


**REVISED DECLARATION OF COVENANTS,
CONDITIONS and RESTRICTIONS
FOR
MOUNTAIN SHADOWS SUBDIVISION No. 1, 2, 3 and 4 (future)**

THIS DECLARATION ("Declaration") is made on the last date herein below set forth, by Mountain Shadows Home Owners Association, an Idaho non-profit entity, hereinafter referred to as "Association."

WHEREAS, the members of the Association, not including the Developer, own greater than 50% of the land designated as Mountain Shadows Subdivision numbers 1, 2 and 3 and desire to subject the Property to covenants, conditions, and restrictions set forth herein to insure and enhance property values, provide for appropriate residential design and promote compatible property use by all owners and visitors. This Declaration applies to all phases of Mountain Shadows except as might be amended by the developer for Phase 4 only, in accordance with Article VI.

WHEREAS the Members of the Association do hereby adopt these REVISED Covenants, Conditions and Restrictions and have recorded the same with Boise County Idaho.

Instrument # 248283

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**ARTICLE I
DEFINITIONS**

- 1.1 "Association" shall mean and refer to Mountain Shadows Homeowners Association, Inc., an Idaho non-profit corporation, its successors and assigns.
- 1.2 "Architectural Control Committee" shall mean and refer to a minimum of three individuals, whose function shall be to review and by a majority vote, approve or disapprove each application for the construction of a Residence on a Lot and to take those other actions authorized by this Declaration. See Article VII.
- 1.3 "Code" shall mean and refer to the County Code of Boise County as the same may be amended from time to time.
- 1.4 "Common Area" shall mean all Lots or portions of Lots (including improvements thereon) owned by the Association or over which the Association holds an easement for the common use, enjoyment, or benefit of all Owners. The Common Areas are designated on the plat and include the roadways.
- 1.5 "Development" shall mean and refer to that certain real property showing on the Plat maps for Mountain Shadows Subdivision Phase 1, 2, 3 and 4 (future).
- 1.6 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Development and is the basic unit to which all Covenants, Conditions and Restrictions are directed. All Mountain Shadows Lots are as shown on the plat plan and may not be combined or otherwise restructured to avoid or minimize payment of HOA dues or fees.

- 1.7 “Member” shall mean and refer to every person or entity or owner who holds a membership in the Association as set forth in Section 4.2.
- 1.8 “Mortgage” shall mean and refer to any mortgage or deed of trust and “mortgagee” shall mean and refer to the mortgagee under a mortgage or the beneficiary under a deed of trust, and “mortgagor” shall mean and refer to the mortgagor of a mortgage or the grantor of a deed of trust.
- 1.9 “Owner” shall mean and refer to the recorded owner , whether one or more persons or entities, of fee simple title to any Lot which is a part of the Development, including contract buyers, but excluding those holding a Mortgage or those persons otherwise claiming an interest in a Lot as security for the performance of an obligation.
- 1.10 “Plat” shall mean the recorded plat of Mountain Shadows Subdivision No. 1, 2, 3 and 4 as recorded in the official records of Boise County, Idaho.
- 1.11 “Residence” shall mean and refer to a single family residential building and all appurtenances thereto together with any private garage, barn, or other outbuildings incidental to the residential use of the premises. However, Residence shall not include the two (2) buildings located on Lots 15 and 16 and existing on the Development shown on the Plat.
- 1.12 “Review Committee” shall include a minimum of 5 Members, whose function is to hear and act upon appeals from ACC decisions. See Article VII.
- 1.13 “Setback” shall mean and refer to the minimum distance between the lawful location of a Residence or other structure on a Lot from a given street or road, from a lot line.
- 1.14 “Written Notice” shall mean a letter delivered by United States Postal Service or sent via electronic mail to an address provided by the Member.

ARTICLE II
General Restrictions

- 2.1 Land use. Each Lot, except Lot 1, shall be used solely for residential purposes and shall not be used for the commercial activities. A Lot or portions thereof may be used for Common Areas pursuant to Article VIII.
- 2.2 Residence Construction. All construction on any Lot shall strictly follow all of the covenants, conditions, and restrictions in this Declaration.

Each Owner, including any contractor, builder, or agent for an Owner intending to construct a Residence, improve an existing Residence or install a Residence on any Lot, or construct or relocate any outbuilding onto the Lot shall do so only if the following conditions have been met.

- a. The Owner shall first submit a written application for construction authority to the Architectural Control Committee (“ACC”) and receive from the ACC its written approval, according to the provisions of Article VII. It is the intent of the Association that architectural designs similar to

- that of other upscale communities in the area are desired and will be utilized for construction of Residences within the Development.
- b. Each Residence constructed on a Lot shall be a “single-family” dwelling as defined by building codes applicable to Boise County.
 - c. Minimum primary Residence size shall be 1800 gross square feet of habitable space not counting a garage. A minimum of 1300 square feet must be on the ground floor. The gross square footage is calculated based on the exterior dimension of the Residence. The Residence nor any secondary structure shall exceed 35 feet in height.
 - d. For Lot Owners in Phase 1 and Phase 2 at the time these Covenants, Conditions and Restrictions (CCRs) are revised, the minimum primary Residence size shall be 1350 gross square feet of habitable space, not counting a basement or garage. A minimum of 800 square feet must be on the ground floor. The gross square footage is calculated based on the exterior dimension of the Residence. The Residence nor any secondary structure shall exceed 35 feet in height. For all Phase 1 and Phase 2 lot owners that purchased a lot after the date of this CCR revision the building requirements shall be as specified in Paragraph. 2.2.c. above.
 - e. Every Residence on any Lot shall comply with the following setback requirements as measured to any point on a residence or other building structure;
 - 1. 53 feet from the center of the road where the road forms the boundary of the property regardless of position on the lot. The road may wrap around the lot or form a side or rear boundary.
 - 2. 20 feet from the rear of the lot as long as the rear boundary is not the road.
 - 3. 10 feet from the side of the lot as long as the side boundary is not the road.
 - f. Driveways. The Owners of Lots 2,4 and 5 shall have a vehicle access to such Lots only by way of Fairmeadow Drive and the Owners of Lots 6,7, and 8 shall have vehicle access to such Lots only by way of Creek Hollow Drive.
 - g. No more than one (1) primary residence and two (2) outbuildings shall be allowed on a Lot. Such outbuildings shall contain at least 150 gross square feet of floor area as measured from the outside walls, no structures or outbuildings under 150 square feet are permitted.
 - h. Owners with more than one adjacent lot may build a maximum of 2 outbuildings on the lot without the primary residence.
 - i. Color. Residence color schemes should be from the earth tone palette and be consistent with the surrounding natural environment.
 - j. All Residences and outbuildings on a Lot shall be a similar color.
 - k. A Residence shall only be constructed if the Owner, including the contractor, builder or agent acting on behalf of the Owners, has obtained ACC approval and a building permit from all governmental agencies with jurisdiction over residential construction on a Lot. Once construction of any Residence has begun, the same shall be completed to an enclosed state

giving a finished appearance to the exterior of the Residence within one (1) year from the start of construction.

- l. All Residences on a Lot shall be constructed of the same materials in order to have the same exterior appearance. All Residences shall have, wood siding, log construction, or composite material siding with the appearance of wood or log. Residences may be constructed of materials other than wood siding or log construction if approved on a case by case basis by the ACC. Stone, brick or stucco accents are permissible. If the primary Residence is of log construction, the outbuildings may have a different exterior appearance if approved by the ACC.
 - m. All residences regardless of their siding material or construction must maintain compatibility with the surrounding environment and the surrounding structure design and construction materials.
 - n. All residences shall have fire-resistant roofing as approved by the ACC. Every roof on a Lot shall be of a similar color and approved by the ACC.
 - o. All residences shall be constructed on a stem wall foundation.
 - p. If a Residence is to consist of a modular home or is otherwise to be moved onto a Lot, such Residence must be of new construction.
 - q. The construction trades shall be permitted to construct or use temporary facilities on a Lot, but not on the paved roadway, solely for the purpose of aiding in the construction of a Residence on the Lot. Such temporary facilities shall be removed after the construction is complete.
 - r. Owners may reside in an RV for up to one year on a Lot, but not on the paved roadway, during which time the Residence is under construction.
 - s. Owner/contractor must provide sanitary facilities during construction.
 - t. No building material of any kind shall be placed or stored upon a Lot until the Owner is ready to and able to commence the structure to be erected.
 - u. Owners/Builders shall keep each job site and adjacent roadways clean of excess debris at all times. Any and all construction debris and slash remaining on the Lot shall be removed within 30 days after completion of construction.
 - v. Owners are responsible for all damages to any roads or Common Areas that may occur during construction.
- 2.3 Reconstruction. In any case where it is necessary to reconstruct a Residence or make any improvement to a Residence, the same rules and restrictions pertaining to residence construction shall apply.
- 2.4 Landscaping. All landscaping shall be designed and maintained so as to minimize water usage and fire danger, and be in keeping with the natural setting of the development. Native Idaho plants are recommended. Invasive species as defined by the State of Idaho will not be permitted. The Association is responsible for the landscaping on the Common Areas.

- 2.5 Fences. No barbed wire, chain link, vinyl, or white fences of any type can be used. All fences, except those used to shield propane or similar storage tanks from view, shall be of an open design.
- 2.6 Quiet Hours. In keeping with the natural aspects and the serenity of the Development, quiet hours shall be observed between 10:00 p.m. and 7:00 a.m. All vehicles shall be operated so as to maintain the peace and quiet of the Development.
- 2.7 Signs. No sign shall be displayed to the public view on any Lot except for signs of no more than five (5) square feet. The name of the Owners or the name of the Residence may be displayed. The Board may post signage with Subdivision Rules and information which are exempt from the 5- square-foot requirement.
- 2.8 Refuse Disposal and Lot appearance. No unsightly material shall be stored upon any Lot, nor shall trash, garbage, or other refuse be thrown, dumped or stored on any Lot. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse from the Lot and all such receptacles shall be screened from public view and protected from disturbance. Each Owner shall be responsible for removal/disposal of such refuse from the Lot. Deadfall and/or slash which comprise a public fire hazard shall be removed.
- 2.9 Vehicle Storage and Parking. No vehicle or recreational equipment of any kind shall be stored on a Lot for more than 14 days unless it is garaged or shielded from public view. Garaged means covered and enclosed on three sides. Daily or other routine use vehicles are exempt from this requirement. Motor homes, truck campers, travel trailers, and farm/heavy equipment shall not be considered daily or routine use vehicles. On-street parking is limited to 7 days. On-street parking is prohibited during snow-removal season. No inoperable, dismantled or unsightly vehicles or any vehicles displaying a "For Sale" sign shall be parked on any lot unless garaged.
- 2.10 Nuisances or Hazardous Activities. No noxious or offensive activity shall be permitted on any Lot, nor shall anything be done thereon which maybe or become an annoyance or nuisance to the other Lot Owners. No activity shall be conducted on or in any Residence, Lot, or Common Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearm shall be discharged within the Development, and no hunting or killing of game shall be allowed within the Development.
- 2.11 All burning taking place within the Development shall comply with the Boise County fire regulations, including burn permits as required by the County.
- 2.12 Lights. Owners may install security lights. The lights shall be designed to be shielded or aimed so as not disturb the neighbors or emit an offensive glare. Large area exterior lighting is prohibited.

- 2.13 Antennas. No satellite dishes or other similar reception devices shall be allowed within the Development except (a) satellite dish that is compliant with the best commercial practices which may be attached to a Residence or otherwise placed as required to facilitate reception, and (b) a local television antenna may be installed if it is either fully enclosed within the roof structure or located as to not be clearly visible from adjoining Lots. Antennas for cell service or wireless internet may be used if mounted in such a way as to be unobtrusive.
- 2.14 Storage Tanks. Any storage tank, including propane tanks, installed on a Lot and any type of air conditioning or heating unit must be concealed from view from neighboring Owners or otherwise attractively screened from view. Underground propane tanks are recommended but not required.
- 2.15 Animals. No livestock including, without limitation, cattle, swine, poultry, sheep or other animals raised for breeding or consumptive purposes shall be raised, bred or kept on any Lot. Horses, llamas and similar riding or pack animals, dogs, cats, or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose. No more than (3) of any genus may be kept on any Lot. A maximum of 3 large animals (an animal exceeding 300 pounds) may be kept on any Lot. Dogs shall be under the control of the owner.
- 2.16 Platted Roads. All roads within the Development shall be private and owned by the Association for the use and benefit of all Members and their successors and agents, and shall be appurtenant to and for the benefit of the Development and each portion thereof and shall run with the land. It is the responsibility of the Association to maintain, repair and resurface, when necessary, the paved private roadways in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability for so long as the Association is the owner of the road improvements. All costs associated with or arising out of the Association's obligation to maintain, repair, plow or resurface the paved roadways, including all costs associated with transferring the roadway improvements to a public entity shall be paid by the Association and assessed to each Member.
- 2.17 Camping. Members or their guests may camp on the Lot not to exceed 14 consecutive days within a 35-day period provided they make provisions for sanitary waste disposal in an approved manner. After 14 days, the Member must take all camping material off-site. Member is responsible for conduct of any guests and shall insure the guests comply with all provisions of these CC&Rs.

ARTICLE III

Utilities and Utility Easements

- 3.1 Utility Services. All Lots shall be served with underground utility lines for power, water and telephone services. Each Member is responsible for final hookups, connections to residence, or other structures and distribution within the Lot. Members shall be responsible for maintaining insulation within the water meter enclosures so as to prevent freezing. If water meters or attached piping fails due to freezing, and the enclosure is not adequately insulated, the Member may be held liable for the repair costs.
- 3.2 Platted Easements. Utility and drainage easements exist as shown on the Plat of the development. Installation of additional utilities within the easements requires the approval of the Board. Such easements specifically, but without any limitation, include easements for a reservoir and pump station as shown on the Plat.
- 3.3 Ownership and Operation of Public Water System.
- a. The Association owns the Public Water System and all of its components, and any water rights appurtenant to the Development,
 - b. The Public Water System is regulated by the Idaho Department of Health and Welfare, Division of Environmental Quality (“DEQ”), and the US Environmental Protection Agency (“EPA”). The Association shall operate, perform routine or special sampling, and maintain the Public Water System in Compliance with the regulations and Permits issued by the Department of Environmental Quality.
 - c. Domestic Water. Each Lot shall have the right to use water from the public water system (PWS). The Board of Directors is responsible for management of the PWS, including setting water use policy and, if appropriate, determining a fair and equitable rate or fee schedule for water consumption. The Water Policy shall be promulgated in writing and will have the full force and effect of the CC&Rs. Enforcement of the policy shall be in accordance with Section 5.6 and be handled the same as any assessment or fee.
 - d. No Member shall connect any equipment or device to the water supply system (even within the Lot or residence building of such Member) which has any potential or possibility of introducing water or any foreign substance into the water supply system. If any Member desires to connect such equipment or device, it shall be done only with the prior written approval of the Association and use of connection control or backflow prevention devices approved by the Association.

ARTICLE IV

Homeowners Association

- 4.1 Organization of Association. The Association shall be organized as an Idaho corporation under the provisions of 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 of incorporation, by-laws, and this Declaration. Neither the articles of incorporation nor the by-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 4.2 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. Membership in the Association shall not be assignable except to the successor in interest of an Owner, and each membership in the Association shall be appurtenant to ownership of the Lot. Membership in the Association shall not be transferred, pledged, or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of membership shall be void and will not be reflected on the records of the Association. A Member shall be considered a Member in Good Standing if all Association fees and assessments are paid in full.
- a. Voting Members. All Members in good standing shall be voting Members of the Association and will have one vote for each Lot owned.
- 4.3 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board and such officers as may be elected by the Members or appointed by the Board, in accordance with the articles of incorporation and by-laws.
- 4.4 Powers of the Association. The Association shall have all the powers of a non-profit corporation organized under the general non-profit 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 of incorporation, the by-laws, 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 it under this Declaration, the articles of incorporation, and the bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the proper management and operation of and the performance of the other responsibilities herein assigned, including without limitation.
- a. Assessments. The power to levy assessments (regular, special, and limited) on the owners of Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration. The Developer is exempt from this requirement for lots owned by the Developer.
- b. Rights of Enforcement. The power and authority from time to time, in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain

and enjoin any breach or threatened breach of the Declaration or the articles of incorporation or by laws, including the Association rules pursuant to this Declaration, and to enforce by mandatory injunctions or otherwise all provisions hereof.

- c. Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm, or corporation to act as manager. Neither the Association nor the membership of the Board of Directors shall be liable for any omission or improper exercise of the manager of any such duty or power so delegated.
- d. Emergency Powers. The Association or any person authorized by it may enter upon any Lot in the event of any emergency involving illness or potential danger to life or property, or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Member as is practicable, and any damage caused thereby shall be repaired by the Association and at its sole cost and expense.
- e. Association Rules. The Association has the power to adopt, amend, and repeal by majority vote of the Board of Directors such rules and regulations as the Association deems reasonable (the "Association Rules"). The Association rules shall govern the use of the Common Areas by the Members, families of an Member, or any invitee, licensee, lessee, or contract purchaser of an Member, provided, however the Association rules may not discriminate among Members and shall not be inconsistent with this Declaration, and Articles of Incorporation, or the By-Laws. A copy of the Association rules, as they may from time to time be adopted, amended, or repealed shall be mailed or otherwise delivered to each Member. Upon such mailing, electronic or personal delivery to all Members, said Association rules shall have the same force and effect as they were set forth in and were a part of this Declaration. In the event of any conflict between any Association Rule and any other provision of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be superseded by the provisions of this Declaration, the Articles of Incorporation or the Bylaws to the extent of any such inconsistency.
- f. Licenses, Easements, and Right of Way. The Association has the power to grant and convey to any third party such licenses, easements, and right-of-way in, on, or under the Common Areas as may be necessary or convenient in the judgment of the Association, or for the purposes of constructing, erecting, operating, or maintaining:
 - 1. Utility lines, cables, wires, conduits, and other devices for the transmission of electricity for lighting, heating, power, telephone, and other purposes.
 - 2. Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating, and gas lines or pipes.
 - 3. Snow removal or cleanup, and

4. Any similar public or quasi-public improvements or facilities

The right to grant such licenses, easements, and rights-of-way are hereby expressly reserved to the Association.

4.5 Duties of the Association. In addition to the powers granted to it by the articles of incorporation and this Declaration, and without limiting the generality thereof, the Association or its agent, if any, shall conduct all general business affairs of common interest to all Members including, without limitation, the following

- a. Enforcement of CCRs and the general business affairs of the Association.
- b. Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of any Common Area (which shall include the roadways) including the repair and replacement of property damaged or destroyed by casualty loss, and all other property acquired by the Association. The Association shall maintain the landscaped area on Lot 1 shown on the Plat.
- c. Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area owned and managed by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association. In addition, the Association shall pay all other taxes, whether federal, state, or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of tax-exempt corporation.
- d. Water and Other Utilities. Acquire, provide, and/or pay for water, garbage disposal, refuse and rubbish collection, electrical, and other necessary services for the Common Area and other property owned or managed by it.
- e. Insurance. Obtain policies or insurance from reputable insurance companies authorized to do business in the State of Idaho, and to maintain in effect the following types of policies of insurance to the extent available at a reasonable cost.
 1. Comprehensive public liability insurance insuring the Board of Directors, the Association, the Declarant, the individual Members, and the agents and employees of each of the foregoing, against any liability incident to the ownership and/or use of the Common Area or other property owned or managed by the Association.
 2. Such other insurance, including Worker's Compensation Insurance to the extent necessary to comply with all applicable laws, directors, and officers liability insurance, and such indemnity, faithful performance, fidelity, and other bonds as the Board of Directors shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty or

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

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

- f. Snow Removal. Provide for the plowing, sanding and removal of snow from the paved roadways as shown on the Plat.
 - g. Public Water System. Manage, operate, maintain, repair, and replace the public water system up to and including water meters for every Lot and pressure reducing valves where required. Maintain the Public Water System within the Common Areas.
- 4.6 Personal Liability. No member of the Board of Directors or Architectural Control Committee or any committee of the Association, nor any officer of the Association, nor the manager, if any, nor the Developer shall be personally liable to any Member or to any other party, including the Association, for an damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board of Directors, the manager, if any, or any other representative or employee of the Association, the Architectural Control Committee, or any other committee, or any officer of the Association, or the Developer, provided such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.
- 4.7 Dissolution. In the event the Association is dissolved, the assets of the Association shall be dedicated to a public body or conveyed to another non-profit organization with similar purposes.

ARTICLE V

Covenant for Assessments

- 5.1 Creation of Lien and Personal Obligation for Assessments. Each Owner covenants with the Association and Developer that by accepting a deed, and whether or not it is expressly stated in said deed, each Owner agrees to pay to the Association the following:
- a. All regular assessments for specified services and maintenance as set forth in 5.3 and all special assessments for specified services and maintenance as set forth in 5.4.
 - b. An initial Mountain Shadows Owner registration fee of \$250 per Lot.
 - c. Each assessment, together with interest accrued thereon shall be a charge on each Owner's Lot and shall create a continuing lien upon each Owner's Lot against which each assessment is made

from and after the date the assessment is due. In the event the Association initiates or defends any action, legal or otherwise for the collection of any assessment due, the Association shall be entitled to recover from the assessed Owner its reasonable costs and attorney fees (including, without limitation, its reasonable costs and attorney fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

Prior to bringing an action to foreclose the continuing assessment lien granted by this Article, the Association shall cause a notice of lien claim to be prepared and filed with the Boise County Recorder's office and shall send a copy by certified mail to the delinquent Owner. The cost of preparing, filing and mailing, and travel associated with this claim of lien, including a reasonable attorney fee incurred by the Association, shall also be the cost of the delinquent Owner and shall be recovered from the Owner or added to any claim of lien.

- 5.2 Regular Periodic Assessments. Each Member except the Developer, shall also be assessed and pay a regular periodic assessment accruing from the date of ownership which regular assessment are to be used by the Association for the purpose of maintenance of the Common Area, paying costs incurred for policies of insurance purchased by the Association, and/or providing for any other regular business activities of the Association. The Association shall collect these periodic assessments on a monthly, quarterly, semi-annual, or annual basis, as it deems appropriate. The beginning assessment annualized for the year 1999 shall be \$400 based upon an estimate made by the Declarant for the cost of services anticipated. This periodic assessment can be automatically increased by the Board of the Association by as much as 20% of the previous year amount per year beginning with the year commencing January 1, 2000. It may be increased by more than 20% by a majority vote of a quorum of Members at a meeting called for that purpose by the Board.
- 5.3 Special Assessment for Repairs, Operations, or Maintenance. In addition to the regular periodic assessments, the Association, by the majority vote of a quorum of Members present at a meeting called for that purpose, may make any special assessment for a specific one-time cost or expense benefiting all Members. Such special assessment shall be made payable as a one-time assessment or over a period of time as determined by a majority vote of the Members.
- 5.4 Notice of Action under Section 5.3 and 5.4. Written notice of any meeting called for the purpose of taking any action authorized under section 5.3 and/or 5.4 of this Declaration shall be sent to all Members not more than fifty (50) days and not less than ten (10) days in advance of the meeting.

- 5.5 Miscellaneous Assessment Information. In the event the Board increases the periodic assessments, written notice of such assessments shall be sent to each Member at least thirty (30) days before the effective date of such increased periodic assessment. Such periodic assessment shall be due and payable and continue to be due and payable without further notice from the Board. The Association shall, upon request and for a reasonable charge, furnish a certificate signed by an authorized officer of the Board stating whether or not assessments on a Lot are current.
- 5.6 Effect of Nonpayment of Assessments and Remedies of the Association. The Association shall have the right to apply any or all of the following remedies to any Lot Owner that is delinquent on any regular or special assessment, water billing, or charges stemming from construction, landscaping, clean up or any other charge levied by the Association. Any assessment or other billing not paid within thirty (30) days after the due date shall be deemed to be delinquent.
- a. The Association shall charge a late fee of not less than \$25 and interest from the due date at 12% per annum.
 - b. If the assessment is not paid within 180 days the Association shall place a lien on the property and the Owner will be charged an administrative fee of not less than \$100 as well as the past due amount plus accrued interest in order to satisfy the lien.
 - c. Owners can be placed on payment plans established by the Board. These payment plans may include an interest rate of 12% annum, and an administrative fee not less than \$25.
 - d. Water service can be discontinued until such time as the lien or assessment is satisfied, and an administrative fee of not less than \$50 will be charged.
- 5.7 No Owner shall waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.
- 5.8 Subordination of Assessment Liens to Mortgages. The lien of any unpaid assessment shall be subordinate to any first mortgage or deed of trust against a Lot. No mortgagee of a mortgage or beneficiary of a deed of trust shall be required to collect any unpaid assessment. The failure of an Owner to pay assessments shall not constitute a default under a mortgage or deed of trust. Sale or transfer of a Lot shall not affect the assessment lien, nor shall the transferee in such sale or transfer be relieved from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VI Phase 4 Development

- 6.1 The Developer, Mountain Shadows Development Company LLC, successors or assigns intends to develop Phase 4 as the final phase of Mountain Shadows. This development will be done maintaining the character and esthetics of Phases 1 through 3 and encompasses approximately 170 acres adjacent to the current development. Phase 4 is located to the west of Phases 1, 2 and 3. The design of Phase 4 including layout of lots, roads, easements and common areas shall be done at the sole discretion of the Developer and be shown on the Plat maps recorded with Boise County. The development shall comply with all Zoning and environmental regulations.
- 6.2 Phase 4 shall become subject to these covenants, conditions, restriction, grant of easements, and equitable servitudes contained herein and further shall become subject to the functions, powers, and jurisdiction of the Association. The Developer retains the right to make unilateral amendments to these covenants, conditions, and restrictions that apply to Phase 4 as he deems necessary to adjust to market conditions, and said modifications will be discussed with the Mountain Shadows HOA prior to recording. The Owners of Lots within Phase 4 shall immediately become Members of the Association. All provisions, burdens, and obligations contained in these CC&Rs shall apply to Phase 4 when developed.
- 6.3 Designation of Common Area. Any Common Area and common facilities designated by Developer as such on the Plat, or conveyed to the Association by the Developer, shall be subject to the same easements or other rights for the use and enjoyment of the Members of the Association.
- 6.4 Right to Dedicate Roads and Utility Easements. If Developer owns, has reserved an easement, or obtains the agreement of an Owner of a Lot, Developer may dedicate all or any portion of such easement, Lot, road, or Common Area for the use, burden and benefit of one or more Owners and/or Lots in the Development
- 6.5 Notwithstanding other Articles of these covenants, conditions, and restrictions, the Developer may erect signs at all entry points to the Development from the Banks Lowman Road, or other points internal to the development that are entry points to Phase 4. Such signs would advertise the development, and may direct potential buyers to a realtor of the Developer's choice.

ARTICLE VII Architectural Control

In order to protect the quality and value of the homes built in the Development and for the continued protection of the Members thereof, an Architectural Control Committee (ACC) is established consisting of a Board Member serving as Chairman and a minimum of two Members to be elected by the Members. No building, Residence, or outbuilding of any type that requires a Boise County Building permit or storage shed of 150 gross square feet or greater shall be commenced, erected, or installed upon any Lot until the plans and specifications have been submitted to and approved in writing by the ACC. No external alteration, or modification of a structure that requires a Boise County Building permit, or that significantly alters the original appearance of the Residence or outbuildings, regardless of the requirement for a Boise County Permit, shall be done without ACC written approval.

7.1 Requirements for ACC review. These requirements are consistent with the requirements for a Boise County building permit. Requests for ACC approval must be submitted in writing to either the President of the HOA or the Chairman of the ACC. Requests for ACC review that are not complete will be returned to the requestor within 7 days and no action will be taken until the complete application is received. It is highly recommended that the Member, agent or contractor meet with the ACC in person if possible to allow for an open discussion, resolution of potential issues and timely approval. The Member should contact the ACC for a checklist of the required information along with the Responsibility Acknowledgement form.

- A. Site plan. The following information must be clearly shown on the site plan and must be drawn to an identifiable scale.
1. Orientation with a North arrow;
 2. Property Boundary Lines and dimensions in feet;
 3. If other buildings or structures are on the Lot, the location of each shall be shown on the site plan along with location on the Lot, distance to other structures and the proposed building.
 4. Outline of proposed structure(s) with exterior dimensions;
 5. Location of driveway or other access points;
 6. Actual building setbacks that meet these minimums
 - a. 53 feet from the center of the road that forms any property boundary;
 - b. 20 feet from the rear of the lot if not a road
 - c. 10 feet from the side of the lot if not a road
 7. Siting for propane tank, heat pump, air conditioning or similar equipment if applicable.
 - a. Method to shield propane tank, heat pump, air conditioning or similar equipment from view.
 8. Siting for septic tank and drain field.

- B. Plans. One set of scale drawings of the proposed construction shall be furnished to the ACC. Such drawings should include:
1. Outline drawing of construction indicating gross square footage on each floor.
 2. Additional layout of garages and outbuildings.
 3. Foundation plan to scale, sufficient to determine suitability and compliance with Article II.
 4. Elevation Plan to scale showing as a minimum, the front and rear elevation. Basements must be indicated if applicable. Such Elevation Plans must include the height of the structure and the roof pitch;
 5. Type and color of roof, with sample or color photograph;
 6. Type and color of siding, with sample or color photograph, including stain or paint colors;
 7. Type and color of architectural accents including trim and trim paint color with sample or color photograph;
 8. Proposed construction start date;
 9. Lot corners should be clearly marked to allow ACC on-site review;
 10. Signed Responsibility Acknowledgement, which demonstrates the Member is aware of their obligations associated with the construction of the Residence and other structures as shown in Article II.

7.2 In the event the ACC fails to act either by approval or disapproval within thirty (30) days after written submission to the ACC as required in Section 7.1, approval will not be required and the Member's proposal shall be deemed in compliance with these CCRs.

7.3 In the event that a situation arises during construction that will result in a change to the structure from what was submitted to and approved by the ACC, the Member shall notify the ACC immediately and request an in-progress review and approval.

7.4 Enforcement. The Association may exercise all available legal and equitable remedies to correct any issues of non-conformance including completion, unauthorized or unapproved construction or improvement on any Lot. Any enforcement action will be subject to the assessment collection methods specified in Article V.

- 7.5 Waiver. The approval of any plans, drawings, or specifications for any improvements or construction or for any matter requiring the approval of the ACC shall not be deemed a waiver of the right of the ACC to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.
- 7.6 Appeal. The decision of the ACC may be appealed to the Board. The Board will then appoint a Review Committee comprised of one Board Member, one Member of the ACC and 3 Members (a minimum of 5 people), to review and act on the appeal. The Review Committee shall notify Board and Member of the decision within 30 days and that decision shall be final and binding. No appeal will be entertained that requests a variation from the Boise County requirements.
- 7.7 Materials and Technology. The ACC can approve any building material which meets the requirements of Section 2.2 on a case by case basis. If the material is such that it could have wide spread application for future construction then the adoption of this material for common use shall be subject to a vote by the Members. A simple majority of votes cast will be required to adopt the new material as a standard for use in Mountain Shadows. The ACC will consider technology trends such as the use of solar or wind energy and insure that their use is in compliance with the character of Mountain Shadows. Similar to materials if the technology becomes pervasive, or if it is unclear that the technology is in the character of Mountain Shadows then the adoption of standards for its use will be submitted to the Membership for consideration and a vote. The simple majority of votes cast will be used to determine the application of and standards development for such technologies.
- 7.8 Liability. Neither the ACC, a Review Committee nor any member thereof shall be liable to the Association, to any Member, or to any other party for any damage suffered or claimed on account of any act, action, or lack thereof, or conduct of the ACC or the respective members thereof, if the ACC or its individual members acted in good faith on the basis of information they then possessed.

ARTICLE VIII

Common Areas

The Developer established several Common Areas for the mutual benefit of all Members. These Common Areas are designated in the Plat and are to be used for roads, pedestrian and equestrian access, snow storage, fire safety zones and open areas. The use, control, and maintenance of these Common Areas shall be as follows.

- 8.1 Common Rights. Each Member and the Association shall have an in common and perpetual access easement with all other Members for the use within the purposes set forth above, which use and easement shall run with the Owner's Lot.
- 8.2 Association's Duty to Maintain. In addition to other duties required of the Association, the Association shall maintain all Common Areas. No individual

liability shall be imposed on Developer, the Association or any Member for damages to a Common Area, except to the extent that their direct negligence is the cause of that damage.

- 8.3 Mortgage or Conveyance of Common Area. The Association shall place no mortgage on a Common Area nor shall the Association convey a Common Area without the written consent of two-thirds (2/3) of all Members, excluding those Lots owned by the Developer. If a mortgage is placed on a Common Area, it shall be subject to and inferior to the use and easement rights granted to all Members.

ARTICLE IX

General Provisions

- 9.1 Enforcement. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Association becomes aware, or is made aware, of a condition that may not be in compliance with a restriction or covenant in this Declaration the Board will meet to determine if a noncompliance exists, and if so, what action is required to resolve the non-compliance. If it is determined that action is required, the Member will be formally notified by email or registered mail that clearly states the noncompliance (including photos of the noncompliant condition if possible), provides a desired remedy, and a reasonable date when compliance is expected. The reasonable date should allow the Member sufficient time to confirm the noncompliance and arrange for the necessary work to be accomplished or to seek legal advice or other remedy. No Member should assume the duties of enforcement of the HOA rules or regulations. HOA concerns shall be directed to the Board and/or law enforcement.
- 9.2 Existing Conditions. The Residences and other structures on Lots 15 and 16 predate the establishment of the Development and are therefore deemed to be in compliance with Article 2.1 and 2.2 of the initial Covenants, Conditions and Restrictions which were adopted by the Development. The Residences, outbuildings in excess of 150 square feet, and other structures, on Lots 1, 2, 7, 8, 10, 11, 13, 19, 20, 22, 24, 25, 26, 27, 30, 32, 35, 37, 40, 43, 47, 49, 51, 57, 58, 73, 75, 78, and 82 were approved by the ACC at the time of construction and are deemed to be in compliance with Article 2.1, 2.2, and 2.5 of the Covenants, Conditions and Restrictions for the Development. All Lots regardless of the date of construction shall comply with all other Articles of the Covenants, Conditions and Restrictions.
- 9.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision hereof, and all other provisions of this Declaration shall remain in full force and effect.

- 9.4 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is filed of record. After completion of the initial term of twenty (20) years, this Declaration shall be automatically extended for successive periods of ten (10) years.
- 9.5 Member Responsibility. The Member is responsible for the conduct of their visitors, guests, renters or lessors.
- 9.6 Amendment or Revision. This Declaration may be amended or revised only with the written approval of two-thirds (2/3) of the Owners with each Lot only granted one vote.

In witness whereof, the undersigned have executed this Declaration of Covenants, Conditions, and Restrictions this **31st day of August of year 2015.**

Billie Davolt
 Billie Davolt- President

Ralph Van Paepeghem
 Ralph Van Paepeghem- Vice President

Judy Hardman
 Judy Hardman- Secretary/Treasurer

STATE OF IDAHO
 BOISE County
 Notary for:
 BILLY DAVOLT
 RALPH VAN PAEPEGHEM
 JUDY HARDMAN

8/31/15
Jami Smith
 Notary
 Garden Valley
 3/10/2017

