



<b>Maple Creek Ranches Conservation Project Phase 2 Declaration</b>		limits, etc.	10
		4.9 Rubbish, offensive activities	11
<b>MAPLE CREEK RANCHES CONSERVATION PROJECT PHASE 2 DECLARATION</b>	<b>3</b>	<b>5. ARCHITECTURAL STANDARDS AND RESTRICTIONS</b>	<b>11</b>
<b>DECLARATION AND PURPOSE</b>	<b>3</b>	5.1 General standards and residential purpose	11
1.1 Effective Date	3	5.2 Board as architectural control committee	11
1.2 Declaration	3	5.3 Building codes, permits, zoning	11
1.3 Purpose and conservation theme	4	5.4 Design character	11
<b>2. LEGAL DESCRIPTION AND STATUS OF SUBDIVISION</b>	<b>4</b>	5.5 Permissible structures	12
2.1 Legal description of subdivision	4	5.6 Setbacks	12
2.2 Legal description of common area	4	5.7 Main dwelling	12
2.3 Legal description and ownership of lots	5	5.8 Guesthouse	12
2.4 Percentages of ownership	5	5.9 Outbuildings	12
2.5 Incidence of ownership	5	5.10 Solar collectors	13
2.6 Use of common areas	6	5.11 Fences and landscape borders	13
2.7 Easements and reserved rights	6	5.12 Subdividing and consolidation of lots	13
2.8 Personal property	7	5.13 Variances	13
<b>3. GOVERNANCE</b>	<b>7</b>	<b>6. MAINTENANCE</b>	<b>13</b>
3.1 Subject to Declarant control	7	6.1 Maintenance of lots	13
3.2 Association of owners	7	6.2 Maintenance and stewardship of preservation parcels and common elements	14
3.3 Governing documents of MCR	7	6.3 Type of maintenance and repair	14
3.4 Powers	8	6.4 Mechanic's lien	14
3.5 Voting	8	6.5 Utility easements	14
3.6 Mandatory or discretionary duties of MCR	8	<b>7. RISK CONTROL</b>	<b>14</b>
3.7 Limitation on MCR's liability	9	7.1 Standard of liability	14
<b>4. LOT OWNER STANDARDS AND RESTRICTIONS</b>	<b>9</b>	7.2 Corporation indemnification	15
4.1 Manufactured, mobile and modular homes	9	7.3 Owner indemnifications	15
4.2 Recreational vehicles	10	7.4 Scope of indemnifications	15
4.3 Signs	10	7.5 Release of liability between MCR and lot owners	15
4.4 Animal restrictions	10	7.6 Allocation of risk	15
4.5 Driveways and parking	10	7.7 Insurance	15
4.6 Water and waste water systems	10	7.8 Form of Insurance	16
4.7 Fuel tanks, water tanks and utility lines	10	7.9 Sale or dedication of property	17
4.8 Subdivision roads, maintenance, speed			

7.10 Condemnation	17	11.2 Protection of mortgagees	26
7.11 Reorganization	18	11.3 Amendments	27
<b>8. ASSESSMENTS</b>	<b>18</b>	11.4 Dispute resolution	27
8.1 Owners obligation to pay assessments and other amounts	18	11.5 Other sanctions	27
8.2 Regular and special assessments	18	11.6 Financial statements	27
8.3 Individual assessments	19	<b>12. DEFINITIONS</b>	<b>27</b>
8.4 No waiver of assessment	19	12.1 Allocated interest	27
8.5 Expenditure of funds	19	12.2 Association or lot owners association	27
8.6 Lien for assessments	19	12.3 Attachment 2	27
8.7 Liability of purchasers and encumbrances	20	12.4 Board of Directors or Board	28
8.8 Estoppel certificate	20	12.5 Common elements	28
8.9 Allocation of assessments	20	12.6 Common expenditures or expenses	28
<b>9. SPECIAL DECLARANT PROVISIONS</b>	<b>20</b>	12.7 Common interest community	28
9.1 Declarant control of the association	21	12.8 Declarant control period	28
9.2 Declarant's reservation of essential rights	21	12.9 Dispose or disposition	28
9.3 Amendments to this Declaration	21	12.10 Lot and improved lot	28
9.4 Declarant's and lot owner rights and responsibilities	22	12.11 Owner or lot owner	28
9.5 Easement for construction or renovation	23	12.12 Maple Creek Ranches Inc. or MCR	29
9.6 Easement for maintenance of drainage water	23	12.13 Person	29
9.7 Reservation to use lots as management, sales and other offices	23	12.14 Project	29
9.8 Right to grant and reserve easements	23	12.15 Separate areas	29
9.9 Right to assign	23		
<b>10. PHASES OF DEVELOPMENT AND DECLARANT OPTION TO EXPAND THE PROJECT</b>	<b>23</b>	<b>Maple Creek Ranches Conservation Project Phase 2 Declaration</b>	
10.1 Reservation	23	<b>Declaration and purpose</b>	
10.2 Property subject to future phases of development	23	<b>1.1 Effective Date</b>	
10.3 Maximum number of lots	25	The effective date of this Declaration shall be October 1, 2009, or its recording date, whichever is later.	
10.4 No assurances	25	<b>1.2 Declaration</b>	
10.5 Effect of liens on property to be added	25	This Declaration of private conservation project is made under title 55, chapter 15, of the Idaho Code by Silcock Franklin Properties, LLC who is the Declarant. The Project shall be known as the Maple Creek Ranches Conservation Project Phase 2. The common elements shall be managed by Maple Creek Ranches Inc. (MCR), an Idaho non-profit corporation.	
<b>11. MISCELLANEOUS</b>	<b>25</b>		
11.1 Recordings in county records	25		

Declarant submits, declares and establishes that the property described in Article 2.1 is subject to this Declaration and shall be held in the form of ownership provided in Idaho Code title 55, chapter 15, and section 55-101B, with each lot being separately owned and with the common areas as set forth in Article 2.2 being commonly owned. A specified share of the common areas is inseparably appurtenant to each specified lot. The entire property is from now on referred to as the Project.

The common and separate areas of the subdivision are declared to be as set forth in this Declaration and its attachments. All of the property described in Article 2.1, from now on shall be held, conveyed, encumbered, leased, used, occupied and maintained subject to Idaho Code Title 55, Chapter 15, and all rights and restrictions as set forth in this Declaration.

All of the provisions of this Declaration shall run with the land and shall burden and benefit the Declarant and its successors and assigns and all present and subsequent owners or other persons holding any ownership or possessory interest in the subdivision. All rights, interests, obligations and restrictions created under this Declaration shall be appurtenant to each lot and shall not be separable from that lot. Any conveyance or encumbrance of a lot shall be considered a conveyance or encumbrance of the lot and its associated rights, interests, obligations and restrictions even though such rights, interests, obligations and restrictions are not expressly referred to in the conveyance or encumbrance.

### **1.3 Purpose and conservation theme**

The separate portion of each lot in the subdivision will be fully owned as separate property by the owner(s) of that lot. Associated with each lot will be an undivided common interest in the preservation parcels, bridal paths and other areas identified on the plat map as common elements. A lot owners association is established to enable the owners to control the common interest property by their vote and to make assessments for the maintenance and development of the Project.

The Project is a conservation subdivision in accordance with Franklin County Development Code, Ordinance No. 2007-8-13. The subdivision creates preservation parcels as shown on the plat for the purpose of protecting and preserving the rural setting and open farmland of the surrounding area. The preservation parcels include bridal paths and open areas. Additional equestrian amenities and facilities may be developed on the preservation parcel common areas of future phases as further set forth in Article 9.1 of this Declaration (Special Declarant Provisions).

## **2. Legal description and status of subdivision**

### **2.1 Legal description of subdivision**

The real property that is the subject of this Declaration is described as follows:

Lots 1 through 18 of Maple Creek Ranches Phase 2, as shown on the subdivision plat, recorded in the official records of Franklin County, Idaho, as instrument number 246715, and together with the tracks of land designated as PP-1 and PP-2 on that subdivision plat.

That real property is the Project and is subject to this Declaration and associated plat for the Maple Creek Ranches Conservation Project Phase 2 and as it may be amended from time to time and any other existing covenants, conditions, restrictions and easements of record.

### **2.2 Legal description of common area**

The legal description of that portion of the Project to be held in common ownership is:

#### Preservation Parcel No. 1

Tract PP-1 of the Maple Creek Ranches Phase 2 Subdivision, Franklin County, Idaho, per the recorded plat filed as instrument number 246715 in Franklin County.

#### Preservation Parcel No. 2

Tract PP-2 of the Maple Creek Ranches Phase 2 Subdivision, Franklin County, Idaho, per the recorded plat filed as instrument number 246715 in Franklin County.

The roads within the subdivision shall be dedicated to Franklin County. Such roads are not common elements and shall not be maintained as a common expense, subject to the terms of the Declarant's development agreement with Franklin County. MCR has no authority to control or grant easements over roads dedicated to Franklin County.

### 2.3 Legal description and ownership of lots

The legal description of the lots shall be construed to: (1) describe the lot and the appurtenant interest in the common elements; and (2) incorporate all rights, obligations and limitations incident to the ownership of a lot in this Project. The legal description of a lot will be the lot's identifying number as shown on the plat together with the Project name and will be as follows:

Lot No. \_\_\_\_\_, Maple Creek Ranches Conservation Project Phase 2, an Idaho Code title 55, chapter 15 project situated in Maple Creek Ranches Phase 2 Subdivision, Franklin County Idaho, instrument number 246715.

### 2.4 Percentages of ownership

The percentage of ownership interest in the common elements allocated to each lot for purposes of tax assessment, liability and assessments made by MCR shall be fixed by the following formula: the acreage of the lot as represented on the plat, divided by the total acreage of all platted lots combined, multiplied by 100 and rounded to the nearest whole number to reach a percentage of ownership as set forth in Attachment 2. Each lot shall have one membership vote. All lots are considered to have equal per acre value.

### 2.5 Incidence of ownership

Title to a lot within the subdivision may be held or owned by any person or entity in any manner in which title to any other real property may be held or owned in the State of Idaho.

The common elements are not subject to partition from the separate areas of the subdivision. Any purported conveyance, encumbrance, judicial sale or other voluntary or

involuntary transfer of an undivided interest in the common elements other than as an appurtenance to the lot to which that interest is allocated is void. The undivided allocated share of the common elements that are appurtenant to a lot shall not be separated from it and shall be transferred automatically with the transfer of the lot regardless of whether separately described. If any lot is encumbered, the encumbrance shall apply both to the lot and to all interest in the common elements associated with that lot.

No action for partition of the common elements shall lie, excepting under Idaho Code Section 55-1511(a)(1)-(3). Section 55-1511(a)(4), (b)-(c) shall have no application to this subdivision. A lot shall not be subject to partition as between multiple owners, but if grounds for such partition exist, the lot shall be sold in its entirety. If the subdivision is subject to partitioning under the terms of Section 55-1511(a)(1)-(3) of the Idaho Code, MCR shall have an irrevocable power of attorney to sell and convey the entire subdivision for the benefit of all owners. The power of attorney shall not be exercised until two-thirds of the owners vote in favor of having MCR exercise the power of attorney and until the owners of two-thirds of the voting rights have executed and recorded a certificate certifying the power of attorney has been duly authorized and properly exercised under the terms of this section.

MCR and all present and future owners and tenants or any other person using common elements or separate areas of the subdivision are subject to and must comply with Idaho Code Title 55, Chapter 15, this Declaration, the articles of incorporation, the by-laws, and rules and regulations of MCR. In the event of a conflict in any of the provisions of those documents, the documents shall govern or control in the following order of preference: (1) the Declaration, (2) the Idaho Code, (3) articles of incorporation of MCR, (4) The by-laws of MCR, (5) the rules and regulations of MCR. All agreements, decisions and determinations lawfully made by the Board of directors of MCR shall be binding on all lot owners and shall

inure to the benefit of all owners.

All taxes, assessments and other charges of the State of Idaho, any political subdivision of the State of Idaho, any special improvement district or any other taxing or assessing authority shall be assessed against and collected on each lot separately and not on the subdivision as a whole. Each lot shall be carried on the tax records as a separate and distinct parcel.

Each owner shall have the right to mortgage or otherwise encumber his lot. However, no owner shall attempt to or shall have the right to mortgage or otherwise encumber any part of the common elements except the undivided interest appurtenant to his or her lot.

Subject to other provisions of the Declaration, each owner shall have a nonexclusive right to use and enjoy so much of the common elements as may be required for access and ingress and egress to and use and occupancy and enjoyment of the respective lot owned by that owner. The right to use the common elements or areas shall extend to each lot owner and the agents, servants, tenants, family members, guests, and invitees of each lot owner. The right to use the common elements shall be consistent with the rights of use and enjoyment of other owners and shall be subject to and governed by the provisions of this Declaration, and the articles of incorporation, the by-laws, and the rules and regulations of MCR. The right of use does not include the right to manage or control. All rights of management and control of the common elements resides exclusively in the MCR Board of Directors.

Subject to other provisions of this Declaration, each owner shall have the complete dominion and ownership of his or her lot. Each owner and the owner's agents, servants, tenants, family members, guests and invitees shall have the exclusive right to use and enjoy that lot. Each owner may freely transfer his or her lot subject to restrictions on those rights of transfer as set forth in this Declaration.

MCR shall have the nonexclusive easement

over and right to make such use of the common elements as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform under this Declaration, including, without limitation, the right to construct and maintain in the common elements facilities for use by owners generally or by MCR and its agents exclusively.

Each owner of a lot shall have the exclusive right to place improvements on his or her lot so long as the construction and maintenance of the improvements is consistent with the restrictions in this Declaration, and so long as prior approval, consistent with the authority set forth in Article 3 (Governance) of this declaration, is obtained from MCR. The owner of a lot shall not have the right without the consent of MCR to make any other changes in the subdivision. No owner shall have the right to alter any separate system which functions as a part of a common system without the prior approval of MCR.

All present and future owners, tenants and any other person who might use the facilities of the subdivision in any manner are subject to the provisions of this Declaration. The purchasing of a lot, the rental of a lot, or the mere act of occupying a lot in this subdivision shall signify the acceptance by the buyer, lessee or occupier of the provisions of this Declaration. The provisions of this Declaration shall constitute covenants that run with the land.

## **2.6 Use of common areas**

Subject to the rules and regulations of MCR, each lot owner and his or her family, guests, tenants and invitees may make reasonable use of the tangible personal property of MCR located in the common spaces. The right of lot owners to use the common elements of the subdivision is permanent and is not subject to amendment.

## **2.7 Easements and reserved rights**

MCR shall have the irrevocable right to have access to each lot and to all common elements from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any common

element accessible from a lot or for making emergency repairs at any time to common elements accessible through a lot and to prevent damage to the common elements or to a lot or lots. In addition, MCR or its agents may enter any lot when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping or construction for which MCR is responsible. The entry shall be made with as little inconvenience to the owner of the lot as practicable and any damage caused by the access shall be repaired by MCR.

MCR reserves an easement for 10 feet on either side of all utilities installed on any lot, whether installed at the time this Declaration is signed or later installed. The easement is for access to and maintenance of all utilities, even if the utilities fall outside the areas designated for easements on the plat and includes service lines running from the main utility line to the dwelling. MCR, its agents or the responsible utility company may enter any lot to make necessary repairs even if the lot owner is not available to give consent.

The easements and rights created by this Declaration shall be appurtenant to each lot and each lot shall be subject to all such easements and rights. All conveyances and other instruments affecting title to any lot shall be considered subject to all such easements and rights, even though they are not specifically mentioned in the conveyance. Those rights cannot be revoked or amended except with the consent of all persons having an ownership or security interest in the lot.

### **2.8 Personal property**

MCR may acquire and hold, for the benefit of the lot owners, tangible and intangible personal property and may maintain accounts in the name of MCR and may dispose of all such tangible and intangible personal property and accounts by sale or otherwise. The beneficial ownership of the personal property and accounts shall be owned by MCR and shall not be transferable by the lot owners. However, membership in MCR is appurtenant to each lot and cannot be transferred separately from the

lot it is appurtenant to. All personal property located in common areas shall be owned by MCR.

## **3. Governance**

### **3.1 Subject to Declarant control**

All rights, obligations and authority of MCR to act as managing body for the Project or on behalf of the lot owners are subject and subordinate to those of the Declarant as provided in this Declaration, including without limitation Articles 9 (Special Declarant Provisions) and Article 10 (Option to Expand).

### **3.2 Association of owners**

This Project shall be managed by Maple Creek Ranches Inc. (MCR), an Idaho nonprofit corporation established specifically for the benefit of the owners in the subdivision. It is the entity through which the owners will control, operate, and maintain their common interest in the preservation parcel common areas, bridal paths, and other common elements.

The lot owners association has the authority and responsibility to assure the entire Project is well maintained, fully insured, and properly cared for throughout the year. It is also given architectural control of future developments to assure all structures constructed on any lot in the subdivision have an acceptable appearance and meet minimal square footage and setbacks.

The lot owners association has the right to manage and make all decisions concerning all non-lot areas of the subdivision. It also has the authority to make and collect assessments.

The articles of incorporation of MCR require one vote in the corporation be allocated for each lot and provide for that voting right in MCR to be connected permanently and inseparably to the one lot. Voting rights in MCR cannot be transferred or held separate from the lots to which they are tied.

### **3.3 Governing documents of MCR**

MCR shall be governed in accordance with its articles of incorporation, by-laws, and all resolutions, rules and regulations adopted by

its Board of Directors. The purchaser of any lot in the subdivision will be provided with a copy of the articles of incorporation, by-laws, existing rules and regulations and the Declaration for the Project as may be amended from time to time.

In the event of a conflict in any of the provisions of those documents, the documents shall govern or control in the following order of preference: (1) the Declaration, (2) articles of incorporation of MCR, (3) The by-laws of MCR, (4) the rules and regulations of MCR. All agreements, decisions and determinations lawfully made by the Board of Directors of MCR shall be binding on all lot owners and shall inure to the benefit of all those owners.

### 3.4 Powers

MCR is the management body managing the Project under Idaho Code § 55-1503(f). MCR shall have all powers normal for an Idaho nonprofit corporation. Those powers shall include, but not be limited to the following:

Power to adopt and amend articles of incorporation, resolutions, rules, and regulations.

Power to adopt and amend budgets for revenues, expenditures, and reserves.

Power to assess and collect fees, assessments, fines, and late charges.

Power to hire and discharge managing agents, employees, agents, and independent contractors.

Power to institute and defend in litigation and administrative proceedings in its own name on behalf of itself or on behalf of two or more lot owners.

Power to make contracts, incur liabilities, and to acquire, hold, encumber and convey real and personal property.

Power to do any act necessary or useful to the administration and discharges of its duties as a management body.

Power to regulate the use, maintenance, repair, replacement and modification of common elements of the subdivision.

Power to grant easements, leases, licenses and concessions through or over any portions of the subdivision.

Power to provide for the indemnification of its officers and Board of Directors and maintain directors and officers liability insurance.

### 3.5 Voting

Each membership share in MCR represents a right to one vote. One membership share is assigned to each lot. The share assigned to any lot may be held in any form of multiple ownership, such as community property, joint tenancy, tenancy in common, partnership or otherwise. However, the votes assigned to a unit must be voted in a single block.

### 3.6 Mandatory or discretionary duties of MCR

Subject to the rights and duties of owners, MCR shall be responsible for the exclusive management and control of the common elements and shall keep the common elements in good, clean, attractive, safe and sanitary condition, order, maintenance and repair. The meaning and standard of "good, clean, attractive, safe and sanitary condition" shall be given a reasonable interpretation consistent with the keeping of horses and other herd animals and consistent with the farm and equestrian theme of the subdivision.

MCR shall make and enforce reasonable and uniformly applied rules and regulations governing the use of the separate and common areas. The rules and regulations shall be consistent with the rights and duties established in this Declaration.

MCR Board of Directors shall distribute to all lot owners copies of all rules and regulations adopted by the Board of Directors within thirty (30) days after their adoption.

MCR shall (or if discretionary, may) acquire and pay for the following services out of the common expense fund: irrigation systems, insurance required or allowed by this Declaration, maintenance and development of preservation parcel common areas and



property, fencing of common areas, perimeter fencing of the subdivision, all other matters of shared interest to the lot owners, and all matters required under this Declaration.

MCR shall take all action necessary to comply with orders, requirements, rules, regulations or laws affecting the property adopted by any federal, state, county or municipal authority having jurisdiction.

MCR shall have the affirmative duty to take all action necessary to protect and defend the clear title, legal status or any legal challenge threatened or instituted by any lot owner or third party, including governmental entities. Such protection and defense includes seeking legal advice, entering formal or informal dispute resolution and taking judicial action.

MCR shall maintain accounts showing its revenues and expenditures and shall maintain individual accounts for each owner showing the charge and payment of all assessments, fees, fines, and penalties. Upon ten days notice to MCR and payment of a reasonable fee, any lot owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from the owner.

MCR may obtain and pay for the services of any person or entity to manage its affairs or any part of its affairs to the extent it considers necessary or desirable. MCR has the authority to obtain the services of other personnel or contractors it determines to be necessary or desirable for the proper operation of the subdivision.

MCR shall have the affirmative obligation to enforce all provisions of this Declaration and of its articles of incorporation, bylaws, resolutions, rules and regulations. MCR shall also have the affirmative obligation to bill, collect, and receive assessments, fees, fines, and penalties in accordance with this Declaration and its articles of incorporation, by-laws, resolutions, rules and regulations.

MCR may take judicial action against any owner to enforce compliance with its rules and regulations or other obligations of owners

arising under this Declaration and to obtain damages or specific performance for noncompliance, all to the fullest extent permitted by law.

MCR may also suspend any services it provides to owners in the association during any period or periods during which the owner fails to comply with rules and regulations of MCR or any other obligation of the owner under this Declaration. However, the association shall first provide the owner with notice of the claimed violation and an opportunity for hearing regarding the violation. Upon correction of the noncompliance, prompt restoration of services shall occur.

### **3.7 Limitation on MCR's liability**

MCR shall not be liable for any failure of any service to be obtained and paid for by MCR or for injury or damage to personal property caused by an act of nature or by any other owner or person in the subdivision resulting from electricity, water, waste water, rain, snow, or snow removal or ice which may leak, flow or accumulate from any parts of the common areas of the subdivision, or from any other place, unless caused by the gross negligence of MCR. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the property or the common elements or any part of the common elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

## **4. Lot owner standards and restrictions**

### **4.1 Manufactured, mobile and modular homes**

No manufactured or mobile home shall be permitted on any lot. A manufactured or mobile home means one which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including plumbing, heating, air conditioning, and electrical systems as further defined in Idaho Code §§39-4105(8) and (9).

No modular home may be placed on any lot without the prior written consent of the Board. A modular home means any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

#### **4.2 Recreational vehicles**

One motor home, camp trailer, fifth wheel or other recreational vehicles primarily designed as temporary living quarters for recreational, camping, or travel use may be kept on a lot. Any recreational vehicle kept on a lot must have current registration with the department of motor vehicles of one or more states.

Recreational vehicles may be used as a temporary residence during construction of the main dwelling for no longer than twelve months or the completion of construction of the main dwelling, whichever occurs first.

#### **4.3 Signs**

No commercial or business signs shall be displayed on any lot. One (1) sign designating the name of the record owner is permitted. Name designation signs shall be made of natural materials, shall not be brightly painted and shall not exceed three square feet in area.

One (1) sign designating the lot for sale is permitted, provided it does not exceed six square feet in area. Both sides of a sign may be used. The Board's determination of what constitutes a nonconforming sign shall be final and binding.

#### **4.4 Animal restrictions**

No swine sheep, poultry, fowl, pigs or goats may be maintained on any lot for any purpose. Owners of any lot shall be entitled to keep the equivalent of one (1) animal unit (AU) as defined by United States Forest Service per acre on the lot. All lot owners who keep horses or cattle on their lots must maintain sufficient grass to pasture the animals. Dirt pastures or bare ground are not permitted. Lot owners may keep no more than two dogs and two cats or other recognized household pets.

All animals shall be leashed or otherwise restrained from running or roaming at large.

Participants in an authorized 4-H or FFA program may be granted a temporary variance from this provision, provided the variance is obtained from the Board in advance. Any such variance will be denied or terminated if, in the sole discretion of the Board, it would threaten to create a nuisance.

#### **4.5 Driveways and parking**

Driveways and sufficient parking shall be provided on the lot to accommodate all vehicles. No subdivision roads, road easements, or utility easements may be used as regular parking areas.

#### **4.6 Water and waste water systems**

All toilet facilities shall be within the main dwelling as a part of an integrated sanitary wastewater disposal system approved by Idaho Health and Welfare. No outhouse serving as a toilet shall be on any lot at any time.

Commercial "port-o-lets" with internal sewage tanks used during construction of the residence shall not be considered outhouses under this provision, provided such port-o-lets are removed from the lots within thirty (30) days of receipt of the certificate of occupancy.

Each lot owner will be responsible for drilling his or her own well and installing his or her own septic system. The lot owner will be responsible for all damage caused by drilling his or her well or installing his or her sewer system and for all damage, which may later be caused by his or her water or sewage.

#### **4.7 Fuel tanks, water tanks and utility lines**

All fuel tanks, water tanks or similar storage facilities shall be installed underground or inconspicuously housed inside the main dwelling, garage or other outbuildings. All utility or service lines for electricity, telephone, cable television and exterior lighting shall be installed underground.

#### **4.8 Subdivision roads, maintenance, speed limits, etc.**

The roads in the subdivision shall be dedicated

to Franklin County. The County shall maintain the roads and set all speed limits. Subject to Declarant's development agreement with Franklin County, MCR shall have no control over nor responsibility for any road within the subdivision once the dedication of such road is accepted by the County.

#### **4.9 Rubbish, offensive activities**

No portion of any lot may be used as a dumping ground for rubbish or garbage. Trash, garbage, and other waste shall be kept only in covered sanitary containers. No incinerators may be used.

No noxious or offensive activities shall be carried on upon any portion of any lot, nor shall anything be put or done on any lot that may become or be an annoyance or nuisance to the subdivision.

### **5. Architectural standards and restrictions**

#### **5.1 General standards and residential purpose**

The standards and restrictions set forth in this Declaration are applicable to construction, remodeling, repair, refinishing or any other alteration to any dwelling or other structure and to any improvements and site preparation made on any lot in the Project. Except as provided in the following paragraph, lots may be used only for single-family residential purposes. No industrial or business ventures of any type may be maintained or constructed upon any lot.

Home offices, artistic studios or other commercial business ventures may be maintained on a lot provided they are housed within the residence or other structure and do not generate traffic, noise, odors or other inconvenience to the subdivision. MCR at its sole discretion shall have the authority to determine whether a home business is in violation of this Declaration and to take any necessary action to prohibit or terminate the objectionable business activities. All such decisions by MCR shall be final and binding.

#### **5.2 Board as architectural control committee**

No placement or construction of any improvement on any lot may commence until written plans and specifications have been submitted to and approved by the Board. Improvements include, but are not limited to, outbuildings, fences, corrals, foundations, septic systems, wells and driveways. The decision of the Board approving or disapproving written plans and specifications is final and binding on all parties.

All construction must be completed within 12 months after commencement of site preparation or other improvements to the lot.

#### **5.3 Building codes, permits, zoning**

All construction shall comply with all local and state health, safety, fire, and building codes and zoning in effect at the time of construction. All construction shall also comply with the current edition of the following model codes:

- International Building Code
- Uniform Plumbing Code; and
- National Electric Code

Construction shall not commence until all necessary building permits are obtained.

#### **5.4 Design character**

All structures shall be designed and constructed in a manner that compliments the character of the Project. The general design character of the Project will be defined by exterior materials of earth tones and neutral color palettes, including the roofing, siding, trim and foundation finishing.

Acceptable exterior materials are brick, wood, stucco, stone, or similar natural materials. No aluminum siding, metal siding or cinder block shall be used as exterior material. Faux wood or stone may be permitted at the sole discretion of the Board. Vinyl siding may be used as an accent material only and may not constitute more than 20% of siding and finishing used on any exterior elevation of any structure. Acceptable roofing materials shall include asphalt, cedar shake or slate shingle. Natural, neutral earth tone colored metal roofs may be

permitted at the sole discretion of the Board. No brightly colored or reflective roofing materials will be permitted. All decisions made by the Board are final and binding on all parties.

### 5.5 Permissible structures

Each lot owner may construct one (1) single-family dwelling, one (1) guest house, and detached garage(s), storage building(s) for the storage of vehicles, boats, farming, recreational or other equipment, supplies, and barn(s) to house permissible livestock as set forth in this Article 5. All construction shall receive prior approved from the Board, use approved materials and be harmonious with the character of all other structures on the lot and within the Project.

### 5.6 Setbacks

No main dwelling or outbuilding may be placed closer than 30 feet from any side or rear lot line and no closer than 50 feet from the front lot line. Compliance with these minimum setbacks shall be measured from the closest portion of the building to the lot line, including an overhang from above ground stairs, deck, balcony, eaves or gables. No construction of any improvement shall be located so as to obstruct a clear view at road intersections. The lot owner is responsible for complying with all setbacks required by local or state government.

### 5.7 Main dwelling

Only one main dwelling house for one single-family may constructed upon any lot. The main dwelling may be occupied by the lot owner, lessees, guests and invitees. Construction of the main dwelling house shall meet the following minimum criteria:

- constructed on a permanent concrete foundation;
- exposed building foundations or walls shall not exceed 30 inches in height and shall be stucco with a sand/cement or other acceptable weather resistant coating.
- minimum floor area of 1,500 square feet

as measured by the exterior dimensions on the ground floor, exclusive of garages, breezeways, and any carport or unenclosed porch or deck;

- garage space large enough to house a minimum of 2 automobiles;
- maximum exterior height of 25 feet, consisting of no more than two stories, excluding walk out or daylight basements or underground garages;
- minimum eaves overhang of 24 inches;
- minimum roof pitch of five feet in twelve (5/12); and
- an interior sprinkler system shall be installed for fire suppression and shall receive all necessary approval from Franklin County.

### 5.8 Guesthouse

One guesthouse not exceeding 1000 square feet may be constructed on each lot. Construction of any guesthouse shall be consistent and harmonious with the construction of the main dwelling. The minimum requirements regarding the foundation, exterior height, eave overhang and roof pitch set forth in the above Article 5.7 (Main Dwelling) shall apply to the design and construction of any guesthouse.

The guesthouse may not be rented for any period of time. It may not be occupied by any guests, servants or invitees for more than 30 consecutive days.

### 5.9 Outbuildings

Appropriate enclosed outbuildings harmonious with the main dwelling may be constructed to enclose vehicles, recreational units (trailers, bikes, boats, snowmobiles, etc.), livestock and for storage. Storage of recreational vehicles must be done in a neat and inconspicuous manner and location. MCR shall have sole discretion in determining what constitutes neat and inconspicuous storage. MCR shall have the authority and power to require owners to move or remove personal property stored outside of enclosures if MCR of Directors

determines such storage is unsightly and gives the subdivision an inappropriate appearance.

#### **5.10 Solar collectors**

Solar collectors may be installed provided they are incorporated into the structure of a dwelling, garage, storage building or barn and are not freestanding. Solar collectors may be of any construction, materials or pitch required for efficient operation, but they may not be installed in a manner causing objectionable glare to any other lot owner. Solar collectors shall not be considered roofs.

#### **5.11 Fences and landscape borders**

In order to maintain the historic ranch atmosphere, the fencing of entire lots is discouraged and the use of fencing is not limited to the containment of livestock. Fences shall be constructed of only 3 rail posts with a maximum distance of 12 feet between posts. Temporary working corrals of metal construction will be permitted.

Fences and planted trees or bushes shall not obstruct the scenic view from adjoining lots. MCR shall have the authority to limit the height of any fences, trees, and other growing plants to prevent obstruction of the view of any other lot owner. Under no circumstances shall wire mesh, barbed wire, bait wire, chain link or other, substantially metal components be integrated into any fence surrounding a residential lot. All proposed fences must be submitted to MCR for prior approval.

MCR may provide standards for uniform fencing throughout the subdivision, and may assume responsibility for the installation and maintenance of fencing. If MCR assumed responsibility for the installation and maintenance of the fencing, it shall assess the costs of the installation and maintenance to lot owners in the same manner as all other assessments by MCR. If MCR takes responsibility for the fencing, it may remove any conflicting fencing on a lot, and no lot owner shall interfere with the MCR installed fencing.

#### **5.12 Subdividing and consolidation of lots**

No lot may be subdivided or conveyed or encumbered in any size less than the full dimensions shown on the recorded plat of the subdivision. Two or more contiguous lots may be irrevocably joined or consolidated as one lot. Upon receipt of all required approvals from the county or other government body, the consolidated lots shall be treated as one lot for the purposes of design and construction requirements under this Declaration. The consolidated lots shall retain the voting rights and assessment obligations of the lots prior to consolidation.

Lot line adjustments or other variances may be authorized by MCR provided those variances accommodate reasonable adjustments in lot lines without increasing the density of dwellings in the subdivision. The lot owner shall be responsible for obtaining all required approvals from the county or other government body.

#### **5.13 Variances**

Variances to building restrictions may be granted by MCR on a case-by-case basis where size of the lot or topography make strict application of the restriction impractical or difficult. The prime concern of MCR shall be to ensure the design, exterior finish, and location harmonize with and compliment the natural environment to the fullest extent practical and do not negatively impact the view or valuation of the adjoining lots and improvements. Variances must be applied for in writing to MCR. MCR's decision shall be final and binding in all instances.

### **6. Maintenance**

#### **6.1 Maintenance of lots**

Each owner shall maintain his or her lot in a clean, safe and sanitary condition in accordance with the rules and regulations of MCR. Each owner shall use due care to avoid damaging any of the common elements or any other lot. Each owner shall be responsible for his or her negligence or the negligence of his or her lessees, guests and invitees misuse of the common elements or of that owner's lot

resulting in damage to the common elements or any other lot. If any lot owner fails to comply with the terms of this section, MCR may perform those duties for and at the expense of that lot owner.

### **6.2 Maintenance and stewardship of preservation parcels and common elements**

MCR shall have the responsibility to maintain, repair, replace and keep in a clean, sanitary, and safe condition all common elements. The requirement to maintain any common element will be consistent with that common element's purpose.

The common areas identified as Preservation Parcels 1 and 2 are agricultural in nature and will be preserved as bridal paths and agricultural pasture land. The bridal paths will be regularly maintained as attractive and safe pathways for equestrian and pedestrian traffic. MCR shall be responsible for the stewardship of all preservation parcels to ensure they retain their value as natural and agricultural land.

### **6.3 Type of maintenance and repair**

It is intended the subdivision at all times have a well-maintained attractive appearance in all lots and common areas. MCR will promulgate rules and regulations regarding the maintenance, repair and upkeep standards of the Project.

If owners do not maintain their lots in accordance with this Declaration, MCR shall have the affirmative obligation to make the repairs necessary to comply with those restrictions. Such repairs shall be made by MCR as an agent for the lot owner and the costs of those repairs shall be chargeable as an assessment by MCR against the lot benefiting from the repairs.

MCR shall have the responsibility to effect emergency repairs as may be needed in any part of the subdivision, whether lots or common areas and elements. The foregoing maintenance and repairs shall be performed at MCR's expense, but those expenses shall be assessed to the benefitting owners. The expenses benefitting particular lots shall be allocated to those lots and those benefitting

common areas shall be apportioned to all the lots as provided in Article 8 (Assessments) of this Declaration.

### **6.4 Mechanic's lien**

No labor performed or materials furnished for use in connection with any lot with the consent or at the request of the owner of that lot or his or her agent, contractor or subcontractor shall create any right to file a statement of mechanic's lien against the lot of any other owner not expressly consenting to or requesting the same or against any interest in the common elements, except as to the undivided interest attached to the lot of the owner for which such labor and/or materials shall have been furnished.

An express consent shall be considered to have been given by the owner of any lot receiving emergency repairs or maintenance authorized by MCR. Each owner shall indemnify and hold harmless each of the other owners from liability or loss arising from any claim against the lot of the owner for labor performed or for materials furnished on or to such owner's lot. At the written request of any owner, the association shall enforce this indemnity by collecting from the owner of the lot on which the labor was performed and materials furnished the amount necessary to discharge the lien and all incidental costs and attorneys fees. If not promptly paid, MCR may collect the amounts due in the manner provided for collection of assessments for the purpose of discharging the lien.

### **6.5 Utility easements**

Utility easements are shown on attachment 1 and are augmented by provisions in section 2.7 of this Declaration. MCR shall have the right to control the use of all utility easements and to permit their use for the benefit of any member.

## **7. Risk control**

### **7.1 Standard of liability**

Neither MCR, the Board of Directors of MCR, nor any officer, agent or employee of MCR shall be liable to MCR or any lot owner for any action or for any failure to act with respect to

any matter so long as such person acts in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director, officer, agent or employee reasonably believes to be in the best interests of MCR.

### **7.2 Corporation Indemnification**

MCR shall indemnify to the full extent authorized or permitted by the Idaho Corporation Law any person made, or threatened to be made, a party to an action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact he or his or her personal representative is or was a director, officer or employee of MCR or served any other enterprise at the request of MCR.

### **7.3 Owner indemnifications**

No lot owner shall act or purport to act for MCR unless he or she is at the time an officer acting pursuant to his or her position as an officer or is acting pursuant to duly adopted resolutions of the Board of Directors of MCR specifically authorizing that person to take such action. Each lot owner agrees to indemnify and hold MCR and all other lot owners harmless from any violation of this subsection.

### **7.4 Scope of indemnifications**

All indemnifications provided under this section shall include payment of reasonable attorneys fees and expenses, court costs, witness fees and deposition fees, and expenses incurred in the removal of liens. The indemnifications shall apply to informal settlement efforts, arbitration or any litigation.

### **7.5 Release of liability between MCR and lot owners**

Neither a lot owner, the Declarant nor MCR shall be liable to the other or to any other lot owner for any business interruption, loss, or damage to property or injury to or death of persons occurring on the subdivision or in any manner arising out of a lot owner or MCR's use of any portion of the subdivision, or the condition of the subdivision. The foregoing sentence shall apply regardless of whether the

loss or damage is caused by the negligence or other fault of the lot owner or MCR, or their respective agents, employees, tenants, subtenants, lessees, licensees, assignees, invitees or otherwise, but it shall not apply if the fault is based on gross negligence.

The preceding paragraph shall apply only to the extent the business interruption, loss or damage to the property or injury to or death of the persons is covered by insurance regardless of whether the insurance is payable to or protects the lot owner or MCR. That paragraph shall be in effect only so long as applicable insurance policies contain a clause that causes that paragraph not to affect the right of the insured to recover under such policies. Such clauses shall be obtained by the parties whenever possible.

### **7.6 Allocation of risk**

Each lot owner's liability for claims, judgments and awards arising out of or in connection with the ownership, use occupation or condition of the common elements is limited to a proportionate sum that equals the amount of any such claim, judgment or award multiplied by the percentage interest of that owner in the Project as set forth on attachment 2. No owner shall be liable for the actions of MCR.

### **7.7 Insurance**

MCR shall (or where so provided, may) obtain and keep in full force, the following insurance coverage provided by responsible companies duly authorized to do business in the State of Idaho:

Fire and casualty insurance. MCR may obtain, or require owners to obtain, policies of fire and casualty insurance on improvements in the subdivision, excluding land, foundation, excavation and other items normally excluded from coverage. The policies may, or may be required, to include buildings, fixtures, facilities, and systems regardless of whether separate, or common. The coverage may include separate and common real and personal property. Such insurance shall insure on a replacement cost basis. The insurance shall cover all exposures normally covered by fire

and all risks insurance. MCR may elect, or require owners to elect, such deductible provisions as it considers good business practice. If fire and casualty insurance is maintained by MCR on all structures in the subdivision, the costs associated with a particular lot shall be allocated to that lot and all other costs shall be allocated as part of the general assessment by MCR to lot owners.

Public liability insurance. MCR shall obtain a comprehensive general public liability insurance coverage on all common areas and facilities in such amounts and in such forms as it considers advisable to provide adequate protection. MCR may obtain, or require lot owners to obtain, comprehensive general public liability insurance in amounts considered appropriate by MCR. The coverage shall insure against death, liability for personal injuries, property damage, operation of vehicles or equipment on behalf of MCR. The limits of the policies shall be not less than one million dollars for each person and not less than one million dollars for each occurrence with respect to personal liability and with limits of not less than three hundred thousand dollars for each accident with respect to property damage liability.

Directors and officers insurance. MCR may obtain directors and officers liability insurance covering liability of MCR, its officers, directors and employees arising from ownership, operation, maintenance, administration, management, use or occupation of the subdivision and its common areas and elements, as well as such other coverage customarily obtained for similar projects. MCR shall have the discretionary authority to obtain coverage to insure against lawsuits and liability arising out of or related to employment or management contracts of MCR.

Workers compensation insurance. In the event MCR hires employees, MCR shall obtain workers compensation and employers liability insurance and all other similar insurance with respect to any employees of MCR in the amount and in the forms now or later required by law.

## 7.8 Form of Insurance

Fire and casualty insurance shall be carried in the form or forms naming the insured as MCR for the use and benefit of the individual lot owners. The loss payable shall be in favor of MCR as to common elements and in favor of MCR as trustee for each lot owner and the lot owner's mortgagee, as to separate interests. Each policy shall provide a standard, noncontributory mortgagee clause in favor of each mortgagee or insurer or guarantor of the mortgage, in a form commonly accepted by private institutional mortgagees in the area. Each policy shall also provide it cannot be canceled by either the insured or the insurer until after 30 days prior written notice is first given to each owner and to MCR and to each mortgagee who is listed as a scheduled mortgage holder in the policies. MCR shall, upon request furnish to each owner or mortgagee, a certificate of coverage, including an identification of the owner's interest.

Public liability insurance shall name MCR and each lot owner as an insured as to common areas, and shall name each lot owner as the insured on insurance applicable just to that lot. Each such policy shall provide that it cannot be canceled either by any insured or the insurer until after 10 days written notice to each of the insureds.

Exclusive authority to adjust losses under policies shall be vested in the Board of Directors of MCR. Insurance proceeds for any loss shall be payable to MCR. MCR shall hold any insurance proceeds in trust for MCR, the lot owners, and lien holders as their interest may appear. The proceeds shall be disbursed by MCR first for the repair and restoration of the damaged property.

MCR shall diligently pursue the completion of any repair or reconstruction of the property damaged or destroyed. MCR shall take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the owners, and no consent or other action by any owner shall be necessary in connection with



the repair or reconstruction. The subdivision shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other destruction, If fire or other casualty totally destroys a dwelling on a lot, upon request of the owner the proceeds of the insurance may be used by the Board to return the land to its natural state, pay any liens against the property, and pay the remainder to the owner.

MCR, the lot owners and lien holders are not entitled to receive payment of any portion of insurance proceeds unless there is a surplus of the proceeds after the property has been completely repaired or restored. Any portion of the common areas for which insurance is required under this article which is damaged or destroyed must be repaired or replaced promptly by MCR unless (i) the common interest community is terminated, (ii) the repair or replacement would be illegal under state or local statute or ordinance governing health or safety, or (iii) 75% of all lot owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

Each owner may obtain additional insurance at his or her own expense above coverage provided in policies obtained by MCR. However, no owner shall be entitled to exercise his or her right to maintain insurance coverage that would decrease the amount MCR may realize under any insurance policy MCR may have in force on the subdivision at any particular time. In no event shall the insurance coverage obtained and maintained by MCR be brought into contribution with insurance purchased by individual owners or their mortgagees.

Each owner shall be required to notify MCR of the value of all improvements made by him to his or her lot. This subsection shall not be construed as authorizing that improvement.

Each policy of insurance obtained by MCR shall contain the following provisions:

A "no other insurance" clause in the policy or policies excluding individual owner's policies

from consideration;

If available, an agreed amount endorsement and an inflation guard endorsement;

Each lot owner is an insured person under the policy with respect to liability arising out of his or her interest in the subdivision (separate and/or common) or membership in MCR.

The Board of Directors of MCR shall review annually the coverage and policy limits of all insurance it obtains or requires owners to obtain, and adjust those limits where appropriate. The annual review shall include an appraisal of the improvements on the property by a representative of the insurer or other qualified appraiser that MCR may obtain.

### **7.9 Sale or dedication of property**

Notwithstanding all other provisions of this Declaration, the owners may, by an affirmative vote of at least 75% of all votes held by all owners, at a meeting of owners duly called for that purpose, elect to sell, dedicate to the public, or otherwise dispose of the portions of the subdivision that are not lots. The action shall be binding upon all owners and it shall become the duty of every owner to execute and deliver all instruments and to perform all acts in as may be necessary to affect the sale. The proceeds of any sale shall be divided among all owners and their mortgagees in proportion to the undivided interest in the common elements owned by each owner as set forth on attachment 2. Any such sale or dedication shall be subject to the ordinances and approval of Franklin County, Idaho.

### **7.10 Condemnation**

If at any time or times during the continuance of this Project under this Declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the following provisions shall apply:

All compensation, damages or other proceeds from the taking, the sum of which is from now on called the 'condemnation award' shall be

payable to MCR.

In the event less than the entire subdivision is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, the common ownership of the common areas and elements, under this Declaration shall not terminate.

Each owner and his or her mortgagee shall be entitled to a share of the condemnation award to be determined in the following manner As soon as practical, the Board of Directors of MCR shall, reasonably and in good faith, allocate the condemnation award between compensation, severance damages, and other proceeds and shall apportion the amounts so allocated among and pay the same to lot owners and their mortgagees as follows:

The total amount allocated to taking of or injury to the common elements shall be retained by MCR and at the discretion of the Board of Directors all or a portion may be apportioned among all owners in proportion to their respective undivided interest in the common elements as set forth in attachment 2;

The total amount allocated to severance damages shall be apportioned to those lots not taken or condemned;

The respective amounts allocated to the taking of or injury to a particular lot shall be apportioned to that particular lot, and

The total amount allocated to consequential damages and any other taking or injury shall be apportioned as MCR determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree or otherwise, then in allocating the condemnation award, MCR shall employ that allocation to the extent it is relevant and applicable.

Distribution of apportioned proceeds shall be made by checks payable jointly to respective lot owners and their respective mortgagees, as applicable.

## **7.11 Reorganization**

In the event a partial taking results in the taking of a complete lot, the owner automatically shall cease to be a member of MCR. Thereafter, MCR shall reallocate the ownership, voting rights and assessment ratios in accordance with the remaining percentage ownership, applying the same allocation methods as set forth section 2.4.

## **8. Assessments**

### **8.1 Owners obligation to pay assessments and other amounts**

Each owner of a lot in this subdivision, regardless of whether it is improved or unimproved, shall be obligated to pay to MCR all assessments made by MCR for the purposes provided in this Declaration as well as such reasonable and uniformly applied charges for use of property and uniformly applied fines imposed for violation of rules and regulations adopted by MCR. The assessments shall be established and collected from time to time as provided in this Declaration, the by-laws, rules, and regulations of MCR. The assessments shall specifically include without limitation the costs of insurance, maintaining the preservation parcels and other common elements, fencing, and fulfilling MCR's duties as set forth in Article 3 (Governance) or approved by lot owners.

### **8.2 Regular and special assessments**

At the annual meeting the Board of Directors shall present to the lot owners a proposed annual budget. The members shall be entitled to modify the budget and the budget as adopted by the lot owners shall be the basis for making regular assessments during the next 12 months.

In the event the funds of MCR are inadequate during any fiscal year, for whatever reason, including nonpayment of any owner's assessment, MCR may levy special assessments. The special assessments shall be due thirty (30) days after an owner receives notice of the assessment. The special assessment shall not exceed the amount

reasonably estimated to cover the cash shortfall.

### 8.3 Individual assessments

In addition to other assessments authorized under this article, MCR may levy against any lot owner an individual assessment, for the following purposes:

Paying the cost of replacing, repairing, cleaning or otherwise correcting any damage to lots or common areas caused by the intentional or negligent act or omission of any such owner, his or her family, lessees, guests, tenants, or invitees, except damages arising from normal wear and tear, and

Paying the cost of any insurance, maintenance, fencing, repairs, improvements, and other expenditure that are for the benefit of that lot.

### 8.4 No waiver of assessment

The failure of MCR before the expiration of any fiscal year to establish and/or give notice of assessment for the next year shall not be considered a waiver or modification of the provisions of this Declaration, or a release of the owner from the obligation to pay assessments or any installment for that or any subsequent year. However, the date on which payment for such assessment shall become due shall be deferred to a date thirty (30) days after notice of the assessment shall have been made. In no event shall a regular annual assessment be due sooner than the first date of the fiscal year to which the assessment relates. No owner may exempt himself from liability for his or her contribution toward the common expenses by waiver of use or enjoyment of any of the common areas and elements, the personal property of MCR, or by abandonment of his or her lot.

### 8.5 Expenditure of funds

All funds received by MCR from regular and special assessments shall be used exclusively for the benefit of this subdivision and not for the benefit of particular lots to the exclusion of other lots. Funds received from Individual assessments for particular lots shall be

expended for the benefit of those lots.

### 8.6 Lien for assessments

An assessment upon any lot made in accordance with the Declaration, the by-laws of MCR, or any duly promulgated subdivision regulation, shall be a debt of the owner or owners of the lot at the time the assessment is made. The amount of the assessment, together with other charges on the assessment, such as interest, cost, including attorneys fees, and penalties (as allowed in this Declaration) shall be a lien upon the lot. The lien shall be created by the Board of Directors recording with the County Recorder of Franklin County, Idaho, notice of assessment setting forth the amount of the assessment and other charges associated with the assessment, a description of the lot against which the assessment has been made, and the names of the record owners of the lot. The notice shall be signed by an authorized representative of MCR. Upon payment of the assessment and charges in connection with the assessment for which the notice has been recorded, or other satisfaction, MCR shall cause to be recorded a further notice stating the satisfaction and release of the lien. Except as otherwise provided in Article 11.2 (Protection of Mortgages), the lien shall be prior to all other liens filed and recorded subsequent to recordation of the notice of assessment. The lien may be enforced by MCR, its attorney or other person authorized to make the sale, after failure of the owner to pay the assessment in accordance with its terms provided that the enforcement of the lien will not jeopardize the other members' use of the common elements. The enforcement of the lien shall be in accordance with the manner permitted by law for the exercise of powers of sale in deeds of trust and by any other manner permitted by law. MCR shall have the power to purchase the lot at a foreclosure sale and to hold, lease, encumber and convey the same. The amount of all assessments, regular or special, all charges or fines as allowed by this Declaration, including interest, costs, and attorneys fees shall be the personal obligation of the owner of the lot at the

time the assessment is made. Suit to recover money judgment for the personal obligation may be maintained by MCR without foreclosing or waiving the lien securing the same. In the event of any foreclosure, the obligation of the owner shall include interest at the rate of 18% per annum, all costs and all legal fees incurred by MCR in connection with the delinquent assessment prior to filing the lien and after the filing of the lien, for the collection of money judgment or enforcement of the lien. The liability for any assessment payable with respect to multiple owners of a lot shall be joint and several.

### **8.7 Liability of purchasers and encumbrances**

The personal obligation for delinquent assessments shall not pass to successors in title or interest as a result of any bona fide sale, unless a notice of lien has been filed prior to the transfer or sale or unless the purchaser has assumed or specifically taken subject to the delinquent assessments. The lien for any such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on the lot taken in good faith and for value and perfected by recording in the office of the County Recorder of Franklin County, Idaho, prior to the time of notice of failure to pay such amount is recorded in the same office describing the lot and naming the owner of the lot.

### **8.8 Estoppel certificate**

Upon payment of a reasonable fee not to exceed \$100.00 and upon written request of any owner or any person with any right, title or interest in the lot or intending to acquire any right, title or interest in the lot, MCR shall furnish a written statement setting forth the amount of any assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to an owner of the lot and the amount of the assessment for the current fiscal year of MCR payable with respect to the lot, which statement shall, with respect to the party to whom it is issued, be conclusive against MCR and all parties, for all purposes that no greater or other amounts were then due or accrued and unpaid.

### **8.9 Allocation of assessments**

All assessments for expenses related to common elements shall be based upon the percentages set forth on attachment 2. All costs of insurance related to common areas shall be assumed to be for the benefit of all lots and assessed on the basis of the percentages set forth on attachment 2. If insurance pertains solely to a lot its costs shall be allocated in full to that lot.

All lot owners shall be responsible for paying all costs related to the installation and maintenance of power, telephone and other utilities provided to that lot directly to the utility provider.

Any expense caused by the misconduct of any lot owner shall be assessed exclusively against the lot owned by that owner.

Assessments to pay claims, judgments or awards arising out of or in connection with the ownership, use, operation or management of common areas shall be assessed in accordance with the percentages set forth on attachment 2.

Any repairs or maintenance undertaken for the benefit of a lot owner shall be assessed solely to the lot owner. All other repairs and maintenance shall be assessed on the basis of the percentages set forth on attachment 2.

All capital expenditures shall be considered undertaken for the benefit of all lots and shall be apportioned on the basis of the percentages set forth on attachment 2. All increases in working capital shall be considered for the benefit of all owners and assessed on the basis of the percentages set forth on attachment 2.

All other expenses shall be considered for the benefit of all owners and assessed on the basis of the percentages set forth on attachment 2.

### **9. Special Declarant provisions**

The provisions of this article shall be in effect only during the Declarant Control Period. During that period they shall take precedence over any conflicting provisions in this Declaration or in the rules and regulations of

MCR.

### 9.1 Declarant control of the association

The Declarant Control Period shall commence on the date of recordation of this Declaration and end on the earlier of:

Fifteen (15) years after the recordation of this Declaration; or

One hundred and twenty days (120) days after the conveyance of one hundred percent (100%) of the total lots to lot owners other than the Declarant.

Total lots means all of the 52 lots contemplated for all of the phases anticipated for the subdivision as represented on the preliminary plat approved by Franklin County and attached as Attachment 3. At present the total contemplated lots in Phase 2 are 18, but that number could change if the size and scope of the subdivision changes or if the size of the lots to be sold changes.

At any time during the Declarant Control Period, the Declarant may transfer control of the Project to MCR. The transfer of control shall be subject to the Declarant's reservation of essential rights as set forth in Article 9.2 below. In the event the Declarant opts to exercise its right of transfer, it shall notify the lot owners of the scope and extent of authority to be transferred in the notice of corporation's next annual meeting. At that annual meeting, the lot owners shall elect any Board positions made available by the transfer.

Unless the Declarant has otherwise exercised its right to transfer management authority to the lot owners, a transitional governing body shall be established upon the conveyance of seventy-five percent (75%) of the lots in Phase 2. Not later than sixty (60) days after the beginning of the transitional period an election shall be held to elect three additional members to the board of directors by owners other than the Declarant. Those three shall not be subject to removal by Declarant and shall have 40% of the voting rights on the board of directors during the transition period. Declarant shall have 60% of the voting rights. The transition

period shall end no later than the earlier of five (5) years after its commencement or upon the conveyance of one hundred percent (100%) of the total lots as defined in this section.

### 9.2 Declarant's reservation of essential rights

Notwithstanding any transfer of control over MCR to the lot owners during the Declarant Control Period, the Declarant shall maintain the right to: (1) cast all votes of members on any member vote; (2) amend this declaration as set forth in paragraph 9.3 of this declaration; (3) amend the articles of incorporation of Maple Creek Ranches, Inc.; (4) perform all improvements of the Declarant as set forth in this Declaration; (5) expand the Project to include additional phases; (6) control the amount and timing of assessment; (7) exercise all easement and other rights specifically granted in this declaration. The Declarant may exercise these rights at its sole discretion. Declarant's control of assessments shall include the right to allocate a portion of the MCR budget for common areas to sold lots, unsold lots, improved lots, and unimproved lots. The Declarant shall exercise those rights so that the assessments to owners of sold lots, when less than 9 lots have been sold, is no more than two times the average amount the assessments were estimated to be at the time of the sale of the lot to the lot owners.

### 9.3 Amendments to this Declaration

During the Declarant Control Period, no amendments shall be effected impairing the rights of Declarant. During the Declarant Control Period and notwithstanding any other provisions of this Declaration to the contrary, if any amendment necessary in the judgment of the Declarant to cure any ambiguity or to correct or supplement any provisions of the Project documents that are defective, missing or inconsistent with any other provisions, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary mortgage market lenders

guarantors, or insurers with respect to this Project, then Declarant may effect an appropriate corrective amendment without the approval of the lot owners or the holders of any liens on all or any part of the property, upon receipt by Declarant of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. No amendment to the Declaration shall be contrary to the provisions of the articles of incorporation. Each amendment of the type described in this section shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by the Declarant.

#### **9.4 Declarant's and lot owner rights and responsibilities**

Declarant accepts the responsibility to bring the roads, utilities and common areas up to the standards as described below before the Declarant Control Period ends:

Roads. The roads for phases 2 will be dedicated by Declarant to Franklin County upon completion and acceptance by Franklin County. The Declarant will engineer and install the roads to the standards required by Franklin County.

Public Utilities. The Declarant will provide for the installation of telephone lines and electricity running through and under the roadways or common areas to each lot. The lot owner is responsible for installing and maintaining the telephone and electricity lines within the boundary lines of the separate area of a lot, exclusive of areas within utility easements.

Water and Septic Systems. Each lot owner is responsible for providing his or her lot with a well and septic system. The Declarant shall provide Lots 1 through 18 with secondary water for irrigation on a pro-rata basis when such water is available, subject to the appurtenant water rights and historic seasonal volume. Such water rights are dependent on the demands of senior water holders and natural water supply conditions.

Bridal Paths. The Declarant will install the bridal paths in the common areas as identified on Attachment 1. Upon assuming control of the Project, MCR will become responsible for the maintenance of the bridal paths.

Equestrian areas and facilities. The Project may be expanded to include an equestrian facility as a common element at some future date. The Declarant may, but is not obligated to, construct such facilities prior to MCR's assumption of control. The controlling entity, either, the Declarant or the Board of Directors of MCR, will have the sole discretion to determine the desirability or necessity of an equestrian facility and will have the sole discretion to determine the scope of the construction project. The controlling entity shall be responsible to pay for the equestrian facility that it determines is necessary or desirable. If the Declarant constructs an equestrian facility, MCR will become responsible for maintaining the facility upon assuming control of the Project. Assessments for expenses related to the maintenance, repair and upkeep of the equestrian facilities and related common areas and elements shall be based upon the percentages set forth on attachment 2.

Orchards. The Declarant may, but is not obligated, to expand the Project to include an existing historic fruit orchard as a common element. If the fruit orchard is added to the Project, MCR will become responsible for maintaining the orchard upon assuming control of the Project. Assessments for expenses related to the maintenance, repair and upkeep of the orchards and related common areas and elements shall be based upon the percentages set forth on attachment 2.

Offering of equestrian amenities to the public. The Declarant may, but is not obligated, to offer use privileges to the lot owners of Maple Creek Ranches Phase 1 and other members of the public for the use of the bridal paths, other preservation parcels and any equestrian amenities. A person with a use privilege shall pay whatever fee MCR determines is appropriate for the use privilege. Persons with use privileges shall not be members of MCR

and shall have no right to vote at MCR meetings.

#### **9.5 Easement for construction or renovation**

Declarant reserves an easement, until the later of the end of Declarant Control Period, to use portions of the common areas and to use portions of any lots owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the subdivision.

#### **9.6 Easement for maintenance of drainage water**

Declarant reserves an easement, until the later of the end of the Declarant Control Period on, over, and under those portions of the common areas and lots not located below a residential structure for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this section expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil, installation of pipes, and or to take any other action reasonably necessary. After taking such action, Declarant shall restore the affected property as closely to its original condition as practicable.

#### **9.7 Reservation to use lots as management, sales and other offices**

Declarant reserves the right to use any common area or any lots owned or leased by the Declarant as management offices, sales offices or customer service offices. Declarant reserves the right to relocate that office from time to time within the subdivision. Declarant further reserves the right to maintain on the subdivision such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the subdivision and may be relocated or removed, all at the sole discretion of Declarant until the later of the end of the Declarant Control Period.

#### **9.8 Right to grant and reserve easements**

Declarant shall have the right, prior to the

termination of the Declarant Control Period, to grant and reserve easements and rights of-way through, under, over and across the subdivision for construction purposes, and for the installation, maintenance and inspection of the lines for drainage, electricity, telephone, irrigation and other utilities.

#### **9.9 Right to assign**

Declarant shall have the right to assign all or any part of their interests arising under this Declaration. Multiple partial assignments are allowed.

#### **10. Phases of development and Declarant option to expand the Project**

##### **10.1 Reservation**

The Declarant reserves the right to add additional lots, common areas and elements and expand the Project in phases until the fifteenth (15<sup>th</sup>) anniversary of the recordation of this Declaration without the consent of any lot owner or mortgagee. The option to expand may be terminated prior to the fifteenth anniversary only upon the filing by the Declarant of an amendment to this Declaration.

Additional phases are not now subject to this Declaration. All additional phases will be made subject to this Declaration by amendment to the Declaration and plat.

##### **10.2 Property subject to future phases of development**

The property that may become a part of the Project and subject to this Declaration is the following parcel:

TOWNSHIP 16 SOUTH, RANGE 40 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO

SECTION 11: SE1/4SE1/4

SECTION 12: S1/2NE1/4, W1/2SE1/4, SE1/4SE1/4, SW1/4SW1/4

SECTION 13: NE1/4NE1/4, NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, SW1/4NE1/4, W1/2SE1/4, SE1/4SW1/4

ALSO, Commencing at the Southeast corner of the SW1/4, thence running North 80 rods;

thence West 98 rods; thence South 80 rods; thence East 98 rods to the Place of Beginning.

SECTION 14: NE1/4NE1/4.

ALSO, Commencing at the Northwest corner of the SE1/4NE1/4; thence running East 80 rods; thence South 6 rods; thence West 80 rods; thence North 6 rods to the Place of Beginning.

ALSO, Commencing at the Southeast corner of the SE1/4NE1/4; thence running North 74 rods; thence West  $26 \frac{2}{3}$  rods; thence South 74 rods; thence East  $26 \frac{2}{3}$  rods to the Place of Beginning.

ALSO, a right-of-way 1 rod wide, which will commence at a point 18 rods North of the Southwest corner of the NE1/4NE1/4, and running thence North 20 rods, more or less to the County road.

EXCEPTING THEREFROM: Commencing at a point 42 rods, more or less, South of the Northwest corner of the NE1/4NE1/4 of Section 14; said point being on the Northerly boundary line of the County road right of way; thence North 450 feet; thence Southeasterly 230 feet; thence South 80 feet to the North boundary line of said county road right of way; thence Southwesterly following the County road right of way to the point of beginning.

ALSO EXCEPTING: A parcel of land being a portion of the NE1/4NE1/4 of Section 14, and a portion of the SE1/4SE1/4 of Section 11, Township 16 South, Range 40 East of the Boise Meridian, Franklin County, Idaho, and being more particularly described as follows:

Commencing at, the NE corner of said Section 14, being a rebar and cap bearing the PLS NO.4735, also being the SE corner of said Section 11; thence North  $89^{\circ}41'38''$  West along the common line between said Sections 14 and 11 a distance of 650.40 feet to the Point of Beginning; thence South  $9^{\circ}10'00''$  East a distance of 364.48 feet; thence along the Northerly edge of Maple

Creek Road, a County Road, for the following three courses:

- 1.) South  $73^{\circ}41'00''$  West a distance of 199.40 feet;
- 2.) North  $86^{\circ}04'30''$  West a distance of 84.30 feet;
- 3.) North  $78^{\circ}48'00''$  West a distance of 186.30 feet;

thence North  $46^{\circ}52'30''$  West a distance of 154.80 feet; thence North  $23^{\circ}46'00''$  East a distance of 213.50 feet; thence North  $62^{\circ}40'00''$  East a distance of 104.40 feet; thence North  $48^{\circ}29'00''$  West a distance of 160.30 feet; thence South  $88^{\circ}32'00''$  East a distance of 443.20 feet; thence South  $09^{\circ}10'00''$  East a distance of 71.08 feet to the POINT OF BEGINNING.

ALSO EXCEPTING: A parcel of land being a portion of the NE1/4 of Section 14, and a portion of the SE1/4 of Section 11, Township 16 South, Range 40 East of the Boise Meridian, Franklin County, Idaho, and being more particularly described as follows:

Commencing at the NE corner of said Section 14, being a rebar and cap bearing the PLS No. 4735, also being the SE corner of said Section 11; thence North  $89^{\circ}41'38''$ , West along the common line between said Sections 14 and 11 a distance of 1358.15 feet to the Point of Beginning, also being a point in an existing boundary fence line; thence North  $00^{\circ}07'30''$  East along said existing boundary fence line a distance of 169.16 feet; thence South  $70^{\circ}08'00''$  East a distance of 269.00 feet; thence South  $48^{\circ}29'00''$  East a distance of 160.30 feet; thence South  $62^{\circ}40'00''$  West a distance of 104.40 feet; thence South  $23^{\circ}46'00''$  West a distance of 213.50 feet; thence South  $46^{\circ}52'00''$  East a distance of 154.80 feet; thence along the Northerly side of Maple Creek Road, a public road, for the following two courses:

- 1.) 142.22 feet along the arc of a curve to the left having a central angle of  $47^{\circ}50'00''$ ,



a radius of 170.36 feet, and a chord which bears South 68° 55' 00" West 138.13 feet;

2.) South 45° 00' 00" West a distance of 254.59 feet; thence North 00° 07' 30" East along the above said existing boundary fence line a distance of 607.38 feet to the Point of Beginning.

ALSO INCLUDING: Commencing at the Southeast corner of the SE1/4NE1/4 of Section 14; thence North 80 rods; thence West 80 rods; thence South 6 rods; thence East 53-1/3 rods; thence South 74 rods; thence East 26-2/3 rods to the point of beginning.

#### SECTION 24: NW1/4NE1/4

Subject to boundary line agreement recorded as instrument number 246379 Franklin County, Idaho.

Less, Maple Creek Ranches Conservation Project Phase 2 which is already included in the Project.

#### 10.3 Maximum number of lots

The number of lots in the Project, inclusive of all phases, shall not exceed 68 units. As additional land and lots are added, attachment 2 shall be amended or supplemented to reflect the pro rata adjustment in the percentages shown on attachment 2 to reflect the addition of the additional lots. The Declarant shall file of record in Franklin County, Idaho an amended or supplemental plat, an amended or supplemental attachment 2 and an amendment to this Declaration to the extent necessary to include the added land in the Project. The Declarant shall have the right to file those amended documents without the consent of other owners, mortgagees or holders of security interests. The Declarant may withdraw any land identified in section 10.2 from the possibility of being included in the Project. The withdrawal shall be accomplished by an amendment to section 10.2.

#### 10.4 No assurances

The Declarant makes no assurances as to location of improvements on future common

elements. At such time the Project is expanded, the maximum number of lots on future phases shall not exceed 68. The maximum number of lots on any portion of the land added to the Project shall not exceed that number allowed by ordinance. No assurances are made by the Declarant as to the size or type of lots that may be created in the future phases. The Declarant expressly reserves the right to designate common elements in future phases. The Declarant makes no assurances as to type, size or maximum number of such common elements.

#### 10.5 Effect of liens on property to be added

Any liens on property to be added to the Project shall not affect any existing property in the Project, but shall be a lien only on the property that is added. All taxes and other assessments relating to property to be added to the subdivision for any period prior to the addition of the property must be paid by the Declarant at the time of the addition.

#### 11. Miscellaneous

##### 11.1 Recordings in county records

MCR shall record in the Franklin County Recorders Office all instruments affecting this subdivision. From time to time, the Board of Directors shall record in the Franklin County Recorder's Office a certificate of identity of the person or persons then comprising the Board of Directors of MCR in accordance with Idaho Code Section 55-1505(i).

MCR shall record in the Franklin County Auditor's Office a designation of person to receive service of process in any action relating to the common areas and facilities together with an acknowledgment in writing of the acceptance of the designation by the person so designated. Upon termination of the person's capacity or authority to receive service of process, a new designation shall be duly made and filed. The agent for service of process shall be designated by MCR. In the absence of designation, it shall be Winston V. Beard, whose address is 2105 Coronado, Idaho Falls, Idaho. Upon any change in the person designated to receive service of process, MCR

shall file the required registered agent information with the Secretary of State.

If any assessments are not paid within ninety (90) days, MCR shall prepare and execute notice of lien assessment, which shall be filed in the Franklin County Recorder's Office. Upon payment of the assessment and collection costs as set forth in the notice of assessment or other satisfaction of the delinquent assessment, MCR shall cause to be recorded a further notice stating satisfaction and release of lien. If the lien is not satisfied within six (6) months from the date of filing, MCR shall immediately initiate enforcement action.

### 11.2 Protection of mortgagees

The holder of any security interest encumbering any lot who comes into possession of the lot pursuant to the remedies provided in the security agreement including foreclosure of a mortgage, or deed (or assignment) in lieu of foreclosure, deed of trust sale or otherwise, shall take the property free of any claims for unpaid assessments or charges against the mortgaged lot which accrued subsequent to the date the lien was recorded in Franklin County, Idaho and prior to the time the mortgagee comes into possession of the lot. The sale or transfer of a lot pursuant to a foreclosure of a mortgage shall extinguish a subordinate lien for the lot owner's association assessments and charges which became payable prior to the sale or transfer. The liens created under Idaho Code title 55, chapter 15, or pursuant to this Declaration or the rules and regulations of MCR upon any lot shall be subject and subordinate to and shall not affect the rights of senior mortgages or lien upon that interest made in good faith and for value. After the foreclosure sale or transfer pursuant to the mortgage, liens for charges and assessments accruing thereafter shall apply against the then owner of the lot and shall be enforceable as provided in this Declaration. Subsequent purchasers or transferees shall not be relieved from liability for, nor the lots sold or transferred free of the liens arising from any assessment or charges accruing after the foreclosure, sale or transfer.

MCR shall give to the holder of any recorded mortgage that has furnished to MCR its name and current address, written notice of any default by any mortgagor of performance of the mortgagor's obligations under this Declaration or any duly adopted rules or regulations pertaining to the subdivision which default has been demanded to be corrected by MCR but which remains uncorrected for thirty (30) days after the demand. The notice shall be given thirty (30) days prior to when any notice of lien is filed or suit is filed by MCR to correct the default.

MCR shall make available to lot owners, lenders and holders and insurers of the first mortgage of any lot, current copies of the Declaration, the articles of incorporation, and other rules governing the Project and shall make available for inspection at reasonable times the books, records and financial statements of MCR. In addition, MCR shall make available to prospective purchasers current copies of the Declaration, articles of incorporation, and rules governing the Project and the most recent annual financial statement. The holder, insurer or guarantor of a first mortgage, upon written request to MCR will be entitled to timely written notice of:

- Any proposed amendment of the Project Declaration affecting a change in (a) the boundaries of any lot or the exclusive easement rights appertaining to it, (b) the interests in the common areas associated with any lot or the liability for common expenses pertaining to the lot, (c) the number of votes in the owner's association pertaining to any lot or
- Any proposed termination of the project's status under Idaho Code title 55, chapter 15;
- Any condemnation, loss or casualty loss which affects a material portion of the Project or which affects any lot on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- Any delinquency in the payment of assessments or charges owed by the

owner of the lot subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;

- Any lapse, cancellation or material modification of any insurance policy maintained by the home owner's association.

### **11.3 Amendments**

This Declaration may be amended by Declarant during the Declarant Control Period and thereafter by MCR in a duly constituted meeting called for that purpose. An amendment approved by Declarant during the Declarant Control Period and thereafter by 51% of the voting powers of the owners in the subdivision shall be binding upon every owner and every lot whether the burdens on the lot are increased or decreased and whether the owner of each lot consents to the amendment. Each amendment shall be recorded in the Franklin County Recorder's Office.

### **11.4 Dispute resolution**

Any controversy (including both actions in contract and in tort) arising out of or relating to this Declaration for any form of relief (including damages, rescission, specific performance, and injunction, but excluding punitive damages which shall not be awardable) shall be settled exclusively by arbitration. The arbitration shall be held in the city of Idaho Falls, Idaho. It shall be conducted under the auspices of and by the rules of the American Arbitration Association. Discovery shall be allowed at the discretion of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties. The parties consent that any notice, motion, application or any paper concerning the arbitration may be served by certified mail, return receipt requested, or by personal service provided it allows reasonable time for appearance. The arbitration proceedings must be commenced within one year after the claim arises. Failure to begin arbitration proceedings within that period shall constitute an absolute bar to the institution of any proceedings on that claim and a waiver of that claim. A decision in

arbitration shall be enforceable by prohibitive or mandatory injunctive relief in a court of law, if the arbitrators expressly decided such relief is appropriate. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

### **11.5 Other sanctions**

In addition to the foregoing, if any lot owner shall violate any of the obligations, provisions, covenants, restrictions and conditions contained in this Declaration or in any supplemental or amended Declaration or in the articles of incorporation or bylaws of MCR, MCR may, after reasonable notice and opportunity for the owner to be heard, levy such reasonable fines or penalties as it may have previously established and published to all owners.

### **11.6 Financial statements**

MCR shall prepare and furnish within a reasonable time a compiled financial statement of MCR for the immediate preceding fiscal year.

## **12. Definitions**

### **12.1 Allocated interest**

Allocated interest means the undivided interest in the common areas and elements, the common expense liability, and the votes in the home owners association.

### **12.2 Association or lot owners association**

Association or lot owners association means the Maple Creek Ranches Inc., the members of which are the lot owners in this Project. The association is referred to in this Declaration as MCR.

### **12.3 Attachment 2**

Attachment 2 is a table showing the lots, the percent allocated to each lot based on the combined acreage of all the lots and the number of each lot's voting shares. Each lot shall have a proportionate ownership of the common areas and elements in the percentages set forth in the third column of attachment 2. The responsibility of each owner for taxes and assessments against the entire private subdivision and the responsibility for

any liability for claims, judgments or awards arising out of or in connection with the ownership, use, operation and management of the common areas and elements shall be in proportion to the percentages set forth in the third column of attachment 2. The owner of each lot shall be solely responsible for all taxes and assessments levied against the portion of the common areas and elements appurtenant to that lot. The assignment of percentages of common areas and elements assumes all units are of equal value per acre and represents the proportionate value of each lot in relation to the value of the Project as a whole.

#### **12.4 Board of Directors or Board**

Board of Directors or Board means the Board of Directors of MCR. The Board of Directors is also the management body, as defined in the Idaho Code title 55, chapter 15.

#### **12.5 Common elements**

Common elements means all portions of the subdivision other than lots. The undivided interests in the common elements created by this Declaration shall always be vested in the lot owners. Common elements includes bridal paths, preservation parcels, common areas, common facilities and common systems and personal property associated with those facilities and systems. The common systems include the irrigation system.

#### **12.6 Common expenditures or expenses**

Common expenditures or expenses means expenditures made by, and financial liabilities incurred by, the association for the benefit of the subdivision as a whole. Expenditures and liabilities incurred for the benefit of a single lot are not a common expense but an expense that is to be allocated to that lot as an individual assessment.

#### **12.7 Common interest community**

Common interest community means real estate with respect to which a person by virtue of his or her ownership of a separate interest in real estate has a pro-rata interest in common interests.

#### **12.8 Declarant control period**

Declarant control period means the time period commencing on the date of recordation of this Declaration and ending on the earlier of:

Fifteen (15) years after the recordation of this Declaration; or

One hundred and twenty days (120) days after the conveyance of one hundred percent (100%) of the total lots to lot owners other than the Declarant. Total lots means all of the 52 lots contemplated for all of the phases anticipated for the subdivision as represented on the preliminary plat approved by Franklin County and attached as Attachment 3.

#### **12.9 Dispose or disposition**

Dispose or disposition means a voluntary transfer by a purchaser of any legal or equitable interest in a lot, but the term does not include the transfer or release of a security interest.

#### **12.10 Lot and improved lot**

Lot means the physical portion of the real estate designed for separate ownership or occupancy and shown by lot numbers on attachment 1, together with the interest in the common elements associated with the separate ownership. The physical boundaries of the lots in this subdivision are shown on attachment 1. The pro-rata share of the common elements associated with that separate element is set forth on attachment 2. So long as this Declaration continues in force, such common elements shall be inseparably appurtenant to the separate portion of the lots. An improved lot is a lot served by a road, and has power and telephone available, has a well or sewer installed or has a residence or other outbuilding constructed on it.

#### **12.11 Owner or lot owner**

The term owner or lot owner means any person who holds an ownership interest in this Project. The lot owners shall be limited to persons whose ownership interest is reflected in the records of the Recorder's Office of Franklin

County, Idaho. A purchaser under a contract of purchase shall be an owner if the contract is of record in the records of the Recorder's Office of Franklin County, Idaho. The purchaser shall, after recording the contract, be an owner and the seller shall not be an owner until the contract of purchase is rescinded and the agreement or judgment of rescission is recorded in the Franklin County Recorder's Office. Owner does not refer to any holder of a security interest unless the holder of the security interest has acquired title to the lot pursuant to foreclosure or other proceedings in lieu of foreclosure. All forms of ownership, community, tenancies-in-common, joint tenancies, partnerships, trusts, are permitted. If ownership of a lot is held by one or more persons or entities, the multiple owners of that lot shall be considered a single owner for voting purposes. All votes associated with any lot must be cast as a block. Only one of multiple owners shall represent the owners at all meetings of the Association and shall cast the vote for the owners. That person shall be elected by a majority vote of the lot owners or if no majority by the first name on the earliest deed establishing ownership in the then current multiple ownership form. Owners shall have the absolute right to lease and sublease their lots subject to limitations set forth in this document. Lessees shall not be considered owners unless the lease specifically provides they are to be considered owners or unless the lease is for twenty (20) years or more. Leases may be subleased or assigned unless the lease prohibits such assignment or sublease, but all such subleases and assignments shall be subject to the terms and conditions of this Declaration.

#### 12.12 Maple Creek Ranches Inc. or MCR

Maple Creek Ranches Inc. or MCR means the Idaho non-profit corporation organized to act as the lot owners association to manage the Project.

#### 12.13 Person

Person means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or

commercial entity. All terms and references to him, his or her, their, etc. are to be construed as gender neutral.

#### 12.14 Project

See definition in section 2.1.

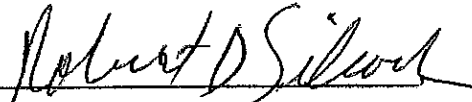
#### 12.15 Separate areas

Separate areas means the real estate in which the titleholder has ownership interests and rights to the exclusion of all others.

Dated: September 25, 2009.

#### Declarant:

Silcock Franklin Properties, LLC


By: 

Robert D. Silcock, Member

#### Consent to recordation

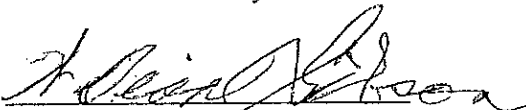
Silcock Franklin Properties, LLC, the owner of the Project and W. Dean Gibson and Jeanne M Gibson, trustees of the W. Dean Gibson Family Trust dated May 29, 1998 consent to the recording of this Declaration in the real property records of Franklin County, Idaho.

Silcock Franklin Properties, LLC

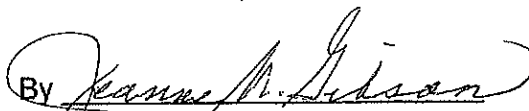
By: 

Robert D. Silcock, Member

W. Dean Gibson Family Trust

By: 

W. Dean Gibson, Trustee

By: 

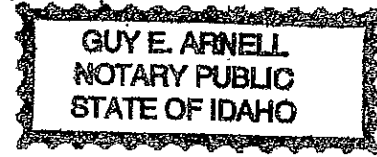
Jeanne M. Gibson, Trustee

Commission Expires:

(SEAL)

STATE OF IDAHO

CASSIA ss.  
County of ~~Franklin~~



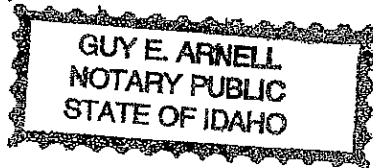
On this 2 day of ~~September~~ <sup>October</sup>, in the year 2009, before me Guy E. Arnell personally appeared Robert D. Silcock, known or identified to me, to be the member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

Guy Arnell  
Notary Public for Idaho

Residing At: Burley

Commission Expires: 15 July 2010

(SEAL)



STATE OF IDAHO

THIRD FALLS ss.  
County of ~~Franklin~~

On this 1 day of ~~September~~ <sup>October</sup>, in the year 2009, before me Guy E. Arnell personally appeared W. Dean Gibson and Jeanne M. Gibson, known or identified to me, to be the persons whose names are subscribed to the within instrument as trustees of the W. Dean Gibson Family Trust dated May 29, 1998, and acknowledged to me that they executed the same as the trustees of the Dean Gibson Family Trust dated May 29, 1998.

Guy Arnell  
Notary Public for Idaho

Residing At: Burley