Association for its actual costs and expenses incurred in obtaining corrective action, repairing and replacing damaged property, and for landscaping and maintenance expenses caused by the negligent and willful acts of an Owner or occupant of a Lot.

Limited assessments are not intended and shall not be construed as Fines imposed or levied by the Association as penalties for violations of the general covenants, conditions and restrictions described in Article II above. Limited assessments represent actual costs and expenses incurred by the Association and shall be separate from and in addition to any Fines imposed and levied by the Association as penalties for violations of the general covenants, conditions and restrictions described in Article II above; nevertheless, the Board shall comply with the provisions of Idaho Code § 55-115 in assessing limited assessments.

**4.2.4 Enforcement Assessments.** Enforcement assessments may be levied against any Owner in an amount equal to the attorney fees, costs and expenses incurred by the Association or Declarant in attempting to collect any assessment or enforce any covenant, condition or restriction provided for herein, or in demanding an Owner's compliance with any provision of this Declaration or regulatory requirement, including but not limited to charges for compliance demand notices, and attorney fees, costs and expenses necessitated by such Owner's failure to correct non-complying conditions. In the event the Association or an Owner is required to initiate any action to enforce the provisions of this Declaration, it shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees, costs and expenses incurred as a consequence thereof, whether or not any lawsuit is actually filed, and any such attorney fees, costs and expenses so incurred by the Association shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The nature and purpose of enforcement assessments are to reimburse the Association or Declarant for its actual costs and expenses incurred in attempting to collect any assessment or fine, enforce any covenant, condition or restriction provided for herein or regulatory requirement or violation caused by the Owner, or in obtaining an Owner's compliance with any provision of this Declaration. Enforcement assessments are not intended and shall not be construed as Fines imposed or levied by the Association as penalties for violations of the general covenants, conditions and restrictions described in Article II above. Enforcement assessments represent actual costs and expenses incurred by the Association and shall be separate from and in addition to any Fines imposed and levied by the Association as penalties for violations of the general covenants, conditions and restrictions described in Article II above; nevertheless, the Board shall comply with the provisions of Idaho Code § 55-115 in assessing enforcement assessments.

**4.2.5 Initial Regular and Special Assessment, and Transfer, Setup, ACC and Construction Deposit Fee Assessments.**

**4.2.5.1 Initial Regular and Special Assessment.** Upon the sale of each Lot by Grantor or an Owner, the purchaser shall pay an initial regular and special assessment equal to the balance of the prorated amount of the regular annual assessment under Section 4.3 below and any special assessment under Section 4.2.2 above then in effect remaining for the calendar year in which the Lot is conveyed and transferred by Grantor or an Owner to the purchaser. Such initial regular and special assessment shall be paid at the escrow closing of the Lot sale on or before the date of recordation of the deed from Grantor or an Owner to the purchaser. Grantor or an Owner, as agent for the Association, shall be entitled to collect the initial regular and special assessment at the escrow closing of the Lot sale for payment by the escrow agent to the Association.

4.2.5.2 **Setup Fee Assessment.** [reserved].

4.2.5.3 **Transfer Fee Assessment.** Upon the sale of each Lot by Grantor or an Owner, the purchaser shall pay a one-time transfer fee assessment of Two Hundred Fifty Dollars (\$250.00) per Lot. Such transfer fee assessment shall be paid at the escrow closing of the Lot sale on or before the date of recordation of the deed from Grantor or an Owner to the purchaser. Grantor or an Owner, as agent for the Association, shall be entitled to collect the transfer fee assessment at the escrow closing of the Lot sale for payment by the escrow agent to the Association. The transfer fee assessment shall be used to defray organizational costs for the Association and general costs of operation.

4.2.5.4 **ACC Fee Assessment.** Consistent with Article V below, the Architectural Committee also may require a fee to accompany each application for approval of any plans and specifications for improvements to be constructed on a Lot, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed Five Hundred Dollars (\$500.00). Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

4.2.5.5 **Construction Deposit Fee Assessment.** Upon the initial sale of each Lot from Grantor to an Owner, Grantor may require the Owner to pay a construction deposit fee assessment of up to Two Thousand Five Hundred Dollars (\$2,500.00). Such construction deposit fee assessment shall be paid at the escrow closing of the Lot sale on or before the date of recordation of the deed from Grantor to Owner. Grantor, as agent for the Association, shall be entitled to collect the construction deposit fee assessment at the escrow closing of the Lot sale for payment by the escrow agent to the Association. The construction deposit fee assessment may be used by the Association for cleanup on the Lot during the construction period on the Lot if, in the sole discretion of the Association, the Lot is not adequately maintained and construction debris and waste is not timely removed from the Lot during the construction period on the Lot. The Association shall refund the construction deposit fee assessment to the Owner following issuance of the Certificate of Occupancy for the home on the Lot and the completion of all construction cleanup on the Lot.

4.3 **Regular Annual Assessment.** The initial regular annual assessment to be assessed by the Association shall be One Thousand Dollars (\$1,000.00) per Lot per year. The regular annual assessment may be invoiced by the Association and be due and payable from an Owner to the Association in prorated amounts on a monthly, quarterly, biannual, semi-annual, annual or any other basis deemed appropriate by the Association in its sole and absolute discretion from time to time. An Owner that does not sign up for recurring and/or online bill pay, or pays with a credit card or services that charges a fee, may be assessed such expenses imposed on the Association.

4.3.1 The regular annual assessment may be increased by the Board each year by not more than ten percent (10%) above the regular annual assessment for the previous year without a vote of the membership of the Association as provided below. Notwithstanding the foregoing, for so long as Declarant owns one (1) or more Lots or has the right to elect and/or appoint the Board of Directors of the Association, the Declarant alone, without requiring a meeting or a vote of the membership of the Association or the consent of any other party, may unilaterally increase the regular annual assessment by any commercially reasonable amount for the purpose of meeting the costs and expenses of the Association and its obligations under this Declaration consistent with any current, proposed or estimated operating budget of the Association.

4.3.2 The regular annual assessment may be increased above ten percent (10%) by a two-thirds (2/3) vote of each class of the members who are voting in person or by proxy, at a meeting duly called

for this purpose. Notwithstanding the foregoing, for so long as Declarant owns one (1) or more Lots or has the right to elect and/or appoint the Board of Directors of the Association, the Declarant alone, without requiring a meeting or a vote of the membership of the Association or the consent of any other party, may unilaterally increase the regular annual assessment by any commercially reasonable amount for the purpose of meeting the costs and expenses of the Association and its obligations under this Declaration consistent with any current, proposed or estimated operating budget of the Association.

4.3.3 The Board of Directors of the Association may fix the amount of the regular annual assessment at an amount as established from time to time.

4.4 **Notice and Quorum for any Action Authorized Under Sections 4.2 and 4.3.** Notwithstanding and subject to Declarant's right to increase assessments under Sections 4.2 and 4.3 above, written notice of any meeting called for the purpose of taking any action by the membership of the Association authorized under Sections 4.2 and 4.3 shall be sent to all members entitled to vote not less than ten days (10) or more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.5 **Uniform Rate of Assessment.** Both regular annual and special assessments must be fixed at a uniform rate for all Lots (except the assessments for the Church Lots may be equitably apportioned for PUIS expenses and exclude pool or recreational facility expenses, if any) and may be invoiced and collected on a monthly, quarterly, biannual, semi-annual, annual or any other basis deemed appropriate by the Board of Directors of the Association in its sole and absolute discretion from time to time.

4.6 **Date of Commencement of Assessments - Due Dates.** The regular annual assessments or any special assessments then in effect as provided for herein shall commence as to a Lot or Lots on the earlier of: (1) six-months after the conveyance of the Lot or Lots from Declarant to an Owner or Owners; or (2) issuance of a Certificate of Occupancy for such Lot. The Board of Directors may waive or reduce the Assessments for model homes or homes without occupants for up to one-year. The Board of Directors shall fix the amount of the regular annual assessment against each Lot at least thirty (30) days in advance of each regular annual assessment period. Written notice of any change to the regular annual assessment shall be sent to every Owner subject thereto. Owners agree that electronic notice shall qualify as written notice and agree to have an email account (or similar mode of communication acceptable to the Association) of record with the Association for receiving notice. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

4.7 **Effect of Non-payment of Assessments - Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall incur a late payment fee of one and one-half percent (1.5%), and shall bear interest from the due date at the rate of eighteen percent (18%) per annum or at the highest rate allowed by law if such rate is less than 18%, interest and principal compounded monthly, including all costs and expenses including attorney's fees incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. The Association may file a lien on the Lot and/or bring an action at law against the Owner personally obligated to pay the same, and/or an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, not using services provided through the Association (such as irrigation water or fiber), or abandonment of his Lot. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

4.8 **Lien**. The Association is authorized to file a lien on any Lot with a past due Assessment pursuant to Idaho law and to take action to foreclose the lien against the property and/or action against the Owner personally obligated to pay the same.

4.9 **Declarant Not Obligated to Pay Assessments**. The Declarant shall not be obligated to pay any Assessments under this Article IV on any Lot owned by Declarant.

## **ARTICLE 5 - ARCHITECTURAL COMMITTEE**

5.1 **Members of the Committee**. The Architectural Committee for the Property, sometimes referred to as the "Committee", shall consist of three (3) members. Each of the said persons shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

5.2 **Right of Appointment and Removal**. For so long as the Declarant, or its successors or assigns, is the Class B Member and holds the Class B voting rights, or has the right to appoint and/or elect the Association's Board of Directors, or owns one (1) or more Lots, the Declarant alone shall have the unilateral right to appoint and remove all members of the Committee. Thereafter, the Board of Directors of the Association shall have the power to appoint and remove all members of the Committee. Members of the Committee may be removed at any time, without cause.

5.3 **Review of Proposed Construction**. The Committee shall consider and act upon any and all proposals of plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board of the Association, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or their written designation consistent with this Declaration, which types of improvements shall be submitted to the Committee to review and approve. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of any structure affected thereby, will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

5.3.1 **Conditions on Approval**. The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to an Association for the maintenance thereof, upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, or upon all three, any may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

5.3.2 **Committee Rules and Fees**. The Committee also may establish, from time to time, rules and/or guidelines setting forth procedures for the required content of the applications and plans submitted for approval ("Design Standards"). Such rules may require a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed Five Hundred Dollars (\$500.00). Such fees shall be used to defray the costs and expenses of the Committee or for such other purposes as established by the Board.

Such Design Standards may establish, without limitation, procedures, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

5.3.3 **Detailed Plans.** The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, landscape plans, drainage plans, elevation drawings, colored renderings, and descriptions or samples of exterior material colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.

5.3.4 **Committee Decisions.** Decisions of the Committee and the reasons therefore shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Committee shall have been sent to the Applicant within thirty (30) days after the date of the filing of said materials with the Committee. The said thirty (30) day period shall only commence to run when an authorized representative of the Committee has executed an application form acknowledging acceptance of such application and acknowledging that such application is complete.

5.4 **Meetings of the Committee.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee Representative (who may, but not need be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 5.9. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the committee.

5.5 **No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

5.6 **Compensation of Members.** The members of the Committee that are also members of the Board shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Board. A member of the committee that is not a member of the Board may receive reasonable compensation.

5.7 **Inspection of Work.** Inspection of work and correction of defects therein shall proceed as follows:

5.7.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Committee.

5.7.2 Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance with such sixty (60) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same.

5.7.3 If for any reason the Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the written notice of compliance from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

5.7.4 Upon the initial sale of each Lot from Grantor to an Owner, Grantor may require the Owner to pay a construction deposit fee assessment of up to Two Thousand Five Hundred Dollars (\$2,500.00). Such construction deposit fee assessment shall be paid at the escrow closing of the Lot sale on or before

the date of recordation of the deed from Grantor to Owner. The construction deposit fee assessment may be used by the Association for cleanup on the Lot during the construction period on the Lot if, in the sole discretion of the Association, the Lot is not adequately maintained and construction debris and waste is not timely removed from the Lot during the construction period on the Lot. The Association shall refund the construction deposit fee assessment to the Owner following issuance of the Certificate of Occupancy for the home on the Lot and the completion of all construction cleanup on the Lot.

**5.8 Non-Liability of Committee Members.** Neither the Committee nor any member thereof, nor its duly authorized Committee representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment, which would result in the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be an opinion on the structural safety or conformance with building or other codes.

**5.9 Variances.** The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including 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. Such variances must be evidenced in writing and must be signed by at least two (2) members of the Committee. If such variances are granted, no violation of the Restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof, covered by the variance that was granted, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

## **ARTICLE 6 - EASEMENTS**

**6.1 Lot Line Easement.** On all Lots there is an unobstructed five foot (5') wide utility, fiber, irrigation (gravity and pressure irrigation), and drainage easement along front lot lines, rear lot lines, and side lot lines. Additionally, on all Lots there is a ten foot (10') wide easement on rear lot lines and front lot lines to perform installation, maintenance, and repair. As provided in Section 2.30, to preserve grading and drainage on upper elevation Lots, the street end of a retaining wall may utilize this lot line easement to blend into the slope of the upper elevation Lot as permitted by the Committee.

**6.2 City of Emmett Easements.** The following referenced instruments grant easements to the City of Emmett:

6.1.1 Lots 1 and 6, Block 1 are subject to an easement granted to the City of Emmett for the construction and maintenance of a domestic water booster station as contained in Inst. # 328564, recorded 8/20/2020, Gem County, Idaho.

6.1.2 Lot 3, Block 7 is subject to an ingress/egress easement granted to the City of Emmett as contained in Inst. No. 328565, recorded 8/20/2020, Gem County, Idaho.

## 6.2 Irrigation Easements.

6.2.1 Lots 1 and 2, Block 7 are subject to a permanent pressured irrigation easement granted to the Association as contained in Inst. # 328674, recorded 8/26/2020, Gem County, Idaho.

6.2.2. Lots 1, 2 and 3, Block 7 are subject to a permanent gravity irrigation easement granted to the Association as contained in Inst. # 328615, recorded 8/24/2020, Gem County, Idaho.

6.2.3. Lot 3, Block 7 is subject to a ten-foot (10') irrigation (gravity and pressure irrigation) easement along the north side of such lot.

**6.3 Common Area Easements.** Lots 1 and 7, Block 1; Lots 9 and 18, Block 2; Lot 1, Block 3; Lot 1, Block 4; Lot 11, Block 5; Lot 1, Block 6; and Lot 1, Block 7 are the Common Area. The Common Area Lots are reserved for landscaping, irrigation, utilities, fiber, mailboxes, and Association recreation facilities. Said Lots are covered by blanket public utility and irrigation easements. These Lots are to be owned and maintained by the Association, or its assigns subject to easements identified in this Article 6 and other restrictions contained herein.

6.3.1 A portion of Lot 7, Block 1; and Lot 1, Block 6 are reserved for and contain the storm water drainage system. Such portion of these lots as originally constructed at the recording of PROS No. 1 are for the operation and maintenance of the storm water drainage system as set forth therein. The portion of such lots shall remain free of encroachments and obstructions (including fences and trees) which may adversely affect the operation and maintenance of the storm drainage facilities. The Association and City of Emmett shall have the right at all reasonable times, except in the case of emergency then at any time, to inspect the storm water drainage system, and perform any required maintenance and repairs.; and

6.3.2 A portion of Lot 1, Block 6 is reserved for a Private Access Easement as contained in Inst. # 328568, recorded 8/20/2020, Gem County, Idaho.

**6.4 Stormwater Easement.** Lot 8, Block 1 is subject to a permanent stormwater drainage easement granted to the Association as contained in Inst. # 328613, recorded 8/24/2020, Gem County, Idaho.

**6.5 Fiber Easement.** The fiber conduit installed in the subdivision is owned by 210 Main, LLC (in this Section 6.5 “Lessor”) and leased to Tekfinity LLC (in this Section 6.5 “Fiber Provider” identifies any lessee of Lessor’s fiber conduit including Tekfinity LLC) pursuant to that certain Conduit System Lease Agreement dated 7/28/2020 (in this Section 6.5 “Lease”). Lessor shall be the owner and/or holder of the property comprising the Conduit System. Lessor agrees to keep the Conduit System free and clear of any monetary liens. In the event of Lessor’s uncured material breach of this Agreement, Tekfinity LLC has the option to purchase the Conduit System from Lessor as provided in the Lease. Fiber Provider shall be the owner and/or holder of the property comprising the Lessee Fiber Optics. Fiber Provider agrees to keep the Lessee Fiber Optics located within PROS free and clear of any monetary liens. In the event of Fiber Provider’s uncured material breach of this Agreement, Lessor has the option to purchase the Fiber Provider’s Fiber Optics located within PROS from Fiber Provider as provided in the Lease.

6.5.1 The Association and Tekfinity LLC entered into a Bulk Service Agreement dated 7/28/2020 (“Bulk Service Agreement” located in the offices of the Association) where Fiber Provider will utilize the Lease and provide fiber services to the Owners with an initial term that expires on January 1, 2031 only as provided in the Bulk Service Agreement. As provided in the Bulk Service Agreement, the Association will pay a base monthly recurring charge for services of \$34.95 for each Unit (different rate for Church Lot) and every owner will pay for such charge to the Association through Assessments. A summary exhibit to the Bulk Service Agreement is attached to this Declaration as Exhibit “A”. Owners and Association agree to be bound by the Bulk Service Agreement, which provides:

- (a) Owners will reasonably cooperate with Fiber Provider or its agents to install, maintain, and repair Services. Fiber Provider's obligations under this Bulk Service Agreement are conditioned upon Association's compliance with this Section. Association will provide or secure at Association's expense appropriate space and power, access or license rights, easements, or other agreements reasonably required by Fiber Provider, for Fiber Provider to access the Property to install, operate, or maintain Service or associated Fiber Provider equipment necessary to provide Services. Fiber Provider may refuse to install, maintain, or repair Services if any condition on Association's premises is unsafe or likely to cause injury.
- (b) Association and Owners grant Fiber Provider, at no charge, a right and license to: (a) offer, sell and distribute the Services to residents of the Property ("Residents"), (b) access the Property, Lots, and Units (including the right of ingress and egress to and from the Property), for the purposes of installing, operating, maintaining, removing and/or upgrading all or any portion of Fiber Provider's facilities on the property, along with inside wiring at the Property necessary for Fiber Provider to provide the Services, and (c) use Fiber Provider's facilities and the inside wiring in, on and throughout the Property.
- (c) Association or Owner is responsible for any facility or equipment repairs caused by Association or Owner where such party failed to call in a dig locate or broke a facility that was appropriately marked. Owner is responsible for breaks in service lines located on their Lots outside of the public right of way. Owner may request a technician dispatch for Service problems. Before dispatching a technician, Fiber Provider will notify Owner of the dispatch fee. Fiber Provider will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point (the network interface unit "NIU") or was not caused by Fiber Provider's facilities or equipment on Fiber Provider's side of the demarcation point.

**6.6 Other Easements and Restrictions Shown on Plat.** All other easements and restrictions are as set forth on the Plat and are hereby incorporated by reference and notice is hereby given of the same.

## **ARTICLE 7 - GENERAL PROVISIONS**

**7.1 Enforcement.** The Declarant or Association shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant or Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Declarant or Association is required to initiate any action to enforce the provisions of this Declaration, it shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees and costs incurred as a consequence thereof, whether or not any lawsuit is actually filed, and any such attorney fees and costs so incurred by the Declarant and/or the Association shall be a continuing lien on the Owner's Lot and be added to and become a part of the assessment to which such Owner's Lot is subject.

**7.2 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

**7.3 Interpretation.** The terms, covenants and conditions hereof are to be read and interpreted consistently and in a manner to protect and promote Property values.

**7.4 Term and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. **Notwithstanding anything set forth in this**



**Declaration to the contrary, for so long as Declarant, or its successors or assigns, is the Class B Member and holds the Class B voting rights, or owns one (1) or more Lots, or has the right to elect and/or appoint the Board of Directors of the Association, this Declaration, the Articles of Incorporation or the Bylaws of the Association may be amended unilaterally by the Declarant alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment negatively affecting the interests of the City of Emmett without its prior written consent.** This Declaration may be amended, supplemented, restated, replaced, terminated or superseded by an instrument executed: (i) unilaterally by the Declarant alone for so long as Declarant, or its successors or assigns, is the Class B Member and holds the Class B voting rights, or owns one (1) or more Lots, or has the right to elect and/or appoint the Board of Directors of the Association, or (ii) if Declarant, or its successors or assigns, no longer have the unilateral right, by the President and Secretary of the Association affirming that such amendment was approved by two-thirds (2/3) of the Owners of the Lots covered by this Declaration, or (iii) if Declarant, or its successors or assigns, no longer have the unilateral right, by two-thirds (2/3) of the Lot Owners. Any amendment shall be in the form of a supplemental declaration and recorded in the records of Gem County, Idaho. No dissolution of the Association shall be accomplished without the consent the City of Emmett.

## **ARTICLE 8 - ANNEXATION**

8.1 **Land Subject to Annexation:** Declarant and/or its affiliated entities hereby reserve the right to annex any real property adjacent or contiguous to the Subdivision, and any real property within a one and one-half (1.5) mile radius of the Subdivision into the Subdivision, or any portion thereof (herein referred to as annexable or annexed property) owned by Declarant or affiliates at the time of annexation into the Association, and after annexation, the annexed property will be included in the definition of "Properties." The annexation of the annexable property, or portions thereof, from time to time, shall be effected by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to the project created by this Declaration, pursuant to the provisions of this Article VIII.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the project; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots and Units within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Units within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

By accepting a deed to a Lot within the Subdivision, each Owner and Association shall be conclusively deemed to have waived any objections, or any present or future right to object, to the annexation of the annexable property, and to any zoning application(s) filed by Declarant or one of their affiliated entities pertaining to the annexable property and affiliated improvements (including property covered by the Preliminary Plat, Development Agreement, potential future additional canal crossing identified in Exhibit 3 in the Development Agreement, and any property within a one and one-half (1.50) mile radius). Each owner further consents to the subdivision and development of such annexable property in accordance with applicable zoning ordinances then in force and effect and applicable to the annexable property, including such development as shall be required to provide access to the annexable property (including the lots subdivided therein) by the public right(s)-of-way within the Subdivision, and the extension of utility facilities located within the Subdivision to serve the annexed property (including the lots subdivided therein).

8.2 **Procedure for Annexation:** Any of the above-described real property may be annexed into the project by the recordation of a Supplemental Declaration setting forth any of the above-described real property subject to annexation executed by Declarant 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 Gem County where this Declaration is recorded;
- B. An exact legal description of the added land;
- C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and
- 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.

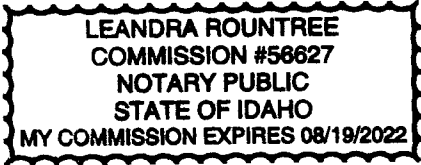
IN WITNESS WHEREOF, the Grantor has executed and acknowledged this Declaration effective as of the day and year first written above.

**210 MAIN, LLC**, an Idaho limited liability company

By: David Little, Its: Member

STATE OF IDAHO     )  
                                  ) ss.  
County of Gem        )

This record was acknowledged before me on January 4, 2021, by **David Little**, Member of **210 Main, LLC**, an Idaho limited liability company.



Notary Public for Idaho  
Residing at Emmett, Idaho  
My Commission Expires: 8/19/2022

**Exhibit “A” (see Section 6.5.1)**  
**TEKFINITY FIBER SERVICE EXHIBIT**

Tekfinity offers fiber to the home internet Services at the Property subject to these terms. Capitalized terms not defined in this Tekfinity Fiber Service Exhibit are defined in the Agreement.

**1. Tekfinity:**

- (a)** Will provide fiber to the home internet service, as described in this Agreement, and substantially consistent with the Service speeds identified below, which may be intermittently limited by a variety of factors, including but not limited to use of other Services, the physical condition of the inside wiring, network/Internet congestion, the distance of location from certain Tekfinity network facilities.
- (b)** Does not provide Tekfinity assigned email account per Unit. Residents must use web-based email with third party providers.
- (c)** Does not qualify Residents for Tekfinity bundle discounts for retail services.
- (d)** Will monitor the level of service received by the Residents and ensure the level of service is consistent with this Agreement.
- (e)** Provide the following level of Services without data limit charges (data limits may be imposed to limit or protect the system from uses deemed abusive, and such limitations may be set out in Tekfinity’s Service Terms):

Tier	Tekfinity Fiber Service	MRC	One-Time Charges / Installation Charges	Payor
Tier 1	50 Mbps downstream and upstream speed	\$34.95	none	Emmett Highland Owners Association, Inc. (“Customer”) included in HOA fees
Tier 2	100 Mbps downstream and upstream speed	\$59.95	none	Resident for upgrade cost above Tier 1 (\$25.00)
Tier 3	1,000 Mbps downstream and upstream speed	\$84.95	none	Resident for upgrade cost above Tier 1 (\$50.00)

**2. Resident (the owner of the Unit) is responsible for:**

- (a)** their own router, which may be: (1) purchasing their own router, which Tekfinity will permit; or (2) lease a router from Tekfinity, such initial cost will be \$5.95 per month, but subject to change by Tekfinity after the first year of this Agreement subject to Tekfinity standard applicable Service Terms to Resident.
- (b)** Activating their Service, Resident will register an account with Tekfinity and accept Tekfinity Service Terms and Acceptable Use Policy. Current Service Terms are attached, which Tekfinity may revise, but shall not conflict with this Agreement.
- (c)** Contacting Tekfinity directly to order and activate any available upgrades. A Resident may upgrade their service from Tier 1 to either Tier 2 or Tier 3 by directly contacting Tekfinity and paying the difference in the cost from Tier 1. A Resident may also downgrade back to Tier 1 (which will be paid to Tekfinity by the Customer (Emmett Highland Owners Association, Inc.) and paid by the Resident in the HOA fees). Resident may also subscribe to additional services offered by Tekfinity based on term, conditions, and prices set by Tekfinity.
- (d)** Additional service calls related to the Service that are not related to or caused by a failure of Tekfinity and will be billed at Tekfinity’s standard retail rates to applicable Resident. Residents are responsible for raising interruptions of Service with Tekfinity.
- (e)** Breaks in service lines located outside of public right of ways in their Units, or any break in Tekfinity Facilities caused by Resident or their agents where they failed to call in a dig locate (digline.com or call 811) or broke a facility that was appropriately marked.
- (f)** Providing all computers, TVs, or comparable equipment necessary to utilize any Service and complying with applicable Terms of Service.

**Term / Change in MRC / Non-Renewal.** The “Initial Term” means the initial term of the Agreement, which is ten (10) years. The Initial Term begins on January 1, 2021 which is the estimated date that the first temporary or permanent certificate of occupancy, or local equivalent, will be issued for any of the residential units at the Property. At the end of the Initial Term, the Agreement will automatically renew on an annual basis (a “Renewal Term”) if not terminated earlier in accordance with the Agreement. The Initial Term and each Renewal Term are referred to as the “Term.” Tekfinity may revise the MRC (upon expiration of the then current Term) to be consistent or less than the then existing market for competitively priced similar services by providing written notice 90 days prior to the expiration of the then current Term. Tekfinity will provide a market analysis to Customer supporting its analysis for competitively priced similar fiber services where more than one service provider provides similar fiber services and Tekfinity’s fiber services in other locations. Tekfinity and Customer will engage in discussions to agree upon MRC based on Tekfinity provided information and Customer’s research. Either party may elect not to renew the Agreement for a Renewal Term by providing written notice to the other party of its intentions not to renew at least 60 days prior to the expiration of the then current Term