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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
BALD EAGLE POINT SUBDIVISION**

**Declarant: WPG BEP LLC**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
BALD EAGLE POINT SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for Bald Eagle Point Subdivision is made effective November 1, 2021, by WPG BEP LLC, a Delaware limited liability company (“Declarant”).

**RECITALS**

- A. Declarant platted the real property known as Bald Eagle Point, aka Bald Eagle Pointe, in the County of Ada, State of Idaho. The following real property shall be subject to this Declaration:

All Lots and Common Area parcels shown as Phase 1 on the plat map of Bald Eagle Pointe Subdivision No. 1, aka Bald Eagle Point Subdivision No. 1, filed for record in the plat records of Ada County, State of Idaho, and, if annexed by supplemental declaration, Phase 2 on the plat map of Bald Eagle Pointe Subdivision, aka Bald Eagle Point Subdivision, and any subsequent plat(s) that may be annexed (the “Property”).

- B. Declarant intends to develop Bald Eagle Point as a planned unit development in accordance with existing development approvals obtained from Ada County and documented in Ada County file DR-43-17’ City of Eagle Development Agreement RZ-03-17, recorded as Instrument Number 2017-094388 in the records of Ada County, Idaho; or any other development plan(s) for which Declarant may from time to time obtain approval. To establish Bald Eagle Point as a planned unit development, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments and liens on the Property, under a comprehensive general plan of improvement and development for the benefit of all Lots and Common Area in Bald Eagle Point.
- C. Declarant has deemed it desirable for the efficient preservation of the values and amenities in Bald Eagle Point to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain and administer the Common Area, to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created.

**NOW, THEREFORE,** Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the Idaho Nonprofit Corporation Act (“Act”) as may be amended from time to time, other applicable provisions of Idaho law, and subject to the following covenants, conditions, restrictions, easements, charges and liens, which shall run with the land, which shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

## ARTICLE 1 DEFINITIONS

When used in this Declaration, the following terms, whether or not capitalized, have the following meanings:

- 1.1 **“Act”** means the Idaho Nonprofit Corporation Act, Idaho Code Title 30, Chapter 30, as it may be amended from time to time.
- 1.2 **“Additional Property”** means any Lots and Common Area parcels which may be subsequently annexed to Bald Eagle Point and subjected to this Declaration.
- 1.3 **“Architectural Review Committee” or “ARC”** means the committee constituted and acting under Article 7, below.
- 1.4 **“Articles of Incorporation”** means the Articles of Incorporation for the nonprofit corporation, Bald Eagle Point Homeowners Association, Inc., as they may be amended or restated from time to time.
- 1.5 **“Assessment”** means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the provisions of this Declaration, the Bylaws or Idaho law, including Regular Assessments, Special Assessments, and Individual Assessments as provided in Article 10, below.
- 1.6 **“Association”** means Bald Eagle Point Homeowners Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.
- 1.7 **“Bald Eagle Point”** means the Lots of the Property and any Common Area parcels as designated and depicted on the Plat and described in the attached Exhibit A, as well as any other Lots and Common Area parcels annexed into the Property by supplemental declaration
- 1.8 **“Board of Directors” or the “Board”** means the board of directors of the Association elected as provided in the Bylaws.
- 1.9 **“Bylaws”** means the Bylaws of Bald Eagle Point Homeowners Association, Inc., recorded concurrently with this Declaration, as they may be amended from time to time.
- 1.10 **“City of Eagle”** means the council or applicable department, agency or other division of the City of Eagle, Idaho.
- 1.11 **“Common Area”** means any parcels and private roads shown on the recorded Plat of the Property, including any Improvements located thereon, and any Common Area created by annexation of Additional Property and designation of all or a portion of such property as common area by a supplemental declaration and plat or by acquisition of any common property by the Association.

- 1.12 **“Common Expenses”** means expenditures made by or financial liabilities incurred by the Association, including expenses specified in Section 10.4, below.
- 1.13 **“Common Property”** means any real property or interest in real property, including any Improvements located thereon, that is owned or leased by the Association or owned as tenants in common by the Owners. Common Property includes, without limitation:
- 1.13.1 Common Area as defined in Section 1.11, above.
- 1.13.2 Any property owned by a person or entity other than the Association for which the Association has the obligation to maintain, repair and replace.
- 1.13.3 Any Improvements located thereon.
- 1.13.4 Any personal property or interest in personal property that is owned or leased by the Association.
- 1.14 **“Declaration”** means this Declaration of Covenants, Conditions, and Restrictions for Bald Eagle Point Subdivision, including, without limitation, all covenants, conditions, restrictions, and other provisions set forth herein, as the document may be amended, supplemented, or restated from time to time.
- 1.15 **“Declarant”** means and refers to WPG BEP LLC, a Delaware limited liability company, and its successors or assigns, or any successor or assign to all or the remainder of its interest in the Property.
- 1.16 **“Dwelling” or “Home”** means a building, structure, or any portion of a building or structure situated on a Lot and designed and intended for use and occupancy as a residence by a single family or household.
- 1.17 **“General Plan of Development”** means Declarant’s general plan of development of the Property, as approved by appropriate governmental agencies, as may be amended from time to time.
- 1.18 **“Improvement”** means 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, or removed from any portion of the Property, including, without limitation, any Dwelling, Home, or other residential structures, accessory buildings, porches, patios, decks, carports, driveways, storage shelters, sheds, Accessory Dwelling Units (ADUs), swimming pools, hot tubs, pool buildings, fences, streets, drives, parking areas, sidewalks, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, living or dead vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, conduits, pumps, ditches, waterways, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, plantings, awnings, and any new exterior construction or exterior improvement or other product of construction efforts on



or in respect to the Property that may not be included in the foregoing. “Improvement” does not mean any exterior antenna or satellite dish authorized in accordance with Section 4.21, below.

- 1.19 **“Individual Assessment”** means an assessment imposed by the Association under Section 10.7, below.
- 1.20 **“Lot”** means each and every Lot numerically designated and platted on the Plat (including the Dwelling located thereon), and any additional Lots subsequently annexed to the Property. Notwithstanding the foregoing, **“Lot”** does not include any Common Area parcel, even if a Common Area parcel is designated as a lot on the Plat.
- 1.21 **“Majority” or “Majority of Owners”** means more than fifty percent (50%) of the voting rights allocated to the Lots under Section 6.4, below.
- 1.22 **“Member”** means any person or entity who holds a membership in the Association and owns a Lot in Bald Eagle Point.
- 1.23 **“Mortgage”** means a recorded first mortgage, first trust deed, first contract of sale that creates a first lien against a Lot, or other first document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation that creates a first lien against a Lot. **“Mortgagee”** means the holder, beneficiary, or vendor of a Mortgage, but only when such holder, beneficiary, or vendor notifies the Association in writing of the existence of such Mortgage and provides to the Association a current name and mailing address. **“Mortgagor”** means a mortgagor or a grantor of a Mortgage.
- 1.24 **“Occupant”** means the occupant of a Dwelling or Home, whether such person is an Owner, family member of an Owner, or a lessee or any other person authorized by the Owner to occupy the Home.
- 1.25 **“Owner”** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or purchaser in possession of a Lot under a land sale contract. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation (including the holder of a vendor’s interest under a land sale contract, unless otherwise stated in the contract).
- 1.26 **“Percent of Owners” or “Percentage of Owners”** means the percent of the voting rights allocated under Section 6.4, below.
- 1.27 **“Phase”** means a defined portion of the Property within which the contemplated development involves a common use or compatible uses, and which will have been designated a Phase by recorded supplemental declaration. Each Phase will contain at least one Lot and Common Area.

- 1.28 **“Plat”** means the Plat of Bald Eagle Pointe Subdivision No. 1, recorded October 28, 2021, as Instrument Number 2021-155967, and in Book 121, Pages 19094-19097, Plat Records of Ada County, Idaho.
- 1.29 **“Project Documents” or “Governing Documents”** means the basic documents creating and governing the Property, including, without limitation, this Declaration, the Bylaws, Articles of Incorporation, the Association Rules and Regulations, design guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Board or Architectural Review Committee.
- 1.30 **“Property”** has the meaning attributed to such term in the Recitals of this Declaration, and includes the property described on the attached Exhibit A and on the Plat.
- 1.31 **“Regular Assessment”** means an assessment imposed by the Association under Section 10.5, below.
- 1.32 **“Reserve Account”** means an account set up by the Board to hold funds for repair, replacement or maintenance of the Common Area.
- 1.33 **“Rules and Regulations”** means those policies, procedures, rules and regulations adopted by the Board of Directors pursuant to the authority granted in this Declaration, the Bylaws or Idaho law.
- 1.34 **“Voting Rights”** means the portion of the votes allocated to a Lot under Section 6.4, below.
- 1.35 **Additional Definitions.**
- 1.35.1 Incorporation by Reference. Except as otherwise provided in this Declaration, unless the context clearly requires otherwise, terms used in this Declaration, whether or not capitalized, that are not otherwise defined herein, but are defined in the Act, have the meanings set forth in the Act.
- 1.35.2 Other Definitions. Terms that are not defined in this Article but are defined elsewhere in this Declaration, whether or not capitalized, have the respective meanings given them in the provisions of this Declaration.

## **ARTICLE 2 PROPERTY SUBJECT TO DECLARATION**

- 2.1 **The Property.** The development of Bald Eagle Point shall consist of the Property, which shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Phase 1 of the development consists of Lot 3, Block 1; Lots 1, 4-12, and 14-17, Block 2; and Lots 2-6 and 8-18, Block 3, and Common Area parcels depicted as Common Lots 1 and 2, Block 1; Lots 2, 3, and 13, Block 2; and Lots 1 and 7, Block 3 on the Plat. Declarant intends to build Common Area Improvements in Phase 1, including ponds and a riverfront pathway. The easements, covenants, conditions, restrictions and charges described in this

Declaration run with the Property and are binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and inure to the benefit of the Association and each Owner.

- 2.2 **Annexation of Additional Property.** Additional Property may be added by Declarant to Bald Eagle Point without approval of any other Owner or the Association. However, such Additional Property must be residential Lots or Common Area, must abut to some portion of the Property or would abut except for intervening public streets or other publicly owned real property, and must be annexed by a supplemental declaration not later than twenty (20) years from the date this Declaration is recorded. The annexation of such real property shall be accomplished as follows:
- 2.2.1 Supplemental Declaration. The Owner or Owners of such real property shall record a supplemental declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.
- 2.2.2 Annexed Property a Part of Bald Eagle Point. The property included in any such annexation shall thereby become a part of Bald Eagle Point and the Association shall accept and exercise administration of any supplemental declaration with respect to such property.
- 2.2.3 Voting Rights of Annexed Lots. Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Section 6.4, below.
- 2.2.4 Annexed Lot Owners as Members. After complying with the procedures for annexation and upon conveyance of the first Lot in the annexed property to an Owner, Owners of Lots in the annexed property shall be Members, shall be subject to this Declaration and shall be entitled to the use and enjoyment of all Common Area in Bald Eagle Point in the manner and for the purpose for which such Common Areas are intended to be used and enjoyed. The Association shall reallocate the assessments to assess each Owner of a Lot in Bald Eagle Point as provided in Article 10, below.
- 2.3 **Amendment.** After the conversion of Class B membership to Class A membership, this Article may not be amended without the consent of Declarant as long as the Declarant owns a Lot or has a right to annex Additional Property to Bald Eagle Point.
- 2.4 **Annexation With Approval of Membership.** In addition to the rights of Declarant pursuant to Section 2.2, above, the Association or Declarant may subject any real property to the provisions of this Declaration with the consent of the Owner of such property, the affirmative vote of holders of at least seventy-five percent (75%) of the Class A voting

power of the Association, and the written consent of the Class B Member, if any. Such annexation shall be accomplished by filing a supplemental declaration in the deed records of Ada County, Idaho, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such supplemental declaration shall be signed by the president and secretary of the Association and by the Owner of the annexed property. Any such annexation shall be effective upon the filing for record of such supplemental declaration, unless otherwise provided therein.

### **ARTICLE 3 OWNERSHIP AND EASEMENTS**

- 3.1 **Non-Severability of Lot from Common Area Interest.** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. Each Owner shall have an access easement over the Common Area. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration and the Plat. Each of the easements granted or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Bald Eagle Point.
- 3.2 **Ownership of Lots.** Title to each Lot shall be conveyed in fee simple to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.
- 3.3 **Ownership of Common Area.** Subject to Section 3.5, below, title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting.
- 3.4 **Association's Easements.** Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.
- 3.4.1 Easements on Plat. The Common Area and Lots are subject to the easements and rights-of-ways shown on the Plat.
- 3.4.2 Easements for Common Area. Subject to the restrictions contained herein, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot.

- 3.4.3 Easements Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Area in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests or invitees.
- 3.4.4 Additional Utility and Drainage Easements. Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted or acquired by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Bald Eagle Point. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of water or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot except for those Improvements for which a public authority, utility company or the Association is responsible. Each Owner shall be responsible for removal of any fencing or vegetation in the event a utility company makes such a request.
- 3.4.5 Association's Easements to Perform Duties. Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and, to the extent not owned by the Association, the Common Area as are necessary to perform the duties and obligations of the Association as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.
- 3.4.6 Perimeter Easement Benefiting Association. Declarant grants to the Association and its duly authorized agents and representatives an easement over that perimeter portion of each Lot that is included within the building setbacks set by applicable ordinances for the purposes of installation, maintenance, repair, and replacement of utilities, communication lines, and drainage. The Board may grant or convey the easements reserved herein to any governmental body or agency and/or any public or private utility company or provider, upon a two-thirds (2/3) vote of the Board members at a duly called and held Board meeting.
- 3.4.7 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors and assigns a perpetual, nonexclusive easement over the Common Areas for purposes of enjoyment, use, access and development of adjacent property that may be annexed to Bald Eagle Point, whether

or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction and use of roads, sidewalks, and walking paths and for connecting and installing any and all utilities on such property.

- 3.4.8 Pond Maintenance and Pressure Irrigation Easement. The Association shall have a ten-foot (10') wide pond maintenance and pressure irrigation easement located around the irrigation ponds. The easement area shall remain clear of any fence or other Improvement encroachment.
- 3.4.9 Floodway Easement. Any development, including, without limitation, fencing, within the floodway area is prohibited unless certification by a registered, professional hydraulic engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge, and uses within the floodway shall be restricted to those which are required for public necessity.
- 3.4.10 Pump Facilities Easement. To the extent not otherwise covered by any other easement reserved in this Section 3.4, elsewhere in this Declaration, or by other written agreement, Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and, to the extent not owned by the Association, the Common Area as are necessary to perform the duties and obligations of the Association contained in the Pump Facilities Easement Agreement between Declarant or the Association and Anderson Development LLC and its successors or assigns. This easement includes, without limitation, rights over the Lots and Common Area to perform all maintenance to the pump facilities, pump instruments, pipes, and related items that provide water to the Anderson Development LLC property.
- 3.4.11 Sewer Connection Easement. To the extent not otherwise covered by any other easement reserved in this Section 3.4, elsewhere in this Declaration, or by other written agreement, Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and, to the extent not owned by the Association, the Common Area as are necessary to perform the duties and obligations of the Association contained in any sewer connection easement agreement between Declarant or the Association and the Moon Lake Ranch Owners Association, Inc., and its successors and assigns.
- 3.5 **Declarant's Right to Dedicate Common Area and Grant Easements; Board's Authority After Title Transferred to Association**. Declarant reserves the right and power to dedicate and/or convey any portion or all of any Common Area parcel to any governmental body or agency. Declarant further reserves the right and power to grant an easement over any Common Area parcel to any governmental body or agency or any public or private utility company or provider without the approval of any other Owner or the Association. Declarant's rights and power under this Section shall expire when the Common Area parcels are conveyed to the Association. Thereafter, the Board shall have

the same powers reserved to Declarant and may exercise such power upon a two-thirds (2/3) or greater vote of the Board members at any duly called and held Board meeting. The provisions of this Section shall control over any provisions to the contrary contained in any other Section of the Declaration, including, without limitation, Section 5.8.6.

- 3.6 **Use and Occupancy.** Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner of a Lot is entitled to the exclusive use and benefit of the Lot. Each Lot is bound by and the Owner shall comply with the restrictions contained in Article 4, below, and all other provisions of this Declaration and the Bylaws for the mutual benefit of all Owners.
- 3.7 **Restriction on Lot Division.** Except for Declarant as may be allowed by Ada County or the City of Eagle, Owners may not subdivide, partition or otherwise divide or change the property line of any Lot.
- 3.8 **Owners' Easements.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, Lots are subject to the following easements for the benefit of Owners:
- 3.8.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Lot and between each Lot and such portion of the Common Area adjacent to a Lot for the unwilful placement or settling or shifting of Improvements, including, without limitation, Dwellings, other structures, walkways, bike paths, sidewalks and driveways constructed, and landscaping. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, or settling or shifting of Improvements. However, in no event shall a valid easement for encroachment occur due to the willful acts of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments within and over adjoining Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Subsection.
- 3.8.2 Easements of Access. Declarant expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Lots and Common Area resulting from the normal use of adjoining Lots and Common Area, and for necessary maintenance and repair of any Improvement, including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, and trees and landscaping. Such easements may be used by Declarant, and by all Owners, their family members, guests, and tenants and invitees residing on or temporarily visiting the Lot, for pedestrian walkways, vehicular access, and such other purposes reasonably necessary for the use and enjoyment of a Lot or the Common Area.

3.9 **Right of Entry.**

- 3.9.1 Lots. Upon request to the Owner and any Occupant in accordance with Subsection 3.9.2, below, any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to in Article 4, below, and determining whether or not the Lot is then in compliance with this Declaration and the Bylaws.
- 3.9.2 Requests for Entry. Except for entries allowed under a shorter time frame by the Owner and except in the case of an emergency, when the right of entry is immediate, requests for entry must be made at least twenty-four hours in advance of entry and for a time reasonably convenient to the Owner. An emergency entry does not constitute a trespass or otherwise create any right of action in the Owner of the Lot.

**ARTICLE 4**  
**USE, MAINTENANCE AND OCCUPANCY; RULES OF CONDUCT**

4.1 **Residential Use.**

- 4.1.1 Residential Purposes Only. Lots shall only be used for residential purposes. No commercial activities or uses are allowed on any Lot or in any Home except as provided in Subsection 4.1.2, below, or elsewhere in this Declaration.
- 4.1.2 Allowable Commercial Activities and Uses. Commercial activities are permitted inside a Home as long as only normal residential activities are observable outside of the Home and the commercial activities would not be in violation of applicable local government ordinances. Further, no commercial equipment, materials or vehicles shall be allowed outside of the Home. No commercial traffic is permitted on the Lot. As more fully provided in Section 4.8, below, no short-term rentals, including, without limitation, through VRBO or Airbnb are permitted within Bald Eagle Point. Nothing in this Section shall be deemed to prohibit:
- 4.1.2.1 Activities relating to the sale of residences;
- 4.1.2.2 The right of Declarant, any Owner, or any contractor or homebuilder to construct or remodel residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction or remodeling, and to use any residence as a sales office or model home for purposes of sales in Bald Eagle Point; or
- 4.1.2.3 The right of the Owner of a Lot to maintain such Owner's personal business, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers in such Owner's residence.



4.2 **Construction of Homes, Structures or Improvements.** Except for the original construction of a Home, accessory structures, or any other Improvement by Declarant, no construction of a Home, accessory structure or any other Improvement on a Lot shall occur unless the approval of the ARC is first obtained, in writing, pursuant to Article 7, below. This Declaration is intended to serve as authority for the Association, through the Board or ARC, to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Property, height, grade and finished ground elevation, natural conditions, landscaping, and all other aesthetic conditions. Consideration such as siting, shape, size, color, design, height, solar access, or material may be taken into account by the Board or ARC in determining whether or not to consent to any proposed work. Except for any original construction of a Home, accessory structure or any other Improvement on a Lot by Declarant, the following restrictions are minimum standards applicable to all Lots:

4.2.1 Height. Homes shall not exceed two (2) stories in height measured from the floor of the front door entry.

4.2.2 Floor Area. The square footage area of a Home shall not be less than two thousand four hundred (2,400) square feet of livable space, which shall be exclusive of unfinished basements, attics, patios, decks, porches, balconies and garages.

4.2.3 Garages. At least one attached three (3) car garage must be constructed on the Lot.

4.2.4 Lot Coverage. No more than fifty percent (50%) of the total square footage of a Lot may be covered by any type of structure, including, without limitation, a Home.

4.2.6 Mailboxes. Mail delivery by the U.S. Postal Service is made to a central post office box location in Bald Eagle Point. Neither mailboxes nor newspaper receptacles are allowed to be placed on Lots.

4.2.7 Sewer. Each Lot Owner is required to be connected to the City of Eagle sewer system. No on-site sewage disposal system (septic system) is allowed on a Lot.

4.2.8 Setbacks. Except as otherwise authorized by the Architectural Control Committee under Article 8, below, setbacks within Bald Eagle Point shall be as follows:

4.2.8.1 Front Yard:                   15 feet (living)  
  20 feet (garage)

4.2.8.2 Rear Yard:                   25 feet

4.2.8.3 Street Side Yard:       20 feet

4.2.8.4 Side Yard:                   7.5 feet (single-story)  
  12.5 feet (two-story)

Setback requirements may change with approval of the City of Eagle.

- 4.3 **Completion of Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of the construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ARC. If construction has not commenced within three (3) months after the project has been approved by the ARC, the approval shall be deemed revoked unless the Owner has applied for and received an extension of time from the ARC.
- 4.4 **Construction Debris.** Every contractor building or remodeling any Improvement upon any Lot or the Common Area shall furnish trash containers and at all times shall keep the premises free from accumulation of trash and scrap caused by construction. Trash shall not be allowed outside a designated trash and scrap area and any that does intrude beyond shall be cleaned up immediately. Upon completion of the work, all remaining trash and scrap shall be disposed of legally. Tools, construction equipment, machinery, and surplus materials shall be removed from the site. The Association, ARC or Declarant shall be entitled to enter upon any construction site within Bald Eagle Point and to clean up, remove and dispose of materials on-site, to charge the contractor for any costs incurred by the Association, ARC or Declarant in performing such acts, and to recover such costs and attorney fees and costs whether or not a legal action against the contractor is filed. Such costs incurred by the Association, ARC or Declarant shall be lienable as an Assessment as elsewhere provided herein.
- 4.5 **Construction Activities and Noise.** Construction activities shall not generate noise beyond Lot boundaries before 7:00 a.m. and after 8:00 p.m., except as those hours may be extended by written Board approval. No construction activity may occur or generate noise beyond Lot boundaries on Sundays. Animals shall not be permitted on any construction site.
- 4.6 **Landscaping.**
- 4.6.1 Time to Commence and Complete Landscaping on Lot. Landscaping for all portions of the Lot not completed by Declarant shall commence within one hundred twenty (120) days after sale of a Home from the Declarant or builder to a third party. Landscaping shall be completed within one (1) year after such sale.
- 4.6.2 Landscaping Guidelines; ARC Approval. The Board or the ARC may adopt and amend, from time to time, guidelines regulating landscaping permitted and required on each Lot. Each Owner other than Declarant shall obtain the ARC's prior written approval of all landscaping plans before commencing installation of any landscaping on the Owner's Lot. This Section shall apply to Lots with finished Homes being held for sale as well as to other Lots.

- 4.6.3 Owners' Maintenance Obligation; Association's Right to Cure. Owners shall irrigate their entire yard to keep lawns green and other landscaping fresh. The Association may irrigate from hose bibs connected to individual Homes of Owners who fail to properly irrigate their yards. If plantings on any Lot have died or are dying, the Owner shall replace them. In the event that any Owner shall fail to install and maintain landscaping in conformance with this Section and the Board's or ARC's guidelines, or shall allow the Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Association, upon thirty (30) days' prior written notice to such Owner, shall have the right to correct such condition and to enter upon the Owner's Lot for the purpose of doing so. The Association's entry shall not be considered a trespass. The Owner shall promptly reimburse the Association for the costs of correcting the conditions on the Owner's Lot. Such costs shall be assessed as an Individual Assessment and shall create a lien enforceable in the same manner as other Assessments set forth herein.
- 4.7 **Maintenance of Lots and Homes.** Each Owner shall maintain such Owner's Lot and all Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, maintenance of windows, doors, screens, garage doors, siding, roofs, gutters, downspouts, accessory buildings, driveways, walks, patios, chimneys, gutter cleaning, pressurized irrigation system, landscaping, trees and all other exterior Improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the ARC. Each Owner shall repair damage caused to such Owner's Lot or Improvements located thereon by fire, flood, storm, earthquake, riot, vandalism, or other causes within a reasonable period. No tarps shall be permitted to be used on the Lot or Home.
- 4.8 **Rental of Homes.** An Owner may rent or lease such Owner's Home provided that the following conditions are met:
- 4.8.1 Rental of Entire Home; No Partial or Room Rentals. Any rental or lease of a Home must be for the entirety of a Home. No Owner may rent only a portion of the Owner's Home, including, without limitation, renting out a room or multiple rooms in the Home, or a guest house, pool building, or other accessory structure or ADU on the Lot.
- 4.8.2 Written Rental Agreements Required. The Owner and the tenant must enter into a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Declaration, Bylaws and Rules and Regulations, and that a failure to comply with any provision of the Declaration, Bylaws and Rules and Regulations shall constitute a default under the rental or lease agreement.
- 4.8.3 Minimum Rental Period. No rental or lease of a Home may be for less than thirty (30) calendar days. To the extent that any rules and regulations, including without limitation, any rules governing vacation rental housing units or other short-term rental housing limitations, as are now in effect or hereafter promulgated by Ada

County or the City of Eagle are more restrictive in requiring a longer minimal rental period than the 30-day minimal rental period set forth in this Subsection, then the more restrictive rules shall apply.

4.8.4 Tenant Must be Given Documents. The Owner must give each tenant a copy of the Declaration, Bylaws and Rules and Regulations.

#### 4.9 **Animals.**

4.9.1 Animals Allowed and Not Allowed. No animals, birds, rodents, reptiles, poultry, or livestock of any kind, including, without limitation, chickens, hens, roosters, rabbits, snakes, and pigs, shall be raised, bred, kept or permitted within any Home or Lot, except for a reasonable number of household domestic pets. For purposes of this Subsection, “household domestic pets” means dogs, cats, hamsters, guinea pigs, caged birds (parrot, parakeet, or canary), or an aquarium of fish. For purposes of this Subsection, a “reasonable number” means no more than three (3) domestic dogs, three (3) domestic cats, or one (1) dog and two (2) cats or two (2) dogs and one (1) cat; two (2) hamsters; two (2) guinea pigs; or one (1) aquarium of fish that are not being kept, bred or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance.

4.9.2 Defense and Indemnity; Compliance with Governmental Regulations. Any Lot Owner who maintains any animal upon any portion of Bald Eagle Point shall be deemed to have agreed to indemnify and hold the Association, each of its members and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal. Such Owner shall further abide by all governmental sanitary laws and regulations, leash and other local and state laws relating to animals and rules or regulations of the Association created by the Board of Directors.

4.9.3 Leash Requirements and Use of Common Area. Animals are not allowed to roam the Common Area or other Lots unattended and shall be kept on a leash at all times while off of an Owner’s Lot. Owners and Occupants are responsible for the prompt removal of their animal’s waste anywhere outside of their own Lots, including, without limitation, the Common Area.

4.9.4 Nuisance and Noise; Removal of Animal. Incessant barking or howling of a dog or other noise caused by an animal that is clearly audible will be considered a nuisance. Compliance with the covenants, restrictions, and rules in this Section and elsewhere in this Declaration shall be determined by the Association at its sole discretion. Nothing in the policies or the Project Documents will prevent the Association from requiring the removal of any animal immediately, without prior and repeated notices that the animal presents an actual threat to health or safety of persons within Bald Eagle Point. In addition, the Board of Directors shall have the right to order any person whose animal is a nuisance to remove such animal from the premises upon the delivery of the third notice in writing of a violation of any

rule, regulation or restriction governing animals within Bald Eagle Point. All animals shall be registered and inoculated as required by law. The Board may adopt further rules and regulations governing all animals in Bald Eagle Point, including, without limitation, rules requiring registration, providing proof of inoculation, or limitations on types or times of use of the Common Area with animals.

- 4.10 **Nuisance.** No noxious, harmful or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the other Owners or Occupants of the Property. No Owner or Occupant shall cause or permit such Owner's or Occupant's representatives, agents, employees, or family members to cause any nuisance or to make any use or engage in any practice on the Property that is a source of annoyance to other Owners and Occupants or that interferes with other Owners' and Occupants' peaceful possession and proper use of the Property. Owners and Occupants shall exercise extreme care about creating disturbances, making noises, causing excessive dust or using musical instruments, radios, televisions and amplifiers that may disturb other Owners and Occupants. Owners and Occupants shall keep all parts of their respective Lots in a clean and sanitary condition, free of any accumulation of rubbish, refuse or garbage and free of any fire hazard and shall not cause any accumulation of rubbish, refuse or garbage or any fire hazard on any other part of the Property. Owners and Occupants shall place all of their rubbish, refuse and garbage inside disposal containers. No Owner shall make or permit any use of such Owner's Lot or of the Common Area that will increase the cost of insurance upon the Common Area. No outside burning of leaves, trash, garbage or household refuse shall be permitted. Smoking and vaping of any substance that causes smells, odors, smoke, mist or haze, whether visible or not, to extend beyond the boundaries of the Lot shall constitute a nuisance.
- 4.11 **No Hazardous Activities.** No activities shall be conducted on the Property, and no Improvements constructed on any Lot that are or might be unsafe or hazardous to any person or property.
- 4.12 **Improper, Offensive, Prohibited or Unlawful Use.** No Owner or Occupant shall make any improper, offensive, prohibited, illegal or unlawful use of any part of the Property. Owners and Occupants shall observe all valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction over the Property. No portion of any Lot may be used for mining mineral exploration or mineral extraction. The responsibility for meeting the requirements of governmental bodies for maintenance, modification or repair of the Property shall be carried out and paid for in the same manner as the responsibility for the maintenance and repair of the Property concerned.
- 4.13 **Parking.**
- 4.13.1 Boats, Trailers, Commercial Vehicles, Recreational Vehicles and Like Equipment. Boats, trailers, commercial vehicles, mobile homes, tractor trailers, fifth wheels, campers, and other recreational vehicles, or equipment, regardless of weight, shall not be parked on any Lot (including the driveway), any part of the Common Area,

or on any streets in or adjacent to the Property, except fully within the confines of an enclosed garage.

4.13.1.1 This restriction, however, shall not prohibit such vehicles from parking on a Lot or on the street adjoining a Lot for a maximum of two (2) different periods of up to forty-eight (48) consecutive hours during a single calendar month for loading, unloading, and cleaning purposes.

4.13.1.2 Notwithstanding this restriction, the Board, in its sole and reasonable discretion, may authorize a mobile home, fifth wheel, camper, or other recreational vehicle to be parked in the driveway of a Lot for up to seven (7) consecutive calendar days in order to accommodate traveling out-of-town guests. However, the Board of Directors may authorize this exception for a Lot only once during any calendar month. The Board may adopt rules prescribing the manner by which an Owner may seek Board approval for the application of this exception.

4.13.1.3 This restriction shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to a Lot or the Common Areas, or for construction of Improvements by Declarant or Owners, during normal business hours (or extended hours with written consent from the Board); provided, however, that such use shall not unreasonably bother or constitute a nuisance to others as determined by the Board in its sole and reasonable discretion and judgment.

4.13.2 No Overnight Street Parking. In addition to the restrictions contained in Subsection 4.13.1, above, no vehicles, including, without limitation, passenger automobiles, trucks, and motorcycles, may be parked on any street within the Property between the hours of 10:00 p.m. and 6:00 a.m. During those overnight hours, all vehicles must be parked fully within the confines of an enclosed garage or within the driveway on the Lot, as provided in Subsection 4.13.3, below.

4.13.3 Driveway Parking. The number of vehicles that may be parked in any driveway on a Lot is limited to the total number of garages located on the Lot. By way of example, if a Lot has a three-car garage, then three (3) vehicles may be parked in the driveway. If a Lot has a three-car garage and a recreational vehicle garage, then four (4) vehicles may be parked in the driveway of the Lot. This limitation on the number of vehicles that may be parked in a driveway is for all vehicles, including, without limitation, any passenger automobiles, trucks, motorcycles, and vehicles described in Subsection 4.13.1 parked in a driveway for purposes of loading, unloading or cleaning. In the event an Owner has out-of-town guests and the parking of the guests' vehicles would exceed the driveway parking limit, the Owner may obtain written consent from the Board to allow the guests to park their vehicles in the driveway for a period not to exceed seven (7) days during any calendar month.

- 4.14 **Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair (including, but not limited to, a vehicle that fails to run, cannot be moved under its own power in current condition, has flat tires, is unpainted, or has body parts missing) or that is not currently licensed to be abandoned or to remain parked upon the Common Area or on any street in or adjacent to the Property at any time and may not permit them on a Lot for a period in excess of forty-eight (48) hours in any calendar month, except fully enclosed within the confines of a garage. A vehicle shall be deemed in a “state of disrepair” when the Board reasonably determines that its presence offends the Occupants of the neighborhood. If an Owner fails to remove such vehicle within five (5) days following the date on which the Association mails or delivers to such Owner a notice directing such removal, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as an Assessment, which may be collected and enforced as any other Assessments imposed pursuant to the Declaration and Bylaws.
- 4.15 **Speed Limit.** The Association may post speed limits from time to time in various locations in Bald Eagle Point. The speed limit is twenty-five miles per hour (25 mph), unless otherwise marked. Owners, tenants and guests shall observe and abide by all posted speed limits at all times.
- 4.16 **Soliciting.** Except for Declarant’s and Owners’ activities to sell a Home, no soliciting is permitted at any time by any person, including, but not limited to, an Owner or guest, invitee or contractor of an Owner, or member of the general public, within the boundaries of Bald Eagle Point. Notwithstanding the foregoing, representatives of the Association or Owners may solicit proxies, ballots, and consents for Association business, including, without limitation, to establish quorum at Association meetings, collect votes for elections or amendments, and to gather signatures for any petition allowed under the Project Documents and Idaho law.
- 4.17 **Signs.** No signs shall be erected or maintained on any Lot, except as provided in Subsections 4.17.1 and 4.17.2, below.
- 4.17.1 **“For Sale” and “For Rent” Signs.** Not more than one (1) “For Sale” or “For Rent” sign placed by the Owner or by a licensed real estate agent or builder, not exceeding four (4) feet high and four (4) feet long, may be temporarily displayed on any Lot. Real estate and builder signs shall be removed within three (3) days after the sale closing date.
- 4.17.2 **“Political” Signs.** The temporary placement of a reasonable number of “political signs” on any Lot by the Owner or Occupant in accordance with the provisions of Idaho Code 55-115 or such other law is allowed. Political signs shall be removed within seven (7) days after the election day pertaining to the subject of the sign. For purposes of this Subsection, “political sign” has the same meaning as contained in Idaho Code 55-115, and “reasonable number of political signs” means not more than three (3) political signs in support of or opposition to a political candidate or ballot measure. In accordance with Idaho Code 55-115 or other Idaho law, the

Board may adopt reasonable rules, subject to any applicable laws or ordinances and this Declaration, regarding the time, size, place, number, and manner of display of political signs.

The restrictions contained in this Section 4.17 shall not apply to Declarant as long as Declarant owns a Lot in the Property.

- 4.18 **Rubbish and Trash.** No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Area or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings or any similar materials from any Lot, any streets or the Common Area where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the Owner, the Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute an Assessment, which may be collected and enforced as any other Assessments imposed pursuant to the Declaration and Bylaws.
- 4.19 **Fences and Hedges.** No fences or boundary hedges shall be installed or replaced on a Lot, including fencing between Lots, without prior written approval of the ARC. Wrought iron, extruded aluminum, vinyl, wood, and metal fencing is allowed, except that no barbed wire, chain link, or woven fences shall be permitted. Fences located adjacent to Common Area and on corner Lots must be open-stile, such as wrought iron, extruded aluminum, or three-rail-type decorative fencing as approved by the ARC. All other types of fencing are prohibited adjacent to the Common Area or on corner Lots.
- 4.20 **Service Facilities.** Service facilities (garbage containers, propane tanks, fuel tanks, clotheslines, etc.) shall be screened so that such facilities are not visible at any time from the street. All telephone, electrical, cable television and other utility installations shall be placed underground in conformance with applicable law and subject to approval by the ARC.
- 4.21 **Antennas and Satellite Dishes.** Except as otherwise provided by law or this Section, no exterior antennas, satellite dishes, microwave, aerial, tower or other devices for the transmission or reception of television, radio or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Common Area or Lot. Exterior satellite dishes with a surface diameter of one (1) meter or less, and antennas designed to receive television broadcast signals or multi-channel multi-point distribution (wireless cable), may be placed on an Owner's Home. They shall be screened from neighboring Homes to the extent possible. The Board or ARC may adopt reasonable rules and regulations governing the installation, safety, placement and screening of antennas, satellite dishes and other similar devices. This Subsection and any rules adopted hereunder shall not unreasonably delay or increase the cost of installation, maintenance or use, or preclude reception of a signal of acceptable quality.



- 4.22 **Exterior Lighting or Noise-making Devices.** Except with the consent of the ARC, no exterior lighting or noise-making devices, other than security and fire alarms, shall be installed or maintained on any Home.
- 4.23 **Grades, Slopes and Drainage.** There shall be no interference with the established drainage patterns or systems over or through any Lot within Bald Eagle Point so as to affect any other Lot or the Common Area or any real property outside Bald Eagle Point unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term “established drainage” shall mean the established system of drainage, whether natural or otherwise, including, without limitation, drainage swales, berms, conduits, inlets and outlets designed and constructed for Bald Eagle Point, which exists at the time the overall grading of any portion of the Property is completed by Declarant, or that drainage which is shown on any plans approved by the ARC.
- 4.24 **Damage or Destruction to Home and/or Lot.** If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements, or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (i), above, must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article 7, below, are complied with by the Owner. The Owner must commence such work within sixty (60) days after the damage occurs and must complete the work within one (1) year thereafter.
- 4.25 **Right of Maintenance and Entry by Association.** If an Owner fails to perform any maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Bald Eagle Point, the Board may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. An Owner may request, and the Board shall conduct, a hearing on the matter. The Owner’s request shall be in writing delivered within five (5) days after receipt of the notice, and the hearing shall be conducted within not less than five (5) days nor more than twenty (20) days after the request for a hearing is received. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty-eight (48) hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as an Assessment, which may be collected and enforced as any other Assessments authorized hereunder.
- 4.26 **Manufactured and Modular Homes.** No manufactured or modular homes shall be constructed, placed or maintained in Bald Eagle Point.
- 4.27 **Association Rules and Regulations.** The Board from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Area as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association. A copy of the Rules and Regulations, upon adoption, and a

copy of each amendment, modification or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and Occupants of all Lots upon the date of delivery or actual notice thereof. Subject to approval or consent by the Board, the ARC may adopt rules and regulations pertinent to its functions.

- 4.28 **Ordinances and Regulations.** The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail. In the event a governmental rule, regulation, law or ordinance would render a part of this Declaration, the Bylaws, or rules and regulations unlawful, then that portion of the Declaration, Bylaws, or rules and regulations shall be deemed to be amended to comply with the applicable rule, regulation, law or ordinance.
- 4.29 **Temporary Structures.** No structure of a temporary character or any trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently.
- 4.30 **Accessory Buildings.** Except for any accessory building or structure constructed by Declarant, all accessory buildings and structures, including, without limitation, ADUs, shall require prior approval of the ARC. All accessory buildings and structures shall complement the Home in design. The ARC may require the accessory buildings to be painted the same color as the Home.
- 4.31 **Street Trees.** Street trees, in the size, diameter, and type as required by the City of Eagle or Ada County as part of the development plan approval, shall be installed on each Lot or such other location within the Property as required by the City of Eagle or Ada County.

## **ARTICLE 5 COMMON AREA**

- 5.1 **Use of Common Area.** Use of the Common Area is subject to the provisions of the Declaration, Bylaws, Articles and the Rules and Regulations adopted by the Board. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior written consent of the Board. No Owner shall place or cause to be placed on any portion of the Common Area any trash, structure, equipment, Improvement, furniture, package or object of any kind. Common Areas shall be used for no purpose other than what is customary for such areas. No alterations or additions to the Common Area shall be permitted without the prior written consent of the Board. The Common Area parcels owned by the Association consists of Common Lots 1 and 2, Block 1; Lots 2, 3, and 13, Block 2; and Lots 1 and 7, Block 3 as shown on the Plat. Additional Common Area may be added to the Association by annexation as provided in Section 2.2.2 or 2.2.4, above.

- 5.2 **Title to Common Area.** Fee title to the Common Area, including all Improvements, is vested in the Association.
- 5.3 **Maintenance of Common Area.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area, including, without limitation, all landscaping, pressurized irrigation systems, and any other Improvements thereon (except to the extent such maintenance is done by a government agency). The cost shall be at the equal expense of all Lot Owners. The Association shall keep the Common Area in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area.
- 5.3.1 **Streambank Riparian Zone.** The Association shall maintain a riparian vegetation and wildlife habitat, if any, along the stream bank and within the require twenty-five foot (25') wide setback or riparian zone.
- 5.3.2 **Pump Station.** The Association shall maintain the pump station and all related facilities in accordance with the Operation and Maintenance Manual ("O&M Manual") for the pump station as required by the City of Eagle.
- 5.4 **Alterations to Common Area.** Only the Association or a governmental agency has jurisdiction over the Common Area and shall construct, reconstruct, or alter any Improvement located on the Common Area. A proposal for any construction of or alteration, maintenance or repair to any such Improvement may be made at any Board meeting.
- 5.5 **Funding.** Expenditures for alterations, maintenance or repairs to an existing Improvement for which a reserve has been collected shall be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of the Common Area for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost.
- 5.6 **Condemnation of Common Area.** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be received by and expended by the Board in a manner that, in the Board's discretion, is in the best interest of the Association and the Owners. The Association shall represent the interest of all Owners in any negotiations, suit, action or settlement in connection with such matters.
- 5.7 **Damage or Destruction of Common Area.** If all or any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents or members of Owner's family, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constructed or as may be modified or altered subsequently by the Association in the discretion of the Board. Reasonable costs incurred in connection with effecting such repairs shall become a Special Assessment upon the Lot and against the Owner who caused or is responsible for such damage.

5.8 **Power of Association to Sell, Convey or Grant Security Interest in Common Area.** The Association may sell, convey or subject to a security interest any portion of the Common Area pursuant to the processes and limitations set forth below:

- 5.8.1 Vote Threshold. The Association may sell, transfer, convey or subject to a security interest any portion of the Common Area if eighty percent (80%) or more of the votes in the Association, including eighty percent (80%) of the votes of Lots not owned by Declarant at the time of the vote, are cast in favor of the action.
- 5.8.2 Removal from Covenant Restrictions. A sale, transfer, conveyance or encumbrance by a security interest of the Common Area or any portion of the Common Area made pursuant to this Section may provide that the Common Area be released from any restriction imposed on the Common Area by the Declaration or other Project Document if the request for approval of the action also includes approval of the release. However, a sale, transfer or encumbrance may not deprive any Lot of its right of access to or support for the Lot without the consent of the Owner of the Lot.
- 5.8.3 Leases, Easements, Rights of Way, and Licenses. Subject to Subsections 5.8.4 and 5.8.5 of this Section, the Association may execute, acknowledge and deliver leases, easements, rights of way, licenses and other similar interests affecting the Common Area and consent to vacation of roadways within and adjacent to Common Area.
- 5.8.4 Owner Approval of Leases, Easements, Rights of Way, and Licenses. The granting of a lease, easement, right of way, license or other similar interest pursuant to Subsection 5.8.3 of this Section shall be first approved by at least seventy-five percent (75%) of Owners present at a meeting of the Association or with the consent of at least 75% of all Owners solicited by any means the Board determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that approval of the grant will be an item of business in the agenda of the meeting.
- 5.8.5 Board Approval of Leases, Easements Rights of Way, and Licenses. The granting of a lease, easement, right of way, license or other similar interest affecting Common Area for a term of two (2) years or less requires the approval of a majority of the Board of Directors. No Owner approval is required.
- 5.8.6 Leases, Easements, Rights of Way, and Licenses to Public Body. The granting of a lease, easement, right of way, license or other similar interest affecting the Common Area for a term of more than two (2) years to a public body, or to a utility or a communications company for installation and maintenance of power, gas, electric, water, Internet, or other utility and communication lines and services requires the approval of two-thirds (2/3) of the Board of Directors. No Owner approval is required.

- 5.8.7 Vacating Roadways. The consent to vacation of roadways within and adjacent to Common Area must be approved first by at least a majority of Owners present and voting at a meeting of the Association or with the consent of at least a majority of all Owners solicited by any means the Board of Directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that the roadway vacation will be an item of business in the agenda of the meeting.
- 5.8.8 Documentation. An instrument that sells, transfers, conveys or encumbers Common Area pursuant to this Section or grants an interest or consent pursuant to this Section shall:
- 5.8.8.1 State that the action of the Association was approved in accordance with this Section; and
- 5.8.8.2 Be executed by the president and secretary of the Association and acknowledged in the manner provided for acknowledgment of the instruments by the officers.
- 5.8.9 Proceeds of Sale, Transfer, or Conveyance. The Association shall treat proceeds of any sale, transfer or conveyance under this Section, any grant under this Section or any consent to vacation under this Section as an asset of the Association.
- 5.9 **Owner Easement of Use and Enjoyment.** Subject to the provisions of this Article, and any other provisions of this Declaration, every Owner and Owner's invitee has a right and easement of use and enjoyment in and to the Common Area. The easement is appurtenant to and passes with the title to every Lot.
- 5.10 **Restrictions on Use of Common Area.**
- 5.10.1 Except as otherwise provided in this Article and other provisions of this Declaration, the Common Area is reserved for the exclusive use and enjoyment of all Owners and no private use may be made of the Common Area.
- 5.10.2 Except as otherwise permitted under this Article, no building, wall, fence, paving, landscaping or construction of any type may be erected or maintained by any Owner so as to trespass or encroach upon the Common Area. The Association has authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means, with or without bringing legal proceedings.
- 5.10.3 The Common Area and any facilities thereon must be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance may not be obstructed, damaged or unreasonably interfered with by any Owner or other person.
- 5.10.4 The Board may adopt rules as provided in the Bylaws that govern use of Common Area.

- 5.11 **Delegation of Use.** An Owner may delegate the Owner's right of enjoyment to the Common Area to other Occupants, tenants, or contract purchasers who reside on the Property, and whose use of the Common Area is subject to this Declaration, the Bylaws and all Rules and Regulations.

**ARTICLE 6  
HOMEOWNERS ASSOCIATION; ALLOCATION OF VOTING RIGHTS**

The administration, management and operation of Bald Eagle Point shall be by the Association as provided in this Article, the Articles of Incorporation and the Bylaws.

- 6.1 **Association Organization.** The Association has such powers and duties as may be granted to it or imposed by the Act and otherwise by Idaho law, together with such additional powers and duties afforded by this Declaration, the Bylaws and the Articles.
- 6.2 **Board of Directors.** The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.
- 6.3 **Automatic Membership.** Each Owner is automatically a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof. The rights, obligations and other entitlements granted to or imposed upon an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of the ownership. However, termination of ownership does not discharge an Owner from obligations incurred prior to termination.
- 6.4 **Voting Rights.**
- 6.4.1 The Association shall have two (2) classes of voting members.
- 6.4.1.1 Class A. Class A members shall be all Owners of Lots other than Declarant, and each Class A member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote.
- 6.4.1.2 Class B. The Class B member shall be Declarant, its successors and assigns. The Class B member shall have three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of the following dates (the "Termination Date"):
- (a) Twenty (20) years after the date this Declaration is recorded; or
  - (b) At such earlier time as Declarant elects in writing to terminate Class B membership.

- 6.4.2 After the Termination Date, each Owner, including Declarant, shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots subject to this Declaration. If an Owner owns more than one Lot, the Owner has one (1) vote for each Lot owned. The Board is entitled to vote on behalf of any Lot that has been acquired by or on behalf of the Association. However, the Board is not entitled to vote any Lot in any election of directors. The method of voting is as specified in the Bylaws.
- 6.4.3 When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.
- 6.5 **Proxy.** Each Owner may cast such Owner's vote in person, by written ballot or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one (1) year after its date, unless the proxy specifies a shorter term.
- 6.6 **Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the president shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

## ARTICLE 7 ARCHITECTURAL REVIEW COMMITTEE

- 7.1 **Architectural Review.** Improvements on the Property shall be made in conformity with the Bald Eagle Point design guidelines and the Project Documents. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the Improvement have been submitted to and approved in writing by the ARC. This Declaration is intended to serve as authority for the ARC to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the building envelope, height, grade and finished ground elevation, natural conditions, landscaping and all aesthetic considerations as set forth in the Project Documents. This Article's purpose is to assure quality of workmanship and materials and harmony between exterior design and the existing Improvements and landscaping, and as to location with respect to topography and finished grade elevations. The design guidelines are designed to protect the special qualities of Bald Eagle Point, and to encourage creative design by providing general architectural, design, and construction guidelines (including building envelope guidelines),

landscape guidelines (including a description of existing, natural conditions and vegetation), submittal and review procedures, and fees and charges for review. The content of the design guidelines may be modified and amended from time to time as provided in the design guidelines. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time to time by the ARC. The ARC shall not be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the Applicant's responsibility. The provisions of this Article shall apply in all instances in which this Declaration requires the ARC's consent.

- 7.2 **Architectural Review Committee, Appointment and Removal.** Declarant shall act as the ARC until Bald Eagle Point is one hundred percent (100%) built out. After build out, or such earlier time as the Declarant may elect in writing, the Board shall have the right to appoint and remove members of the ARC. After the Board has the right to appoint the members of the ARC, the ARC shall consist of no fewer than three (3) members and no more than five (5) members. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.
- 7.3 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto. The actions of the ARC in the exercise of its discretion by its approval of the proposed Improvements on a Lot, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.
- 7.4 **Duties.** The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural and design rules, regulations and guidelines ("Design Guidelines").
- 7.5 **Review of Proposed Construction.** The ARC shall consider and act upon any and all proposals or plans and specifications submitted for approval pursuant to the Project Documents and the Design Guidelines, and shall inspect construction progress to assure its conformance with plans approved by the ARC. The ARC shall have the power to hire an architect, licensed with the State of Idaho, to assist the ARC in its review of proposals or plans and specifications submitted to the ARC.
- 7.5.1 Conditions on Approval. The ARC may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate and/or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to the Association for the maintenance thereof, and/or upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.



- 7.5.2 ARC Rules and Fees. The ARC may also establish rules setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approvals or additional factors which it will take into consideration in reviewing submissions. The ARC shall determine the amount of such fee in a reasonable manner. The fees shall be used to defray the costs and expenses of the ARC, including, without limitation, the cost and expense of hiring an architect licensed by the State of Idaho, as provided above, or for such other purposes as established by the Board, and such fees shall be non-refundable. Such fees shall be collectible as Assessments.
- 7.5.3 Detailed Plans. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plan or specification submitted for approval.
- 7.6 **ARC Decision.** The ARC shall render its decision approving or denying each application submitted to it within sixty (60) calendar days after its receipt of all materials required with respect to such application. It shall render its decision in writing.
- 7.6.1 Extension of Time. The ARC may unilaterally grant itself one extension of time to render a decision, not to exceed thirty (30) days, by providing written notice to the Applicant of the extension before the expiration of the sixty (60)-day decision period. Additionally, the ARC may request any number of additional extensions of time from the Applicant. Both the ARC's request for an extension of time and the Applicant's approval of an extension of time must be in writing. An extension of time requested by the ARC and granted by the Applicant may be for any duration of time and is not limited to thirty (30) days. The Applicant may agree to further extensions to allow the Applicant to complete or supplement the application.
- 7.6.2 Effect of No Decision or Extension Within Sixty (60) Days. If the ARC fails to render a written decision within sixty (60) calendar days of its receipt of all required application materials or before the expiration of any approved extension period thereof, then the ARC must provide the Applicant with a written statement showing good cause why the application was not approved or denied within the deadline. Further, if the ARC fails to render a written decision within seventy-five (75) calendar days of its receipt of all required application materials or fifteen (15) days after the expiration of any extension period, whichever applies, then the application shall be deemed approved.
- 7.7 **ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Bald Eagle Point. The ARC may consider siting, shape, size, color, design, height, view preservation, solar access or other effect on the enjoyment of other Lots or the Common Area, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work.

- 7.8 **No Waiver of Future Approvals.** The approval by the ARC 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 ARC, 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 whatsoever subsequently or additionally submitted for consent.
- 7.9 **Appeal.** Once the Board has the right to appoint ARC members, any Owner adversely impacted by action of the ARC may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within ten (10) days after the ARC's action. The Board shall issue a final, conclusive decision within sixty (60) days after receipt of such notice, and such decision shall be final and binding upon the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within twenty (20) days after receipt of the notice of appeal. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.
- 7.10 **Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire six (6) months after issuance unless construction of the project has been commenced or the Owner has applied for and received an extension of time from the ARC.
- 7.11 **Determination of Compliance.** The ARC may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of the non-compliance and shall require the Owner to remedy the non-compliance.
- 7.12 **Inspection of Work.** Inspection of work and correction of defects therein shall proceed as follows:
- 7.12.1 Notice of Completion. 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 ARC.
- 7.12.2 Inspection; Notice of Non-compliance. Within sixty (60) days after the Owner gives notice of completion to the ARC, the ARC or its duly authorized representative may inspect the Improvement. If the ARC finds that the work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within ninety (90) days after the Owner gives notice of completion to the ARC. The notice of non-compliance from the ARC shall specify the particular non-compliance, and shall require the Owner to remedy the same.

- 7.12.3 **Failure to Cure Non-compliance.** If, upon the expiration of thirty (30) days from the date of the ARC's notification of non-compliance to the Owner, or any longer time the ARC determines to be reasonable, the Owner shall have failed to remedy such non-compliance, the ARC shall notify the Board in writing of such failure. (No notice to the Board is required if the Board is acting as the ARC.) Upon notice and opportunity for a hearing, as provided in the Bylaws, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The Board shall then provide written notice to the Owner of the violation, the cost of correcting or removing the same, and require the Owner to correct or remedy the non-compliance. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the notice from the Board ruling unless the Board specifies a longer time is reasonable. If the Owner does not comply with the Board ruling and notice within such period, then the Board, at its option, may either remove the non-complying Improvement or condition or remedy the non-compliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith, including, without limitation, actual attorney fees incurred. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Individual Assessment against the Owner for reimbursement. The Association may also record a notice of non-compliance in the deed records of Ada County.
- 7.13 **Liability.** Neither the ARC nor any member thereof shall be liable to any person or entity for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or their actual knowledge, acted in good faith.
- 7.14 **Estoppel Certificate.** Within fifteen (15) working days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chair or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof, either (i) all Improvements made or done upon such Lot comply with this Declaration, or (ii) such Improvements do not so comply, in which event, the certificate shall also identify the non-complying Improvements and set forth with particularity the nature of such non-compliance. The Owner and such Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.
- 7.15 **Declarant and Successor Exempt From ARC.** The Declarant or a successor to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC.
- 7.16 **View Preservation.** The construction and/or installation of any Homes, outbuildings or other structures on a Lot and any non-native vegetation or landscaping shall not

unreasonably impair the view from any other Home within Bald Eagle Point. The ARC shall be the sole judge as to whether a view has been impaired under this Section. The ARC, in its discretion, may develop specific height restrictions that may pertain to specified areas within Bald Eagle Point and procedures for addressing any complaints of view impairment.

- 7.17 **VariANCES.** The ARC may authorize a variance from compliance with any of the architectural provisions of the Project Documents, 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. However, no variance will be granted for construction of structures or Improvements in the Common Area. A variance must be evidenced in writing, must be signed by at least two (2) members of the ARC, and shall become effective upon recordation in the deed records of Ada County. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Lot, including, without limitation, zoning ordinances or requirements imposed by any governmental agency or municipal authority.
- 7.18 **Increase in Insurance Cost.** Unless approved in writing by the Board of Directors, nothing may be done or kept within any Lot or the Common Property that will increase the cost of insurance to the Association or to other Owners. An Owner may not permit anything to be done or kept within Owner's Lot or in the Common Property that will result in cancellation of insurance on any Lot or any part of the Common Property.
- 7.19 **Association Rules and Regulations.** In addition to the restrictions and requirements specified in this Article and other provisions of this Declaration and the Bylaws, the Board of Directors from time to time may, by resolution, adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of Bald Eagle Point. Any such action by the Board of Directors is subject to the procedures prescribed in Article 9 of the Bylaws.

## ARTICLE 8 DECLARANT CONTROL

- 8.1 **Interim Board and Officers.** Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board of directors (the "Interim Board"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of one (1) to three (3) members. Notwithstanding the provision of this Section, at the Turnover Meeting,

at least one (1) director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three (3) directors.

8.2 **Turnover Meeting.** Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A members within sixty (60) days of the earlier of the following dates:

8.2.1 **Latest Date.** One hundred percent (100%) of the Lots in all phases have been sold and conveyed by Declarant to third parties; or

8.2.2 **Optional Turnover.** At such time as Declarant has elected in writing to terminate Class B membership.

Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section, the transitional advisory committee or any Owner may do so.

## **ARTICLE 9 DECLARANT'S SPECIAL RIGHTS**

9.1 **General.** Declarant is undertaking the work of developing Lots and other Improvements within Bald Eagle Point. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a residential community. In addition to those rights specified in Section 8.1, above, until the Homes on all Lots on the Property, including Additional Property that may be annexed, have been constructed, fully completed and sold, with respect to the Common Area and each Lot on the Property, Declarant shall have the special rights set forth in this Article 9.

9.2 **Marketing Rights.** Declarant shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

9.3 **Additional Improvements.** Declarant does not agree to build any Improvements not described in this Declaration or supplemental declaration.

9.4 **Control of the ARC.** Declarant shall have the right, but not the obligation, to control all aspects of the ARC, including the modification or adoption of the Architectural Standards as described in Article 7 herein.

**ARTICLE 10  
ASSESSMENTS**

- 10.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners and Occupants of Dwellings in Bald Eagle Point; for the improvement, operation and maintenance of the Common Area; for the payment of obligations of the Association; for the administration and operation of the Association; for property, liability, and other insurance; and for any other purposes required or permitted under this Declaration or the Bylaws.
- 10.2 **Covenants to Pay.** Owners covenant and agree to pay to the Association the Assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All Assessments for operating expenses, repairs and replacement and reserves shall be allocated among the Lots and their Owners as set forth in Section 10.5.2, below. Provided, however, Lots owned by the Declarant shall not be subject to assessment.
- 10.2.1 Funds Held in Trust. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in Section 10.1, above. The Assessments are the property of the Association and are not refundable to Owners or Lots. Upon the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.
- 10.2.2 Joint and Several Obligation. In addition to constituting a lien on the Lot as provided under Section 10.10, below, and Idaho Code 45-810, each Assessment is the joint and several obligation of the Owner or Owners of the Lot against which the Assessment is levied.
- 10.2.3 Offsets. No offsets against any Assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.
- 10.2.4 Voluntary Conveyances. In a voluntary conveyance of a Lot, the grantee is jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.
- 10.2.5 Right to Profits. Association profits, if any, shall be the property of the Association and shall be contributed to the Operating Account.
- 10.3 **Basis of Assessment; Commencement of Assessments.** The Declarant shall pay all Common Expenses of the Association until the first Lot is sold to an Owner other than Declarant. Upon the conveyance of the first Lot to an Owner other than Declarant, the Common Expenses of the Association shall be assessed to and paid by the Owners of the Lots other than Declarant. The amount of the initial Regular Assessment to Owners other

than Declarant shall be determined by the Declarant. Declarant shall be exempt from paying any Assessments (regular, special and reserve) on all Lots owned by it. Notwithstanding Declarant's exemption, Declarant shall subsidize all Common Expenses that cannot be paid by Assessments collected from all non-Declarant Owners until such time that a sufficient number of Lots have been sold to Owners other than Declarant to pay the Common Expenses of the Association.

10.4 **Determination of Common Expenses.** Common Expenses include, without limitation:

10.4.1 Expenses of administration of Bald Eagle Point and the Association.

10.4.2 Expenses of maintenance, repair or replacement of Common Area and any other portions of Bald Eagle Point required to be maintained by the Association pursuant to this Declaration or the Bylaws.

10.4.3 Cost of insurance or bonds obtained in accordance with the Bylaws.

10.4.4 Funding of the Reserve Account in accordance with Section 10.9 of this Declaration.

10.4.5 A general operating reserve, if established under Section 11.4 of the Bylaws.

10.4.6 Any deficit in Common Expenses for any prior period.

10.4.7 Any other items properly chargeable as an expense of the Association.

10.5 **Regular Assessments.** Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Assessments shall be levied on a periodic basis (e.g., monthly, quarterly, semi-annually, or annually) determined by the Declarant or the Board. The initial Assessment and the implementation thereof shall be determined by the Declarant and shall be prorated on a monthly basis. For prospective purposes, any portion of a month shall count as a full month. The fiscal year shall be the calendar year unless a different year is adopted by vote of the Association members. Unless otherwise specified by the Board, Assessments shall be due and payable on the first (1<sup>st</sup>) day of the period for which they are assessed, and shall be delinquent if not paid by the tenth (10<sup>th</sup>) day of the period for which they are due.

10.5.1 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing:

10.5.1.1 Estimated revenue and operating expenses;

10.5.1.2 The amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies;

10.5.1.3 An itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and

10.5.1.4 A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. Once Assessments begin, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the calendar year.

10.5.2 Allocation of Assessments. Association Common Expenses specified in Section 10.4, above, shall be allocated equally among all Lots, except:

10.5.2.1 Benefiting Fewer than All Lots. Any Common Expense or any part of a Common Expense benefiting fewer than all the Lots may be assessed exclusively against the Lots benefited as an Individual Assessment as provided under Section 10.7, below.

10.5.2.2 Fault of an Owner. If the Board of Directors determines that any loss or cost incurred by the Association is the fault of one or more Owners, the Association may assess the loss or cost exclusively against the Owners and Lots of the Owners determined at fault as an Individual Assessment.

10.5.3 Reallocation Upon Annexation of Property. In the event Additional Property is made subject to this Declaration, the expenses and reserves shall be reallocated to those Lots subject to assessment as set forth herein.

10.5.4 Nonwaiver of Assessments. If before the expiration of any year the Association fails to fix Regular Assessments for the next year, the Regular Assessments established for the preceding year shall continue until a new Regular Assessment is fixed.

10.6 **Special Assessments.** In the event that the Board determines that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the expenses of the Association for any reason, including, without limitation, costs of construction, reconstruction, unexpected repairs or replacement of Improvements upon the Common Area, attorney fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray the expenses and levy a Special Assessment against the Owners and the Lots in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which the Special Assessment will be paid. Every Special Assessment shall be levied, paid, and delinquent upon the same allocation and basis as prescribed for the levying, payment, and delinquency of Regular Assessments; provided, however, the Declarant shall be exempt



from Special Assessments. In addition to the general power to levy Special Assessments for the reasons described above, the Board and/or the Owners shall have the power to levy Special Assessments against an Owner or all Owners in the following manner for the following purposes:

10.6.1 Correct Deficit. To correct a deficit in the operating budget, by vote of a majority of the Board;

10.6.2 Repairs. To collect additional amounts necessary to make repairs or renovations to the Common Area if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

10.6.3 Capital Improvements. To make capital acquisitions, additions or improvements, by vote of at least eighty percent (80%) of all votes allocated to the Lots.

10.7 **Individual Assessments**. Notwithstanding the above provisions with respect to Annual and Special Assessments, the Board of Directors may levy an Individual Assessment against an Owner and an Owner's Lot as a remedy to reimburse the Association for costs incurred, including, without limitation, actual attorney fees, in bringing the Owner and/or the Owner's Lot into compliance with the provisions of the Project Documents. The Board of Directors may levy Individual Assessments against one or more Lots and Owners as provided in this Section.

10.7.1 Determination of Individual Assessments. Individual Assessments include, without limitation:

10.7.1.1 Any Association Common Expense Assessment that the Board of Directors determines is the fault of the Owner and not paid by Association insurance;

10.7.1.2 Fines or other charges imposed pursuant to this Declaration, the Bylaws or the Act for violation of this Declaration, the Bylaws or rules and regulations; and

10.7.1.3 Amounts due to the Association from an Owner pursuant to other provisions of this Declaration or the Bylaws.

10.7.2 Allocation and Payment. Unless otherwise provided in this Declaration or a resolution adopted by the Board of Directors, Individual Assessments are:

10.7.2.1 Allocated equally against the Owners subject to the Individual Assessment; and

10.7.2.2 Due thirty (30) days after the Board has given written notice of the Assessment to the Owners subject to the Individual Assessment.

10.7.2.3 Delinquent ten (10) days after the Individual Assessment is due.

10.7.3 Distribution and Use of Individual Assessments. Unless otherwise provided by resolution of the Board of Directors, fines, late charges, interest and other fees collected shall be allocated to the Operating Account described under the Bylaws.

## 10.8 Working Capital Fund/Transfer Fee.

10.8.1 Working Capital Fund. A working capital fund shall be established to meet unforeseen expenditures or to purchase additional equipment or services reasonably required in the discretion of the Board, with the fund to be established by deposits of a Working Capital Fund Fee paid by the purchaser at the closing of the Declarant's initial sale of each Lot. The amount of the Working Capital Fund Fee for each initial sale of a Lot shall be Five Hundred Dollars (\$500.00). Amounts paid into the fund shall be considered reserve funds under Section 10.9.2, below, and shall not be considered as advance payments of the Regular Assessments. Declarant shall have no right to use the working capital fund to defray any of its expenses or construction costs, or to make up any budget deficits while Declarant retains voting control over the Association.

10.8.2 Transfer Fee. After the initial sale of a Lot from the Declarant to a purchaser, at all subsequent transfers of the Lot, the purchaser shall pay a transfer fee to the Association in the amount of Five Hundred Dollars (\$500.00). The transfer fee shall be paid at the closing of the sale of the Lot, and the transfer fee funds shall be deposited into the accounts of the Association for the benefit and use of the Association, its members, and property. Amounts paid as a transfer fee shall be considered operating or reserve funds of the Association, as determined in the sole discretion of the Board, and shall not be considered advance payments of the Regular Assessments.

## 10.9 Accounts.

10.9.1 Types of Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank, which accounts shall be clearly designated as (i) the Operating Account and (ii) the Reserve Account. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the Operating Account and shall deposit those portions of the Assessments collected as reserves for major maintenance, repair, replacement and deferred maintenance of the Common Area into the Reserve Account. The reserve funds deposited in the Reserve Account, including funds placed in the working capital fund described in Section 10.8, above, shall be maintained as a segregated account, separate from all other funds of the Association. Withdrawal of funds for the Association's Reserve Account shall require the approval of either two (2) directors or one (1) director and an officer of the Association who is not a director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area and operating expenses relating to all other

matters, as well as for necessary reserves relating to the Common Area and necessary reserves relating to all other matters.

10.9.2 Reserve Account. Declarant shall establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of Common Area property that normally requires major maintenance, repair or replacement, in whole or in part, within one (1) to thirty (30) years and not for regular or periodic maintenance and expenses. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

10.9.2.1 Calculation of Reserve Portion of the Annual Assessment; Reserve Study and Maintenance Plan. The reserve portion of the Regular Assessment is based on the estimated remaining life and current replacement cost of Common Area property which normally requires major maintenance, repair or replacement, in whole or in part, within one (1) to thirty (30) years. At least annually, the Board of Directors shall inventory all items of Common Area property and shall estimate the remaining life of each item and the current replacement cost of each of such items. The total reserve portion of the Regular Assessment shall be equal to the sum of the estimated major maintenance, repair or replacement cost of each item which has an estimated life of greater than one (1) but less than thirty (30) years, divided by the estimated number of years of life for such item. The Board of Directors shall establish a thirty (30)-year plan for maintenance, repair and replacement of Common Area with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule. The Board of Directors shall, within thirty (30) days after conducting the reserve study, provide to every Owner a written summary of the reserve study and of any revisions to the thirty (30)-year plan adopted by the Board of Directors or the Declarant as a result of the reserve study. The reserve portion of the Regular Assessment shall be allocated pursuant to Section 10.5.2, above. The Board of Directors shall annually conduct a reserve study and a maintenance plan for the Common Area, or review and update an existing study of Common Area to determine the Reserve Account requirements.

10.9.2.2 Loan from Reserve Account. After the Turnover Meeting, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from Assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the date of adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment within a reasonable period.

10.9.2.3 Investment of Reserve Account. Assessments paid into Reserve Accounts shall be kept with a safe and responsible depository, shall be accounted for separately and, if invested, the Association must comply with the restrictions set forth under Idaho law.

10.9.2.4 Refunds of Assessments. Assessments paid into the Operating Account and the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot. No Owner shall have any individual rights in any of these reserves, although it is understood that the value of an Owner's Lot may increase in proportion to such Lot's right to receive repair, maintenance and replacement therefrom.

10.9.3 Operating Account. All costs other than those to be paid from the Reserve Account may be paid from the Operating Account.

#### 10.10 **Default in Payment of Assessments; Enforcement of Liens.**

10.10.1 Personal Obligation. All Assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such Assessment pertains. In a voluntary conveyance (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantors for all Association Assessments imposed through the recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such Assessments without either waiving or foreclosing the Association's lien.

10.10.2 Association Lien. The Association shall have a lien against each Lot for any Assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. The Association's lien shall accumulate all future Assessments or installments, reimbursement Assessments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed either judicially or nonjudicially at any time pursuant to Idaho law, and as more fully provided in Section 11.3, below. The Association shall record a notice of a claim of lien for Assessments and other charges in the deed records of Ada County before any suit to foreclose may be filed or nonjudicial foreclosure instituted. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, or any first mortgage, deed of trust or land sale contract recorded before the Association's notice of lien.

10.10.3 Interest; Late Fees; Penalties. If any Assessment imposed or levied by the Association pursuant to the provisions of this Declaration, the Bylaws or the Act is not paid within ten (10) days after its due date, the Assessment is delinquent and the Owner is obligated to pay:

10.10.3.1 Interest. Interest from the due date of the Assessment, or such other date as may be specified by resolution of the Board, at the rate of twelve percent (12%) per annum or at such other rate, not to exceed the maximum lawful rate, if any, as may be established by a resolution of the Board of Directors from time to time.

10.10.3.2 Late Charge. A late charge of ten percent (10%) of the unpaid Assessment, or such lower amount as may be established by resolution of the Board of Directors.

10.10.3.3 Attorney Fees and Costs. All expenses incurred by the Association in collecting unpaid Assessments including, without limitation:

(a) Attorney Fees. Attorney fees incurred by the Association (whether or not legal proceedings are instituted and including attorney fees at trial, in arbitration, or on appeal or petition for review).

(b) Costs. If a notice and claim of lien is recorded under this Section 10.10, the costs associated with the preparation and recording of the notice and claim of lien, and all other costs incurred in collection of the unpaid Assessments.

10.10.4 Acceleration of Assessments. If an Owner is delinquent in payment of any Assessment or installment on any Assessment, the Association, upon not less than ten (10) days' written notice to the Owner, may accelerate the due date of the full Regular Assessment for that calendar year and all future installments of any Special Assessments.

## 10.11 **Statement of Assessments.**

10.11.1 Contents. The Association shall provide, within ten (10) business days of receipt of a written request from an Owner, a written statement that provides:

10.11.1.1 The amount of Assessments due from the Owner and unpaid at the time the request was received, including:

(a) Annual, Special, and Individual Assessments;

(b) Fines and other charges;

(c) Accrued interest; and

(d) Late payment charges.

10.11.1.2 The percentage rate at which interest accrues on Assessments that are not paid when due.

10.11.1.3 The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

10.11.2 Exemption from Providing Statement of Account. The Association is not required to comply with Subsection 10.11.1, above, if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

10.11.3 Statement for Prospective Purchasers. Upon request of an Owner or Owner's agent, for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor or the Lot effective through a date specified in the statement, and the grantee in that case is not liable for any unpaid Assessments against the grantor not included in the written statement.

10.11.4 Fee for Providing Information. Pursuant to rules adopted under Article 9 of the Bylaws, the Association may charge a fee for providing the information required under Subsections 10.11.1 and 10.11.3 of this Section.

## **ARTICLE 11 COMPLIANCE AND ENFORCEMENT**

### **11.1 Compliance.**

11.1.1 Owners, Occupants and Tenants. Each Owner and Occupant (including tenants) of a Lot shall comply with the provisions of this Declaration, the Bylaws, Articles of Incorporation, Design Guidelines, Rules and Regulations, and Idaho law. The Owner is responsible for obtaining the compliance of an Occupant of the Lot and is liable for any failure of compliance by the persons occupying the Lot in the same manner and to the same extent were the Owner occupying the Lot.

11.1.2 Guests and Other Invitees. Guests, invitees, family members, contractors and other persons entering the Lot or other part of Bald Eagle Point under rights derived from the Owner shall comply with all the provisions of this Declaration, the Bylaws, Articles of Incorporation, Design Guidelines, and Rules and Regulations restricting or regulating the Owner's use, improvement or enjoyment of Owner's Lot or other parts of the Property, including the Common Area. The Owner is responsible for obtaining compliance and is liable for any failure of compliance by such persons in the same manner and to the same extent were the non-compliance by the Owner.

11.1.3 Joint Owners. When two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of the persons to comply with this Declaration, Bylaws, Articles of Incorporation, Design Guidelines, and Rules and Regulations adopted pursuant to the Project Documents is a joint and several responsibility, and the act or consent of any one or more of the persons constitutes the act or consent of the entire ownership interest. A disagreement among joint Owners as to the manner in which any vote or right of consent held by them is to be exercised with respect to a pending matter is governed by Section 3.5 of the Bylaws.

11.2 **Violations of Declaration, Bylaws, or other Project Documents; Right to Enforce**. The failure of any Owner of a Lot to comply with any provision of this Declaration, the Bylaws, Articles of Incorporation, Design Guidelines, or Rules and Regulations is hereby declared a nuisance and will give rise to a cause of action in Declarant, the Association, or any Owner of a Lot within the Property for recovery of damages or for negative or affirmative injunctive relief, or both. However, notwithstanding any other provision to the contrary, only Declarant, the Association, the Board, or a duly authorized agent of any of them may enforce by self-help any of the provisions of this Declaration or the other Project Documents, and then only if such self-help is preceded by reasonable notice to the Owner.

Additionally, the violation of any provision of this Declaration, Bylaws, Articles of Incorporation, Design Guidelines, or Rules and Regulations gives the Board of Directors, acting on behalf of the Association, the right in addition to any other rights set forth in this Declaration, Bylaws, Articles, Design Guidelines, or Rules and Regulations to enforce the Project Documents and to do any or all of the following after giving notice to the Owner and an opportunity to be heard:

11.2.1 Abatement. To summarily abate and remove, at the expense of the Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions of the documents stated in this Section, and the Board of Directors may not thereby be deemed guilty of any manner of trespass;

11.2.2 Injunction. To enjoin, abate, or remedy such thing or condition by appropriate legal proceedings;

11.2.3 Levy Fines. To levy reasonable fines in accordance with Idaho Code 55-115 or any other provision of Idaho law;

11.2.4 Termination of Utility Services or Access to Recreational Facilities. To terminate the right to receive utility services paid for out of Association Assessments or the right of access to and use of recreational and service facilities of Bald Eagle Point until the correction of the violation has occurred;

11.2.5 Legal and Equitable Proceedings. Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any Rules and Regulations; and

11.2.6 Other Action. To do any of the actions specified in this Section in conjunction with each other.

11.2.7 Attorney Fees and Costs. In the event an attorney is employed for the collection of an Assessment or to enforce compliance with or specific performance of the terms and conditions of the Project Documents, the Association is entitled to its actual attorney fees and costs incurred in enforcing the Project Documents regardless of whether or not a lawsuit is actually filed.

11.3 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment levied by the Association is not paid within ten (10) days after its due date (which, unless otherwise specified in this Declaration or Bylaws, shall be established by resolution of the Board of Directors), the Assessment is delinquent and is subject to interest and late payment charges as set forth in Section 10.10, above. In addition, if an Assessment levied by the Association is not paid within thirty (30) days after its due date, the Assessment is subject to collection costs and attorney fees as set forth in Section 10.10, above, and the Association may also exercise any or all of the following remedies:

11.3.1 Acceleration of Assessment. If any Assessment or any portion of any Assessment is delinquent, the Board may, after ten (10) days' written notice to the Owner, declare all Assessments of the Owner due immediately and interest thereafter accrues as provided under Section 10.10, above, on the entire Assessment until paid.

11.3.2 Foreclosure of Lien. The Association, by and through the Board of Directors, may file a suit to foreclose the lien in an action in court, or may foreclose by sale by the Association in a non-judicial foreclosure with the Association, its attorney, or other person authorized to make the sale. Any non-judicial foreclosure sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee or successor trustee for the purpose of conducting such power of sale or foreclosure.

11.3.2.1 Creation of Lien. There is hereby created a claim of lien with power of sale on each and every Lot within the Property to secure payment of any and all Assessments levied against such Lot pursuant to this Declaration, together with interest thereon at the maximum rate permitted by law, late charges, and all costs of collection, including actual attorney fees, which may be paid or incurred by the Association making the Assessment in connection therewith. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Lot upon recordation of a notice of claim of lien in the deed records of Ada County. Notwithstanding the actual recording date of a notice of delinquency and claim of lien, such lien shall be prior and superior to all other liens or claims



created subsequent to the original recordation of this Declaration, except for tax liens for real property taxes on any Lot, Assessments on any Lot in favor of any municipal or other governmental assessing body, and any first mortgage, deed of trust or land sale contract on a Lot as provided in Section 10.10, above.

- 11.3.2.2 Claim of Lien. Upon default of any Owner in the payment of Annual, Special or Individual Assessments hereunder, the Association may cause to be recorded in the deed records of Ada County a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording the notice), a sufficient description of the Lot against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.
- 11.3.2.3 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot described in the notice of delinquency and claim of lien, and to the person in possession of such Lot, and a copy thereof is recorded by the Association in the deed records of Ada County.
- 11.3.2.4 Subordination of Certain Trust Deeds. The lien for the Assessments provided for in this Declaration in connection with a given Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article with respect to a first mortgagee who acquires title to a Lot, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recording of a claim of lien, on account of the Assessments becoming due, whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

11.3.2.4 **Rights of Mortgagees.** Notwithstanding any other provision of this Declaration or the other Project Documents, no amendment of this Declaration or other Project Documents shall operate to defeat the rights of the beneficiary under a first deed of trust or first mortgage upon a Lot made in good faith and for value, and recorded against the Lot.

11.3.3 **Suit or Action.** The Association may bring an action to recover a money judgment for unpaid Assessments under this Declaration or the Bylaws without foreclosing or waiving the lien described in Section 10.10, above, and this Section 11.3. Recovery on any such action, however, operates to satisfy the lien, or the portion thereof, for which recovery is made.

11.3.4 **Other Remedies.** The Association has any other remedy available to it by law or in equity.

11.4 **Fines and Hearings.** The Board, in its sole and reasonable discretion, may from time to time adopt, by resolution, a schedule of fines and penalties for violations of the provisions of this Declaration, the Bylaws, Design Guidelines and the Rules and Regulations adopted by the Board or the ARC. A copy of the schedule of fines and penalties shall be sent to all Owners in writing before the effective date by a notice mailed to the assessment billing address of such Owners or transmitted electronically to the Owners as permitted by Idaho law. Any fine or penalty levied against an Owner shall be considered an Assessment that is lienable and collectible in the same manner as any other Assessments; provided, however, no fine or penalty may be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing.

11.5 **Nonwaiver.** The failure to enforce any of the provisions of this Declaration or the other Project Documents at any time shall not constitute a waiver of the right to enforce any such provision thereafter.

11.6 **Costs and Fees.** An Owner determined liable or in violation of the provisions of the Project Documents in any enforcement action taken under this Article is responsible to the Association for any reasonable administrative fee as established by the Board of Directors, and all costs and actual attorney fees incurred by the Association, whether or not legal proceedings are instituted and including attorney fees at trial, in arbitration, or on appeal or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or Owners, or fines so levied. The sums shall be levied against the Lot determined liable as an Individual Assessment under Section 10.7, above, and enforced as provided in this Article.

11.7 **Non-exclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration or the Bylaws does not prevent concurrent or subsequent exercise of any remedy permitted under this Declaration or the Bylaws. The remedies provided in this Declaration are not exclusive but are in addition to all other remedies, including actions for damages and suits for injunctions and specific performance available under Idaho law.

**ARTICLE 12  
AMENDMENT AND DURATION**

- 12.1 **How Proposed.** Amendments to the Declaration may only be proposed by either a majority of the Board of Directors or by Owners representing thirty percent (30%) or more of the voting rights delivering the proposed amendment to the Board for presentation to the Owners. The proposed amendment must be reduced to writing and included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment.
- 12.2 **Approval Required.** Except as otherwise provided in Section 12.3, below, or by other provisions of this Declaration or by the Act, this Declaration may be amended if the amendment is approved by Owners holding at least seventy-five percent (75%) of the voting rights of Bald Eagle Point.
- 12.3 **Additional Approval Requirements.**
- 12.3.1 Unless the Owners of the affected Lots unanimously consent to the amendment, no amendment may change:
- 12.3.1.1 The boundaries of any Lot or the use to which any Lot is restricted under Article 4, above.
- 12.3.1.2 The method of determining liability for Association Common Expenses or right to revenues under Section 10.5, above.
- 12.3.1.3 The method of determining voting rights for Association matters under Section 6.4, above.
- 12.4 **Execution and Recording.** An amendment is not effective until the amendment is:
- 12.4.1 Executed and acknowledged by the president and secretary of the Association;
- 12.4.2 Certified by the president and secretary of the Association as being adopted in accordance with this Declaration and the applicable provisions of the Act; and
- 12.4.3 Recorded in the deed records of Ada County, Idaho.
- 12.5 **Duration.**
- 12.5.1 This Declaration perpetually runs with the land and is and remains in full force and effect until December 31, 2051, after which the Declaration shall automatically be extended for successive periods of ten (10) years.

12.5.2 This Declaration may be terminated upon approval by the vote or written consent of not less than ninety percent (90%) of all Owners and, if required by the development approval or otherwise, the City of Eagle. Any termination becomes effective only if a certificate signed by the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required in this Section, is duly acknowledged and recorded in the deed records of Ada County, Idaho.

### **ARTICLE 13 MORTGAGEES**

13.1 **Mortgagee Rights.** Each mortgagee has the following rights:

13.1.1 Right to Examine Books and Records. All mortgagees have the right to examine the books and records of the Association upon reasonable notice and at reasonable times.

13.1.2 Right to Annual Reports. All mortgagees, upon written request, are entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

13.1.3 Right to Receive Written Notice of Meetings. The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and mortgagees are permitted to designate a representative to attend all meetings.

13.2 **Request for Approval of Mortgagees.** Any mortgagee that receives a written request to approve amendments to the Declaration or Bylaws, or any other action to be taken by the Board of Directors, the Association or Owners, is considered to have given the approval unless the mortgagee delivers or posts a negative response within sixty (60) days after receipt of the request.

### **ARTICLE 14 GENERAL PROVISIONS**

14.1 **Severability; Number; Construction; Captions.**

14.1.1 Severability. The invalidity of any part of this Declaration by judgment or court order does not impair or affect in any manner the validity, enforceability or effect of the balance of this Declaration.

14.1.2 Number; Construction. As used in this Declaration:

14.1.2.1 The singular includes the plural and the plural the singular as the context requires.

14.1.2.2 “May not” and “shall not” are equivalent expressions of an absolute prohibition.

14.1.2.3 The masculine, feminine and neuter each include the masculine, feminine, and neuter, as the context requires.

14.1.3 Liberal Construed. This Declaration shall be liberally construed as an entire document to effectuate the intended purposes.

14.1.4 Captions. All captions used in this Declaration are intended solely for convenience of reference and in no way limit any of the provisions of this Declaration.

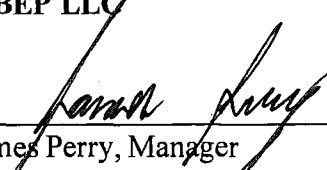
14.2 **Waiver, Precedent and Estoppel**. No restriction, condition, obligation or provision contained in this Declaration, the Bylaws or Rules and Regulations may be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur, and any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

14.3 **Effect of Municipal Ordinances**. Police, fire and other public safety ordinances of any municipal corporation having jurisdiction over any portion of the Properties govern where more restrictive than the provisions of this Declaration.

14.4 **Conflicts**. If a conflict arises between or among the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any Rules and Regulations, the provisions of the Declaration are paramount to those of the Articles of Incorporation, the Bylaws, and the Rules and Regulations; those of the Articles of Incorporation are paramount to those of the Bylaws and the Rules and Regulations, and those of the Bylaws are paramount to those of the Rules and Regulations, except to the extent the Declaration, Bylaws and Articles of Incorporation are inconsistent with the Act or other Idaho law.

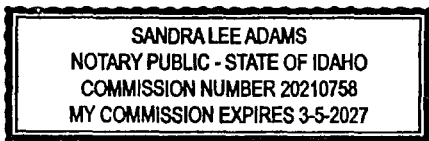
IN WITNESS WHEREOF, Declarant has executed this Declaration this 9<sup>th</sup> day of November, 2021.

**DECLARANT:  
WPG BEP LLC**

  
\_\_\_\_\_  
By: James Perry, Manager  
Woodbridge Pacific Group, LLC, a California  
Limited Liability Company, Manager  
WPG BEP LLC, a Delaware Limited Liability  
Company

STATE OF Idaho )  
County of Ada )ss:

On this 9<sup>th</sup> day of November, 2021, before me, the undersigned, a notary public in and for said state, personally appeared James Perry, known or identified to me to be a Manager of Woodbridge Pacific Group, LLC, a California Limited Liability Company, Manager of WPG BEP LLC, a Delaware Limited Liability Company, who subscribed said limited liability company's name to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said Woodbridge Pacific Group, LLC, and that such limited liability company executed the same in said WPG BEP LLC's name.



  
\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Plat of Bald Eagle Pointe Subdivision No. 1, recorded October 28, 2021, as Instrument No. 2021-155967, and in Book 121, Pages 19094-19097, Plat Records of Ada County, Idaho.