

Being re-recorded to correct Fifth Amendment Instrument # 525302, incorrect instrument # in first paragraph.

**FIFTH AMENDMENT AND COMPLETE RESTATEMENT OF THE  
MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE STARWEATHER SUBDIVISION  
LOCATED IN BLAINE COUNTY, IDAHO**

This Fifth Amendment and Complete Restatement of the Master Declaration of Covenants, Conditions and Restrictions for Starweather Subdivision, Blaine County, Idaho (hereinafter called the "Starweather CC&R's" or simply the "CC&R's"), restates and amends both the original Starweather Covenants, Conditions and Restrictions that were recorded on January 18, 1982 as Blaine County Instrument No. 223013, and the following four (4) subsequent amendments thereto:

FIRST AMENDMENT recorded October 4, 1988 as Instrument No. 298831  
SECOND AMENDMENT recorded October 4, 1988 as Instrument No. 298832  
THIRD AMENDMENT recorded August 6, 1996 as Instrument No. 393007  
FOURTH AMENDMENT recorded June 10, 1999 as Instrument No. 428273

**RECITALS**

a. This Fifth Amendment and Complete Restatement of the Starweather Covenants, Conditions and Restrictions is made pursuant to Section 11.11A of the original 1982 Starweather CC&R's. This Fifth Amendment and Restatement has been approved by the vote or written consent of at least fifty-one percent (51%) of the owners in Starweather Subdivision. A Certificate to that effect has been signed and acknowledged by the President and Secretary of the Starweather Owners' Association, and is included immediately after Article X of this Fifth Amendment. This Fifth Amendment and Complete Restatement shall become effective upon its recording with the Blaine County, Recorder at Hailey, Idaho.

b. The Declarants (hereinafter referred to collectively as the "Declarant") are the owners of at least fifty-one percent (51%) of the lots in Starweather Subdivision (hereinafter called "the Property") as described on the official Starweather plats filed with the Blaine County Recorder in Hailey, Idaho; true and correct copies of said plats are attached hereto as Exhibit A which is included herein by reference. Declarant hereby subjects all of the Property to the following Covenants, Conditions and Restrictions for the benefit of the Property in present and future owners thereof. This Declaration of Covenants, Conditions and Restrictions is intended to preserve the value, desirability and attractiveness of the Property, and to create and protect the highest quality development of the Property and to ensure its proper maintenance.

**DECLARATION**

a. Scope of Declaration. Declarant hereby declares that all of the Property, and each Lot therein, is and shall be held, sold, and conveyed, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, and equitable servitudes which are for the purpose of protecting the value and desirability of, and which shall run, with the Property. The covenants, conditions and restrictions contained in this Declaration shall:

**Instrument # 525982**

HAILEY, BLAINE, IDAHO

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MARSHA RIEMANN Fee: 84.00

Ex-Officio Recorder Deputy

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1. Be binding upon all persons having or acquiring any right, title, or interest in or to the Property or any Lot, and their successors or assigns; and

2. Inure to the benefit of every portion of the Property any Lot or any interest therein; and

3. Inure to the benefit and be binding upon Declarant, and its successors, and assigns and each grantee and his respective successors in interest; and

4. Be enforced by Declarant or its agent, by any Owner or grantee or his successors in interest or by the Starweather Owners' Association.

b. Other Restrictions. The covenants, conditions and restrictions contained in this Declaration are IN ADDITION TO any other land use restrictions, zoning ordinances, laws, rules, and decisions of other governmental authorities and governmental and judicial authorities including, but not limited to, Blaine County, Idaho. This Declaration does not supplant any such land use restrictions that are enforced, and must be satisfied, independent of this Declaration.

## ARTICLE I

### DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in the Starweather CC&R's shall have the meanings hereinafter specified.

1.01 **ARCHITECTURAL REVIEW COMMITTEE** shall mean the committee created pursuant to Article VII hereof; also called the "ARC" or the "Committee."

1.02 **ARCHITECTURAL CONCRETE** shall mean concrete with an exposed aggregate textured or sandblasted finish.

1.03 **ARCHITECTURAL REVIEW COMMITTEE RULES** shall mean the rules adopted by the Architectural Review Committee pursuant to Article IV hereof.

1.04 **ARTICLES** shall mean the Articles of Incorporation of the Starweather Owners' Association which have been filed in the office of the Secretary of State, a true copy of which is attached hereto, marked Exhibit "B" and incorporated herein by this reference.

1.05 **ASSESSMENTS** shall mean the all assessments of the Starweather Owners' Association, including both regular and special assessments.

1.06 **ASSOCIATION PROPERTY** shall mean all real and personal property now or hereafter owned by or leased to the Starweather Owners' Association.

1.07 **BENEFICIARY** shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgage, beneficiary or holder.

1.08 **BOARD** shall mean the Board of Directors of the Starweather Owners' Association.

1.09 **BY-LAWS** shall mean the By-Laws of the Starweather Owners' Association which have been or shall be adopted by the Board substantially in the form of Exhibit "C" attached hereto and incorporated herein by this reference, as such By-Laws may be amended from time to time.

1.10 **COMMON AREA** shall mean any portion of Starweather Subdivision either designated on any recorded Starweather plat as Common Area for the primary benefit of the Owners of lots within the Subdivision Project, to be owned in common, by such Owners or by a non-profit corporation or unincorporated association in which all such Owners shall be entitled to membership. Common Area shall also include, without limitation, all roads, rights of way, pedestrian paths and common lots within Starweather Subdivision.

1.11 **DEED OF TRUST** shall mean a mortgage or a deed of trust, as the case may be.

1.12 **IMPROVEMENT** shall mean all structures and appurtenances; thereof of every type and kind, including, but not limited to, buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, deck's, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning, utility meters and water softener fixtures or equipment.

1.13 **LOT** shall mean that area, parcel, piece, or division of real property intended for the development of a residential unit located within the Starweather Subdivision which is specifically detailed or shown on the official plat thereof, and designated by number.

1.14 **MANAGER** shall mean the person, firm or corporation employed by the Master Association pursuant to and limited by Articles VII and VIII, and delegated the duties, power or functions of the Association pursuant to said Articles.

1.15 **MASTER ASSOCIATION** (hereinafter sometimes "Association") shall mean the Starweather Owners' Association, Inc., the non-profit Idaho Corporation described in Article VII hereof, its successors and assigns.

1.16 **MASTER DECLARATION** (hereinafter sometimes "Declaration") shall mean this instrument as it may be amended from time to time.

1.17 **MEMBER** shall mean any person who is a member of the Starweather Owners' Association pursuant to Section 7.02 hereof.

1.18 **MORTGAGE** shall mean any mortgage or deed of trust or other conveyance of a lot of Starweather Subdivision to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance.

1.19 **NOTICE AND HEARING** shall mean thirty (30) days written notice and a public hearing before the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense.

1.20 **OUTBUILDING** shall mean any freestanding structure with a roof, separate and apart from the primary residence or detached garage. A detached garage is not considered an outbuilding.

1.21 **OWNER** shall mean: (1) the person or persons or other legal entity or entities, including Grantor, holding an aggregate fee simple interest in a lot, or, as the case may be, (2) the purchaser of a lot.

1.22 **PERMITTED USERS** shall mean Owners of Lots located in Starweather Subdivision, and the family, invitees, licensees and lessees of any such Owners.

1.23 **PERSON** shall mean a natural individual or any other entity with the legal right to hold title to real property in the State of Idaho.

1.24 **PROPERTY** shall mean any and all property within Starweather Subdivision.

1.25 **RECORD GRADE** shall mean natural grade, as it exists prior to any excavation, grading or filling.

1.26 **RECORD, RECORDED AND RECORDATION** shall mean the recordation of any document in the office of the Recorder of Blaine County.

1.27 **STARWEATHER SUBDIVISION** shall mean all that certain real property identified and described in Exhibit "A" to this Master Declaration, as the same is now and as it may from time to time be developed and improved, located in the County of Blaine, State of Idaho, and as shown on the official plat thereof.

1.28 **STARWEATHER SUBDIVISION RULES** shall mean the rules adopted by the Board pursuant to Section 8.4 hereof, as they may be amended from time to time.

## **ARTICLE II**

### **RESIDENTIAL LOTS**

All residential lots within Starweather Subdivision shall be designated and referred to herein as single-family lots. Homes on all residential lots shall be single-family dwellings.

## **ARTICLE III**

### **GENERAL RESTRICTIONS**

All Starweather lots and all improvements thereon, shall be held, used and enjoyed subject to the following limitations and restrictions:

3.01 **REMODELS.** No additions or alterations to the exterior of any structure, including decks, porches and patios, shall be undertaken or constructed without the prior written approval of the ARC.

3.02 **ANIMALS.** No livestock or animals of any kind may be kept on any lot with the exception of not more than two (2) domestic cats and two (2) domestic dogs per lot. Dogs, when outside, must at all times be in an enclosed yard, kennel, leashed or under owner's control and supervision. Any house pet may be subject to expulsion from the property upon a finding by the Board of the Starweather Owners' Association that said animal constitutes a nuisance. No more than two (2) horses or ponies may be kept on any lot if said lot is two (2) or more acres. Horses and ponies must be kept in an enclosed corral.

3.03 **EXTERIOR LIGHTING.** No light, which is unreasonably bright, shall be emitted from any lot, and all exterior lighting must be incandescent, downlit and approved by the ARC.

3.04 **PROPERTY MAINTENANCE.** All lots must be properly maintained at all times, both prior to and after construction of improvement thereon, in a natural and attractive manner, free of trash and other unsightly material. Disturbed soil shall be revegetated or receive groundcover within one (1) year after completion of the principal residence. Except for such cutting or altering of trees and bushes and other natural vegetation growing on a residential lot necessary in connection with construction of improvements, or landscaping previously approved in writing by the ARC, there shall be no further cutting or altering of trees or bushes or other natural vegetation growing on any residential lot, and no further landscaping except as may be authorized in writing by the ARC. If the natural vegetation is replaced by shrubs and grass, it must be kept under control and maintained at all times. Care should be taken so as to not disturb the natural vegetation any more than is necessary. Before commencing construction of a residential structure on any lot, the owner thereof must have had a landscape plan approved in writing by the ARC. The total irrigated area of any lot shall not exceed one-half (1/2) acre.

3.05 **NUMBER OF BUILDINGS.** No more than one (1) single-family dwelling, including an attached or detached garage, shall be erected or maintained on any one Lot, together with no more than one (1) detached outbuilding per Lot. A detached garage is not an outbuilding within the meaning of Article III. Subject to obtaining prior written approval from both Blaine County and the Architectural Review Committee, one outbuilding or garage per lot may contain a dwelling for temporary guests; provided, however, that such guest quarters shall not be rented separately from the primary residence. All outbuildings must be located within the platted building envelope. No building or structure intended for, or adapted to, business purposes and no apartment, house, rooming house or other multiple-family dwellings shall be erected, placed, permitted, or maintained in Starweather.

3.06 **OUTBUILDING CONSTRUCTION.** No garage or outbuilding shall be constructed on any residential lot until after commencement of construction of the primary dwelling house on the same residential lot, except as otherwise specifically permitted by the Architectural Review Committee. All construction and alteration work shall be prosecuted diligently, and construction of any principal residence which is commenced shall be entirely completed within twenty-four (24) months after commencement of construction. Construction of any outbuilding, improvements or alterations to any structure other than a principal residence shall be entirely completed within twelve (12) months after commencement of construction. Further, a construction schedule shall accompany any proposed building plans submitted to the Architectural Review Committee.

**3.07 BUILDING ENVELOPE.** The building envelope is that area so marked and designated on the plats of all Starweather lots containing within it a marked building centroid. The entire principal residence, garage and all outbuildings must be located entirely within the building envelope, established and indicated upon the Starweather Plat. A building envelope may be moved following approval by the Architectural Review Committee and Blaine County.

**3.08 GARAGES.** Single-family shall have an enclosed garage for a minimum of two (2) cars. This may be an enclosure attached to the principal residence or a detached building. Recreational vehicles such as campers, trailers, horse trailers, motor homes, boats, boat trailers, snowmobiles, and motorcycles, and vehicles used for property maintenance must be kept in garages, designated common recreational vehicle storage areas or outbuildings.

**3.09 MINIMUM HOUSE SIZE.** The principal residence shall have a minimum of one thousand five hundred (1,500) square feet, excluding garage, of enclosed heated area. If the principal residence is more than one story, it shall have a minimum enclosed heated area of seven hundred fifty (750) square feet, excluding garage, on the ground floor. All guesthouses shall have a minimum of five hundred (500) square feet and must meet all requirements of Blaine County. Basements shall be excluded from all minimum square footage calculations.

**3.10 HEIGHT.** No building or structure, or any portion thereof, shall exceed thirty-five (35) feet in height above record or natural grade, as it existed prior to any construction, grading or filling.

**3.11 OUTBUILDINGS.** Proposed outbuildings, including garages and guest houses, must receive written approval of their design, location and proposed use from the Architectural Review Committee prior to start of construction.

**3.12 MATERIALS.** All buildings and structures shall comply with the following specifications:

(a) Exteriors. Exterior covering materials on buildings shall be wood, brick, stone, stucco, glass or architectural concrete, and shall be designed so that the appearance blends and coordinates with the natural surroundings. Exterior colors must also blend and coordinate with the natural surroundings. Bright, flashy and unnatural color schemes are not permitted.

(b) Concrete. Exposed concrete block construction is not permitted for any construction except for normal foundations. Exposed architectural concrete is permitted.

(c) Roofs. Bright, reflective metal, rusted metal, standing seam roofs are not permitted. Self-oxidizing copper, Corten or painted metal roofs are permitted providing the colors are muted and non-reflective.

(d) Roof Pitch. Minimum roof pitch shall be 4/12; maximum roof pitch shall be 12/12. Flat roofs are not permitted.

(e) Codes. All construction shall comply with applicable building codes and ordinances, and no building or structure, including primary residences, shall be constructed unless the Architectural Review Committee has first approved in writing its design and proposed location.

3.13 **UTILITIES.** Within and upon single family dwelling lots, there may occur encroachments for water lines, sewer lines, utility service lines, septic systems and drain fields serving one or more residences. Because said encroachments are in the common interest and betterment of the single family development in Starweather Subdivision, an easement for their construction, use, maintenance and repair is hereby granted and the same shall and do exist. Further, each owner of any such lot, upon whose property such easements do or may hereafter exist, by acceptance of a deed therefor, whether or not it is so expressed in the deed, shall be deemed to covenant and agree to the granting of the same.

3.14 **ALTERATIONS.** No additions or alterations to the exterior of any structure, including decks, porches and patios, shall be undertaken or constructed without the prior written approval of the Architectural Review Committee.

3.15 **ANIMALS.** No livestock or animals of any kind may be kept on any lot with the exception of not more than two (2) domestic cats and two (2) domestic dogs per lot. Dogs, when outside, must at all times be in an enclosed yard, kennel, leashed, or under owner's control and supervision. Any household pet may be subject to expulsion from the property upon a finding by the Board of the Starweather Owners' Association that said animal constitutes a nuisance. No more than two (2) horses or ponies may be kept on any lot having a minimum size of two (2) acres if kept in an enclosed corral.

3.16 **FENCES, SIGNS AND ANTENNAS.** The following regulations apply to fences, signs and antennae:

(a) Fences. No fence shall be erected in any yard of any lot without the written approval and consent of the Architectural Review Committee nor shall any fence, which exceeds six (6') feet in height, be erected.

(b) Signs. With the exception of one (1) "For Sale" sign (which shall not be larger than 20" x 26"), and except for one (1) entrance gate sign of a style and design approved by the Architectural Review Committee, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, altered, or permitted to remain in Starweather.

(c) Antennas. Except for satellite dishes less than two feet (2') in diameter, no exposed or outside radio, television or other electronic antennae shall be permitted in Starweather

3.17 **COMMERCIAL USES.** No lands or residences within Starweather shall ever be occupied or used for any commercial or business purposes for any noxious activity, and nothing shall be done or permitted to be done on any of said lands which is a nuisance or might become a nuisance to the owner or owners of any of said lands; provided, however, that nothing in this Declaration shall prevent the rental of residential property by the owner for residential purposes.

3.18 **RESUBDIVISION.** Lots shall not be further subdivided, and no portion of any lot may be sold separately from the rest of that lot. Two or more lots may be combined to create one lot. Setback requirements would then pertain only to the new larger lot. The new and larger lot or lots shall each be considered as one residential lot for the purposes of these covenants, and

may not thereafter be split and developed as two (2) or more parcels but shall be developed as, and remain, a single parcel.

**3.19 GARBAGE.** Each dwelling house, unit or any other structure containing a kitchen shall be equipped with a garbage grinder or garbage disposal unit. No unsightly articles shall be permitted to remain visible from adjoining property. Refuse, garbage and trash shall be kept at all times in a covered, noiseless, container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap, refuse or, trash shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view. No dumpsters are permitted. No garbage or household trash or debris may be burned in Starweather.

**3.20 NUISANCES.** No light, which is unreasonably bright, shall be emitted from any lot, and all exterior lighting must be incandescent, downlit and approved in writing by the Architectural Review Committee. No sound, which is unreasonably loud or annoying, shall be emitted from any lot. Construction work shall only be permitted between 8:00 a.m. and 6:00 p.m., Monday through Friday, and between 8:00 a.m. and noon on Saturdays. The ARC has authority to modify work hours in its sole discretion. No odor, which is noxious or offensive to others, shall be emitted from any lot. No snowmobiles, motorbikes and other off-road vehicles may be used on the property.

**3.21 LANDSCAPE MAINTENANCE.** All lots must be maintained at all times by the owner thereof, both prior to and after construction of improvement thereon, in a natural and attractive manner, free of trash and other unsightly material. Disturbed soil shall be revegetated or receive groundcover within one (1) year after completion of the principal residence. Except for such cutting or altering of trees and bushes and other natural vegetation growing on a residential lot as is necessary to be done in connection with construction of improvements or landscaping previously approved in writing by the Architectural Review Committee, there shall be no further cutting or altering of trees or bushes or other natural vegetation growing on any residential lot, and no further landscaping thereof except as may be authorized in writing by the Architectural Review Committee. If the natural vegetation is replaced by shrubs and grass, it must be kept under control and maintained at all times. Care should be taken so as to not disturb the natural vegetation any more than is necessary. Before commencing construction of a residential structure on any lot, the owner must have received written Architectural Review Committee approval of a landscape plan.

**3.22 LOCATION OF UTILITIES.** All power, gas, telephone and other service lines shall be located underground. All meters and service access devices shall be concealed from view of adjoining properties and roads.

**3.23 NO MINING.** No quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth shall ever be permitted within Starweather, with the exception of water wells which may be permitted with the prior written approval of the Architectural Review Committee and the Board of Directors of the Starweather Owners' Association.

**3.24 DAMAGE.** There shall be no interference with the established drainage pattern



over any property within Starweather unless adequate provision is made for alternative drainage and is approved by the Architectural Review Committee. No structure, fence, planting or other material shall be placed or permitted to remain which may damage or interfere with the direction or flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels.

**3.25 SEPTIC TANKS.** Septic tank drain fields shall not be closer than three hundred (300) feet from the edge of the vegetation immediately adjacent to the Big Wood River. No cesspool, septic tank, or other sewage disposal system or device shall be installed upon any lot without the approval of the Architectural Review Committee, the South Central Health District Health Department, the Idaho Department of Health and Welfare, and any other governmental bodies having jurisdiction over such systems. Septic systems shall be maintained and used in compliance with all regulations of said agencies. In the event that a public sewer and/or water system are made available within sixty (60) feet of a property line of any said lot, the Board of Directors may order all dwellings and guest houses to connect to these utilities and the cost for these connections shall be paid by the party owning the lot at the time of connection.

**3.26 TEMPORARY STRUCTURES.** No temporary structure, house trailer, basement, tent, shack, garage or other outbuilding shall be erected or used on any lot at any time as a residence either temporarily or permanently. A house trailer may be used on any lot, but only during the construction period if the owner of said trailer has first obtained written ARC approval, a conditional use permit for it from Blaine County, and any and all other permits and licenses from all other governmental agencies having jurisdiction.

**3.27 UPKEEP.** No improvement upon any property within Starweather Subdivision shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair.

**3.28 HAZARDS.** No activities, which are or might be unsafe or hazardous to any person or property, shall be conducted on any property and no improvements constructed on any property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Subdivision, and no open fires shall be lighted or permitted on any property except those in a contained barbecue unit while attended and in use for cooking purposes, or those within a safe and well designed interior fireplace, or those controlled and attended fires required for, clearing or maintenance of land which are previously approved in writing by the Committee and all governmental entities having jurisdiction over the same. Storage of combustible fuels of any kind is prohibited in the recreational vehicle storage area.

**3.29 VEHICLES.** The use of all vehicles, including but not limited to, trucks, automobiles, bicycles and motorcycles, shall be subject to the Starweather Subdivision Rules, which may prohibit or limit the use thereof within the Starweather Subdivision, provide parking regulations or adopt other rules regulating the same.

**3.30 PUBLIC ACCESS.** All designated footpaths shall be open for pedestrian use by the general public. Also, no owner shall interfere with or impede use of the ten-foot (10') wide pedestrian easement adjacent to the Big Wood River. Said pedestrian easement is shown on the plat of the Starweather Subdivision. No owner shall perform or construct any flood control work or improvements, which will in any way affect the channel of the Big Wood River or the banks of, said river. Snags in the Big Wood River shall not be disturbed in any manner, such snags

being essential to fish habitat. Individual owners or representatives of the Association shall assist in the enforcement of trespass complaints in the wildlife preserve. Owners shall cooperate with the Idaho Department of Fish and Game in its efforts to interest licensed trappers in trapping the area for beaver during fur seasons in problem beaver areas. In the off-season, owners shall comply with Idaho Department of Fish and Game guidelines for dealing with problem beaver. Owners shall cooperate in affording vehicle access for official Idaho Department of Fish and Game vehicles at all times.

**3.31 NON-WAIVER.** Failure of the Starweather Board of Directors to enforce any restrictions, covenants, conditions or agreements, herein contained, shall not be deemed a waiver of the Board's right to do so thereafter as to the same breach, or as to one occurring prior to or subsequent thereto.

**3.32 RIGHT OF ACTION.** The restrictions herein contained shall operate as covenants running with the land for the benefit of Starweather owners. Upon any breach or default in any of said restrictions or covenants the Association may bring action for money damages or equitable relief against any other offending owner for breach of any covenant or restriction herein contained to recover actual money damages or equitable relief suffered by the Association by reason of any violation of said restrictions or covenants.

**3.33 EFFECT OF BREACH ON MORTGAGE HOLDERS.** A breach of these CC&R's shall not defeat or render invalid the lien of any mortgage, contract of sale or deed of trust made in good faith and for value as to the property in Starweather or any part thereof. These CC&R's shall be binding upon and effective against owner or purchaser of any part of any Starweather lot whose title thereto is acquired by foreclosure, forfeiture, judicial sale or sale proceedings upon default in performance of conditions of a trust deed.

## **ARTICLE IV**

### **ARCHITECTURAL REVIEW COMMITTEE**

All rights, functions, and authority herein delegated or granted herein to the Architectural Review Committee, shall be implemented in the following manner:

**4.01 ARC MEMBERS.** The Architectural Review Committee shall be composed of five (5) persons appointed by the Board of Directors. At least one (1) member of the Architectural Review Committee shall be a licensed Idaho architect. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to nominate a successor. The Committee's nomination becomes final and effective when it is approved by the Board.

**4.02 WRITTEN RECORD.** The vote or written consent of a majority of the Architectural Review Committee members shall constitute action of the Architectural Committee. The Architectural Review Committee shall maintain a permanent written record of all its proceedings. The Architectural Review Committee shall report in writing to the Board all approvals and disapprovals of requested changes in the existing state of the Property.

**4.03 ARC APPROVAL REQUIRED.** No changes in the existing state of the Property shall be made or permitted without the prior written approval of the Architectural Review Committee. Changes in the existing state of the Property shall include without limitation, fences, the construction of any building, structure or other improvement, including utility facilities; the excavation, filling or similar disturbance of the surface of the land including, without limitation, change of grade, stream bed, ground level or drainage pattern, the clearing, marring, defacing or damaging of trees, shrubs, or other growing things; the landscaping texture or exterior appearance of any previously approved change in the existing state of property.

**4.04 ARC STANDARDS.** The Architectural Review Committee shall have complete discretion to approve or disapprove any change in the existing state of the Property and shall exercise such discretion with the following objectives in mind, among others: to carry out the general purposes expressed in this Declaration; to prevent violation of any specific provision of this declaration or any supplemental declaration; to prevent any change which would be unsafe or hazardous to any persons or property; to minimize obstruction or diminution of the view of others; to preserve visual continuity of the area and to prevent a marked or unnecessary transition between improved and unimproved areas, or any sharp definition of boundaries or property ownership; to assure that any change will be of good and attractive design and in harmony with the natural setting of the area and will serve to preserve and enhance existing features of natural beauty; to assure that material and workmanship for all improvements are of high quality comparable to other improvements in the area and to assure that any change will require as little maintenance as possible so as to assure a better appearing area under all conditions.

**4.05 PRELIMINARY ARC REVIEW.** Prior to expenditures of any substantial time or funds in the planning of any proposed change in the existing state of the Property, the owner of a Lot shall advise the Architectural Review Committee in writing of the general nature of the proposed change; shall, if requested by the Board, meet with a member or members of the Architectural Review Committee to discuss the proposed change; shall read or become familiar with any guidelines which may have been prepared or formulated by the Board; and shall, if requested by the Committee, furnish the Board with preliminary plans and specifications for comment and review. After the nature and scope of a proposed change in the existing state of the Property is determined and prior to the commencement of work to accomplish such change, the Architectural Review Committee may require the Lot owner to furnish three (3) copies of a complete and full description of the proposed change in writing and with final working drawings, drawn to such scale as may be reasonably required by the Architectural Review Committee, showing all boundaries, showing existing and proposed contour lines and elevations at reasonably detailed intervals, showing all existing and proposed improvements, showing the existing and proposed drainage pattern, showing the existing and proposed utility and sanitation facilities, showing the existing or proposed substantial trees and shrubs. There shall also be furnished to the Committee any and all further information with respect to the existing state of the Lots, which the Architectural Review Committee may reasonably require to permit it to make an informed decision on whether or not approve the change.

**4.06 FINAL ARC REVIEW.** With respect to all buildings and other structures, the Architectural Review Committee shall require submission, in duplicate, of floor plans, elevation drawings, and final working drawings, all drawn to such scale as may be reasonably required by the Committee, descriptions of exterior materials and colors and samples of the same and final construction specifications. Where buildings or structures or other improvements which reasonably require plans and specifications are proposed to be constructed or built, a reasonable

fee as shall be determined from time to time by the Association, which shall be paid to the Association to cover costs and expenses of review. Prior to giving approval to a proposed change in the existing state of a Lot, at least one (1) member of the ARC shall physically inspect the Lot. No proposed change in the existing state of a Lot shall be deemed to have been approved by the Committee unless its approval is in writing executed by a majority of the members of the Committee.

**4.07 COMPLIANCE.** After approval by the Architectural Review Committee of any proposed change in the existing state of the Property, the proposed change shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed change and any plans and specifications therefore given to the ARC. Failure to accomplish the change strictly in accordance with the description thereof and plans and specifications therefore shall operate to automatically revoke the approval of the proposed change, and, upon demand by the Committee, the Lot shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any changes in the existing state of a Lot being made or which may have been made. The Committee shall have the right and authority, after notice and hearing to the owner, to record a notice to show that any particular change in the existing state of a Lot has not been approved or that any approval given has been revoked.

**4.08 ARC IMMUNITY.** The Architectural Review Committee shall not be liable in damages to any person or association submitting any architectural plans for approval, or to any owner or owners of lands within Starweather by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Any person or association acquiring the title to any property in Starweather, or any person or association submitting plans to the Architectural Review Committee for approval, by so doing, does agree and covenant that he, she or it will not bring any action or suit against the Architectural Review Committee, its members as individuals, or its advisors, employees or agents.

**4.09 ARC RECORDS.** The Architectural Review Committee shall keep and safeguard written records of all applications for approval, including one (1) set of all preliminary sketches and one (1) set of all architectural plans so submitted, and minutes of all actions taken by the ARC.

**4.10 ARC FEES.** The Architectural Review Committee may establish, and from time to time amend, a fee schedule for reviewing proposed plans. Fees shall be paid by the person requesting plan approval to the Association.

**4.11 ARC RULES.** The ARC has authority to adopt ARC Rules governing all construction, landscaping and improvements in Starweather. ARC Rules must first be adopted by the ARC. ARC Rules must then be approved by the Association Board at a meeting noticed for that purpose. ARC rules become effective when recorded with the Blaine County Recorder.

**4.12 VARIANCES.** The Committee may, subject to prior approval of appropriate governmental agencies, authorize variances from compliance with any of the architectural provisions of this Declaration, any Supplemental Declaration, and the ARC Rules, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when

circumstances such as topography, natural obstructions, aesthetic or environmental considerations present a genuine hardship.

If a variance is required, the applicant must: (a) obtain and complete the ARC variance application; and (b) provide the Committee with the names and addresses of all property owners owning real property within three hundred (300) feet of the external boundaries of the subject property. The ARC shall send a notice of hearing and a copy of the Variance Application to those owners by certified mail at least fourteen (14) days prior to the variance hearing. Prior to the hearing, the owner must reimburse the ARC for the cost of mailing hearing notices.

If a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration, any Supplemental Declaration, or the ARC Guidelines, shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration, any Supplemental Declaration, or the ARC Guidelines for any purpose except as to the particular property and particular provision covered by the variance.

**4.13 NON-CONFORMING USES.** The Rules adopted by the ARC may transform some Starweather existing uses into non-conforming uses. The ARC has complete authority to adopt rules and regulations concerning any and all Starweather improvements that do not comply with either these CC&R's, any Supplemental Declaration, or the ARC Rules.

## **ARTICLE V**

### **COMMON AREA**

The following provisions apply to the use and ownership of the Common Area:

**5.01 TITLE.** The Association holds fee simple title to all of the property designated as Common Area on the final plat of Starweather Subdivision. The Association is responsible for the use, maintenance and control of the Common Area.

**5.02 USE.** Use, maintenance and control of said Common Area is granted to the Starweather Owners' Association.

**5.03 RESTRICTION ON USE.** Each member of the Association shall have, a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every lot, subject, however, to the following provisions:

(a) The right of the Association to limit the number of members permitted to use the Common Area.

(b) The right of the Association to charge reasonable admission fees for the use of any recreational facility situated upon the Common Area and controlled by the Association, including, particularly, the right to charge an annual or other periodic fee for members who desire exclusive use of such facility and who are willing to pay a special fee or Assessment for such use.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to mortgage the same.

(d) The right of the Association to suspend any member's voting rights and/or right to use any of the recreational facilities owned by the Association for any period during which assessments against said member's property remains unpaid, for a period not to exceed thirty (30) days for each infraction of the Association's published rules and regulations.

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such condition or transfer shall be effective unless a written instrument is signed by the President of the Association indicating the owners of two-thirds (2/3) of Starweather residential lots have given written approval of such a transfer.

(f) The right of the Directors of the Association to promulgate reasonable rules and regulations governing such right of use from time to time, in the interest of securing maximum safe usage of such Common Area by the Members of the Association without unduly infringing upon the privacy or enjoyment of the owner or occupant of any part of said property, including, without being limited thereto, rules restricting persons under or over designated ages from using certain portions and restrictions regarding vehicle parking.

**5.04 DELEGATION.** Any member may delegate, in accordance with the rules and regulations adopted from time to time by the directors, his right of enjoyment to the Common Area and facilities providing said delegates reside within the Subdivision.

**5.05 NO DEER CREEK ACCESS.** The Starweather Owners' Association shall not grant any person any easement of access to Deer Creek through Starweather Subdivision common ground and particularly through the bird sanctuary common ground. The common grounds to which this prohibition applies are: Common Lots 53, 54, 55, 56 and 57 of Starweather Plat 1, according to the official plat thereof, recorded as Instrument No. 223014, records of Blaine County, Idaho; Common Lot 58 of Starweather Plat 1, Amended, according to the official plat thereof, recorded as Instrument No. 261808, records of Blaine County, Idaho.

## **ARTICLE VI**

### **WATER SYSTEM**

**6.01 TITLE.** The title in fee to the water system, including, but not limited to, the pump, pump house, well, pipelines and other appurtenant equipment thereto, shall be vested in the Starweather Owners' Association. The water system has been transferred to the Association by Bill of Sale and Quitclaim Deed and the Association shall be deemed to have accepted such conveyance on the date of the Bill of Sale or recordation of the deed pertaining thereto.

**6.02. ASSOCIATION POWER AND DUTIES.** Upon conveyance of the water

system to the Starweather Owners' Association, the Association shall have the duty of owning, managing and operating the water system, which duties and responsibilities shall include, but not be limited to, the following:

(a) To maintain said system in good and clean condition and to keep all such facilities in good repair and operating condition;

(b) To pay any real and personal property taxes, assessments and charges when due and not permit the same to become a lien thereon;

(c) To officially operate, regulate and maintain the water system in a manner calculated to provide reliable water service to all users;

(d) To maintain a comprehensive policy of public liability insurance covering the operation of the water system with policy limits, to be established by the Association. Any such insurance shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying a claim of an owner for negligent acts of the Association. Said insurance policy shall name as a separately protected insured, the Starweather Owners' Association, its officers and Board of Directors and its members, employees and agents;

(e) To levy assessments as more specifically set forth hereinafter, to defray the costs incurred with respect to the operation, maintenance, repair and ownership of said water system.

**6.03 MAINTENANCE.** All repair, maintenance, and capital improvement expenses with respect to the water system, including, but not limited to, the pump, pump house, well, water lines, and other appurtenant equipment, shall be shared on an equal basis by the members of the Starweather Owners' Association through assessments levied by said Association in the manner hereinafter provided for. The amount of said assessments shall be set annually by the directors of the Starweather Owners' Association, who shall estimate the amount required during the ensuing year for repairs, maintenance and required capital improvements. In determining this amount, the Board of Directors may include reasonable contributions to a reserve fund created for the purpose of providing for major repairs, component replacement, system improvement or expansion which may be anticipated in future years.

**6.04 ASSESSMENTS.** In addition to the assessments made for repair, maintenance and capital improvements, the Starweather Owners' Association, through its Directors, shall determine, on a monthly basis, the actual cost incurred by it for delivering water to users through the system. The cost so incurred shall be assessed only to those record owners of lots, which are serviced by the water system during that period. The assessment to these owners shall be on a pro rata basis. The calculation for this pro ration shall utilize only the number of lots then serviced by the water system and not necessarily the total number of lots within the Subdivision. For purposes of this section, "serviced by the water system" shall mean those lots within the Subdivision which have been improved and for which a water line has been hooked-up so that water could be supplied to and used upon the premises. It is initially contemplated that this allocation of expenses among the owners shall not be by actual quantities of water used. However, the Association shall have the option of adopting as the basis for the allocation of costs the actual quantity of water used by each user. In order to monitor usage, the Association shall

have the right to install water-metering device in each water line so as to accurately measure the use of the water by each lot owner.

## **ARTICLE VII**

### **STARWEATHER OWNERS' ASSOCIATION**

#### **7.01 ASSOCIATION**

(a) The Starweather Owners' Association is a non-profit Idaho Corporation charged with the duties and invested with the powers prescribed by law, and those set forth in the Articles, By-Laws and this Master Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration.

(b) Nothing in this Master Declaration shall prevent the creation, by provision therefore in Supplemental Declarations, of Sub-Associations to assess, regulate, maintain or manage the portions of Starweather Subdivision subject to such Supplemental Declaration, or to own or control portions thereof for the common use or benefit of the owners of Lots in the portion of Starweather Subdivision subject to such Supplemental Declaration.

#### **7.02 MEMBERSHIP**

(a) Each owner of a Lot, including Grantor, by virtue of being such an owner and for so long as he is such an owner, shall be deemed a member of the Starweather Owners' Association.

(b) The Starweather Owners' Association membership of each owner, including Grantor, shall be appurtenant to said Lot and 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 shall be void. Any transfer of title to said Lot shall operate automatically to transfer said membership to the new owner thereof.

#### **7.03 VOTING AND MEETINGS**

(a) The Starweather Owners' Association shall have one class of voting membership. All owners within the Starweather Subdivision shall be entitled to one vote for each Lot owned. The owner of each Lot in the Starweather Subdivision, may, by written notice to the Association, designate a person who need not be an owner to vote for such Lot. Such designation shall be revocable at any time by the owner's written notice to the Association. Such powers of designation and revocation may be exercised by the guardian of an owner's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of an owner's estate, by his personal representative, executor or administrator where the latter's interest in said property is subject to administration in his estate.



(b) The vote for each such Lot shall, if at all, be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same Lot.

(c) There shall be a meeting of the owners on the 15<sup>th</sup> day of January of each year at 10 o'clock a.m. at Starweather Subdivision or at each other reasonable place or time, not more than forty-five (45) days before or after such date, as may be designated by notice of the Board given to the owners not less than fifteen (15) nor more than sixty (60) days prior to the date fixed for said meeting. A special meeting of the owners may be called at any reasonable time and place by notice of the Board or by the owners having one-tenth (1/10) of the total votes and delivered to all other owners not less than fifteen (15) days prior to the date fixed for said special meeting.

(d) The presence at any meeting, in person or by proxy, of the owners entitled to vote, at least a majority of the total votes shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the owners present, either in person or by proxy, may, as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the owners entitled to vote at least twenty-five percent (25%) of the total votes.

(e) The president of the Association (or the vice president in his absence) shall act as chairman of all meetings of the owners and the secretary of the Association (or its assistant secretary thereof in his absence) shall act as secretary of all such meetings. The Association shall maintain a permanent written record of the minutes of all its meetings, including meetings of its Board of Directors. Except as otherwise provided herein, any action may be taken at any meeting of the owners upon the affirmative vote of the owners having a majority of the total votes present at such meeting in person or by proxy; provided, however, that the members of the Board shall be elected by cumulative voting as provided in Section 7.03(d). At each annual meeting, the Board shall present a written statement of the financial condition of Starweather Owners' Association itemizing receipts and disbursements for the preceding calendar year and the allocation thereof to each owner. Within ten (10) days after the date set for each Annual meeting, the financial statement shall be mailed or delivered to the owners not present at said meeting. The Association shall keep written minutes of all its meetings and shall maintain a permanent record of all its minutes.

(f) In any election of the members of the Board, every owner entitled to vote at such an election shall have the right to cumulate and cast votes for one candidate, or divide among any number of the candidates, a number of votes equal to the number of votes to which that owner is entitled in voting upon other matters multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

(g) The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any owner may give a revocable proxy, or may

assign his right to vote for the term of the lease or deed of trust, and any sale, transfer of conveyance of such Lot to a new owner or owners shall operate automatically to transfer the appurtenant vote to the new owner, subject to any assignment of the right to vote to a lessee or beneficiary as provided herein.

## ARTICLE VIII

### DUTIES AND POWERS OF THE ASSOCIATION

In addition to all other powers and duties delegated or granted elsewhere herein to the Starweather Owners' Association, said Association shall have the following duties and powers with respect to Starweather Subdivision. All members of the Association, by acceptance, of a deed to property situated in said Subdivision, whether or not it be so expressed in the deed, shall be deemed to agree to and acquiesce in the delegation and granting of the following duties and powers to the Association:

**8.01 TITLE.** To accept title to and exercise jurisdiction over all property and appurtenances thereto, real and personal, conveyed free and clear of all liens and encumbrances, including: (1) Common Area within Starweather Subdivision Area, (2) easements for operation and maintenance, utilities, roadways, recreation and structures over and upon any Starweather Subdivision Area, and (3) easements for the benefit of Starweather Owners' Association members within any Starweather Subdivision Area. For purposes of this section, a non-exclusive easement, license or other contractual right to use in favor of the Permitted Users or any of them, shall not be deemed a lien or encumbrance.

**8.02 DISSOLUTION.** To convey, upon dissolution of the Starweather Owners' Association, the assets of the Starweather Owners' Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Master Association was created, or to a non-profit corporation, association, trust or other organization organized and operated for such similar purposes.

**8.03 MAINTENANCE.** To operate and maintain, or provide for the operation and maintenance of: (1) all Starweather Subdivision Areas in which the Association otherwise has an interest, and (2) all Starweather Subdivision Areas in which it owns easements for the benefit or use of Starweather Owners' Association members; and to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair

**8.04 TAXES.** To pay all real property taxes and assessments levied upon any property owned by, leased or otherwise transferred to the Starweather Owners' Association, to the extent not assessed to or payable by others. Such taxes and assessments may be contested or compromised by the Starweather Owners' Association.

**8.05 INSURANCE.** To obtain and maintain in force the following policies of insurance:

(a) Fire, extended coverage and all risk insurance on all structures, facilities and improvements erected or installed in Common Area within Starweather Subdivision; the amount of such insurance shall be not less than ninety percent (90%) of the aggregate full

insurable value, meaning actual replacement value exclusive of the cost of excavations, foundations and footings. Such insurance shall insure the Association, the owners and their respective mortgagees, as their interests may appear. As to each such policy, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Manager, the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

(b) A policy of insurance in an amount not less than One Million Dollars (\$1,000,000), combined single limit, providing coverage to the Association for bodily injury and property damage liability. Said policy shall insure against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property, utilities and facilities under its jurisdiction, operation or control, including, but not limited to, the Subdivision water system.

(c) Workmen's compensation insurance to the extent necessary to comply with any applicable laws.

(d) Such other insurance, including indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Master Association functions as set forth in the Starweather Subdivision Restrictions, the Articles and the By-Laws.

(e) The liability insurance referred to above shall name as separately protected insureds, the Starweather Owners' Association, the Board of Directors, the Architectural Review Committee and their representatives, members and employees, with respect to any liability arising out of the maintenance or use of any Association Property. Every policy of insurance obtained by the Starweather Owners' Association shall contain an express waiver, if available, of any and all rights of subrogation against the Board of Directors, the Architectural Review Committee and their representatives, members and employees.

(f) Directors and officers' liability insurance in a minimum amount of One Million Dollars (\$1,000,000) protecting the Association's officers and directors and ARC members from all claims arising out of the performance of their duties.

**8.06 RULES.** To make, establish, promulgate, amend, ratify and repeal the Starweather Rules, the ARC Rules and the ARC fee schedule.

**8.07 ARC.** To appoint, remove and establish compensation for members of the Architectural Review Committee as provided in Section 4.01 hereof, and to insure that at all reasonable times there is available a duly constituted and appointed Architectural Committee.

**8.08 ENFORCEMENT.** To perform such other acts, whether or not expressly authorized by the Starweather CC&R's, as may be reasonably necessary to enforce any of the provisions of the Starweather CC&R's and the Architectural Review Committee Rules. Specifically, the Board may, after Notice and Hearing to the owner, enter any lot and correct any violation of either these CC&R's or the ARC Rules. The owner shall pay the Association for all costs incurred by the Association relating to such correction efforts. The Board may levy a

special assessment against an offending owner's Lot to collect such collection costs. Such special assessments shall be levied in accordance with Article IX hereof.

**8.09 ASSOCIATION DUES.** To carry out the duties of the Starweather Owners' Association set forth in the Starweather CC&R's, the Articles and the By-Laws.

**8.10 PERIODIC AUDIT.** The Board may provide for a periodic independent audit of the accounts of the Manager and the Association and for delivery of a copy of such audit to each owner within thirty (30) days after completion thereof. Any owner may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Manager or the Association by a certified public accountant; provided that such audit or inspection is made during normal working hours and without unnecessary interference with the operations of the Manager or the Association.

**8.11 ADOPT RULES FOR ASSOCIATION PROPERTY.** To adopt such rules and regulations as it deems proper for the use and occupancy of the Association property. A copy of said rules and regulations, as adopted, amended or repealed shall be mailed or otherwise delivered to each member of the Association, or recorded in the records of Blaine County, Idaho. Upon such mailing, delivery or recordation, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of the Master Declaration.

**8.12 RIGHT OF ACTION.** After twenty-four (24) hours written notice, to enter, without being liable to any owner or Sub-Association, upon any Lot or any property owned or controlled by Sub-Association for the purpose of enforcing by peaceful means the Starweather Subdivision CC&R's, or for the purpose of maintaining or repairing any such area if for any reason whatsoever, the owner thereof fails to maintain or repair, any such area as required by said Restrictions. The Starweather Owners' Association shall also have 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 Starweather CC&R's and to enforce, by mandatory injunctions or otherwise, all of the provisions of said Restrictions.

**8.13 COMMON AREA EASEMENTS.** To grant and convey to any person easements, rights-of-way, parcels or strips of land, in, on, over or under any Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (1) roads, streets, walkways, driveways, parkways, and park areas, (2) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes, (3) sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (4) any similar public or quasi-public improvements or facilities, and (5) roof overhangs or eaves.

**8.14 MAINTENANCE.** To maintain, provide snow removal service for, and repair the Association Property and all improvements thereto; provided, however, that the Association shall have no responsibility to provide the services referred to in this paragraph with respect to any building in any Sub-Association Common Area. Such responsibility shall be that of the Sub-Association.

**8.15 PROFESSIONAL SERVICES.** To retain and pay for the services of a person or firm to manage the Association Properties (the "Manager") to the extent deemed advisable by the

Board, as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Association Properties or the conduct of the business of the Starweather Owners' Association, whether such personnel are employed directly by the Association or are furnished by the Manager. The Board may delegate any of its duties, powers or functions to the Manager, provided that any such delegation shall be revocable upon notice by the Board. The owners release the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function as delegated.

**8.16 PROFESSIONAL SERVICES.** To retain and pay for legal, accounting services, engineering, architectural and other professional necessary or proper in the operation of the Association Properties, enforcement of the Starweather CC&R's, ARC Rules or Starweather Rules, or in performing any of the other duties or rights of the Starweather Owners' Association.

**8.17 UTILITIES AND SERVICES.** To pay for water, sewer, garbage, electrical, telephone, gas, maintenance, snow removal and gardening service, and other necessary utilities and services for Association Properties.

**8.18 ROAD MAINTENANCE.** To maintain and repair easements, roads, roadways, roadway rights-of-way, parkways and highway median strips, entry details, or other areas of Starweather Subdivision not maintained by governmental entities, to the extent deemed advisable by the Board, and at the Board's election, easements not a part of the Association Properties.

**8.19 OTHER SERVICES.** To obtain any other property, services, taxes or amendments which the Association or the Board is required to secure (or pursuant to the terms of these Restrictions or the By-Laws, or in the exercise of reasonable business judgment should secure, including security services for the Association Properties or for Starweather Subdivision generally.

**8.20 IMPROVEMENTS.** The Association may, with the approval of the Architectural Review Committee, construct new improvements or additions to the Association Properties or demolish existing improvements; provided that in the case of any improvements, addition or demolition (other than maintenance or repairs to existing improvements) involving a total expenditure in excess of One Thousand and No/100ths Dollars (\$1,000.00), the vote of a majority of the Association members voting in person or by proxy at a regular or special meeting called for that purpose approving plans and a maximum total cost therefore shall first be obtained. The Association shall levy a special assessment on all owners for the cost of such work.

**8.21 WATER QUALITY.** Install and maintain piezometers at locations indicated on the final plat for Starweather Subdivision for the purpose of monitoring potential contamination of the underlying aquifer and groundwater sources. Samples of water from each piezometer location shall be obtained on a quarterly basis (or on such other frequency as may be ordered or approved by the Idaho Department of Health and Welfare or the South Central District Health Department), tested at a certified laboratory for quality, and the results submitted to the South Central District Health Department and to Blaine County.

**8.22 ROADS.** Maintain, repair and promulgate rules and regulations for the use of all bridges, culverts, streets, sidewalks, street lighting within the Subdivision which are not dedicated to or otherwise accepted for maintenance and repair by any governmental entity.

8.23 **WATER SYSTEM.** Repair, maintain and operate the domestic water system within the Subdivision, as provided in Article VI hereof.

8.24 **LANDSCAPE.** Install, maintain, care for and replace landscaping on Association Property.

8.25 **SNOW REMOVAL.** Provide snow removal on all streets, sidewalks and parking areas.

8.26 **VARIANCES.** Grant or deny variances from the CC&R's or the ARC Rules, following ARC action, in accordance with the ARC Rules. Variances may only be granted upon a clear showing of genuine hardship.

## **ARTICLE IX**

### **FUNDS AND ASSESSMENTS**

9.01 **AUTHORIZATION.** Each owner of any lot in Starweather Subdivision, by acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with other lot owners in the Subdivision, and with the Starweather Owners' Association, to pay to the Association periodic assessments made by the Association to finance and fund its authorized services and functions. The nature and extent of said assessments are specified hereinbelow.

9.02 **ANNUAL ASSESSMENT.** There is authorized an annual assessment levied by the Starweather Owners' Association upon each lot within the Subdivision, which shall be fixed on a *pro rata* basis and collected in a manner prescribed by the Association; provided, however, that it shall not be payable in amounts exceeding twenty-five percent (25%) of the total annual assessment every three (3) months during the assessment year. The amount of the annual assessment shall be determined by the Board of Directors at least thirty (30) days prior to the commencement of each fiscal year, upon estimates of the expenses to be incurred by the Starweather Owners' Association during such year in performing all of the duties and functions, with the exception of the following:

(a) Delivering water to actual users of the domestic water system. (Note: the expenses for repair, maintenance and capital improvement of the water system are included in the annual assessment. See Article VI for further explanation.)

In establishing the amount of the annual assessment, the Board of Directors may also include a reasonable contribution to a reserve fund created for the purpose of providing for major repairs, component replacement or improvements it feels may become necessary in future years. This portion of the assessment may be accumulated and carried over into subsequent years.

9.03 **SPECIAL ASSESSMENTS.** There is authorized one special assessment to be levied by the Starweather Owners' Association in any assessment year, upon each lot within the Subdivision, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement to be performed on the lots or the Common Areas, or for

any necessary capital improvement the Starweather Owners' Association is obligated to make, or for the purpose of performing any unanticipated maintenance. The amount of any special assessment shall not exceed ten percent (10%) of the then current annual assessment without the assent of a majority of the votes of all of the members of the Association, cast in person or by proxy at a meeting duly called for this purpose.

In addition the Starweather Owners' Association may, after notice and hearing to the owner, levy an additional special assessment against any Lot where the owner has been found to violate either these CC&R's or the ARC Rules. There is no limit on the amount of such an enforcement special assessment. See: Section 8.08, above.

**9.04 WATER ASSESSMENT.** There is authorized a monthly assessment levied by the Starweather Owners' Association upon each Lot hooked up to and receiving water for domestic purposes from the water system in Starweather Subdivision in conformance with the provisions of Article VI. Said assessment, payable monthly, shall be levied on a *pro rata* basis among said water users. The amount of each users monthly assessment shall be determined by dividing the actual costs incurred by the Association in delivering water to all users (excluding the costs of repairing, maintaining, and improving the water system and any depreciation allowance for said system) divided by the total number of users; provided, however, that if in the future the Association opts to meter the actual amount of water used by each user, as provided for in Section 6.04, then the assessment for each user shall be the same proportion of the Association's total water delivery costs as the proportion of his water use is of the total water delivered through the system.

**9.05 MAINTENANCE FUND.** The Board shall establish a fund (the "Starweather Subdivision Operating and Maintenance fund") into which shall be deposited all moneys paid to the Starweather Owners' Association and from which disbursements shall be made exclusively for performing the functions of the Starweather Owners' Association under the Starweather Subdivision Covenants, Conditions and Restrictions. Nothing contained herein shall limit, preclude or impair the establishment of other operating or maintenance funds by any Sub-Association pursuant to any Supplemental Declaration.

**9.06 LATE CHARGES AND LIENS.** If any assessment, whether regular or special, assessed to any owner is not paid within thirty (30) days after it is due, the owner may be required by the Board to pay a late charge of five percent (5%) of the amount of the assessment or such other amount as the Board may designate from time to time as set forth in the Starweather Subdivision Rules.

The amount of any assessment, whether regular or special, assessed to any owner and any late payment charge attributable thereto, plus interest on such assessment and late charge at a rate of five percent (5%) per annum simple interest (or such other rate as the Board may designate from time to time as set forth in the Starweather Subdivision Rules), and costs, including reasonable attorneys fees, shall become a lien upon such Lot upon recordation of a notice of assessment stating the amount of the claim of delinquency, the interest and costs which have accrued thereon, the legal description and street address of the Lot against which it has been assessed, and the name of the record owner thereof. Such notice shall be signed and acknowledged by an officer of the Association. Upon recordation it shall create a lien upon the Lot described in the amount set forth. Such assessment lien shall be prior to any declaration of homestead recorded after the recording of this Master Declaration. The lien shall continue until

fully paid or otherwise satisfied. When the lien has been fully paid or satisfied, a further notice releasing the lien shall be recorded. Such lien may be foreclosed in the same manner as is provided in the laws of the State of Idaho for the foreclosure of mechanic's liens on real property. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner upon request at a reasonable fee, not to exceed Twenty Five Dollars (\$25.00). Liens established, pursuant hereto shall be junior to any liens established by any Sub-Association.

**9.07 MORTGAGE RIGHTS.** Notwithstanding all other provisions hereof, no lien created under this Article IX nor any breach of the Starweather CC&R's, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto shall defeat or render invalid the rights of the beneficiary under any recorded deed of trust upon a Lot made in good faith and for value, provided that after the foreclosure of any such deed of trust or conveyance of any Lot to such beneficiary by deed in lieu of foreclosure, such Lot shall remain subject to the Starweather CC&R's and the amount of all regular assessments and all special assessments to the extent they relate to expenses incurred subsequent to such foreclosure, shall be assessed hereunder to the purchaser at such foreclosure sale.

**9.08 AMENDMENTS OF ARTICLE IX.** No amendment to this Article IX of this Master Declaration shall affect the rights of any beneficiary who does not join in the execution thereof, provided that his mortgage is recorded prior to the recordation of such amendment.

**9.09 SUBORDINATION.** By subordination agreement executed by the Association, the benefits of Sections 9.07 and 9.08 above may be extended to beneficiaries not otherwise entitled thereto.

**9.10 CC&R AMENDMENTS.**

(a) The provisions of this Declaration, other than this Article, may be amended by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying that such amendment has been approved by the vote or written consent of the owners of at least fifty-one percent (51%) of the residential lots in Starweather Subdivision, and such an amendment shall be effective upon its recordation with the Blaine County Recorder.

(b) Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any recorded deed of trust upon a Lot made in good faith and for value, provided that after the foreclosure of any such deed of trust such Lot shall remain subject to this Declaration, as amended.

**9.11 NOTICE.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the



residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

**9.12 GOVERNING LAW.** All provisions affecting any development in Starweather Subdivision shall be construed so as to be in conformance with the laws of the State of Idaho. This Declaration shall be construed and governed under the laws of the State of Idaho.

**9.13 REMEDIES.**

(a) Except as otherwise provided herein, any owner of any Lot within Starweather Subdivision shall have the right to enforce any or all of the provisions of the Starweather CC&R's upon any property within Starweather Subdivision and the owners thereof.

(b) Every act or omission whereby any provision of the Starweather CC&R's is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Starweather Owners' Association or any owner or owners of Lots within Starweather Subdivision.

However, any other provision to the contrary notwithstanding the Association, Board or their duly authorized agents, may enforce by self-help any of the provisions of the Starweather CC&R's, but only if such self-help is provided by notice to the owner who would be affected by any such self-help and an opportunity for a the affected owner to have a hearing before the Board of the Starweather Association on the issues of the proposed self-help. Self-help may only be employed upon the receipt of written approval from the Board following notice and hearing to any affected owners.

(c) Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within Starweather Subdivision is hereby declared to be a violation of the Starweather CC&R's and subject to any or all of the enforcement procedures set forth in said Restrictions.

(d) Each remedy provided by the Starweather CC&R's is cumulative and non-exclusive.

**9.14 RULES OF CONSTRUCTION.**

(a) Waiver. The failure of any party to insist upon strict performance of any of the obligations contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms and provisions contained herein by the same or any other person.

(b) Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

(c) Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties hereto.

(d) Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

(e) Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

(f) Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

(g) Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

(h) Recordation. This Declaration shall be recorded in the office of the Blaine County Recorder at Hailey, Idaho.

(i) Governing Law. This Declaration shall be construed in accordance with the laws of the State of Idaho.

**9.15 ATTORNEY'S FEES.** In the event any person retains counsel to enforce or interpret any of the terms of this Declaration, the prevailing party shall be entitled to recover from the losing party its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal), whether or not suit is filed.