

**DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
THREE CREEKS CROSSING SUBDIVISION**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THREE CREEKS CROSSING SUBDIVISION (this "Declaration") is made effective as of _____, by Yard Bird, L.L.C., an Idaho limited liability company ("Grantor").

ARTICLE I: RECITALS

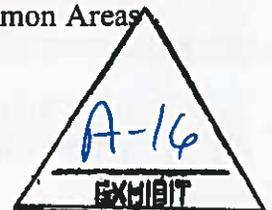
1.1 **Property Covered:** The property subject to this Declaration is located in the County of Blaine, State of Idaho, and is more particularly described in ATTACHMENT A, hereto (the "Property"). The property includes all lots within the Three Creeks Crossing Subdivision.

1.2 **Purpose of Declaration:** The Property is a residential development, which Grantor currently intends to develop in accordance with existing development approvals obtained from Blaine County, or any other development plan(s) for which Grantor may from time to time obtain approval. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions, plans and equitable servitudes (collectively, the "Restrictions") that will apply to the entire development and use of all portions of the Property. The Restrictions are designed to preserve the Property's value, desirability and attractiveness, and to guarantee adequate maintenance of the Common Areas, and any improvements located thereon.

ARTICLE II: DECLARATION

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

2.2. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Areas



or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing.

ARTICLE III: DEFINITIONS

3.1 **Articles:** Shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

3.2 **Assessments:** Shall mean those payments required of Owners and Association Members.

3.3 **Association:** Shall mean Three Creeks Crossing Subdivision Homeowners' Association, Inc., a non-profit corporation organized or to be organized under the laws of the State of Idaho, its successors and assigns.

3.4 **Board:** Shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.5 **Building Lot:** Shall mean one or more lots as specified or shown on any Plat upon which Improvements may be constructed.

3.6 **Bylaws:** Shall mean the Bylaws of the Association.

3.7 **Common Areas:** Shall mean those areas identified on ATTACHMENT A, as designated on the final plat for the Subdivision, which Common Areas may include, without limitation, such recreational facilities as Grantor or the Association may elect to construct.

3.8 **Declaration:** Shall mean this Declaration as it may be amended from time to time.

3.9 **Three Creeks Crossing Subdivision:** Shall mean the Property.

3.10 **Grantor:** Shall mean Yard Bird, LLC, an Idaho limited liability company.

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

3.12 **Limited Assessment:** Shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, including interest thereon as provided in this Declaration.

3.13 **Member:** Shall mean each person or entity holding a membership in the Association.

3.14 **Owner:** Shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

3.15 **Person:** Shall mean any individual, partnership, corporation or other legal entity.

3.16 **Phase:** Shall mean a defined portion of the Property within which the contemplated development involves a common use or compatible uses, and which may have been designated as a Phase by recorded Supplemental Declaration.

3.17 **Plat:** Shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Blaine County, Idaho, as the same may be amended by duly recorded amendments thereof.

3.18 **Property:** Shall mean those portions of the Property described herein including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property.

3.19 **Regular Assessment:** Shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Areas and all Improvements located thereon, and the other costs of the Association which is to be levied against the Property of and paid by each Owner to the Association, pursuant to the terms hereof or the terms of this Declaration.

3.20 **Special Assessment:** Shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to Association, pursuant to the provisions of this Declaration.

3.21 **Supplemental Declaration:** Shall mean any supplemental declaration including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Property.

ARTICLE IV: GENERAL & SPECIFIC RESTRICTIONS

4.1 **Structures, generally:** All structures are to be designed, constructed and used in such a manner as to promote compatibility between the types of use contemplated by this Declaration.

4.1.1 **Use, Size & Height of Dwelling Structure:** All Building Lots shall be improved with a single-family dwelling unit or structure of frame, stone or brick

construction. No structure having more than 2 stories or exceeding 35 feet in height shall be allowed on any Lot.

4.1.2 Accessory Structures: Detached structures shall be allowed and encouraged to house miscellaneous vehicles and equipment

4.1.3 Exterior of Dwelling Structure: The visual harmony and aesthetic appeal of the structures on the Building Lots being of mutual concern to all Owners and having a direct bearing on the value of Building Lots and Improvements thereon,

4.1.4 Location on Building Lot: All structures (exclusive of fences and similar structures) shall be placed within the building setbacks for each Building Lot. All utility facilities and/or systems used in connection with a Building Lot shall be placed underground. Each Owner shall:

a) All fences shall be constructed to allow wildlife migration. The top rail of fences shall not exceed 42" in height and the bottom rail shall exceed 18" in Height.

b) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Building Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.

c) No fence or wall shall interfere with the use and enjoyment of any easement shown on the Plat.

d) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Building Lots and streets, and shall not be allowed if the same constitute an undesirable, noxious or nuisance effect upon neighboring Building Lots.

4.1.5 Completion of Construction: Once any Owner of a Building Lot shall have commenced the construction of a dwelling unit or structure in compliance with the restrictions herein, such construction shall be completed within 18 months thereafter. The term "commenced the construction" shall mean the start of actual physical construction activities upon such dwelling unit or structure upon such Building Lot.

4.2. Landscaping: Owner shall control weeds and maintain the property in a clean and safe condition, free of debris or any hazardous condition. All trees located on common Building Lot lines shall be the joint responsibility of the adjoining Building Lot Owners.

4.3. Exterior Maintenance; Owner's Obligations: No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. Any building or structure that is vacant and unoccupied shall be kept locked and the

windows glazed to prevent entrance by vandals. Vacant structures and unimproved Building Lots shall not be exempt from the provisions of this Declaration. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, overgrown, weed-infested, unsightly or unattractive condition, or damages property or facilities on or adjoining their Building Lot which would otherwise be the Associations' responsibility to maintain, the Board upon 20 days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association, as the case may be, for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due.

4.4. **Excavation:** No excavation for stone, sand, gravel, earth or minerals shall be made upon a Building Lot unless such excavation is necessary in connection with the construction of an approved structure thereon. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in or under a Building Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or under any Building Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Building Lot.

4.5. **No Temporary Structures:** No house trailer, mobile home, shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property.

4.6. **Boats, Campers and Other Vehicles:** No dilapidated or un-repaired and unsightly vehicles or similar equipment, as determined in the reasonable discretion of the Board.

4.7. **Unsightly Articles; Nuisances:** No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure appropriately screened from view, except when necessarily placed for pick-up by garbage removal services. Vacant Building Lots are to be kept in clean natural state. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. No building materials of any kind shall be placed or stored on a Building Lot until the Owner of such Building Lot or such Owner's builder is ready and able to commence construction.

4.8. **No Hazardous Activities:** No activities shall be conducted on the Property, and no Improvements constructed on any property which are or might be unsafe or hazardous to any person or property.

4.9. **Animals/Pets:** No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property unless the presence of such creatures does not constitute a nuisance. Chronic dog barking shall be considered a nuisance.

4.10. **Insurance Rates:** Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance on any property owned or managed by the Association or which would be in violation of any law.

4.11. **No Further Subdivision:** No Building Lot may be further subdivided; provided, however, the conveyance of an insignificant portion(s) of a Building Lot to the Owner of the Building Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Building Lot within the prohibition contained herein.

4.12. **Exemption of Grantor:** Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements with respect to Common Areas to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property, by an express written assignment recorded in the Office of the Blaine County Recorder.

ARTICLE V: RIGHTS TO COMMON AREAS

5.1 **Use of Common Areas:** Every Owner shall have a right to use each parcel of the Common Areas, which right shall be appurtenant to and shall pass with the title to every Building Lot, subject to the following provisions:

5.1.1 The right of the Association holding or controlling the Common Areas to levy and increase Assessments;

5.1.2 The right of the Association to prohibit the construction of structures or Improvements on the Common Areas;

5.1.3 The right of the Association to suspend any Member's voting rights and/or right to use any of the Common Areas and recreational facilities owned by the Association, for any period during which any assessments against said Member's property remains unpaid, and for a period not to exceed 30 days for each infraction of its published rules and regulations;

5.1.4 The right of the Association to limit the number of Members permitted to use the Common Areas and recreational facilities, or a portion thereof, at any one time; and

5.1.5 The right of the Association to publish reasonable rules and regulations governing the use of the Common Areas and recreational facilities.

5.2 **Designation of Common Areas.** Grantor shall designate and reserve the Common Areas in this Declaration, and/or recorded Plats, deeds or other instruments and/or as otherwise provided herein.

5.3 **Delegation of Right to Use.** Any Owner may delegate, in accordance with the respective Bylaws of the Association, such Owner's right of enjoyment to the Common Areas to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot.

5.4 **Damages.** Each Owner shall be fully liable for any damage to any Common Areas which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Building Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments. No Owner shall be liable for any amounts greater than is legally allowable under Idaho law.

ARTICLE VI:

THREE CREEKS CROSSING SUBDIVISION HOMEOWNERS' ASSOCIATION, INC.

6.1 **Organization of Three Creeks Crossing Subdivision Homeowners' Association, Inc.:** Three Creeks Crossing Subdivision Homeowners' Association, Inc. (the "Association") shall be initially organized by Grantor as an Idaho non-profit corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles,

Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 **Membership.** Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title in such Owner's Building Lot and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

6.3 **Voting.** Voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own, or attributable to the Building Lots owned by Grantor. The number of votes any Member may cast on any issue is determined by the number of Building Lots which the Member, including Grantor, owns. When more than 1 person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Building Lot.

6.4 **Class of Membership:** There shall be one class of members, comprised of the Owners of Lots 1-9 in the Three Creeks Crossing Subdivision. Each Member shall be entitled to cast one vote or fractional vote as set forth in the Declaration for each Lot in which the member holds the interest required for membership.

6.5 **Board of Directors and Officers.** The affairs of the Association shall be conducted and managed by a Board of Directors ("Board") and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of the Association shall be elected in accordance with the provisions set forth in the Association Bylaws.

6.6 **Power and Duties of the Association.**

6.6.1 **Powers.** The Association shall have all the powers of a corporation organized under the general corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Areas and the Association's other assets, including water rights, and the performance of the other responsibilities herein assigned, including, without limitation:

6.6.1.1 **Assessments.** The power to levy Assessments on any Owner or any portion of the Property and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration.

6.6.1.2 *Right of Enforcement.* The power and authority from time to time, in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws.

6.6.1.3 *Emergency Powers.* The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

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

6.6.1.4.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services; and

6.6.1.4.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

6.6.1.4.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to 21 years after the death of the issue of the individuals executing this Declaration on behalf of Grantor who are in being as of the date hereof.

6.6.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by this Declaration, and the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

6.6.2.1 *Operation and Maintenance of Common Areas.* Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Areas.

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

6.6.2.3 *Water and Other Utilities.* Acquire, provide and/or pay for necessary services for maintenance of the Common Areas, and to manage for the benefit of the Association all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

6.6.2.4 *Insurance.* Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance:

6.5.2.4.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Areas.

6.5.2.4.2 Comprehensive public liability insurance insuring the Board, the Association, Grantor and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas. Limits of liability of such coverage shall be as follows: Not less than \$1,000,000 per person and \$1,000,000 per occurrence with respect to personal injury or death, and \$1,000,000 per occurrence with respect to property damage.

6.5.2.4.3 Such other insurance, including motor vehicle insurance and Worker's Compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person

charged with the management or possession of any Association funds or other property.

6.5.2.4.4 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith.

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

6.5.2.4.6 Each Owner may obtain insurance at such Owner's own expense providing coverage upon such Owner's Building Lot, such Owner's personal property, for such Owner's personal liability, and covering such other risks as such Owner may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this article. All such insurance shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation. Proceeds of such insurance claims shall be paid to the owner of the Building Lot and/or the mortgagee in connection with such Building Lot.

6.5.2.5 *Enforcement of Restrictions and Rules.* Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or Bylaws, including, without limitation, the recordation of any claim of lien with the Ada County Recorder, as more fully provided herein.

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

6.7 **Budgets and Financial Statements.** A budget and financial statements for the Association shall be prepared regularly and made available to each Member of the Association as follows:

6.8 Meetings of Association. Each year the Association shall hold at least 1 meeting of the Members, according to the schedule for such meetings established by the Bylaws; provided, that such meeting shall occur no earlier than April 15 and no later than May 31 each year. Only Members or their proxies shall be entitled to attend Association meetings, and all other persons may be excluded. Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, and any person in possession of a Building Lot, not less than 10 days nor more than 30 days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board. The presence at any meeting in person of at least 50% of the Class B Members where there are such Members, and of the Class A Members representing Owners holding at least 30% of the total votes of all Class A Members, shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than 10 days nor more than 30 days from the time the original meeting was scheduled.

ARTICLE VII ASSESSMENTS

7.1 Covenant to Pay Assessments. By acceptance of a deed to any Building Lot, each Owner of such property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Initiation, Transfer, Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

7.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

7.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.

7.2 Regular Assessments. All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

7.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorney's fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all Improvements located on such areas owned and/or managed and maintained by the Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common

Areas, or other property of the Association that must be replaced and maintained on a regular basis (collectively "Expenses").

7.2.2 Amount of Regular Assessment. Until January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum Regular Assessment shall be \$1,000. From and after January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum Regular Assessment may be increased each year in such amount as the Board of Directors of the Association shall determine is required in the exercise of its reasonable business judgment.

7.2.3 Payment by Owners. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments.

7.2.4 Exempt Lots. The following Lots shall be exempt from the Assessments created herein: (1) all property expressly dedicated to and accepted by a local public authority; (2) the Common Areas; (3) all Building Lots owned by Grantor, until title is transferred to another, or until occupancy, whichever first occurs; and (4) all other properties owned by Declarant or the Association.

7.3 Water Assessment: In addition to the Regular Assessment, all Owners are obligated to pay a Water Assessment to the treasurer of the Association on a schedule of payments established by the Board. The Water Assessment may be assessed separately from the Regular Assessment, or it may be combined with the Regular Assessment and shall constitute payment for all costs associated with the construction, improvement, protection, maintenance, repair, management and operation of the Association's Water System.

7.4 Special Assessments.

7.4.1 Purpose and Procedure. In the event that the Board shall determine that the Regular Assessment or Water Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Areas or Water System, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds 20% of the budgeted gross Expenses of the Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of the Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

7.4.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments and Water Assessments.

7.4.3 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, shall be sent to all Members of the Association and to any person in possession of a Building Lot, not less than 15 days nor more than 30 days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be 50% of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than 30 days following the preceding meeting.

7.5 Limited Assessments. Notwithstanding the above provisions with respect to Regular, Water and Special Assessments, a Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for Three Creeks Crossing Subdivision.

7.6 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate for all nonexempt Building Lots.

7.7 Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year in which the Initiation Date occurs. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year.

7.8 Notice and Assessment Due Date. Written notice of Regular, Water and Special Assessments shall be sent to the Owner of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. The due dates for Water Assessments shall be no later than February 15 of each year. Each assessment shall become delinquent if not paid within 10 days after the due date thereof. There shall accrue with each delinquent payment a late charge equal to 5% of the delinquent payment. In addition, each payment which is delinquent for more than 20 days shall accrue interest at 10% per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may exempt such Owner from such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owner's Building Lot.

7.9 **Estoppel Certificate.** The Association, upon at least 20 days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 7.9 may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS

8.1 **Right to Enforce.** The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to paragraph 8.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

8.2 **Assessment Liens.**

8.2.1 **Creation.** There is hereby created a claim of lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

8.2.2 **Claim of Lien.** Upon default of any Owner in the payment of any Regular, Water, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Blaine County Recorder a claim of lien in accordance with the requirements of applicable law. In addition to any other information required by applicable law, the claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description

of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Subject to the requirements of applicable law, each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or release of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

8.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

8.4 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until notice as may be required by applicable law has been given to the Owner of the Building Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Building Lot(s), and a copy thereof is recorded by the Association in the Office of the Blaine County Recorder.

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

ARTICLE IX: EASEMENTS

9.1. Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Areas.

9.2. Drainage, Irrigation, and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all

easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities, irrigation and drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property to a purchaser.

9.3. Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

9.3.1. Wherever utility connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

9.3.2. Whenever utility connections are installed within the Property, which connections serve more than one Building Lot, the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Building Lot.

9.4. Access Roads. Access to each Building Lot in the Subdivision shall be provided by shared access roads to be constructed by Grantor in such locations as Grantor shall determine. Each Building Lot shall be and is hereby made subject to and benefited by a perpetual and indefeasible cross easement for ingress and egress to and from the Building Lots sharing such access road, which said easement shall be in the location of the access roads as constructed by Grantor. It is the intent of Grantor that the easements so created shall run with the land and not be sold or conveyed separately from the Lots taking access over them. No Owner or other person shall place or permit to be placed across the access roads any obstruction or in any manner otherwise interfere with the use of the access roads by the Owners of the said Lots nor shall the location thereof be changed without the mutual consent of all such Owners and the Board of Directors of the Association. No access roads other than those constructed by Grantor shall be permitted without the consent of the Board of Directors of the Association.

ARTICLE X: WATER RIGHTS & WATER SYSTEM

10.1. Water Rights, Policies & Procedures:

10.1.1. Water Rights for the irrigation of properties within the Association are owned and managed by the 3CC Water Users Association, Inc. ("3CC WUA").

10.1.2. 3CC has constructed, or will construct, a water system for the diversion, collection, delivery and use of irrigation water within the Property.

10.1.3. All Owners shall be members of both the Association and the 3CC WUA and shall be responsible for the assessments from both associations.

10.1.4. The Association and 3CC WUA shall jointly issue rules and procedures for the use of the 3CC WUA water rights. The rules and procedures shall regulate the use of water to conserve its availability for Lots and for the Common Area and may establish a water rotation for the Common Area and each Building Lot. The water supplied through the Water System is subject to variability and availability from year to year, and generally only from approximately mid-April through mid-October of each year.

10.2. **Maintenance:** The Association may contract with a qualified operation and maintenance company or person to manage the Water System. The Association shall be responsible for the maintenance and repair of the Water Supply up to the stub provided for each Building Lot. Each Owner shall be responsible for the costs incurred in installing, operating, maintaining, repairing or replacing any component of the system located beyond the said stub.

10.3. **Non-Potable Water:** Water from the Water System is non-potable and may contain weed seed, herbicides, pesticides or other contaminants over which the Grantor, the Association and the applicable irrigation entity have no control. Each Owner shall be responsible to insure the irrigation water used on his Building Lot is not consumed by any person or used for culinary purposes.

10.4. **Reservation of Water Rights:** No Owner shall have any right, title or interest in any of such water or water rights.

10.5. **Assessments:** All Owners shall be required to pay the assessment levied by 3CC WUA for the operation, maintenance, repair and replacement of the Water System and delivery of irrigation water regardless of actual use or non-use of water from the Irrigation Water Supply System.

10.6. **Responsibilities:** The Association owns, and is responsible for the construction, operation, maintenance and repair of all common areas – including, but not limited to, common areas adjacent to the storage pond(s) and walking paths over or near the Water System. 3CC owns, and is responsible for the construction, operation, maintenance and repair of, the water system used within the Subdivision. 3CC's obligations shall be limited to the water rights and Water System and shall not be extended to any common areas.

10.7. **Easement:** Grantor, reserves to itself, its agents, contractors, subcontractors and employees, successors and assigns, and grants to the Association and 3CC WUA, a nonexclusive easement as depicted on the Plat, inside the boundary of each Lot and the Common Area adjacent to the right-of-way for construction of the Water System.

10.8. **Non-Owner Water Users:** In addition to the Owners, other property outside of the Subdivision may use water delivered through the water system. Any Non-Owner water user shall be subject to the same terms, conditions and regulations governing the assessment, delivery and use of water through the Water System as provided in the Rules and Procedures.

ARTICLE XI: MISCELLANEOUS

11.1. **Term.** The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2040, unless amended as herein provided. After December 31, 2040, such covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by Members holding at least 3/4 of the voting power of the Association and such written instrument is recorded with the Blaine County Recorder.

11.2. **Amendment.** This Declaration may be amended at any time in accordance with the following provisions:

11.2.1. **By Grantor.** Except as provided below, until the recordation of the first deed to a Building Lot in the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination.

11.2.2. **By Owners.** Except where a greater percentage is required by express provision in this Declaration, any amendment to the provisions of this Declaration, other than this Article, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than 50% of the votes in the Association, and such amendment shall be effective upon its recordation with the Blaine County Recorder. Any amendment to this Article XI shall require the vote or written consent of Members holding 95% of the voting power of the Association.

11.2.3. **Effect of Amendment.** Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

11.3. **Enforcement and Non-Waiver.**

11.3.1. Right of Enforcement. Except as otherwise provided herein, any Owner of any Building Lot, or the Association, shall have the right to enforce any or all of the provisions hereof against any lot or parcel of the Property and Owners thereof.

11.3.2. Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

11.3.3. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

11.3.4. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

11.3.5. Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

11.4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

11.4.1. Restrictions Construed Together. All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

11.4.2. Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph 12.5.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

11.4.3. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

11.4.4. Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

11.4.5. Successors and Assigns. All references herein to Grantor, Owners, the Association or person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Association or person.

ARTICLE XII: ANNEXATION

12.1. **Time for Annexation; Land Subject to Annexation.** Grantor hereby reserves to itself and its successors and assigns the right to annex any other real property into Three Creeks Crossing Subdivision by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to Subdivision, pursuant to the provisions of this Article.

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

12.3. **Procedure for Annexation.** Any Notice of Annexation or Supplemental Declaration to be recorded hereunder shall contain the following information:

12.3.1. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of Ada County where this Declaration is recorded;

12.3.2. An exact legal description of the added land;

12.3.3. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and

12.3.4. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

This Declaration is signed and acknowledged by the owners, including the Grantor, owning all of the Property within the Three Creeks Crossing Subdivision.

Yard Bird, L.L.C.

By: _____
Cameron Lucas Macdonald, Member

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