
**DECLARATION OF
RESIDENTIAL COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS APPLICABLE TO
TIMBER CREEK**

This Declaration of Covenants, Conditions, Easements and Restrictions (“Declaration”) is made this ____ day of July 2020, by Leghorn, LLC, an Idaho limited liability company (“Declarant”).

WHEREAS, Declarant is the owner of certain real property known as Timber Creek, and as described on an official plat, recorded as Instrument No. _____, in Book ___ of Plats at page ___, records of Bonner County, Idaho, and located in a portion of Section 28, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho (the “Property”).

WHEREAS, Declarant is desirous of further protecting the value and desirability of the whole of the Property; now, therefore,

DECLARANT HEREBY DECLARES that the Property, together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any after acquired right, title or interest, including without limitation the numbered Lots therein, shall be held, owned, sold, leased, rented, encumbered, occupied, improved and conveyed subject to this Declaration and as amended from time to time. Declarant further declares that the Property shall be subject to the covenants, easements, restrictions, rights and privileges set forth herein, and that such burdens and benefits shall run with the land and shall be binding upon the Declarant, the Declarant’s successors, agents and assigns, and to persons or entities acquiring or owning an interest in the Property, regardless of whether this Declaration is set forth in a document of conveyance.

**ARTICLE I.
DESIGNATION OF USE**

- 1.1 **No Further Subdivision.** There shall be no further subdivision of any lot or Bike Path Easement Area.
- 1.2 **Declarant’s Right to Make Improvements.** So long as the Declarant is in title to a Lot on the Property, the Declarant shall have the right, in its sole discretion and expense, to make any improvements to the Bike Path Easement Area. The Declarant reserves an

easement incident to construction for ingress, egress, and temporary utilities over, under, around and through the Property.

**ARTICLE II.
MANAGEMENT BODY,
BIKE PATH EASEMENT AREA,
AND SPECIAL REQUIREMENTS**

- 2.1 **Homeowners Association.** The management body of the Property shall be known as **Timber Creek Owner's Association** ("Association"). The Association shall be registered with the Idaho Secretary of State as a non-profit corporation.
- 2.2 **Purpose of Association.** The purpose of the Association shall be to maintain, improve, and regulate the use of the Property, to carry out the provisions of this Declaration, and to take any other lawful actions for the benefit of the Association and its members.
- 2.3 **Governing Documents.** The Declarant shall adopt Articles of Incorporation and Bylaws for the Association. Copies of said Articles and Bylaws have been adopted by the Declarant and are attached hereto as **Exhibit A and Exhibit B**. An amendment of a governing document shall be recorded in the records of Bonner County, Idaho.
- 2.4 **Lot Owners Subject to Governing Documents.** A Lot Owner by acceptance of a Deed thereby acknowledges and ratifies the governing documents and subjects the Lot to any duly adopted amendments and additions to the governing documents, including Rules and Regulations.
- 2.5 **Priority of Authority.** Notations on the plat shall supersede and take precedence over any conflicting provision contained herein. The provisions contained in this Declaration shall supersede and take precedence over any conflicting provision in the Association's governing documents. The Association's governing documents shall be interpreted in a manner consistent with the provisions contained herein. In the event of ambiguity between the governing documents, preference shall be given first to plat notations, then to this instrument, then to the governing documents.
- 2.6 **Association Authority.** The Association through its Board of Directors (Board), shall have the authority to: (a) enforce this Declaration; (b) make improvements to the Bike Path Easement Area; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out its duties; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare of residents in accordance with the letter and spirit of this Declaration; (f) place liens on the real property of Lot Owners who fail to pay dues and assessments, and to enforce such liens through judgment and foreclosure.
- 2.7 **Association as Attorney-in-Fact.** By accepting a deed granting an interest in a Lot, the Lot Owner irrevocably appoints the Association as its attorney-in-fact to manage, control, and represent the interest of such Owner in the Bike Path Easement Area. The purpose of

this grant of authority is to permit the Association to fulfilling its duties and obligations under this Declaration and the Association's governing documents.

2.8 **Duties of Association.** The Association shall have the following general duty to its Members.

2.8.1 **Maintain and Protect the Bike Path Easement Area.** The Association shall have the duty to maintain the Bike Path Easement Area and any Association-owned structures and facilities in a safe, functioning, and attractive condition. Pathways shall be maintained in good repair and kept reasonably cleared of ice and snow. The Association shall not be liable for crimes, vandalism, or injury suffered by Lot Owners on their property, nor shall the Association's duty extend to preventing or protecting Lot Owners or their invitees from assault or theft or like crimes committed on or within the Bike Path Easement Area.

2.9 **Special Requirements.** The following special requirements are imposed on Lot Owners and the Association by the City of Sandpoint:

2.9.1 **Conformance with Land Use Codes.** The Association and Lot Owners shall maintain their respective properties in conformance with applicable City of Sandpoint land use codes, and relevant statutes and regulations of the state of Idaho and the United States of America.

2.9.2 **Individual Lot Stormwater/Erosion Control Management.** Lot Owners shall, at their sole expense maintain storm water management systems required by the City of Sandpoint on their respective lots. In addition, each individual Lot Owner shall implement any and all drainage, stormwater, and erosion control measures pursuant to the City of Sandpoint-approved stormwater management and erosion control plan as set forth by the City of Sandpoint Planning Department.

2.9.3 **Wetlands.** Lot Owners shall not fill, excavate, flood or drain existing wetlands in on Lots, or construct any structure, fence or other facility or encroachment thereon. Lot Owners should preserve wetlands located on private lots. Any work involving filling, excavating, flooding or draining existing wetlands shall be conducted pursuant to a valid permit from the US Army Corps of Engineers and Section 404 of the federal Clean Water Act.

2.10 **Membership.** Every Lot Owner shall be a member of the Association and by acceptance of a Deed consents to membership. Membership shall be appurtenant to and may not be separated from the fee simple ownership of the Lot. Ownership of a Lot shall be the sole qualification for membership. Co-owners shall enjoy the benefits of membership and shall be jointly and severally liable for the obligations of membership.

2.11 **Transfer of Membership.** A Lot Owner shall not transfer, pledge, convey or alienate the Association membership except to a bona fide successor in interest of the ownership of the Lot. A sale of a Lot by real estate contract shall constitute a valid transfer of membership to the buyer. A prohibited transfer is void. A life tenant of a Lot shall be the Member and the remainderman, by acceptance of a deed, grant to the Association the right to lien the remainderman's interest in the Lot for unpaid fees, fines and assessments accrued by the life tenant. A renter, lessee, or remainderman of a Lot is NOT a Member but shall have the right to attend Association meetings.

- 2.12 **Voting Rights.** There shall be two classes of membership: Class A and Class B. The Declarant, or its successor in interest, shall hold Class B membership for each Lot it owns. All other Lot Owners shall hold Class A memberships.
- 2.12.1 **Class A Membership.** Class A members shall have one (1) vote in the Association for each Lot owned, such vote to be cast by the Lot Owner. If more than one (1) person owns a Lot, there shall only be (1) vote per Lot. Where co-owners exist, they may designate in writing, with the Secretary, who among them shall cast the Lot's vote. A designation shall remain of record until revoked. Any co-owner may revoke a designation in a writing submitted to the Secretary. Fractional votes are not permitted. In the absence of a designation, the Secretary shall accept the vote of any co-owner attending a meeting in person or by proxy. If co-owners disagree on a vote or a dispute arises as to authority of a co-owner to cast a vote, the Secretary shall record the Lot's vote as "present." All co-owners may attend and otherwise participate in Association meetings.
- 2.12.2 **Class B Membership.** The Class B member (the Declarant) shall have seventy-five (75) votes in the Association for each Lot owned during the Period of Declarant Control. The Declarant may designate an agent or agent(s) to cast its votes. Class B Membership shall cease to exist after the expiration of the Period of Declarant Control.
- 2.12.3 **Revocation of Voting Rights.** A Member's right to vote shall be deemed revoked unless and until the Member is current on dues and assessments by the Association.
- 2.13 **Majority Vote.** Except as otherwise set forth herein, a majority of votes of the Members shall be the action of the Association.
- 2.14 **Proxy Voting.** A Lot Owner may give his proxy to another Lot Owner. Such proxy shall be (a) in writing; (b) signed by the giver; (c) defining the particular meeting or time period in which the proxy may be exercised; and (d) delivered to the Secretary at or prior to the membership meeting.
- 2.15 **Quorum.** A quorum shall consist of no less than 67% in attendance at the start of a membership meeting. Once a quorum has been established it shall be deemed to continue until adjournment. The Members may increase, but not decrease, the quorum requirement by amendment of the Articles of Incorporation.
- 2.16 **Actions Reserved to the Members.** The following actions are reserved to the Members, voting at a duly noticed meeting of the Association:
- 2.16.1 **Elect and Remove Directors.** The Members shall have the exclusive authority to elect and remove directors. The procedure for election and removal of directors shall be set forth in the Articles of Incorporation and Bylaws.
- 2.16.2 **Approve Budget.** The Members shall adopt an annual budget and any supplemental budgets of the Association. The Members may amend the budget presented by the Board. The Association shall not make expenditures, except emergency expenditures, absent an approved budget. The Board may declare an emergency. Notwithstanding this provision, the Declarant, during Declarant

Control, shall be able to collect the initial annual assessment set forth herein without regard to a budget.

2.16.3 **Resolve a Deadlock of the Board.** If the Board refers a matter to the Members because of a deadlock on the Board or otherwise, the Members shall have the right and duty to resolve the matter by majority vote.

2.16.4 **Right to Inspect Books.** Members shall the right to inspect the financial records of the Association at a reasonable time and upon reasonable notice to the Board.

2.16.5 **Dissolve the Association.** The Members shall have the exclusive authority to dissolve the Association by the majority required to amend this Declaration, together with any other limitations or requirements set forth in Article VIII.

2.17 **Board of Directors.**

2.17.1 **Management Vested in the Board of Directors.** The Board shall govern the Association and shall manage the Property.

2.17.2 **Board of Directors.** The Board shall consist of no less than three (3) Directors who shall serve staggered three-year terms. Directors shall be elected by the Lot Owners at an annual meeting or at a special meeting called for the purpose electing Directors. Directors shall be Lot Owners, except a non-Lot Owner may be elected if nominated by the Declarant. Co-owners may serve as Directors. The Articles of Incorporation and/or Bylaws shall provide for the election and removal of directors.

2.17.3 **Officers.** The Board shall annually elect officers. There shall be a President, Vice President, Secretary and Treasurer. One individual may serve as both Secretary and Treasurer. The Articles of Incorporation and/or Bylaws shall provide for the election and removal of officers and set forth their respective duties.

2.17.4 **Action of the Board.** The votes of a majority of the Board shall be the action of the Board.

2.18 **Management Duties.** The Board, as manager of the Association, shall have the following general duties:

2.18.1 **Carry Out Required Association Duties.** The Board shall carry out the Association's duties and obligations as set forth in this Declaration.

2.18.2 **Annual Budget.** The Board shall prepare and present an annual budget to the Members at least fourteen (14) days prior to an annual or special meeting of the Members. Said meeting shall occur no later than thirty (30) days after notice, and within sixty (60) days of the start of the fiscal year.

2.18.3 **Rate of Assessment.** The Board shall establish the rate of assessment based on the approved annual budget.

2.18.4 **Financial Statements.** The Board shall annually cause a financial statement to be prepared by an accountant approved by the Board. The statement shall be promptly published.

2.18.5 **Insure Against Foreseeable Liabilities.** The Association shall have the further duty to insure against foreseeable liabilities. Premium expenses shall be deemed a

common expense of the Association to be included in the regular assessments levied by the Association. In addition, the Board shall have the right to adjust any minimum insurance limits from time to time as it deems necessary or desirable. So long as the Declarant owns one or more Lots, policies of insurance shall name the Declarant as an additional insured. The Association shall 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:

- (a) **Liability Insurance.** Comprehensive liability insurance insuring the Board, the Association, the Declarant, their guests, agents, employees, and invitees against any liability incident to the ownership and/or use of the Bike Path Easement Area in such amounts as the Board shall determine.
- (b) **Directors and Officers.** Full coverage directors and officers liability insurance with limits in such amounts as the Board shall determine.
- (c) **Other Insurance Policies.** Such other insurance, including motor vehicle insurance and Workers' 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.
- (d) **Waiver of Liability to for Failure to Obtain Insurance.** The terms of this Article, the Association, its officers and Board shall not be liable to the Members for a failure to obtain insurance where the cost of the insurance, other impediments were prohibitive or where the occurrence of the uninsured event was not reasonable foreseeable under the circumstances.

2.19 **Budget Preparation and Procedures.** The Board shall comply with the following budget provisions and procedures:

2.19.1 **Operating Budget.** The operating budget shall contain a reasonable itemization of annual operating costs. The operating budget shall be delivered to the Members with the notice of meeting in which the budget is to be adopted.

2.19.2 **Calculation of Assessment.** The Board shall calculate the annual assessment based on the proposed operating budget.

2.19.3 **Adoption.** The budget shall be deemed adopted and ratified by the Members unless, at a duly called meeting of the Members, a majority or more objects to the budget. The adoption shall be deemed valid even if a quorum is not present. If the budget is rejected, assessments based on the previous budget shall continue until a new budget is adopted and ratified.

2.19.4 **Failure to Prepare or Adopt Budget.** If the Board fails to prepare or the Members fail to ratify a budget, the Members remain obligated to pay their assessments based

on the previous assessed amount and payment schedule. Failure to adopt a budget shall not constitute a waiver of a Member's duty to pay assessments.

- 2.20 **Association as Trustee.** 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 distribute such proceeds as it deems appropriate.
- 2.21 **Waiver of Liability.** The Association shall not be liable for crimes, vandalism, or injury suffered by Lot Owners on their property, nor shall the Association's duty extend to preventing or protecting Lot Owners or their guests, agents, or invitees from assault or theft or like crimes committed on or within the Bike Path Easement Area.

ARTICLE III. COVENANT FOR MAINTENANCE ASSESSMENTS

- 3.1 **Creation of Lien and Personal Obligation.** The Declarant hereby covenants, and each Lot Owner by acceptance of a Deed, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges properly assessed by the Association against the Lot Owner, together with interest, costs and reasonable attorney's fees 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, senior to all liens and debt instruments recorded subsequent to this Declaration. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Lot Owner at the time when the assessment or charge fell due.
- 3.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including without limitation, operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Property; hiring and retaining employees, agents, and contractors; and purchasing equipment, materials, and services. In addition, the Association may include in any assessment the cost of (a) general liability insurance; (b) insuring its directors and officers; (c) insuring its property against loss; (d) the costs of enforcement of this Declaration including reasonable attorney fees; (e) property and other taxes levied against the Association; (f) debt service for monies borrowed for the maintenance and improvement of the Bike Path Easement Areas; and (g) such reasonable reserves as the Board deems necessary.
- 3.3 **Rate of Assessment.** Each lot, regardless of size and location, shall bear an equal burden for the general expenses of the Association.
- 3.4 **Initial Assessment Upon Purchase from Declarant.** The initial assessment shall be \$100.00 due upon conveyance of the lot from the Declarant to the initial buyer and payable at closing. The initial assessment shall be used for the purpose of providing initial capitalization of the Association.

- 3.5 **Initial Annual Assessment.** During the Period of Declarant Control, annual assessment shall be \$100.00 payable on January 1st of each year. The current year's assessment shall be prorated and collected at closing of a lot sale or transfer. During the Period of Declarant Control, the Declarant shall have discretion to establish and levy late fees and penalties. Beginning after the expiration of the Period of Declarant Control, the Board shall have the right and obligation to change the rate of assessment, levy late fees, and penalties from time to time as required.
- 3.6 **Special Assessments.** The Board may levy a special assessment from time to time when the current assessment is reasonably deemed insufficient for the Association to carry out its obligations under this instrument and the Bylaws.
- 3.7 **Remedies for Non-Payment.** The Association shall have the enforcement authority for collection of homeowner assessments as set forth in Idaho Code § 45-810. In addition, the Association shall have all other rights and remedies in law and equity to collect delinquent assessments, fees, dues, fines, and interest not paid within thirty (30) days of its due date. The Association acting through its Board may impose late fees and interest costs for any assessment not paid within thirty (30) days after its due date. The Board may provide notice to a Lot Owner's mortgagee of a delinquency, action required to cure the delinquency, and the Association's remedies if the delinquency is not cured. No Lot Owner may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of the Bike Path Easement Area, or abandonment of a lot. Assessments are a lien upon the land and are a personal obligation of the Lot Owner.
- 3.8 **No Assessment on Declarant.** Notwithstanding the provisions of this article, the Declarant shall not be obligated to pay assessments for any Lot it owns.

ARTICLE IV. ARCHITECTURAL CONTROL STANDARDS

- 4.1 **Architectural Control.** During the Period of Declarant Control, and prior to any owner commencing construction of any building within the Property, they shall submit written plans of the intended building to Declarant, with as much detail as Declarant reasonably requests. Declarant shall have the exclusive right to approve or deny any building plans during the Period of Declarant Control. This provision is necessary for Declarant to maintain the quality of the project. After expiration of the Period of Declarant Control, upon the affirmative vote of at least 67% of the voting rights of the Association, the Board may adopt architectural guidelines which may then be enforced by the Board. All buildings, fences, and structures shall conform to the architectural guidelines adopted by the Declarant or the Board, as applicable.
- 4.2 **Prohibition of Alteration and Improvement.** If architectural control guidelines are adopted, no building, fence, or structure shall be placed upon, added, or permitted to remain upon any part of the Property or any Lot unless a written request for approval thereof containing the plans and specifications therefore, including exterior siding, has been approved, in writing, by the Declarant or Board. Applications for approval shall be made to the Associations Board of Directors. In the event said Board fails to approve or

disapprove such design or location within ninety (90) days after said plans and specifications have been submitted in writing, approval shall not be required and this article will be deemed to have been fully complied with.

The Declarant, and after the Period of Declarant Control has ended the Board, has sole discretion to modify the architectural guidelines and to grant variances from the architectural guideline requirements.

- 4.5 **Building and Design Standards.** The following building and design standards shall apply regardless of whether architectural control guidelines have been adopted :
- 4.5.1 **Building Code and Inspection.** All dwellings and structures shall comply with the City of Sandpoint planning and building codes and design standards.
 - 4.5.2 **Additional Dwelling Unit.** Additional Dwelling Unit (“ADU”) are allowed if approved by the City of Sandpoint.
 - 4.5.3 **Mobile and Manufactured Homes Prohibited.** An owner shall not construct or maintain on the property any mobile or manufactured home as such terms are defined herein.
 - 4.5.4 **Other Structures Permitted.** So long as a dwelling has been (or is being) constructed, a lot owner may construct accessory structures such as sheds, green houses, and barns. Such structures shall comply with the architectural control guidelines, if any, and applicable building code requirements and the set back requirements set forth herein.
 - 4.5.5 **Propane Tanks.** Liquid propane tanks shall be buried or otherwise screened from view.
 - 4.5.6 **Set Back.** Structures shall comply with applicable the City of Sandpoint Revised Code set back requirements. In addition, structures shall comply with any set back requirements shown on the face of the plat.
 - 4.5.7 **Siding on Primary Dwelling.** Vinyl, T-111, and metal siding are prohibited on primary dwelling unit.
 - 4.5.8 **Temporary Structures Prohibited.** Temporary structures are prohibited except for trailers used by contractors while a dwelling is actively under construction. The term “actively under construction” means regular and diligent activity that does not exceed twelve (12) consecutive months in duration.
- 4.6 **Construction of Unapproved Structure.** A structure or site plan that is commenced, altered, erected, placed or maintained upon a Lot that is not in conformance with this Declaration shall be deemed a violation and breach of this covenant. If, within fifteen (15) days of notice, the Lot Owner has failed to remove or terminate the violation, or has failed to take reasonably meaningful steps to do so, the Association shall have right through its designated agents to enter upon such lot and remove or otherwise extinguish the violation. The cost of such removal shall be born by the Lot Owner personally and shall constitute a lien upon the land. Such lien shall be recorded in the records of Bonner County, Idaho.

Upon the Lot Owner's request, the Board shall afford a Lot Owner a hearing before taking any remedial action.

**ARTICLE V.
BIKE PATH EASEMENT AREA**

- 5.1 **Bike Path Easement Area Designation.** The Bike Path Easement Area is designated on the plat map and consists of the pathway easement area dedicated to the public between Lot 12 and Lot 13 of the Property.
- 5.2 **Easement to Bike Path Easement Area.** Every member of the Association shall have a nonexclusive easement of enjoyment in and to the Bike Path Easement Area.
- 5.3 **Easement for Utilities.** The Association shall have a nonexclusive easement for utilities within the Bike Path Easement Area to service the Property. The Association shall have the right to maintain the utilities on behalf of the Lot Owners.
- 5.4 **Bike Path Easement Area Obligations.** The Association shall not sell, transfer, alienate, release, or convey any portion of the Bike Path Easement Area. In addition, the Association shall maintain the Bike Path Easement Areas including, at a minimum, (a) maintenance of signage, entry gates and structures; (b) the preservation and replacement of vegetation; (c) removal of trash; and (d) establishing a schedule of fines and penalties for misuse of the Bike Path Easement Area by a Lot Owner, agent or invitee.
- 5.5 **Damage to Bike Path Easement Area.** Each Member shall be liable to the Association for any damage to the Bike Path Easement Areas not fully reimbursed to the Association by insurance proceeds arising out of or caused by the willful or negligent act of any Lot Owner, his family or invitees. Repair or replacement shall be done at the Lot Owner's expense, or after notice and hearing, a special assessment shall be levied by the Board against the Lot Owner and his lot.
- 5.6 **Noxious Weed Control.** The Association shall destroy and control for noxious weeds in and on the Bike Path Easement Areas. Weed control shall comply with applicable the City of Sandpoint and Idaho state regulations.

**ARTICLE VI.
USE PROVISIONS**

The following uses and activities are prohibited:

- 6.1 **Nuisances.** No noxious or offensive activity shall be carried on, in or upon any lot or dwelling unit. A nuisance shall be broadly defined as any activity that creates a noxious or offensive odor, noise or visual effect, or otherwise substantially interferes with another Lot Owner's quiet enjoyment. A nuisance shall include, without limitation, failing to silence or isolate an excessively barking dog.
- 6.2 **Activity that Increases Insurance Rates.** Nothing shall be done or kept on the property, lot, or dwelling unit that will increase the rate of insurance on any property insured by the

Association without the approval of the Board. Likewise, nothing shall be done or kept that would cause the cancellation of the Association's policies of insurance.

- 6.3 **Temporary or Ancillary Structures.** No tents, trailers, mobile homes, or recreational vehicles shall be used on any Lot for either temporary or permanent habitation.
- 6.4 **Animals.** Animals and pets shall not be kept, bred or maintained for commercial purposes or in unreasonable quantities, nor in violation of the rules and regulations of the Association.
- 6.5 **Operating a Business.** Lot Owners and their invitees shall not conduct a business or commercial activity on the Property except for a "home occupation" as described and limited in the City of Sandpoint Code and as subsequently amended.
- 6.6 **Fencing.** A wood fence is allowed around each Lot so long as it complies with the City Sandpoint Code, as subsequently amended. No other fencing material is allowed.
- 6.7 **Posting Signs.** Signs, billboards, posters, reader boards and the like are prohibited except for small owner identification and address signs, and typical signs necessary for the sale a lot and political yard signs. A "small sign" means a sign typical of residential size and design.
- 6.8 **Boats and Recreational Vehicles.** Boat and recreational vehicle (RV) parking is permitted on lots so long as the boat or vehicle does not block views from adjacent lots, is not used as a dwelling, and is located behind the Lot Owner's fence. No RV or boat parking on the street longer than twenty-four (24) hours.
- 6.9 **Parking and Blocking Roads.** Lot Owners and their guests and invitees are not permitted to park recreational vehicles, boats, or store materials in or on the roadway except for temporary purposes with the express written permission of the Board, or designee.
- 6.10 **Storing Wrecked Vehicles.** Wrecked, disabled, or unlicensed vehicles shall not be stored on or within the Property unless such vehicles are stored in a fully enclosed building.
- 6.11 **Trash.** No rubbish, trash or garbage or other waste material shall be kept or permitted upon any lot or dwelling unit except in sanitary containers.

ARTICLE VII. ENFORCEMENT

Lot Owners individually and collectively, and the Association as an entity, are entitled to the protections provided hereunder and shall, therefore, each be entitled to enforce in law or equity any breach of these covenants. Time is of the essence and these covenants shall be subject to declaratory and/or injunctive relief and/or specific performance. In addition, a party in breach shall be subject to a claim for monetary damages reasonably foreseeable from the breach. The prevailing party shall be entitled to recover the costs of enforcement including reasonable attorney fees from the non-prevailing party subject to the following condition: a party seeking relief shall be entitled to automatic recovery only if it gives the party in breach notice of intent to enforce these covenants in law or equity and provides the party in breach no less than thirty (30) days to cure the breach before such action is commenced. Notice of intent shall be by certified mail, postage prepaid, return receipt requested, to the party's address of record with the Association.

Such notice shall set forth the alleged breach with sufficient particularity that the alleged breach can be cured. The notice period is waived where the alleged breach constitutes an immediate danger to the health and safety of Lots Owners and their invitees.

ARTICLE VIII. MODIFICATION OF RESTRICTIONS

- 8.1 **Declarant Modification.** The Declarant may modify this Declaration at any time during the Period of Declarant Control.
- 8.2 **Homeowner Modification.** Provisions of this Declaration may be modified at any time by owners of no less than sixty-seven percent (67%) of the lots AND, so long as the Declarant holds Class B shares, the Declarant's approval. Such modification shall be in writing, shall designate the number of required signatures, and shall be signed and acknowledged according to law by the requisite number of Lot Owners and, as applicable, the Declarant. The modification shall reference this Declaration by recording number and all prior modifications thereto.
- 8.3 **Duration.** This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination approved by at least 67% is recorded.
- 8.4 **Consent for Modification by Lender, FHA, VA.** Pursuant to the provisions of Article X, a modification of this Declaration shall be subject to the consent of First Mortgagees and First Beneficiaries under a deed of trust, and by the Federal Housing Administration (FHA) and Veterans Administration (VA) where such federal agency has insured or guaranteed a loan (collectively "Lenders"). A modification approved pursuant to Article 10.3 shall be valid upon the actual or constructive consent of the Lenders.
- 8.5 **Binding Effect.** Any modification to this Declaration, made in conformance with the provisions of this article shall be binding upon all Lot Owners from and after the date of recordation regardless of the Lot Owner's consent to such modification.
- 8.6 **Period of Declarant Control.** The Declarant control shall remain until Declarant provides written notice to terminate the Declarant control as set for in Section 9.8 below, or until the Declarant no longer owns a single lot within the Property, whichever is sooner. This period shall be known as the "Period of Declarant Control".
- 8.7 **Termination of Declarant Rights.** In the event Declarant wishes to terminate the Period of Declarant Control, Declarant shall provide written notice to all members of the Association. This notice shall set forth a date, time and location for a special meeting of the Association wherein elections for directors from the Association membership is held. Once this meeting occurs, the Period of Declarant Control will cease effective the date of the special meeting.
- 8.8 **Transfer of Declarant Rights.** In the event Declarant shall convey all its right, title and interest in and to the Property to any third person, then and in such event, Declarant shall

be relieved of the performance of any further duty of obligation hereunder, and such third person shall be obligated to perform all such duties and obligations of the Declarant.

**ARTICLE IX.
NONDISCRIMINATION POLICY**

The Declarant and the Association shall comply with the nondiscrimination provisions of § 42-3601 et. seq, United States Code, known as the Fair Housing Act, as amended from time to time. The Declarant and the Association shall not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin, or other legally protected characteristic applicable to the Fair Housing Act or the provision of mortgages or mortgage guarantees. This policy shall be set forth in the Association's Bylaws.

**ARTICLE X.
MORTGAGEE PROTECTION**

- 10.1 **Subordination.** Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration upon a Lot shall be subordinate to a first mortgage on the Lot.
- 10.2 **Duty to Provide Notice to Association of Mortgages/Guaranty.** Every Lot Owner must provide to the Association the name, mailing address, account number, and phone number of any individual or entity that holds a security interest in that Owner's Lot, as well as any individual or entity that is a guarantor of the debt secured by the Lot. Each owner's duty shall be continuing in nature, requiring the owner to keep the Association updated on any changes with respect to the holder/guarantor of the debt secured by the Lot.
- 10.3 **Amendments Adverse to Mortgagees.** Amendments to this Declaration or the Association's governing documents, which are of a material adverse affect to any mortgagee holding a mortgage on any Lot, shall not be effective unless the Association receives the approval of the amendment by mortgagees that represent no less than fifty-one percent (51%) of the votes of the Lots that are subject to the mortgages.
- 10.4 **Termination of Legal Status of Condominium.** The termination of the legal status of the Property as a condominium, by reason of substantial destruction, condemnation, or for any other reason, shall not be effective unless the Association receives approval by mortgagees that represent no less than fifty-one percent (51%) of the votes of the Lots that are subject to the mortgages.
- 10.5 **Implied Approval.** If a mortgagee fails to submit a response to any written proposal for an amendment or termination notice within sixty (60) days of notice, then the mortgagee shall be deemed to have approved said amendment or termination. Notice shall be delivered by certified or registered mail with "return receipt" requested.
- 10.6 **Right to Notice.** All mortgagees and guarantors of a mortgage on any Lots shall have the right to receive timely notice of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;
 - (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Lot on which it holds the mortgage;
 - (c) A lapse, cancellation, or material modification of any insurance policy maintained by the owners' association;
 - (d) Any proposed action that requires the consent of a specified percentage of mortgagees; and
 - (e) Any judgment rendered against the Association.
- 10.7 **First Mortgagee's Rights Confirmed.** No provision of this Declaration, or the Association's governing documents shall give a Lot Owner, or any other party, priority over any rights of the first mortgagee of the Lot pursuant to its mortgage in the event of the payment to the Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of a Lot.
- 10.8 **Unpaid Dues.** Any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage, or through foreclosure, shall not be liable for more than six months of the Lot's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Lot by the Mortgagee. If the Association's lien priority includes costs of collecting unpaid dues, the lender shall be liable for any fees or costs related to the collection of the unpaid dues.

**ARTICLE XI.
MISCELLANEOUS PROVISIONS**

- 11.1 **Assignment.** The Declarant shall have the right to assign its duties, obligations and interests as set forth herein.
- 11.2 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot agrees to hold Declarant harmless therefrom.
- 11.3 **Conflicts with Government Ordinance.** A City of Sandpoint ordinance that conflicts with a provision herein shall take precedence unless the provision in this Declaration is more restrictive, in which case this Declaration shall take precedence.
- 11.4 **Compliance with Plat Requirements.** No provision herein or resolution by the Association shall be construed to conflict with the requirements set forth in the final plat of the Property.
- 11.5 **Incorporation of Recital.** The Recital on page one of this instrument is hereby incorporated into the Declaration as if fully set forth in the number articles.

- 11.6 **Captions and Titles.** The captions and titles are for convenience and reference only. They shall not define, limit or construe the contents of any provision.
- 11.7 **Governing Law and Severability.** This Declaration is established under and shall be governed by the laws of the state of Idaho. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of the Declaration.

ARTICLE XIII. DEFINITIONS

“Accessory Structure” means any enclosed, covered structure not directly attached to the residence to which it is appurtenant.

“Actively under construction” means regular and diligent activity that does not exceed twelve (12) consecutive months in duration.

“Association” means the Timber Creek Owner’s Association, its successors and assigns.

“Board” means the Board of Directors of the homeowners association.

“Declarant” means Leghorn LLC, an Idaho limited liability company, and its successors-in-interest and assigns with respect to the Property, but excluding members of the public purchasing completed Lots.

“Dwelling” means a building or portion thereof designed exclusively for residential purposes.

“Dwelling Unit” means a dwelling for a single housekeeping unit.

“Emergency” means a sudden, unexpected happening or unforeseen occurrence or condition.

“Improvements” are buildings, accessory structures, driveways, parking areas, sidewalks, and any structure of any type or kind.

“Incompatible” as used herein means that the design and/or materials are substantially discordant and unsuited.

“International Building Code” means the codes as published by the International Code Council together with any amendments or revisions set forth in section 39-4109, Idaho Code.

“Lot” means an individual platted lot within the Property.

“Majority vote” means fifty percent (50%) plus 1 unless a higher percentage is expressly set forth. The voting requirement shall be rounded up to the next higher number.

“Manufactured home” means a structure that is transportable in one (1) or more sections, which in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements.

"Mobile home" means a factory-assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

"Modular Home" or "modular building" means a structure, other than a manufactured or mobile home, which is constructed in modules and delivered to the construction site. A modular home complies with the International Building Code and does not have a chassis.

"Owner" means the record owner, whether one or more persons or entities of the fee simple title. The term Owner includes, but is not limited to, a purchaser under a deed of trust, mortgage, or contract, or a person who takes the lot under a life estate.

"Period of Declarant Control" means and shall refer to that period of time as defined in Article VIII of this Declaration.

"Proxy" means an authorization for a person to vote another person's membership shares.

"Bike Path Easement Area" means the area designated on the face of the plat map and consists of the pathway dedicated to the public between Lot 12 and Lot 13 of the Property and any other property deeded to the Association by the Declarant or acquired by the Association and intended for the use and enjoyment of the members of the Association.

"Publish" means the distribution of documents and notices in a manner reasonably likely to gain the attention of Lot Owners. The term, as used herein, shall not be construed to require publication in a general circulation newspaper. By way of example, without limitation, posting flyers in prominent locations on the Property would qualify as publication.

"Recreational vehicle" means a vehicle primarily designed as temporary living quarters for recreation, camping, travel or other similar use that has its own mode of power or is mounted on or drawn by another vehicle. The term "recreational vehicle" includes but is not limited to travel trailer, camping trailer, truck camper, fifth-wheel trailer, and motor home.

"Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

"Sub-Division" means Timber Creek as depicted on the plat thereof.

[Signature on following page]

DECLARANT:

LEGHORN LLC

By: _____
Name: Richard D. Harlicker
Its : Manager

STATE OF IDAHO)

: ss.

County of Bonner)

On the _____ day of August before me, the undersigned Notary Public, personally appeared RICHARD D. HARLICKER, known or proved to me on the basis of satisfactory evidence to be the Manager of LEGHORN LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

Notary Public for Idaho
Residing at _____
Commission Expires: _____

EXHIBIT A
Articles of Incorporation

EXHIBIT B

Bylaws