

FILED BY  
*Welch*  
JAN 17 P 3:19  
8/1/07  
MARIE SCOTT  
BONNER COUNTY RECORDER

**721140**

**DECLARATION OF  
RESIDENTIAL COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS APPLICABLE TO  
THE CROSSING AT WILLOW BAY  
IN BONNER COUNTY, IDAHO**

This Declaration of Covenants, Conditions, Easements and Restrictions ("Declaration") is made this **5th** day of **January, 2007**, by **CROSSING DEVELOPMENT, INC.**, an Idaho corporation ("Declarant").

WHEREAS, Declarant is the owner of certain real property known as THE CROSSING AT WILLOW BAY, and as described on an official plat, recorded at instrument number 721139, in Book 8 of Plats at page 124, records of Bonner County, Idaho, and located in portions of Section 1, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho, and Section 36 Township 56 North, Range 4 West, Boise Meridian, Bonner County, Idaho; and

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

DECLARANT HEREBY DECLARES that all of the Property, including without limitation the numbered Lots therein, roadways, walkways and the like, shall be held, sold and conveyed subject to the restrictions, covenants, easements and conditions set forth in this instrument for the purpose of protecting the value and desirability of said lots, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.  
DESIGNATION OF USE**

- 1.1 **Residential Lots.** Use of the Property shall be restricted to single family residential lots and associated recreational and maintenance facilities including one lot designated for the use of a caretaker.
- 1.2 **No Further Subdivision.** Except for lots owned by the Declarant, a Lot Owner shall make no further subdivision of any lot. The Declarant reserves the right to further subdivide any lot it owns.
- 1.3 **Future Additions to Subdivision.** The Declarant reserves the right to plat adjoining parcels and to add such platted parcels to the subdivision. The Association shall accept into membership owners of lots in subsequently platted blocks that are made subject to this Declaration, provided such new members shall be subject to this Declaration, as amended, and to all of the duties, obligations, rights and responsibilities contained herein.
- 1.4 **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 Common Area. The Declarant reserves an easement incident to construction for ingress, egress, and temporary utilities over, under, around and through the Common Area.
- 1.5 **Declarant Sales Office.** So long as the Declarant or assignee is in title to a lot on the Property, the Declarant reserves the right to maintain a sales office on its lot(s) or in the Common Area.

**ARTICLE II.  
HOMEOWNERS ASSOCIATION, ROAD MAINTENANCE, SPECIAL REQUIREMENTS  
(Articles 2.1 – 2.5 are Irrevocable Provisions)**

- 2.1 **Homeowners Association.** The Declarant shall establish and the Lot Owners collectively shall maintain an Idaho nonprofit corporation known as **THE CROSSING HOA, INC.** (Association).
  - 2.1.1 **Purpose.** The purpose of the Association shall be to maintain, improve, and regulate the use of real property owned by the Association, to carry out the provisions of the Declaration of Covenants, Conditions, Easements and Restrictions of The Crossing at Willow Bay, and to take any other lawful actions for the benefit of the Association and its members.
  - 2.1.2 **Articles of Incorporation and Bylaws.** The Declarant shall adopt Articles of Incorporation and Bylaws for the Association. The Articles of Incorporation shall be registered with the Idaho Secretary of State. The Articles of Incorporation and the Bylaws, and any future amendments thereto, shall be recorded in the records of Bonner County, Idaho. A Lot Owner by acceptance of a Deed thereby acknowledges and ratifies the Articles of Incorporation of the Association.

- 2.1.3 **Prior 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 Articles of Incorporation and Bylaws. The Association's Articles of Incorporations and Bylaws shall be interpreted in a manner consistent with the provisions contained herein. In the event of ambiguity between these governing documents, preference shall be given first to plat notations, then to this instrument, then to the Articles of Incorporation, and lastly to the Bylaws.
- 2.1.4 **Governing Authority.** The Association through its Board of Directors (Board), shall have the authority to: (a) enforce this Declaration; (b) make improvements to the Property; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration, Articles of Incorporation and Bylaws; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare, in accordance with the spirit and letter of this Declaration; (f) enforce and carryout the development requirements as set forth in Bonner County Planning Department files S1158-05 and C818-05; (g) 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; and (h) hire, retain and dismiss employees, agents or other persons to carry out the purposes of this Declaration.
- 2.2 **Duties of Association.** The Association shall have the following general duties to its Members.
- 2.2.1 **Maintain and Protect the Property.** The Association shall have the duty to maintain the Common Roadways, Common Area, and Association-owned land, structures and facilities in a safe, functioning, and attractive condition. The Association shall not be liable for crimes, vandalism, or injury suffered by Lot Owners on their property.
- 2.2.2 **Publish Rules and Regulations.** The Association shall establish and periodically publish rules and regulations to carry out its duty to maintain and protect the Property. Without limitation, such rules shall provide for use of the RV Parking Area, the Club House, Beach and Swimming Area, and Upland Recreation Areas.
- 2.2.3 **Maintain Erosion Control and Stormwater Management Measures.** The Association shall maintain as designed all permanent erosion control and stormwater management measures installed by Declarant.
- 2.2.4 **Road System and Maintenance.** All lots within the subdivision shall be accessed from the Common Roadway as defined herein. The Association shall maintain the Common Roadway for the benefit of the Lot Owners and their invitees including but not limited to snow removal, road repair and replacement, stormwater management, erosion control, and eradication of noxious weeds. The Association shall annually budget for road maintenance, adjust the fee schedule to accomplish its routine road maintenance obligations, and make and collect special assessments for necessary capital improvements and replacements.

- 2.2.5 **Parking and Blocking Roads.** The Association shall adopt rules for the use of the Common Roadways including a schedule of fines and penalties sufficient to achieve enforcement. Such rules shall provide that, at a minimum, Lot Owners and their invitees are not permitted to park recreational vehicles or store materials in or on the Common Roadways except for (a) temporary purposes with the express written permission of the Association Board, or designee, or (b) in a designated parking area.
- 2.2.6 **Maintain Sewer and Water Systems.** The Association shall maintain a large soil absorption system (LSAS) for certain lots as set forth in Article VI, and a water system as set forth in Article VII.
- 2.2.7 **Maintain a Reserve Fund.** The Association shall maintain a reserve fund sufficient in scope to defray foreseeable capital expenses for Common Area maintenance.
- 2.3 **Special Requirements.** The following special requirements are imposed on Lot Owners and the Association:
- 2.3.1 **Conformance with Land Use Codes.** The Association and Lot Owners shall maintain their respective properties in conformance with applicable Bonner County, Idaho land use codes, and relevant statutes and regulations of the state of Idaho and the United States of America. The following exceptions from the Bonner County Code are permitted:
- 2.3.1.1 **Front and Rear Yard Setbacks.** The six Block 2 “cottage” lots are permitted 20-foot setbacks from the front and rear property line. BCRC Section 12-630(c).
- 2.3.1.2 **Depth to Width Ratio.** Lot 11 of Block 3 may vary from the depth to side ratio of a maximum depth to width of 3:1. BCRC Section 12-2305(b).
- 2.3.1.3 **Other Exceptions.** Other limited exceptions are permitted as set forth in paragraph 7 of Decision Letter of July 14, 2005 in Bonner County Planning Commission file C818-05.
- 2.3.2 **Individual Lot Stormwater/Erosion Control Management.** Lot Owners shall construct and maintain storm water management systems required by Bonner County on their respective lots. In addition, each individual Lot Owner shall implement any and all drainage, stormwater, and erosion control measures pursuant to the Bonner County-approved stormwater management and erosion control plan as set forth in Bonner County Planning Department files S1158-05 and C818-05.
- 2.3.3 **Wildlife Mitigation.** The Idaho Department of Fish and Game recommends the following wildlife mitigation measures:
- 2.3.3.1 **General Advice.** Residents should avoid attracting bears, raccoons and skunks. Suggested means include cleaning barbecue grills frequently, not leaving pet food outside, not distributing bird feed on the ground, and protecting compost piles and fruit trees. Purposely feeding wild

animals creates an unnatural situation and may cause local population increases, which may create an unwanted nuisance for neighboring residents and, eventually, the resident providing the food. Animals will continue to return even if the food is removed. Also, concentrating a large number of animals in a small area can facilitate local disease outbreaks.

2.3.3.2 **Contain Garbage.** Residential garbage shall be stored inside a secure structure or in bear-proof containers.

2.3.3.3 **Retain Timber and Vegetation.** Standing timber and natural vegetation, including snags and shrubs, should whenever possible be retained to provide cover, food, nesting sites, perching sites, etc. for indigenous wildlife.

2.3.3.4 **Control Pets.** Pets shall be restrained from chasing or disturbing wildlife (see Article 8.3).

2.3.4 **Fire Protection Planning.** The Property is located in a wooded, rural area. Therefore, the Association shall remain cognizant of wild fire danger, shall provide fire protection information to Lot Owners from time to time, and encourages Lot Owners to maintain their Lots in accordance with such fire protection safeguards.

2.3.4.1 **Water Flow.** The Association shall maintain a system of approved hydrants and water sources, and water supply for fire protection as approved by the Sagle Fire District or its successor.

2.3.4.2 **No Obstructions.** Access to all water sources for fire protection shall be unobstructed at all times.

2.3.4.3 **Water Source Identification.** Water sources for fire protection, such as hydrants, shall be clearly identified in a manner approved by the Sagle Fire District or its successor.

2.3.4.4 **Testing and Maintenance.** Water sources, draft sites, hydrants and other fire protection equipment shall be subject to periodic tests as required by the Sagle Fire District or its successor.

2.3.4.5 **Clearance of fuel.** Homeowners and the Association are encouraged to maintain defensible space around structures and to utilize fire-resistive vegetation in their landscaping in accordance with safeguards published by the Association and distributed to Lot Owners.

2.4 **Membership and Voting Rights in Association.** The Declarant shall adopt Articles of Incorporation and Bylaws for the Association. The governing documents of the Association shall provide the following:

2.4.1 **Membership.** Every Lot Owner, whether the lot is undeveloped or improved, 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 ownership of any such 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.

2.4.2 **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.

2.4.3 **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.

2.4.3.1 **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. Where co-owners exist, they shall designate in writing, with the Secretary, who shall cast the vote of the Lot Owner. A designation shall remain of record until revoked. Any co-owner may revoke a designation in a writing submitted to the Secretary. The Secretary shall not accept a vote by co-owners who fail to properly designate authority to cast the vote. Fractional votes are not permitted. All co-owners may attend and otherwise participate in Association meetings.

2.4.3.2 **Class B Membership.** The Class B member (the Declarant) shall have ten (10) votes in the Association for each Lot owned. The Declarant may designate an agent or agent(s) to cast its votes. Class B membership shall automatically convert to Class A membership upon the earlier of the following: (a) the voting power of Class A members exceeding that of Class B; (b) the recordation of notice by the Declarant of voluntary conversion; or (c) at 11:59 p.m. on December 31, 2012.

2.4.4 **Majority Vote.** Except as otherwise set forth herein, a majority of votes of the Members shall be the action of the Association.

2.4.5 **Proxy Voting.** A Lot Owner may give his proxy to another Lot Owner. Such proxy shall be in writing and delivered to the Secretary prior to any vote. A proxy shall automatically expire on its annual anniversary.

2.5 **Actions Reserved to the Members.** The following actions are reserved to the Members, voting at a duly noticed meeting of the Association:

2.5.2 **Elect and Remove Directors.** The Members shall have the exclusive authority to elect and remove directors.

2.5.3 **Approve Budget.** Upon presentation by the Board, 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, and for the first six (6) months of 2007, the Declarant shall be able to collect the initial annual assessment set forth in this Declaration without regard to a budget.

- 2.5.4 **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.
- 2.5.5 **Amend the Bylaws.** Upon resolution of the Board, the Members may, at a duly called meeting of the Members, amend the Bylaws by a 60% majority of votes, and amend the Articles of Incorporation with a 75% majority of votes.
- 2.5.6 **Limitation of Action.** Except as set forth in this Article 2.4, the Members shall take no action except upon resolution of the Board presented to the Members at a duly called meeting of the Members. The Members may amend any resolution presented by the Board.
- 2.6 **Board of Directors.**
- 2.6.1 **Management Vested in the Board of Directors.** The Board shall govern the Association and shall manage the Property. The Board may, but is not required to seek the approval of the Members before taking an action other than those actions reserved to the Members in Article 2.4. The Board shall present an annual budget to the Members at least 14 days prior to an annual or special meeting of the Members.
- 2.6.2 **Board Determines Rate of Assessment.** The Board shall establish the rate of assessment based on the approved annual budget. The Board shall not assess in excess of the funds necessary to fund the budget EXCEPT that the Board shall have the right to increase the assessment by an amount no greater than five percent (5%) for the purpose of making capital improvements, major or emergency repairs. Funds reserved in excess of budgeted expenses shall be placed in a reserve fund.
- 2.6.3 **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.
- 2.6.4 **Electing a Director.** The President shall call for nominations for Director. The nominee need not be present. A Lot Owner may nominate himself or herself. Members shall cast one (1) vote for each position. Where only one (1) Director position is being filled, the nominee obtaining the most votes shall be elected. Where more than one (1) Director is being elected, those nominees with the highest plurality of votes shall be elected.
- 2.6.5 **Removing a Director.** The Lot Owners may remove a Director at any time, for any reason or no reason at all. In the case of removal, the Members shall vote on each Director and the Director shall be removed upon the vote of a majority, excluding the vote of the Director subject to removal.
- 2.6.6 **Officers.** The Board shall annually elect officers. There shall be a President, Vice President, Secretary and Treasurer. No Director may hold more than one office except one Director may be both Secretary and Treasurer. The duties of office

shall be expressed in the Bylaws. An officer may be removed by the Board upon the vote of a majority, excluding the vote of the officer subject to removal.

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

2.6.8 **Deadlock of the Board.** If Directors are deadlocked, the Board of Directors shall refer to the Lot Owners at a special or annual meeting the matter causing deadlock.

2.6.9 **Referral to Members.** Except as otherwise required herein, the Board may refer a matter to the Members for an advisory vote or final decision.

2.7 **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. 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.

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

2.7.2 **Liability Insurance.** Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas in such amounts as the Board shall determine.

2.7.3 **Directors and Officers.** Full coverage directors and officers liability insurance with limits in such amounts as the Board shall determine.

2.7.4 **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.

2.7.5 **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.

**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 such as Internet bandwidth and television. In addition, the Association may include in any assessment the cost of (a) general liability insurance; (b) insuring its officers and Directors; (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 improvement of the Common Roadways and other Common 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 including but not limited to Common Area and Common Road maintenance. The Association may, through its Board, levy special assessments disproportionately for particularized services provided to certain Lot Owners or to Lot Owners in a disproportionate manner. The Association may, but shall not be required to make available special services to Lot Owners at a specified cost such as concierge, vacation security, and property maintenance.
- 3.4 **Initial Assessment Upon Purchase from Declarant.** The initial assessment shall be \$750.00, due upon conveyance of the lot from the Declarant or its successor to the initial buyer and payable at closing. The initial assessment shall be used for the purpose of providing initial capitalization of the Association. The initial assessment is in addition to the prorated annual assessment.
- 3.5 **Initial Annual Assessment.** The initial annual assessment shall be \$2,820.00 (\$235.00/month), payable in quarterly installments of \$705.00 for the year commencing January 1 and ending December 31, 2007. Payments shall be due on the first day of the calendar quarter. The Board shall have discretion to establish and levy late fees and penalties. The Board shall have the right and obligation to change the rate of assessment from time to time as required. A Lot Owner purchasing from the Declarant shall have his initial annual assessment prorated for the remainder of the calendar quarter.

- 3.6 **Transfer Assessment.** The Association shall levy a transfer assessment in the amount of one month of membership dues (Annual Assessment) upon the transfer of a lot subsequent to the initial conveyance from the Declarant. The purpose of the transfer assessment is to defray the costs of administration in documenting the ownership change in Association records, providing the new homeowner a current set of governing documents including the rules and regulations, and providing an orientation to the Common Area and facilities.
- 3.7 **Special Assessments.** Upon authorization of a majority of Members, voting at a duly noticed meeting of the Members, the Board may levy a special assessment from time to time when the current assessment is deemed insufficient for the Association to carry out its obligations under this instrument and the Bylaws.
- 3.8 **Remedies for Non-Payment.** The Association shall have authority to apply any and all 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 shall impose late fees and interest costs for any assessment not paid within thirty (30) days after its due date. A schedule of penalties and interest costs shall be established in the Bylaws. 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 Owners may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of the Common Areas, or abandonment of a lot.
- 3.9 **No Assessment on Declarant.** Notwithstanding the provisions of this article, the Declarant shall not be assessed for any Lot it owns. The Declarant shall make up any budget shortfalls in the operating budget through direct contribution to the Association, but the Declarant shall not be required to contribute to any capital fund or future reserve.

#### ARTICLE IV. DWELLINGS, STRUCTURES AND IMPROVEMENTS

- 4.1 **Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall an exterior addition to or change or alteration therein be made until the plans and specifications have been submitted to and approved by the Association's Board or designee. The Board shall appoint an Architectural Review Committee (ARC) to review said plans and specifications and shall delegate substantial authority to the ARC for such purposes. The Board may appoint itself as the ARC.
- 4.2 **Architectural Review Committee.** The ARC shall consist of no less than three (3) members who are Lot Owners EXCEPT, unless and until the Declarant has conveyed ninety percent (90%) of the lots, the Declarant shall exercise the sole authority of the ARC. ARC members shall serve staggered three year terms and no member may serve more than two consecutive terms. The Board may retain an architect or an individual with substantial residential design experience to serve as a consultant to the ARC.

- 4.3 **Architectural Considerations.** The ARC shall consider the nature, kind, shape, height, materials and location of the submitted structure. The Committee shall further consider the quality of materials, harmony of external design and location in relationship to surrounding structures and topography.
- 4.4 **Architectural Guidelines.** The Declarant shall publish architectural guidelines (Design Guidelines). The Design Guidelines may be amended by the Board upon recommendation of the ARC but shall be no less restrictive than the building standards set forth herein. In the event of a conflict in interpretation between this Article IV and the Design Guidelines, the Design Guidelines shall control.
- 4.5 **Building Standards.** The following minimum building standards shall apply. The Design Guidelines may exceed these standards. The ARC shall have discretion to grant relief from these minimum standards in particular cases for good cause shown.
- 4.5.1 **Building Code and Inspection.** All dwellings and structures shall comply with generally recognized building standards as defined in Idaho code. All dwellings and structures shall be inspected if a building inspection is required by the State of Idaho and/or Bonner County, Idaho. Electrical and plumbing inspections are required. Absent County inspection, private inspections of foundation and framing are encouraged.
- 4.5.2 **Building Height.** No building, except buildings constructed by the Declarant, shall be more than 35 feet in height, measured as follows: the distance from the lowest point by elevation that is immediately adjacent to an exterior wall of the structure to a point on a level line that is perpendicular to the highest point of the structure.
- 4.5.3 **Building Permit.** Construction shall not commence on any structure without an applicable building permit or building location permit issued by Bonner County, Idaho.
- 4.5.4 **Floor Space.** With the exception of Block 2, dwellings shall contain no less than 1850 square feet of living space. Living space means all of the space in a dwelling except garage, attic, and crawl spaces. Floor space requirements for Block 2 shall be set forth in the Design Guidelines.
- 4.5.5 **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.
- 4.5.6 **Modular Homes Permitted.** Modular home construction, as defined herein, is permitted, so long as designed and constructed in accordance with the Design Guidelines.
- 4.5.7 **One Dwelling Unit Per Lot.** An owner may construct no more than one single family residence or dwelling unit on a lot as those terms are defined in Bonner County Revised Code.

- 4.5.8 **Set Back.** Structures shall comply with the set backs shown on the face of the Plat. In the event that setbacks for a lot are not indicated on the face of the Plat, then shall comply with the minimum setbacks as required by Bonner County Code, as amended, and as modified in Article 2.3.1 herein.
- 4.5.9 **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 **Design Standards.** Lot Owners shall comply with the Design Guidelines in effect upon the submission of plans and specifications.
- 4.7 **Procedures for Submission and Approval of Plans.** Lot Owners shall comply with the procedures for submitting plans and specifications as set out in the Design Guidelines in effect at the time of submission.
- 4.8 **Grounds for Disapproval.** The ARC shall have the right to disapprove any plans and specifications submitted hereunder for the any one of the following reasons:
- 4.8.1 **Failure of Submission.** The plans or specifications submitted are inadequate to fairly evaluate the proposal and/or the Lot Owner has failed to supply information reasonably requested by the ARC.
- 4.8.2 **Violation of Covenants.** The plans or specifications violate a provision of this Declaration.
- 4.8.3 **Incompatible Design or Materials.** The exterior design, appearance, materials, color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of the proposed structure is incompatible with the surrounding structures, topography, or Design Guidelines.
- 4.8.4 **Incompatible Site Design.** The location of the structure, parking areas, grading, or landscaping is incompatible with the surrounding structures and topography.
- 4.8.5 **Incompatible with the Development Design.** The structure or proposed uses are incompatible or not in harmony with the general plan of improvement of The Crossing At Willow Bay, or with structures or uses located upon other lots in the vicinity.
- 4.9 **Exceptions.** The ARC may modify these standards with respect to the plans and specifications for any particular lot or dwelling unit if the strict application of these standards would create an undue hardship on the Lot Owner, or would create a result inconsistent the appearance or uses of other lots on the property.
- 4.10 **Cost of Architectural Review.** The Board shall, from time to time, establish a fee for design review. Such fee shall be calculated to defray the costs of the Association of plan review and technical assistance.
- 4.11 **No Waiver of Future Approvals.** The approval of the ARC to the plans and specifications as to one dwelling or phase of construction shall not be deemed to constitute

a waiver of any right to withhold approval or consent to any similar plans and specifications subsequently or additionally submitted by a Lot Owner.

- 4.12 **Construction of Unapproved Structure.** A structure or site plan that is commenced, altered, erected, placed or maintained upon a Lot without the approval of the ARC shall be deemed a violation and breach of this covenant. Upon written notice from the ARC, the Lot Owner shall remove such structure or otherwise bring the structure or site plan into compliance. 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.
- 4.13 **Maintenance and Repair Obligations.** Each Lot Owner shall have a continuing duty to maintain, repair, replace and restore areas under its exclusive control in a neat, sanitary and attractive condition. The area of exclusive control means the dwelling unit and lot. After notice and hearing, the Board shall have the right to remove or otherwise remedy any condition found to be (a) dangerous, unsafe, unsightly or unattractive; or (b) that falls out of compliance with approved plans and specifications for any reasons including lack of maintenance; or (c) a prohibited structure or activity. The cost of remedial action shall be born by the Lot Owner. Failure to timely reimburse the Association for such costs of remediation shall be cause for the Board to levy a special assessment on the Lot Owner.
- 4.14 **Non-liability of Board Members.** The Declarant, the Board, and members of the ARC shall not be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of their respective duties hereunder, unless due to willful misconduct or bad faith.

## ARTICLE V. COMMON AREA

- 5.1 **Common Area Designation.** The Common Area consists of the Common Roadway, Trails, open spaces, RV parking, and attendant recreational and maintenance facilities, and any other areas designated Common Area or recreational easement on the plat map. In addition, the Association may acquire and own in fee simple or by easement additional facilities and structures that shall be maintained by the Association for the benefit of Lot Owners.
- 5.2 **Easement to Common Area.** Every member of the Association shall have a nonexclusive easement to the designated Common Area, including without limitation the Common Roadway and Trails, for the limited purpose of ingress, egress, and recreation. Such easement shall be appurtenant to and shall pass with title to every lot, subject to the right of the Association to limit and control the use of the Common Area through rules and regulations established by the Board.

- 5.3 **Easement for Declarant.** Notwithstanding the limitation in paragraph 5.2, the Declarant hereby reserves a mutual non-exclusive easement for ingress, egress and utilities including, without limitation, public and private utilities, under, over, across and through the Common Area for additions to the subdivision located within or without the boundaries of the plat map.
- 5.4 **Reservation of Easement for Water Distribution.** Declarant reserves an exclusive easement for the acquisition and distribution of potable water on, over, under, across and through the Common Area for pipes, buildings, reservoirs, pumps, storage tanks, and related facilities. The scope of the easement may be illustrated in whole or in part on the plat map, but Declarant may expand the easement as reasonably necessary to distribute water to customers within and adjacent to the Property. Declarant further reserves an easement for ingress and egress over the Common Area (specifically including, but not limited to, Tract N (the “well lot”)) to access its water distribution facilities. The Declarant shall have the right to lease, assign or convey the easement, in whole or in part, and/or to grant a license to a water distribution entity for use and maintenance of the easement.
- 5.5 **Water and Septic Utility Easement to Willow Bay Holdings, LLC.** Declarant grants a water and septic utility easement appurtenant to Willow Bay Holdings, LLC, its successors, agents, and assigns, for property located adjacent to the Property (known as Willow Bay Marina and Resort). The Declarant shall have the right to memorialize this grant by separate recorded conveyance.
- 5.6 **Yacht Club Access.** Declarant grants Willow Bay Holdings, LLC, and its lessee, Willow Bay Yacht Club, Inc., and their respective employees, agents, successors, and assigns, an irrevocable license for ingress, egress and utilities, for the limited purpose of construction, maintenance, and operation of slips, tie downs, moorage and navigational aids. This license shall be limited to construction and maintenance personnel and shall not extend to access for Yacht Club members who are not Lot Owners or are not the Lot Owners’ guests, or invitees.
- 5.7 **Damage to Common Property.** Each Member shall be liable to the Association for any damage to the Common Area or Common Roadway 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.
- 5.8 **Parking and Blocking Roads.** The Association may adopt rules for the use of the Common Area including a schedule of fines and penalties sufficient to achieve enforcement.
- 5.9 **Noxious Weed Control.** The Association shall destroy and control for noxious weeds in Common Area. Weed control shall comply with applicable Bonner County and Idaho state regulations.

**ARTICLE VI.  
SEPTIC SYSTEM**

- 6.1 **Private Facilities.** Except for Lots designed in Article 6.2, each Lot Owner shall construct a septic system contained entirely within the lot boundaries and within the applicable set back requirements. No dwelling shall be occupied unless there is an operable septic system in compliance with the regulations of Panhandle Health District.
- 6.2 **Common Facility.** Lots 1-8 in Block 1, 1-6 in Block 2, 1-14 in Block 3, and Open Space Track D shall be served by a LSAS, owned and maintained by the Association. Lot Owners and others licensed to use the common facility shall share the costs of maintenance and operation proportionately. The Association shall determine proportionality, shall publish a fee schedule, and shall establish rules, regulations, and construction standards. Lot Owners purchasing from the Declarant, or its successor in interest, shall be required to pay one-half (50%) of the connection fee upon closing. The connection fee and terms of payment shall be set forth in the Association's rules and regulations or by separate resolution of the Board. PERIODIC SERVICE FEES FOR THE COMMON SEPTIC FACILITY ARE NOT INCLUDED IN THE ASSOCIATION'S ANNUAL ASSESSMENT.
- 6.3 **Responsibility for Maintenance.** The Association shall maintain the common septic system and associated septic facilities to the lot boundary, or to the boundary of any adjacent property using the system. Lot Owners constructing a private septic system shall be solely responsible for construction and maintenance.
- 6.4 **License for Maintenance.** A Lot Owner with a private septic system, and any user of the common septic facility, by hooking on to said system, shall be deemed to have granted the Association, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties for the purpose of maintaining the sewer facilities.. No compensation shall be paid for any use of this license. A Lot Owner shall reimburse the Association for any reasonable costs of repair.
- 6.5 **Documentation.** Lot Owners with private septic systems shall provide the Association with "as built" drawings of the system and relevant operation manuals in order that the Association may maintain the system in an emergency.

**ARTICLE VII.  
WATER SYSTEM**

- 7.1 **Potable Water.** Lot Owners shall be served with potable water by a water association or water district.
- 7.2 **No Individual Wells.** A dwelling shall not be occupied unless under active service by the water association or water district. Lot Owners shall not drill water wells on their lots.
- 7.3 **Water Association.** The initial service entity shall be the Dufort Water Association, Inc. (DWA), an Idaho non-profit corporation established on August 29, 2006. Said association shall be a lessee of Declarant.

- 7.4 **Deemed Membership.** Upon accepting title to a lot, the Lot Owner shall be deemed a member of the DWA and shall have a duty to execute a membership application at closing.
- 7.5 **Connection Fee.** Lot Owners purchasing from the Declarant, or its successor in interest, shall be required to pay one-half (50%) of the connection fee upon closing. The connection fee and terms of payment shall be set forth in the DWA's rules and regulations or by separate resolution of its Board.
- 7.6 **Connection Requirement.** A Lot Owner shall be connected to the water system no later than commencement of construction of a dwelling unit. "Commencement" means ground disturbing activities.
- 7.7 **Rules and Regulations.** Membership in the DWA, or its successor, shall be governed by the entity's rules, regulations, bylaws and other governing documents.
- 7.8 **Fees and Assessments.** Lot Owners shall pay the fees and assessments set forth in the governing documents of the DWA and shall abide by its rules and regulations. WATER SERVICE IS NOT INCLUDED IN THE CROSSING HOA, INC.'s ANNUAL ASSESSMENT. FEES FOR WATER SERVICE ARE CONTAINED IN THE RULES AND REGULATIONS OF THE DWA.
- 7.9 **Maintenance License.** Lot Owners and the Association hereby grant the DWA, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties for the purpose of maintaining, expanding, and/or repairing the water system. No compensation shall be paid for any use of this license.

#### **ARTICLE VIII. PROHIBITED USES AND ACTIVITIES**

The following uses and activities are prohibited:

- 8.1 **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.
- 8.2 **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.
- 8.3 **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. Pigs are specifically prohibited.

- 8.4 **Dirt Bikes, All Terrain Vehicles, and Snowmobiles.** Dirt bikes, as defined herein, all terrain vehicles (commonly known as an ATV), and snowmobiles shall not be ridden on or in the Common Area, on the roadways or trails.
- 8.5 **Discharge of Firearms.** Owners shall not discharge a firearm on the Property except in defense of self or others. Shooting ranges are expressly prohibited.
- 8.6 **Excavations and Building Materials.** Excavation is prohibited except as necessary for construction of a dwelling. Storage of building materials, including but not limited to sand, gravel, top soil, lumber, roofing, windows and doors, shall be permitted only while a structure is actively under construction.
- 8.7 **Firewood.** Firewood, manufactured logs, and the like shall be stored within the dwelling unit or garage, or otherwise screened from public view.
- 8.8 **No Hunting.** Hunting on the Property is prohibiting.
- 8.9 **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 Section 12-202 of the Bonner County Revised Code and as subsequently amended. A “bed and breakfast” or “vacation rental” shall be deemed a prohibited commercial activity regardless of Bonner County Revised Code.
- 8.10 **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. A “small sign” means a sign typical of residential size and design.
- 8.11 **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.
- 8.12 **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 located in areas concealed from public view, or appropriately screened. Lot Owners shall control for odors and protect containers from animals. Containers may be placed in public view for the limited purpose of trash collection for up to twelve (12) hours. Lot Owners shall be responsible for the timely collection of any trash that escapes containment.

**ARTICLE IX.  
NO EASEMENTS IN FAVOR OF THIRD PARTIES.**

Except as otherwise set forth herein or on the plat, the Owners individually or collectively, and the Association, shall not grant a license or easement for ingress or egress through the Property to a third party that owns a lot or parcel outside the boundaries of the Property. Any such grant made in violation of this provision shall be voidable by any Owner or the Association. The Association, through its Board, may grant a utility easement to one or more owners of property outside the boundaries of the Property.

**ARTICLE X.  
CONDEMNATION**

In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of the improvements to the Property, each Lot Owner agrees, by acceptance of a deed to such lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, each Lot Owner receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners in proportion to their respective assessment shares. All amounts due to the Association under this article shall constitute a lien against the Lot Owner's property.

**ARTICLE XI.  
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 XII.  
MODIFICATION OF RESTRICTIONS**

- 12.1 **Covenant.** All of the restrictions contained herein shall be deemed to be covenants running with the land and shall endure and be binding upon all Lot Owners, their successors and assigns.
- 12.2 **Irrevocable Provisions.** Articles 2.1 through 2.5 of this Declaration shall be irrevocable.
- 12.3 **Declarant Modification.** Except for Articles 2.1 – 2.5 herein, the Declarant may modify this Declaration at any time before it conveys a lot.
- 12.4 **Homeowner Modification.** Provisions of this Declaration, other than those set out in Articles 2.1 through 2.5, may be modified at any time by a vote of two-thirds (67%) or more of the Lot Owners voting at a duly called membership meeting AND, so long as the Declarant holds Class B shares, the Declarant's approval. This Declaration may be modified commencing on the fifth anniversary of its recordation, and every fifth anniversary thereafter, by a vote of a majority of the Lot Owners, voting at a duly called membership meeting, AND, so long as the Declarant holds Class B Share, the Declarant's approval. The modification period shall expire at 11:59 p.m. on the last day of the sixth month following the anniversary date. The modification must be adopted within the modification period and recorded within 14 days of its adoption. The modification shall reference this Declaration by recording number and all prior modifications thereto.
- 12.5 **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.

**ARTICLE XIII.  
MISCELLANEOUS PROVISIONS**

- 13.1 **Assignment.** The Declarant shall have the right to assign its duties, obligations and interests as set forth herein.
- 13.2 **Conflicts with Government Ordinance.** A Bonner County 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.
- 13.3 **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.
- 13.4 **No Public Dedication.** Except as otherwise shown on the plat, nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Property to or for the general public. The roads within the Property are private.
- 13.5 **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.

13.6 **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 XIV. 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 six (6) consecutive months in duration.

**“Association”** means The Crossing HOA, Inc., its successors and assigns.

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

**“Common Area”** means property deeded to and/or managed by the Association for the use and enjoyment of the members of the Association. A Common Road is a Common Area.

**“Common Roadway”** means the common roads identified on the Plat and/or deeded to the Association by the Declarant, and/or acquired by the Association and intended for the use and enjoyment of the members of the Association.

**“Dirt Bike”** means a lightweight motorcycle generally equipped with rugged tires and suspension and designed and/or used for riding over rough or unpaved surfaces.

**“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.

**“Family”** as used in the term “single family residence” means an individual or two or more persons who live together as a single housekeeping unit.

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

**“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.

**“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.

**"Modest."** The word "modest" as used herein means not dominate in size or color.

**"Modular Home"** or "modular building" means a structure, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, 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.

**"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.

**"Subdivision"** means The Crossing at Willow Bay as depicted on the plat thereof as recorded in the records of Bonner County, Idaho, including subsequent phases thereto.

**"Trails"** are defined on the plat as recreation easements.

EXECUTED BY THE DECLARANT ON THE ATTACHED SIGNATURE PAGE

SIGNATURE PAGE

DATED this 5 day of January, 2007

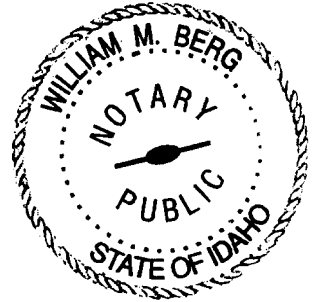
CROSSING DEVELOPMENT, INC.

[Signature]  
By: Jerald D. Hansen  
Its: President

STATE OF IDAHO )  
COUNTY OF BONNER ) SS.

On this 5<sup>TH</sup> day of JANUARY, in the year of 2007, before me, a Notary Public for the state of Idaho, personally appeared **Jerald D. Hansen**, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of **Crossing Development, Inc.** that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign) [Signature]  
NOTARY PUBLIC  
Residing at: SAGUA, IDAHO  
My commission expires: 11/14/08





**FILED EFFECTIVE**

2006 AUG -2 PM 3: 28

SECRETARY OF STATE  
STATE OF IDAHO

**ARTICLES OF INCORPORATION  
OF  
THE CROSSING HOA, INC.**

The undersigned, in order to form a nonprofit corporation under the provisions of Title 30, Chapter 3, Idaho Code, submits the following articles of incorporation to the Idaho Secretary of State.

**ARTICLE I.  
NAME OF CORPORATION**

The name of the corporation shall be The Crossing HOA, Inc. (hereinafter referenced as "Association").

**ARTICLE II.  
PURPOSE AND POWERS OF ASSOCIATION**

- 2.1 The purpose of the Association shall be to (a) enforce and carry out the provisions of the Declaration of Covenants, Conditions, Easements and Restrictions of The Crossing at Willow Bay (Declaration) and the bylaws, rules and regulations of the Association; and (b) maintain and protect the real property described in the Declaration (Property).
- 2.2 The Association through its board of directors, shall have the authority to: (a) enforce the Declaration, bylaws and rules; (b) make improvements to the Property; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out the provisions of the Declaration, these Articles and the Association bylaws; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare of the Members; (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.
- 2.3 The Association shall have and shall exercise all other rights and powers necessary and convenient to carry out its purpose including, without limitation, those general powers set forth in the Idaho Nonprofit Corporation Act, Title 30, Chapter 3-24, Idaho Code.
- 2.4 The Association shall adopt and maintain bylaws.

IDAHO SECRETARY OF STATE  
08/02/2006 05:00  
CK: 075916 CT: 172099 BH: 968116  
1 @ 30.00 = 30.00 INC NONP # 2  
1 @ 20.00 = 20.00 NON EXPEDI # 3

C168183

- 2.5 This instrument, the Declaration, and the Association bylaws shall be recorded in the records of Bonner County, Idaho.

### **ARTICLE III. REGISTERED AGENT**

The Association shall designate a registered agent. The initial registered agent shall be WILLIAM M. BERG, whose address (registered office) is 316 N. Second Ave., Ste B, Sandpoint ID 83864.

### **ARTICLE IV. BOARD OF DIRECTORS**

- 4.1 The Association shall have a board of directors (Board) consisting of no less than three (3) members, elected by the members of the Association at the annual meeting, and in accordance with the bylaws of the Association.
- 4.2 The initial Directors shall be:
- Jerald D. Hansen, 899 E. Bottle Bay Road, Sagle ID 83860  
James W. Sullivan, 16114 E. Indiana Ave., Spokane Valley WA 99216  
Brett T. Sullivan, 16114 E. Indiana Ave., Spokane Valley WA 99216
- 4.3 The Board shall (a) adopt an annual budget for operations; and (b) establish and enforce assessments, rules and regulations, and a schedule of fines and penalties for violation of rules and regulations, including without limitation penalties for late payment of assessments.
- 4.4 The Board shall carry out other duties as required by the bylaws, Declaration, and resolutions of the Members.

### **ARTICLE V. INCORPORATOR**

The incorporator is WILLIAM M. BERG whose address is 316 N. Second Ave., Ste B, Sandpoint ID 83864.

### **ARTICLE VI. ASSOCIATION OFFICE**

The Association shall maintain an Association office in Bonner County, Idaho. The initial office of the Association shall be located at 316 N. Second Ave., Ste B, Sandpoint ID 83864.

**ARTICLE VII.  
ASSOCIATION MEMBERSHIP**

- 7.1 The Association shall consist of voting members.
- 7.2 Every Lot Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any such Lot. The words "Lot" and "Owner" shall be defined as set forth in the Declaration.
- 7.3 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 Unit. A sale of a Unit by real estate contract shall constitute a valid transfer of membership to the buyer. A prohibited transfer is void.
- 7.4 Each Lot shall have one vote in the Association, such vote to be cast by the Lot Owner, except the Declarant, Crossing Development, Inc., an Idaho corporation, or its successor in interest, shall have ten (10) votes for each Lot it owns. Where co-owners exist, such owners shall designate in writing, with the Secretary of the Association, who among them shall cast the vote of the Lot Owner. A designation shall remain of record until revoked. Any co-owner may revoke a designation in writing and submit it to the Secretary. The Secretary shall not accept a vote by co-owners who fail to properly designate authority to cast the vote.

**ARTICLE VIII.  
ASSESSMENTS**

- 8.1 The Association shall levy assessments on its members. 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 but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Property.
- 8.2 Each Lot, regardless of size, shall bear an equal burden for the general expenses of the Association.
- 8.3 The Association, acting through its Board, may levy a special assessment from time to time when the current assessment is deemed insufficient for the Association to carry out its obligations under this instrument and the bylaws.

**ARTICLE IX.  
AMENDMENTS**

- 9.1 Until such time as the Declarant conveys a Unit, it shall have the right to amend these Articles and require the Board to submit such amendment to the Secretary of State.

9.2 Thereafter, these Articles may be amended upon the consent of 75% of the Lot Owners. An amendment shall be effective upon its filing with the Idaho Secretary of State and the recordation of a certified copy thereof in the records of Bonner County, Idaho.

**ARTICLE X.  
DISSOLUTION**

- 10.1 The Association may be dissolved upon modification of the Declaration to permit dissolution and the consent of 75% of the Lot Owners.
- 10.2 Upon dissolution, the assets of the Association shall be divided pro rata among Lot Owners.
- 10.3 Dissolution shall otherwise be accomplished in compliance with Title 30, Chapter 3-110 et. seq.

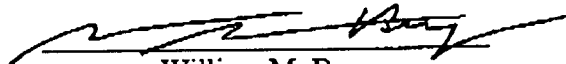
**ARTICLE XI.  
INDEMNIFICATION**

The Association shall indemnify and hold harmless its directors, officers, and employees from personal liability for monetary damages for breach of fiduciary duty in accordance with the powers granted in Title 30, Chapter 3-88, Idaho Code.

**ARTICLE XII.  
MISCELLANEOUS**

These Articles are intended to comply with the Declaration. In the event of ambiguity, the Declaration shall be given greater weight.

EXECUTED this 2 day of AUGUST, 2006.

  
 William M. Berg  
 Incorporator

750519

FILED BY  
*Bill Berg*  
2008 APR 29 P 2:06  
6900  
MARIE SCOTT  
BONNER COUNTY RECORDER

**RESTATED DECLARATION OF  
RESIDENTIAL COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
APPLICABLE TO "THE CROSSING" IN BONNER COUNTY, IDAHO**

**RECITAL**

- A. On January 17, 2007, the Declarant, Crossing Development, Inc., an Idaho corporation, recorded a Declaration of Residential Covenants, Conditions, Easements and Restrictions (Declaration), recorded as instrument number 721140, records of Bonner County, Idaho.
- B. Article 12.4 of the Declaration provides for the modification of the Declaration by a vote of 67% of the Lot Owners, voting at a duly called membership meeting of the homeowner's association, known as The Crossing HOA, Inc., an Idaho nonprofit corporation (Association).
- C. On April 8, 2008, the Board of Directors of the Association resolved to restate the Declaration for the purpose of making certain substantive and clerical modifications thereto.
- D. One modification was to correct the identification of the Plat. The official name of the Plat is "The Crossing," although the development is popularly known as "The Crossing at Willow Bay." Hereinafter, the Plat shall be identified in the Declaration by its official name.
- E. On April 24, 2008, after notice to the Members pursuant to Article 3.10 of the Bylaws, the Members met in Sandpoint, Idaho, and voted to adopt the following restated Declaration.
- F. This restated Declaration shall supersede the original Declaration adopted on January 5, 2007 and recorded on January 17, 2007.

**RESTATEMENT**

WHEREAS, the Declarant and the Association are the owners of certain real property known as THE CROSSING, as described on an official plat, recorded as instrument number 721139, in Book 8 of Plats at page 124, records of Bonner County, Idaho, and located in portions of Section 1, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho, and Section 36 Township 56 North, Range 4 West, Boise Meridian, Bonner County, Idaho; now, therefore,

THE LOT OWNERS AND MEMBERS OF THE ASSOCIATION, with the approval of the Declarant, hereby declare that all of the Property, including without limitation the numbered Lots therein, roadways, walkways and the like, shall be held, sold and conveyed subject to the restrictions, covenants, easements and conditions set forth in this instrument for the purpose of protecting the value and desirability of said lots, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.  
DESIGNATION OF USE**

- 1.1 **Residential Lots.** Use of the Property shall be restricted to single family residential lots and associated recreational and maintenance facilities including one lot designated for the use of a resident site manager.
- 1.2 **No Further Subdivision.** Except for lots owned by the Declarant, a Lot Owner shall make no further subdivision of any lot. The Declarant reserves the right to further subdivide any lot it owns.
- 1.3 **Future Additions to Subdivision.** The Declarant reserves the right to plat adjoining parcels and to add such platted parcels to the subdivision. The Association shall accept into membership owners of lots in subsequently platted blocks that are made subject to this Declaration, provided such new Members shall be subject to this Declaration, as restated or amended, and to all of the duties, obligations, rights and responsibilities contained herein.
- 1.4 **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 Common Area. The Declarant reserves an easement incident to construction for ingress, egress, temporary and permanent utilities, and physical structures over, under, around and through the Common Area.
- 1.5 **Declarant Sales Office.** So long as the Declarant or assignee is in title to a lot on the Property, the Declarant reserves the right to maintain a sales office on its lot(s) or in the Common Area.

**ARTICLE II.  
HOMEOWNERS' ASSOCIATION, ROAD MAINTENANCE, SPECIAL  
REQUIREMENTS  
(Articles 2.1 – 2.5 are Irrevocable Provisions)**

- 2.1 **Homeowners' Association.** The Declarant shall establish and the Lot Owners collectively shall maintain an Idaho nonprofit corporation known as **THE CROSSING HOA, INC.** (Association).
  - 2.1.1 **Purpose.** The purpose of the Association shall be to maintain, improve, and regulate the use of real property owned by the Association, to carry out the provisions of the Declaration of Covenants, Conditions, Easements and Restrictions of The Crossing at Willow Bay, and to take any other lawful actions for the benefit of the Association and its Members.
  - 2.1.2 **Articles of Incorporation and Bylaws.** The Declarant shall adopt Articles of Incorporation and Bylaws for the Association. The Articles of Incorporation shall be registered with the Idaho Secretary of State. The Articles of Incorporation and the Bylaws, and any future amendments thereto, shall be recorded in the records

of Bonner County, Idaho. A Lot Owner by acceptance of a Deed thereby acknowledges and ratifies the Articles of Incorporation of the Association

2.1.3 **Priority of Authority.** Notations on the plat map 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 Articles of Incorporation and Bylaws. The Association's Articles of Incorporations and Bylaws shall be interpreted in a manner consistent with the provisions contained herein. In the event of ambiguity between these governing documents, preference shall be given first to plat notations, then to this instrument, then to the Articles of Incorporation, and lastly to the Bylaws.

2.1.4 **Governing Authority.** The Association through its Board of Directors (Board), shall have the authority to: (a) enforce this Declaration; (b) make improvements to the Property; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration, Articles of Incorporation and Bylaws; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare, in accordance with the spirit and letter of this Declaration; (f) enforce and carryout the development requirements as set forth in Bonner County Planning Department files S1158-05 and C818-05; (g) 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; and (h) hire, retain and dismiss employees, agents or other persons to carry out the purposes of this Declaration.

2.2 **Duties of Association.** The Association shall have the following general duties to its Members.

2.2.1 **Maintain and Protect the Property.** The Association shall have the duty to maintain the Common Roadways, Common Area, and Association-owned land, structures and facilities in a safe, functioning, and attractive condition. The Association shall not be liable for crimes, vandalism, or injury suffered by Lot Owners on their property.

2.2.2 **Publish Rules and Regulations.** The Association shall establish and periodically publish rules and regulations to carry out its duty to maintain and protect the Property. Without limitation, such rules shall provide for use of all Common Areas.

2.2.3 **Maintain Erosion Control and Stormwater Management Measures.** The Association shall maintain as designed all permanent erosion control and stormwater management measures installed by Declarant.

2.2.4 **Road System and Maintenance.** All lots within the subdivision shall be accessed from the Common Roadway as defined herein. The Association shall maintain the Common Roadway for the benefit of the Lot Owners and their invitees including but not limited to snow removal, road repair and replacement, stormwater management, erosion control, and eradication of noxious weeds. The

Association shall annually budget for road maintenance, adjust the fee schedule to accomplish its routine road maintenance obligations, and make and collect special assessments for necessary capital improvements and replacements.

- 2.2.5 **Parking and Blocking Roads.** The Association shall adopt rules for the use of the Common Roadways including a schedule of fines and penalties sufficient to achieve enforcement. Such rules shall provide that, at a minimum, Lot Owners and their invitees are not permitted to park recreational vehicles or store materials in or on the Common Roadways except for (a) temporary purposes with the express written permission of the Association Board, or designee, or (b) in a designated parking area.
  - 2.2.6 **Maintain Sewer and Water Systems.** The Association shall maintain a large soil absorption system (LSAS) for certain lots as set forth in Article VI, and a water system as set forth in Article VII.
  - 2.2.7 **Maintain a Reserve Fund.** The Association shall maintain a reserve fund sufficient in scope to defray foreseeable capital expenses for Common Area maintenance.
- 2.3 **Special Requirements.** The following special requirements are imposed on Lot Owners and the Association:
- 2.3.1 **Conformance with Land Use Codes.** The Association and Lot Owners shall maintain their respective properties in conformance with applicable Bonner County, Idaho land use codes, and relevant statutes and regulations of the state of Idaho and the United States of America. The following exceptions from the Bonner County Code are permitted:
    - 2.3.1.1 **Front and Rear Yard Setbacks.** The six Block 2 "cottage" lots are permitted 20-foot setbacks from the front and rear property line. BCRC Section 12-630(c).
    - 2.3.1.2 **Depth to Width Ratio.** Lot 11 of Block 3 may vary from the depth to side ratio of a maximum depth to width of 3:1. BCRC Section 12-2305(b).
    - 2.3.1.3 **Other Exceptions.** Other limited exceptions are permitted as set forth in paragraph 7 of Decision Letter of July 14, 2005 in Bonner County Planning Commission file C818-05.
  - 2.3.2 **Individual Lot Stormwater/Erosion Control Management.** Lot Owners shall construct and maintain stormwater management systems required by Bonner County on their respective lots. In addition, each individual Lot Owner shall implement any and all drainage, stormwater, and erosion control measures pursuant to the Bonner County-approved stormwater management and erosion control plan as set forth in Bonner County Planning Department files S1158-05 and C818-05.

- 2.3.3 **Wildlife Mitigation.** The Idaho Department of Fish and Game recommends the following wildlife mitigation measures:
- 2.3.3.1 **General Advice.** Residents should avoid attracting bears, raccoons and skunks. Suggested means include cleaning barbecue grills frequently, not leaving pet food outside, not distributing bird feed on the ground, and protecting compost piles and fruit trees. Purposely feeding wild animals creates an unnatural situation and may cause local population increases, which may create an unwanted nuisance for neighboring residents and, eventually, the resident providing the food. Animals will continue to return even if the food is removed. Also, concentrating a large number of animals in a small area can facilitate local disease outbreaks.
  - 2.3.3.2 **Contain Garbage.** Residential garbage shall be stored inside a secure structure or in bear-proof containers.
  - 2.3.3.3 **Retain Timber and Vegetation.** Standing timber and natural vegetation, including snags and shrubs, should whenever possible be retained to provide cover, food, nesting or perching sites for indigenous wildlife.
  - 2.3.3.4 **Control Pets.** Pets shall be restrained from chasing or disturbing wildlife.
- 2.3.4 **Fire Protection Planning.** The Property is located in a wooded, rural area. Therefore, the Association shall remain cognizant of wild fire danger, shall provide fire protection information to Lot Owners from time to time, and encourages Lot Owners to maintain their Lots in accordance with such fire protection safeguards.
- 2.3.4.1 **Water Flow.** The Association shall maintain a system of approved hydrants and water sources, and water supply for fire protection as approved by the Sagle Fire District or its successor.
  - 2.3.4.2 **No Obstructions.** Access to all water sources for fire protection shall be unobstructed at all times.
  - 2.3.4.3 **Water Source Identification.** Water sources for fire protection, such as hydrants, shall be clearly identified in a manner approved by the Sagle Fire District or its successor.
  - 2.3.4.4 **Testing and Maintenance.** Water sources, draft sites, hydrants and other fire protection equipment shall be subject to periodic tests as required by the Sagle Fire District or its successor.
  - 2.3.4.5 **Clearance of Fuel.** Lot Owners and the Association are encouraged to maintain defensible space around structures and to utilize fire-resistive vegetation in their landscaping in accordance with safeguards published by the Association and distributed to Lot Owners.

- 2.4 **Membership and Voting Rights in Association.** The Declarant shall adopt Articles of Incorporation and Bylaws for the Association. The governing documents of the Association shall provide the following:
- 2.4.1 **Membership.** Every Lot Owner, whether the lot is undeveloped or improved, 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 ownership of any such 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.
- 2.4.2 **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.
- 2.4.3 **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.
- 2.4.3.1 **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. Where co-owners exist, they shall designate in writing, with the Secretary, who shall cast the vote of the Lot Owner. A designation shall remain of record until revoked. Any co-owner may revoke a designation in a writing submitted to the Secretary. The Secretary shall not accept a vote by co-owners who fail to properly designate authority to cast the vote. Fractional votes are not permitted. All co-owners may attend and otherwise participate in Association meetings.
- 2.4.3.2 **Class B Membership.** The Class B Member (the Declarant) shall have ten (10) votes in the Association for each Lot owned. The Declarant may designate an agent or agent(s) to cast its votes. Class B membership shall automatically convert to Class A membership upon the earlier of the following: (a) the voting power of Class A Members exceeding that of Class B; (b) the recordation of notice by the Declarant of voluntary conversion; or (c) at 11:59 p.m. on December 31, 2012.
- 2.4.4 **Majority Vote.** Except as otherwise set forth herein, a majority of votes of the Members shall be the action of the Association.
- 2.4.5 **Proxy Voting.** A Lot Owner may give his proxy to another Lot Owner. Such proxy shall be in writing and delivered to the Secretary prior to any vote. A proxy shall automatically expire on its annual anniversary.

- 2.5 **Actions Reserved to the Members.** The following actions are reserved to the Members, voting at a duly noticed meeting of the Association:
- 2.5.1 **Elect and Remove Directors.** The Members shall have the exclusive authority to elect and remove directors.
  - 2.5.2 **Approve Budget.** Upon presentation by the Board, 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, and for the first six (6) months of 2007, the Declarant shall be able to collect the initial annual assessment set forth in this Declaration without regard to a budget.
  - 2.5.3 **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.
  - 2.5.4 **Amend the Articles of Incorporation and Bylaws.** Upon resolution of the Board, the Members may, at a duly called meeting of the Members, amend the Bylaws with a 60% majority of votes, and amend the Articles of Incorporation with a 67% majority of votes.
  - 2.5.5 **Limitation of Action.** Except as set forth in this Article 2.4, the Members shall take no action except upon resolution of the Board presented to the Members at a duly called meeting of the Members. The Members may amend any resolution presented by the Board.

2.6 **Board of Directors.**

- 2.6.1 **Management Vested in the Board of Directors.** The Board shall govern the Association and shall manage the Property. The Board may, but is not required to seek the approval of the Members before taking an action other than those actions reserved to the Members in Article 2.4. The Board shall present an annual budget to the Members at least fourteen (14) days prior to an annual or special meeting of the Members.
- 2.6.2 **Board Determines Rate of Assessment.** The Board shall establish the rate of assessment based on the approved annual budget. The Board shall not assess in excess of the funds necessary to fund the budget EXCEPT that the Board shall have the right to fund a capital reserve account for the purpose of making capital improvements, and major or emergency repairs.
- 2.6.3 **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 Members at an annual meeting or at a special meeting called for the purpose of 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.

- 2.6.4 **Electing a Director.** The President shall call for nominations for Director. The nominee need not be present. A Member may nominate himself or herself. Members shall cast one (1) vote for each position. Where only one (1) Directorship is being filled, the nominee(s) obtaining the most votes shall be elected.
- 2.6.5 **Removing a Director.** The Members may remove a Director at any time, for any reason or no reason at all. In the case of removal, the Members shall vote on each Director and the Director shall be removed upon the vote of a majority, excluding the vote of the Director subject to removal.
- 2.6.6 **Officers.** The Board shall annually elect Officers. There shall be a President, Vice President, Secretary and Treasurer. No Officer may hold more than one office except one Officer may be both Secretary and Treasurer. The duties of office shall be expressed in the Bylaws. An Officer may be removed by the Board of Directors upon the vote of a majority, excluding the vote of the Officer subject to removal.
- 2.6.7 **Action of the Board.** The votes of a majority of the Board shall be the action of the Board.
- 2.6.8 **Deadlock of the Board.** If Directors are deadlocked, the Board shall refer the matter causing deadlock to the Members at a special or annual meeting.
- 2.6.9 **Referral to Members.** Except as otherwise required herein, the Board may refer a matter to the Members for an advisory vote or final decision.
- 2.7 **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. 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:
- 2.7.1 **Fire Insurance.** Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Area.
- 2.7.2 **Liability Insurance.** Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area in such amounts as the Board shall determine.
- 2.7.3 **Directors and Officers.** Full coverage directors' and officers' liability insurance with limits in such amounts as the Board shall determine.

- 2.7.4 **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.
- 2.7.5 **Association as Trustee.** The Association shall be deemed trustee of the interests of all Lot Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Lot Owner's interests in such proceeds and is required to distribute such proceeds as it deems appropriate to the individuals.

### 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 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 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 such as Internet bandwidth and television. In addition, the Association may include in any assessment the cost of (a) general liability insurance; (b) insuring its officers and directors; (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 improvement of the Common Roadways and other Common Area; 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 including but not limited to Common Area and Common Road maintenance. The Association may, through its Board, levy special assessments disproportionately for particularized services provided to certain Lot Owners

or to Lot Owners in a disproportionate manner. The Association may, but shall not be required to make available special services to Lot Owners at a specified cost such as concierge, vacation security, and property maintenance.

- 3.4 **Initial Assessment Upon Purchase from Declarant.** The Initial Assessment shall be \$750.00, due upon conveyance of the lot from the Declarant or its successor to the initial buyer and payable at closing. The Initial Assessment shall be used for the purpose of providing initial capitalization of the Association. The Initial Assessment is in addition to the Annual Assessment.
- 3.5 **Rate of Assessments.** The Annual Assessment shall be \$2,820.00 (\$235.00/month), payable monthly commencing January 1 and ending December 31. Payments shall be due on the first day of the month. Lot Owners may pay in advance. The Board shall have discretion to establish and levy late fees and penalties. The Board shall have the right and obligation to change the rate of assessment from time to time as required.
- 3.6 **Transfer Assessment.** The Association shall levy a transfer assessment in the amount of one month of membership dues (annual assessment) upon the transfer of a lot subsequent to the initial conveyance from the Declarant. The purpose of the transfer assessment is to defray the costs of administration in documenting the ownership change in Association records, providing the new homeowner a current set of governing documents including the rules and regulations, and providing an orientation to the Common Area and facilities.
- 3.7 **Special Assessments.** Upon authorization of a majority of Members, voting at a duly noticed meeting of the Members, the Board may levy a special assessment from time to time when the current assessment is deemed insufficient for the Association to carry out its obligations under this instrument and the Bylaws.
- 3.8 **Remedies for Non-Payment.** The Association shall have authority to apply any and all 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 shall impose late fees and interest costs for any assessment not paid within thirty (30) days after its due date. A schedule of penalties and interest costs shall be established by the Board. 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 Owners may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of the Common Area, or abandonment of a lot.
- 3.9 **No Assessment on Declarant.** Notwithstanding the provisions of this article, the Declarant shall not be assessed for any Lot it owns. The Declarant may make up any budget shortfalls in the operating budget through direct contribution to the Association, but the Declarant shall not be required to contribute to any capital fund or future reserve.

**ARTICLE IV.  
DWELLINGS, STRUCTURES AND IMPROVEMENTS**

- 4.1 **Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall an exterior addition to or change or alteration therein be made until the plans and specifications have been submitted to and approved by the Association's Board or designee. The Board shall appoint a Design Review Committee (DRC) to review said plans and specifications and shall delegate authority to the DRC for such purposes. The Board may appoint itself as the DRC.
- 4.2 **Design Review Committee.** The DRC shall consist of no less than three (3) members who are Lot Owners EXCEPT, unless and until the Declarant has conveyed ninety percent (90%) of the lots, the Declarant shall exercise the sole authority of the DRC. DRC members shall serve staggered three-year terms and no member may serve more than two consecutive terms. The Board may retain an architect or an individual with substantial residential design experience to serve as a consultant to the DRC.
- 4.3 **Architectural Considerations.** The DRC shall consider the nature, kind, shape, height, materials and location of the submitted structure. The Committee shall further consider the quality of materials, harmony of external design and location in relationship to surrounding structures and topography.
- 4.4 **Architectural Guidelines.** The Declarant shall publish architectural guidelines (Design Guidelines). The Design Guidelines may be amended by the Board upon recommendation of the DRC but shall be no less restrictive than the building standards set forth herein. In the event of a conflict in interpretation between this Article IV and the Design Guidelines, the Design Guidelines shall control.
- 4.5 **Building Standards.** The following minimum building standards shall apply. The Design Guidelines may exceed these standards. The DRC shall have discretion to grant relief from these minimum standards in particular cases for good cause.
- 4.5.1 **Building Code and Inspection.** All dwellings and structures shall comply with state and local building standards as applicable. All dwellings and structures shall be inspected if a building inspection is required by the State of Idaho and/or Bonner County, Idaho. Electrical and plumbing inspections are required. Absent County inspection, private inspections of foundation and framing are encouraged.
- 4.5.2 **Building Height.** No building, except buildings constructed by the Declarant, shall be more than thirty-five (35) feet in height, from the entry level finished floor to the mid-point of the roof's pitch.
- 4.5.3 **Building Permit.** Construction shall not commence on any structure without an applicable building permit or building location permit issued by Bonner County, Idaho.

- 4.5.4 **Floor Space.** With the exception of Block 2, dwellings shall contain no less than 1,800 square feet of living space. Living space means all of the space in a dwelling except garage, attic, and crawl spaces. Floor space requirements for Block 2 shall be set forth in the Design Guidelines.
- 4.5.5 **Mobile and Manufactured Homes Prohibited.** An owner shall not construct or maintain on the property a mobile or manufactured home, as such terms are defined herein.
- 4.5.6 **Modular Homes Permitted.** Modular home construction, as defined herein, is permitted, so long as designed and constructed in accordance with the Design Guidelines.
- 4.5.7 **Set Backs.** Structures shall comply with the set backs shown on the face of the recorded plat. In the event that setbacks for a lot are not indicated on the face of the plat, the structure shall comply with the minimum setbacks as required by Bonner County Code, as amended, and as modified in Article 2.3.1 herein.
- 4.5.8 **Temporary Structures Prohibited.** Temporary structures are prohibited except for trailers used by contractors while a dwelling is Actively Under Construction as defined in Article XIV.
- 4.6 **Design Standards.** Lot Owners shall comply with the Design Guidelines in effect upon the submission of plans and specifications.
- 4.7 **Procedures for Submission and Approval of Plans.** Lot Owners shall comply with the procedures for submitting plans and specifications as set out in the Design Guidelines in effect at the time of submission.
- 4.8 **Grounds for Disapproval.** The DRC shall have the right to disapprove any plans and specifications submitted hereunder for any one of the following reasons:
- 4.8.1 **Failure of Submission.** The plans or specifications submitted are inadequate to fairly evaluate the proposal and/or the Lot Owner has failed to supply information requested by the DRC.
- 4.8.2 **Violation of Covenants.** The plans or specifications violate a provision of this Declaration.
- 4.8.3 **Incompatible Design or Materials.** The exterior design, appearance, materials, color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of the proposed structure is incompatible with the surrounding structures, topography, or Design Guidelines.
- 4.8.4 **Incompatible Site Design.** The location of the structure, parking areas, grading, or landscaping is incompatible with the surrounding structures and topography.
- 4.8.5 **Incompatible with the Development Design.** The structure or proposed uses are incompatible or not in harmony with the general plan of improvement of The Crossing At Willow Bay, or with structures or uses located upon other lots in the vicinity.

- 4.9 **Exceptions.** The DRC may modify these standards with respect to the plans and specifications for any particular lot or dwelling unit if the strict application of these standards would create an undue hardship on the Lot Owner, or would create a result inconsistent with the appearance or uses of other lots on the property.
- 4.10 **Cost of Design Review.** The Board may establish a fee for design review. Such fee shall be calculated to defray the costs of the Association of plan review and technical assistance.
- 4.11 **No Waiver of Future Approvals.** The approval of the DRC to the plans and specifications as to one dwelling or phase of construction shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar plans and specifications subsequently or additionally submitted by a Lot Owner.
- 4.12 **Construction of Unapproved Structure.** A structure or site plan that is commenced, altered, erected, placed or maintained upon a Lot without the approval of the DRC shall be deemed a violation and breach of this covenant. Upon written notice from the DRC, the Lot Owner shall remove such structure or otherwise bring the structure or site plan into compliance. 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 borne 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.
- 4.13 **Maintenance and Repair Obligations.** Each Lot Owner shall have a continuing duty to maintain, repair, replace and restore areas under his or her exclusive control in a neat, sanitary and attractive condition. The area of exclusive control means the dwelling unit and lot. After notice and hearing, the Board shall have the right to remove or otherwise remedy any condition found to be (a) dangerous, unsafe, unsightly or unattractive; or (b) that falls out of compliance with approved plans and specifications for any reasons including lack of maintenance; or (c) a prohibited structure or activity. The cost of remedial action shall be born by the Lot Owner. Failure to timely reimburse the Association for such costs of remediation shall be cause for the Board to levy a special assessment on the Lot Owner.
- 4.14 **Non-liability of Board Members.** The Declarant, the Board, and members of the DRC shall not be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of their respective duties hereunder, unless due to willful misconduct or bad faith.

**ARTICLE V.  
COMMON AREA**

- 5.1 **Common Area Designation.** The Common Area consists of the Common Roadway, Trails, open spaces, Boat Storage and RV Parking, and attendant recreational and maintenance facilities, and any other areas designated Common Area or recreational easement on the plat map. In addition, the Association may acquire and own in fee simple or by easement additional real property, facilities and structures that shall be maintained by the Association for the benefit of Lot Owners.
- 5.2 **Easement to Common Area.** Every Member of the Association shall have a nonexclusive easement to the designated Common Area, including without limitation the Common Roadway and Trails, for the limited purpose of ingress, egress, and recreation. Such easement shall be appurtenant to and shall pass with title to every lot, subject to the right of the Association to limit and control the use of the Common Area through rules and regulations established by the Board.
- 5.3 **Easement for Declarant.** Notwithstanding the limitation in paragraph 5.2, the Declarant hereby reserves a mutual non-exclusive easement for ingress, egress and utilities including, without limitation, public and private utilities, under, over, across and through the Common Area for additions to the subdivision located within or without the boundaries of the plat map.
- 5.4 **Reservation of Easement for Water Association.** Declarant reserves for the benefit of THE DUFORT WATER ASSOCIATION, INC., an Idaho nonprofit corporation (DWA), an exclusive easement for the acquisition and distribution of potable water on, over, under, across and through the Common Area for pipes, buildings, reservoirs, pumps, storage tanks, and related facilities. Said reservation includes an easement for ingress and egress over the Common Area for the purpose of installation and maintenance of the water facility.
- 5.5 **Water and Sewer Utility Easement for Willow Bay Holdings, LLC.** Declarant reserves for the benefit of Willow Bay Holdings, LLC, its successors, agents, and assigns, a water and sewer utility easement appurtenant to and for property located adjacent to the Property (known as Willow Bay Marina and Resort) and described in a warranty deed recorded on June 2, 2005 as instrument number 678075, records of Bonner County, Idaho.
- 5.6 **Yacht Club Access.** Declarant grants Willow Bay Holdings, LLC, and its lessee, Willow Bay Yacht Club, Inc., and their respective employees, agents, successors, and assigns, a license for ingress, egress and utilities, for the limited purpose of construction, maintenance, and operation of slips, tie downs, moorage and navigational aids. This license shall be limited to construction and maintenance personnel and shall not extend to access for Yacht Club members who are not Lot Owners or are not the Lot Owners' guests, or invitees. The Association may, at its discretion, grant nonresident Yacht Club members a license to enter the Property, but such license shall be limited to Tracts A, D & E.

- 5.7 **Damage to Common Property.** Each Member shall be liable to the Association for any damage to the Common Area or Common Roadway not fully reimbursed to the Association by insurance proceeds arising out of or caused by the willful, negligent or accidental 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.
- 5.8 **Parking and Blocking Roads.** The Association may adopt rules for the use of the Common Area including a schedule of fines and penalties sufficient to achieve enforcement.
- 5.9 **Noxious Weed Control.** The Association shall destroy and control for noxious weeds in Common Area. Weed control shall comply with applicable Bonner County and Idaho state regulations.
- 5.10 **Nuisance Birds.** The Association and its Members shall avoid attracting nuisance birds.

#### ARTICLE VI. SEPTIC AND SEWER SYSTEM

- 6.1 **Private Facilities.** Except for Lots designated in Article 6.2, each Lot Owner shall construct a septic system contained entirely within the lot boundaries and within the applicable set back requirements. No dwelling shall be occupied unless there is an operable septic system in compliance with the regulations of Panhandle Health District.
- 6.2 **Common Facility.** Lots 1-8 in Block 1, 1-6 in Block 2, 1-14 in Block 3, Open Space Tract D, and other properties serviced by an easement shall be served by a LSAS, owned and maintained by the Association. Lot Owners and others licensed to use the common facility shall share the costs of maintenance and operation proportionately. The Association shall determine proportionality, publish a fee schedule, and establish rules, regulations, and construction standards. Lot Owners purchasing from the Declarant, or its successor in interest, shall be required to pay one-half (50%) of the connection fee upon closing. The connection fee and terms of payment shall be set forth in the Association's rules and regulations or by separate resolution of the Board. PERIODIC SERVICE FEES FOR THE COMMON SEWER FACILITY ARE NOT INCLUDED IN THE ASSOCIATION'S ANNUAL ASSESSMENT.
- 6.3 **Responsibility for Maintenance.** The Association shall maintain the common sewer system and associated sewer facilities to the lot boundary, or to the boundary of any adjacent property using the system. Lot Owners constructing a private septic system shall be solely responsible for construction and maintenance.
- 6.4 **License for Maintenance.** A Lot Owner with a private septic system, and any user of the common sewer facility, by hooking on to said system, shall be deemed to have granted the Association, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties and structures for the purpose of maintaining the sewer facilities. No compensation shall be paid for any

use of this license. A Lot Owner shall reimburse the Association for any reasonable costs of repair.

- 6.5 **Documentation.** Lot Owners with private septic systems shall provide the Association with "as built" drawings of the system and relevant operation manuals in order that the Association may maintain the system in an emergency.

## **ARTICLE VII. WATER SYSTEM**

- 7.1 **Water Association.** Lot Owners shall be served with potable water by the Dufort Water Association, Inc. (DWA), an Idaho non-profit corporation established on August 29, 2006.
- 7.2 **No Individual Wells.** A dwelling shall not be occupied unless under active service by DWA. Lot Owners shall not drill water wells on their lots.
- 7.3 **Deemed Membership.** Upon accepting title to a lot, the Lot Owner shall be deemed a member of the DWA and shall have a duty to execute a membership application at closing.
- 7.4 **Connection Fee.** Lot Owners purchasing from the Declarant, or its successor in interest, shall be required to pay one-half (50%) of the connection fee upon closing. The connection fee and terms of payment shall be set forth in the DWA's rules and regulations or by separate resolution of its Board.
- 7.5 **Connection Requirement.** A Lot Owner shall be connected to the water system no later than commencement of construction of a dwelling unit. "Commencement" means ground disturbing activities.
- 7.6 **Rules and Regulations.** Membership in the DWA, or its successor, shall be governed by the entity's rules, regulations, bylaws and other governing documents.
- 7.7 **Fees and Assessments.** Lot Owners shall pay the fees and assessments set forth in the governing documents of the DWA and shall abide by its rules and regulations. WATER SERVICE IS NOT INCLUDED IN THE CROSSING HOA, INC.'s ANNUAL ASSESSMENT. FEES FOR WATER SERVICE ARE CONTAINED IN THE RULES AND REGULATIONS OF THE DWA.
- 7.8 **Maintenance License.** Lot Owners and the Association hereby grant the DWA, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties or structures for the purpose of maintaining, expanding, and/or repairing the water system. No compensation shall be paid for any use of this license.

**ARTICLE VIII.**  
**PROHIBITED USES AND ACTIVITIES**

The following uses and activities are prohibited:

- 8.1 **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.
- 8.2 **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.
- 8.3 **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. Pigs are specifically prohibited.
- 8.4 **Dirt Bikes, All Terrain Vehicles, and Snowmobiles.** Dirt bikes, as defined herein, all terrain vehicles (commonly known as an ATV), and snowmobiles shall not be ridden on or in the Common Area, on the Common Roadways or Trails.
- 8.5 **Discharge of Firearms.** Owners shall not discharge a firearm on the Property except in defense of self or others. Shooting ranges are expressly prohibited.
- 8.6 **Excavations and Building Materials.** Excavation is prohibited except as necessary for construction of a dwelling and associated landscaping and hardscaping. Storage of building materials, including but not limited to sand, gravel, top soil, lumber, roofing, windows and doors, shall be permitted only while a structure is actively under construction.
- 8.7 **Firewood.** Firewood, manufactured logs, and the like shall be stored within the dwelling unit or garage, or otherwise screened from public view.
- 8.8 **No Hunting.** Hunting on the Property is prohibited.
- 8.9 **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 Section 12-202 of the Bonner County Revised Code and as subsequently amended. A "bed and breakfast" shall be deemed a prohibited commercial activity regardless of Bonner County Revised Code.
- 8.10 **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 of a lot as defined in the Rules and Regulations.
- 8.11 **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.

- 8.12 **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 located in areas concealed from public view, or appropriately screened. Lot Owners shall control for odors and protect containers from animals. Containers may be placed in public view for the limited purpose of trash collection for up to twelve (12) hours. Lot Owners shall be responsible for the timely collection of any trash that escapes containment. Containers used for dwelling construction trash shall be subject to the Design Guidelines.

**ARTICLE IX.  
NO EASEMENTS IN FAVOR OF THIRD PARTIES.**

Except as otherwise set forth herein or on the plat, the Owners individually or collectively, and the Association, shall not grant an easement for ingress or egress through the Property to a third party that owns a lot or parcel outside the boundaries of the Property. Any such grant made in violation of this provision shall be voidable by any Owner or the Association. The Association, through its Board, may grant a utility easement to one or more owners of property outside the boundaries of the Property.

**ARTICLE X.  
CONDEMNATION**

In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of the improvements to the Property, each Lot Owner agrees, by acceptance of a deed to such lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, each Lot Owner receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners in proportion to their respective assessment shares. All amounts due to the Association under this article shall constitute a lien against the Lot Owner's property.

**ARTICLE XI.  
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 XII.  
MODIFICATION OF RESTRICTIONS**

- 12.1 **Covenant.** All of the restrictions contained herein shall be deemed to be covenants running with the land and shall endure and be binding upon all Lot Owners, their successors and assigns.
- 12.2 **Irrevocable Provisions.** Articles 2.1 through 2.5 of this Declaration shall be irrevocable.
- 12.3 **Declarant Modification.** Except for Articles 2.1 – 2.5 herein, the Declarant may modify this Declaration at any time before it conveys a lot.
- 12.4 **Homeowner Modification.** Provisions of this Declaration, other than those set out in Articles 2.1 through 2.5, may be modified at any time by a vote of two-thirds (67%) or more of the Lot Owners voting at a duly called membership meeting AND, so long as the Declarant holds Class B shares, the Declarant's approval. This Declaration may be modified commencing on the fifth anniversary of its recordation, and every fifth anniversary thereafter, by a vote of a majority of the Lot Owners, voting at a duly called membership meeting, AND, so long as the Declarant holds Class B Share, the Declarant's approval. The modification period shall expire at 11:59 p.m. on the last day of the sixth month following the anniversary date. The modification must be adopted within the modification period and recorded within 14 days of its adoption. The modification shall reference this Declaration by recording number and all prior modifications thereto.

- 12.5 **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.

### ARTICLE XIII. MISCELLANEOUS PROVISIONS

- 13.1 **Assignment.** The Declarant shall have the right to assign its duties, obligations and interests as set forth herein.
- 13.2 **Conflicts with Government Ordinance.** A Bonner County 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.
- 13.3 **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.
- 13.4 **No Public Dedication.** Except as otherwise shown on the plat, nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Property to or for the general public. The roads within the Property are private.
- 13.5 **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.
- 13.6 **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 XIV. DEFINITIONS

**"Accessory Structure"** means any structure not directly attached to the residence to which it is appurtenant.

**"Actively Under Construction"** means regular, diligent and periodic activity.

**"Association"** means The Crossing HOA, Inc., its successors and assigns.

**"Board"** means the Board of Directors of the Homeowners' Association.

**"Common Area"** means property deeded to and/or managed by the Association for the use and enjoyment of the Members of the Association. A Common Road is a Common Area.

**"Common Roadway"** means the common roads identified on the Plat and/or deeded to the Association by the Declarant, and/or acquired by the Association and intended for the use and enjoyment of the Members of the Association.

**"Dirt Bike"** means a lightweight motorcycle generally equipped with rugged tires and suspension and designed and/or used for riding over rough or unpaved surfaces.

**"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.

**"Family"** as used in the term "single family residence" means an individual or two or more persons who live together as a single housekeeping unit.

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

**"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.

**"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.

**"Member"** means a member of The Crossing HOA, Inc. when the word is capitalized. Members of other related associations or boards of directors are referenced by the word "member," all in lower case.

**"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.

**"Modest."** The word "modest" as used herein means not dominate in size or color.

**"Modular Home"** or "modular building" means a structure, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, complies with the International Building Code, and does not have a chassis, and is completely disassembled for transportation.

**"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.

**"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.

**“Subdivision”** means The Crossing at Willow Bay as depicted on the plat thereof as recorded in the records of Bonner County, Idaho, including subsequent phases thereto.

**“Trails”** are defined on the plat as recreation easements.

EXECUTED BY THE SECRETARY AND BY THE DECLARANT ON THE ATTACHED  
SIGNATURE PAGE

SIGNATURE PAGE

THE CROSSING HOA, INC.

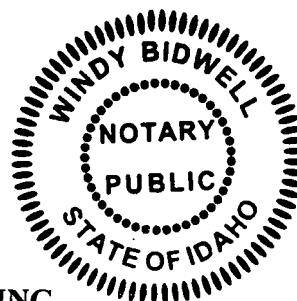
*[Handwritten Signature]*

By: Brett T. Sullivan  
Its: Secretary

STATE OF IDAHO )  
COUNTY OF BONNER ) SS.

On this 24 day of April, in the year of 2008, before me, a Notary Public for the state of Idaho, personally appeared Brett T. Sullivan, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of The Crossing HOA, Inc. that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign) *[Signature]*  
NOTARY PUBLIC  
Residing at: Sandpoint  
My commission expires: 3/2/13



CROSSING DEVELOPMENT, INC.

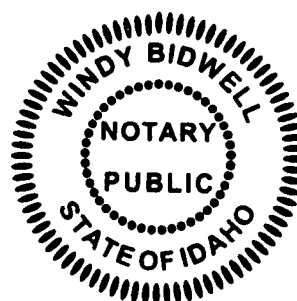
*[Handwritten Signature]*

By: Brett T. Sullivan  
Its: Secretary

STATE OF IDAHO )  
COUNTY OF BONNER ) SS.

On this 24 day of April, in the year of 2008, before me, a Notary Public for the state of Idaho, personally appeared Brett T. Sullivan, known or identified to me to be the president, or vice-president, or secretary or assistant secretary, of Crossing Development, Inc. that executed the within instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

(Sign) *[Signature]*  
NOTARY PUBLIC  
Residing at: Sandpoint  
My commission expires: 3/2/13



RECORDED BY:  
WHEN RECORDED, RETURN TO:

THIS SPACE FOR RECORDER'S USE:

JOHN A. FINNEY  
Finney Finney & Finney, P.A.  
Attorneys at Law  
Old Power House Building  
120 E. Lake Street, Suite 317  
Sandpoint, Idaho 83864  
Telephone: 1-208-263-7712

**Instrument # 847907**

BONNER COUNTY, SANDPOINT, IDAHO  
7-26-2013 03:30:20 No. of Pages: 37  
Recorded for : FINNEY  
R. ANN DUTSON-SATER Fee: 118.00 *CB*  
Ex-Officio Recorder Deputy  
Index to: MISC

**SECOND RESTATED DECLARATION  
OF  
RESIDENTIAL COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
APPLICABLE TO "THE CROSSING" IN BONNER COUNTY, IDAHO  
AND  
RESTATED BYLAWS  
OF  
THE CROSSING HOA, INC.**

**RECITALS**

- A: On January 17, 2007, the Plat of THE CROSSING was recorded as instrument number 721139, in Book 8 of Plats at page 124, records of Bonner County, Idaho, and located in portions of Section 1, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho, and Section 36 Township 56 North, Range 4 West, Boise Meridian, Bonner County, Idaho;
- B. On January 17, 2007, a Declaration of Residential Covenants, Conditions, Easements and Restrictions was recorded as instrument number 721140, records of Bonner County, Idaho;
- C. On August 2, 2006, Articles of Incorporation of The Crossing HOA, Inc. were filed with the Idaho Secretary of State. On April 29, 2008, Articles of Amendment of The Crossing HOA, Inc. were filed with the Idaho Secretary of State; True and correct copies of the Articles of Incorporation, the Articles of Amendment, and the 2013 Annual Report are attached hereto and incorporated herein;
- D. On January 22, 2007, Bylaws of The Crossing HOA, Inc. were recorded as instrument number 721419, records of Bonner County, Idaho;

- E. On April 29, 2008, a Restated Declaration of Residential Covenants, Conditions, Easements and Restrictions was recorded as instrument number 750519, records of Bonner County, Idaho;
- F. Willow Brook Landing, LLP, an Idaho limited liability partnership, has acquired certain rights as Declarant for THE CROSSING subdivision and for THE CROSSING HOA, INC. and is the vested owner of the following described real property within the subdivision:

Block 1, Lots 1, 2, 3, 4, 5, 6, 7 and 8;  
Block 2, Lots 2, 3, and 6;  
Block 3, Lots 1, 4, 6, 7, 8, 9, 10, 11, 13 and 14;  
Block 4, Lots 2, 3 and 4;  
Block 5, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13;  
Block 6, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11;  
Block 7, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17;  
Block 8, Lots 1, 2, and 3;  
Block 9, Lots 1, 2 and 3;  
Block 10, Lot 2;  
Tracts A, B, C, D, E, F, G, H, I, J, K, L, M and N;  
All in THE CROSSING, according to the plat thereof, recorded in Book 8 of Plats, Page 124, records of Bonner County, Idaho.

Said real property comprises 71 of the 82 platted Lots, for a total of 87% of the platted Lots (and 100% of the platted Tracts).

- G. The Restated Declaration, Article 12 provides for the methods of modification of the Declaration by several methods. These methods include a vote of two-thirds majority (67%) vote of the Lot Owners, or by a majority vote (51%) of the Lot Owners within 6 months of each five year anniversary of the recording of the Restated Declaration. The Restated Declaration was recorded April 29, 2008, with five years being April 29, 2013, with the six month period ending October 29, 2013;
- H. The present Bylaws, Article X provides for the methods of amendment of the Bylaws by a sixty percent majority (60%) of the Lot Owners;
- I. At a duly called meeting of the Lot Owners on July 26, 2013, the Lot Owners voted with not less than an 87% majority to adopt this Second Restated Declaration and Restated Bylaws and that this Second Restated Declaration and Restated Bylaws shall amend, modify, replace, and supersede the Restated Declaration (and the original Declaration) and the original Bylaws;
- J. NOW THEREFORE, the Second Restated Declaration and Restated Bylaws, are set forth as follows:

**SECOND RESTATED DECLARATION**  
**AND**  
**RESTATED BYLAWS**

WHEREAS, the Declarant and the Association are the owners of certain real property known as THE CROSSING, as described on an official plat, recorded as instrument number 721139, in Book 8 of Plats at page 124, records of Bonner County, Idaho, and located in portions of Section 1, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho, and Section 36 Township 56 North, Range 4 West, Boise Meridian, Bonner County, Idaho; now, therefore,

THE LOT OWNERS AND MEMBERS OF THE ASSOCIATION, with the approval of the Declarant, hereby declare that all of the Property, including without limitation the numbered Lots therein, roadways, walkways and the like, shall be held, sold and conveyed subject to the restrictions, covenants, easements and conditions set forth in this instrument for the purpose of protecting the value and desirability of said lots, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.**  
**DESIGNATION OF USE**

- 1.1 **Residential Lots.** Use of the Property shall be restricted to single family residential lots and associated recreational and maintenance facilities.
- 1.2 **No Further Subdivision.** Except for lots owned by the Declarant, a Lot Owner shall make no further subdivision of any lot. The Declarant reserves the right to further subdivide any lot it owns.
- 1.3 **Future Additions to Subdivision.** The Declarant reserves the right to plat adjoining parcels and to add such platted parcels to the subdivision. The Association shall accept into membership owners of lots in subsequently platted blocks that are made subject to this Declaration, provided such new Members shall be subject to this Declaration, as restated or amended, and to all of the duties, obligations, rights and responsibilities contained herein.
- 1.4 **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 Common Area. The Declarant reserves an easement incident to construction for ingress, egress, temporary and permanent utilities, and physical structures over, under, around and through the Common Area.
- 1.5 **Declarant Sales Office.** So long as the Declarant or assignee is in title to a lot on the Property, the Declarant reserves the right to maintain a sales office on its lot(s) or in the Common Area.

**ARTICLE II.**  
**HOMEOWNERS' ASSOCIATION & BYLAWS, ROAD MAINTENANCE, SPECIAL**  
**REQUIREMENTS**  
**(Articles 2.1 – 2.5 are Irrevocable Provisions)**

- 2.1 **Homeowners' Association.** The prior Declarant established and the Lot Owners collectively shall maintain the Idaho nonprofit corporation known as **THE CROSSING HOA, INC.** (Association formed under the authority of Chapter 3 of Title 30 of the Idaho Code, known as the Idaho Nonprofit Corporation Act. The principal office of the Association shall be located in the County of Bonner, State of Idaho.
- 2.1.1 **Purpose.** The purpose of the Association shall be to maintain, improve, and regulate the use of real property owned by the Association, to carry out the provisions of the this Second Restated Declaration, and to take any other lawful actions for the benefit of the Association and its Members.
- 2.1.2 **Articles of Incorporation and Bylaws.** The prior Declarant adopted Articles of Incorporation and Articles of Amendment for the Association, which were filed with the Idaho Secretary of State. The Restated Bylaws herein are adopted for the Association and any future amendments shall be recorded in the records of Bonner County, Idaho. A Lot Owner by acceptance of a Deed thereby acknowledges and ratifies the Articles of Incorporation of the Association, as amended and accepts the Restated Bylaws herein.
- 2.1.3 **Priority of Authority.** Notations on the plat map shall supersede and take precedence over any conflicting provision contained herein. The provisions contained in this Second Restated Declaration shall supersede and take precedence over any conflicting provision in the Association's Articles of Incorporation, as amended, and these Restated Bylaws. The Association's Articles of Incorporations, as Amended and Restated Bylaws shall be interpreted in a manner consistent with the provisions contained herein. In the event of ambiguity between these governing documents, preference shall be given first to plat notations, then to this instrument, then to the Articles of Incorporation.
- 2.1.4 **Governing Authority.** The Association through its Board of Directors (Board), shall have the authority to: (a) enforce this Declaration; (b) make improvements to the Property; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out the provisions of this Second Restated Declaration and Restated Bylaws and the Articles of Incorporation, as amended; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare, in accordance with the spirit and letter of this Declaration; (f) enforce and carryout the development requirements as set forth in Bonner County Planning Department files S1158-05 and C818-05, as amended; (g) 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; and (h) hire, retain and dismiss employees, agents or other persons to carry out the purposes of this Second Restated Declaration.

2.2 **Duties of Association.** The Association shall have the following general duties to its Members.

2.2.1 **Maintain and Protect the Property.** The Association shall have the duty to maintain the Common Roadways, Common Area, and Association-owned land, structures and facilities in a safe, functioning, and attractive condition. The Association shall not be liable for crimes, vandalism, or injury suffered by Lot Owners on their property.

2.2.2 **Publish Rules and Regulations.** The Association shall establish and periodically publish rules and regulations to carry out its duty to maintain and protect the Property. Without limitation, such rules shall provide for use of the RV Parking Area, the Club House, Beach and Swimming Area, Upland Recreation Area and all other Common Areas.

2.2.3 **Maintain Erosion Control and Stormwater Management Measures.** The Association shall maintain as designed all permanent erosion control and stormwater management measures installed by Declarant.

2.2.4 **Road System and Maintenance.** All lots within the subdivision shall be accessed from the Common Roadway as defined herein. The Association shall maintain the Common Roadway for the benefit of the Lot Owners and their invitees including but not limited to snow removal, road repair and replacement, stormwater management, erosion control, and eradication of noxious weeds. The Association shall annually budget for road maintenance, adjust the fee schedule to accomplish its routine road maintenance obligations, and make and collect special assessments for necessary capital improvements and replacements.

2.2.5 **Parking and Blocking Roads.** The Association shall adopt rules for the use of the Common Roadways including a schedule of fines and penalties sufficient to achieve enforcement. Such rules shall provide that, at a minimum, Lot Owners and their invitees are not permitted to park recreational vehicles or store materials in or on the Common Roadways except for (a) temporary purposes with the express written permission of the Association Board, or designee, or (b) in a designated parking area.

2.2.6 **Maintain Sewer and Water Systems.** The Association shall maintain a large soil absorption system (LSAS) for certain lots as set forth in Article VI, and a water system as set forth in Article VII.

2.2.7 **Maintain a Reserve Fund.** The Association shall maintain a reserve fund sufficient in scope to defray foreseeable capital expenses for Common Area maintenance.

2.3 **Special Requirements.** The following special requirements are imposed on Lot Owners and the Association:

2.3.1 **Conformance with Land Use Codes.** The Association and Lot Owners shall maintain their respective properties in conformance with applicable Bonner County, Idaho land use codes, and relevant statutes and regulations of the state of

Idaho and the United States of America. The following exceptions from the Bonner County Code are permitted:

- 2.3.1.1 **Front and Rear Yard Setbacks.** The six Block 2 "cottage" lots are permitted 20-foot setbacks from the front and rear property line. BCRC Section 12-630(c).
- 2.3.1.2 **Depth to Width Ratio.** Lot 11 of Block 3 may vary from the depth to side ratio of a maximum depth to width of 3:1. BCRC Section 12-2305(b).
- 2.3.1.3 **Other Exceptions.** Other limited exceptions are permitted as set forth in paragraph 7 of Decision Letter of July 14, 2005 in Bonner County Planning Commission file C818-05.
- 2.3.2 **Individual Lot Stormwater/Erosion Control Management.** Lot Owners shall construct and maintain stormwater management systems required by Bonner County on their respective lots. In addition, each individual Lot Owner shall implement any and all drainage, stormwater, and erosion control measures pursuant to the Bonner County-approved stormwater management and erosion control plan as set forth in Bonner County Planning Department files S1158-05 and C818-05.
- 2.3.3 **Wildlife Mitigation.** The Idaho Department of Fish and Game recommends the following wildlife mitigation measures:
  - 2.3.3.1 **General Advice.** Residents should avoid attracting bears, raccoons and skunks. Suggested means include cleaning barbecue grills frequently, not leaving pet food outside, not distributing bird feed on the ground, and protecting compost piles and fruit trees. Purposely feeding wild animals creates an unnatural situation and may cause local population increases, which may create an unwanted nuisance for neighboring residents and, eventually, the resident providing the food. Animals will continue to return even if the food is removed. Also, concentrating a large number of animals in a small area can facilitate local disease outbreaks.
  - 2.3.3.2 **Contain Garbage.** Residential garbage shall be stored inside a secure structure or in bear-proof containers.
  - 2.3.3.3 **Retain Timber and Vegetation.** Standing timber and natural vegetation, including snags and shrubs, should whenever possible be retained to provide cover, food, nesting or perching sites for indigenous wildlife.
  - 2.3.3.4 **Control Pets.** Pets shall be restrained from chasing or disturbing wildlife.
- 2.3.4 **Fire Protection Planning.** The Property is located in a wooded, rural area. Therefore, the Association shall remain cognizant of wild fire danger, shall provide fire protection information to Lot Owners from time to time, and

encourages Lot Owners to maintain their Lots in accordance with such fire protection safeguards.

2.3.4.1 **Water Flow.** The Association shall maintain a system of approved hydrants and water sources, and water supply for fire protection as approved by the Sagle Fire District or its successor.

2.3.4.2 **No Obstructions.** Access to all water sources for fire protection shall be unobstructed at all times.

2.3.4.3 **Water Source Identification.** Water sources for fire protection, such as hydrants, shall be clearly identified in a manner approved by the Sagle Fire District or its successor.

2.3.4.4 **Testing and Maintenance.** Water sources, draft sites, hydrants and other fire protection equipment shall be subject to periodic tests as required by the Sagle Fire District or its successor.

2.3.4.5 **Clearance of Fuel.** Lot Owners and the Association are encouraged to maintain defensible space around structures and to utilize fire-resistive vegetation in their landscaping in accordance with safeguards published by the Association and distributed to Lot Owners.

2.4 **Membership and Voting Rights in Association.** The Declarant has adopted Articles of Incorporation, as amended and these Restated Bylaws for the Association.

2.4.1 **Membership.** Every Lot Owner, whether the lot is undeveloped or improved, 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 ownership of any such 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.

2.4.2 **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.

2.4.3 **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.

2.4.3.1 **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. Where co-owners exist, they shall designate in writing, with the Secretary, who shall cast the vote of the Lot Owner. A designation shall remain of record until revoked. Any co-owner may revoke a designation in a writing submitted to the Secretary. The Secretary shall not accept a vote by co-owners who fail to properly designate authority to cast the vote. Fractional votes are not permitted. All co-owners may attend and otherwise participate in Association meetings.

- 2.4.3.2 **Class B Membership.** The Class B Member (the Declarant) shall have ten (10) votes in the Association for each Lot owned. The Declarant may designate an agent or agent(s) to cast its votes. Class B membership shall automatically convert to Class A membership upon the earlier of the following: (a) the voting power of Class A Members exceeding that of Class B; (b) the recordation of notice by the Declarant of voluntary conversion; or (c) at 11:59 p.m. on December 31, 2023.
- 2.4.4 **Majority Vote.** Except as otherwise set forth herein, a majority of votes of the Members shall be the action of the Association.
- 2.4.5 **Proxy Voting.** A Lot Owner may give his proxy to another Lot Owner. Such proxy shall be in writing and delivered to the Secretary prior to any vote. A proxy shall automatically expire on its annual anniversary.
- 2.5 **Actions Reserved to the Members.** The following actions are reserved to the Members, voting at a duly noticed meeting of the Association:
- 2.5.1 **Elect and Remove Directors.** The Members shall have the exclusive authority to elect and remove directors.
- 2.5.2 **Approve Budget.** Upon presentation by the Board, 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.
- 2.5.3 **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.
- 2.5.4 **Amend the Articles of Incorporation and Bylaws.** Upon resolution of the Board, the Members may, at a duly called meeting of the Members, amend the Bylaws with a 67% majority of votes, and amend the Articles of Incorporation with a 67% majority of votes.
- 2.5.5 **Limitation of Action.** Except as set forth in this Article 2.4, the Members shall take no action except upon resolution of the Board presented to the Members at a duly called meeting of the Members. The Members may amend any resolution presented by the Board.
- 2.6 **Board of Directors.**
- 2.6.1 **Management Vested in the Board of Directors.** The Board shall govern the Association and shall manage the Property. The Board may, but is not required to seek the approval of the Members before taking an action other than those actions reserved to the Members in Article 2.5. The Board shall present an annual budget to the Members at least fourteen (14) days prior to an annual or special meeting of the Members.

- 2.6.2 **Budget.** The Board shall prepare and the Association shall adopt an annual budget.
- 2.6.3 **Board Determines Rate of Assessment.** The Board shall establish the rate of assessment based on the approved annual budget. The Board shall not assess in excess of the funds necessary to fund the budget EXCEPT that the Board shall have the right to fund a capital reserve account for the purpose of making capital improvements, and major or emergency repairs.
- 2.6.4 **Rate of Assessments.** Each lot, regardless of size and location, shall bear an equal burden for the general expenses of the Association including but not limited to Common Area maintenance. The Association may, through its Board, levy special assessments disproportionately for particularized services provided to certain Lot Owners or to Lot Owners in a disproportionate manner.
- 2.6.5 **Due Date of Assessments.** The annual assessment shall be payable monthly commencing on January 1 and ending December 31<sup>st</sup>. Payments shall be due on the first day of the month and, if late, shall be subject to a late penalty. Lot Owners may pay in advance. The Treasurer shall send written notice of the assessment to every Lot Owner subject thereto.
- 2.6.6 **Number & Terms.** The Board shall consist of no less than three (3) Directors who shall serve staggered three-year terms. Directors shall be elected by the Members at an annual meeting or at a special meeting called for the purpose of 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.
- 2.6.7 **Electing a Director.** The President shall call for nominations for Director. The nominee need not be present. A Member may nominate himself or herself. Members shall cast one (1) vote for each position. Where only one (1) Directorship is being filled, the nominee(s) obtaining the most votes shall be elected.
- 2.6.8 **Removing a Director.** The Members may remove a Director at any time, for any reason or no reason at all. In the case of removal, the Members shall vote on each Director and the Director shall be removed upon the vote of a majority, excluding the vote of the Director subject to removal.
- 2.6.9 **Vacancies.** Any vacancy occurring on the Board may be filled by appointment by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board. A Director appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office. The Board may not appoint a Director who has been removed from the Board.
- 2.6.10 **Action of the Board.** The votes of a majority of the Board shall be the action of the Board.
- 2.6.11 **Meetings.** The Board shall meet from time to time as required to carry out the business of the Association. Meetings of the Board shall be open to Members but Members shall have no right to participate in the meeting.

- 2.6.12 **Notice.** The Board shall, by resolution, adopt notice requirements.
- 2.6.13 **Quorum.** A majority of the number of Directors fixed by Article 5.2 shall constitute a quorum for the transaction of business at any meeting of the Board.
- 2.6.14 **Manner of Acting.** The act of the majority of the Directors present at a duly convened meeting shall be the act of the Board.
- 2.6.15 **Action without a Meeting.** Any action that may be taken by the Board at a meeting may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all of the Directors. This consent requirement may be satisfied by a written resolution adopted by the Directors and signed by all of the Directors.
- 2.6.16 **Compensation.** Directors shall not be compensated but may be reimbursed for expenses incurred in the performance of their duties.
- 2.6.17 **Presumption of Assent.** A Director who is present at a meeting of the Board at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.
- 2.6.18 **Deadlock of the Board.** If Directors are deadlocked, the Board shall refer the matter causing deadlock to the Members at a special or annual meeting.
- 2.6.19 **Referral to Members.** Except as otherwise required herein, the Board may refer a matter to the Members for an advisory vote or final decision.
- 2.6.20 **All Authorized Acts.** The Board may apply any and all power, authority and discretion given a corporate board under the laws of the state of Idaho, as long as such statutory authority is not otherwise inconsistent with the provisions of this instrument or the other governing documents of the Association. In addition the Board take the following specific actions:
- i. **Appoint Agents and Attorneys.** Appoint and employ agents and attorneys as necessary or desirable for the proper administration of the Association or for any litigation, controversy or uncertainty which may arise in connection with the Association.
  - ii. **Appoint Committees.** Appoint committees to advise the Board and/or to carry out tasks as defined by the Board. The Board may determination the composition of the committee and name its chair.
  - iii. **Engage in Legal Proceedings.** Prosecute, defend or participate in any legal action as principal or otherwise. This power shall include, without limitation, actions for attachment, execution, eviction, foreclosure, indemnity, arrest, and any other proceeding for legal, equitable or injunctive relief.

- iv. **Engage or Dismiss Employees.** Engage and dismiss employees, all upon such terms as the Board shall think fit for the efficient administration of the Association.
- v. **Enter Contracts and Leases.** Enter into binding contracts and leases.
- vi. **Insure the Corporation.** Obtain such insurance as the Board determines is necessary to protect the Association against liability with respect to third persons.
- vii. **Manage Financial Accounts.** Open, maintain and close bank, brokerage, or similar accounts. The authority with respect to all such accounts shall include the authority to make deposits, transfers, and withdrawals.
- viii. **Manage Personal Property.** Purchase, receive, take possession of, lease, sell, assign, endorse, exchange, and release any interest in personal property.
- ix. **Manage Real Estate Transactions.** Purchase, take possession of, lease, sell, convey, exchange, mortgage, and release any interest in real property, EXCEPT the Board shall not sell or encumber the Common Area without express authorization by resolution of the Members.
- x. **Manage Securities.** Purchase, sell, assign, collect, redeem, transfer, or exercise any voting or other rights for stocks, bonds, mutual funds, brokerage accounts, other securities and any kind of US government bond including Series E, Series EE, Series H and Series I bonds.
- xi. **Pay and Settle Claims.** Pay, contest, or settle any claim by or against the Association by compromise, arbitration or otherwise and to release, in whole or in part, any claim belonging to the Association.
- xii. **Pay Taxes.** Perform any and all necessary acts with respect to federal and state taxation. This power includes, but is not limited to the following authority: (a) to prepare, execute, and file any tax return or document required by any federal or state government or taxing authority; (b) to represent the Association before any office of the Internal Revenue Service with respect to all Internal Revenue tax matters for any past or future tax periods, including audits, conferences and litigation; (c) to receive confidential information respecting the Association; (d) to receive, endorse and collect checks in payment of any refund of Internal Revenue tax, penalties, or interest, and execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund; (e) to execute consents extending the statutory period for assessment or collection of taxes; (f) to execute any agreements under the Internal Revenue Code; (g) and to delegate authority or substitute another representative for such tax matters.

- xiii. **Receive Money.** Request, demand, recover, collect, endorse, and receive all moneys, debts, accounts, gifts, bequests, dividends, annuities, rents, and payments due the Association.
  - xiv. **Repair Property.** Make ordinary or extraordinary repairs, alterations or improvements in buildings or other Association property including but not limited to demolition.
  - xv. **Sign for the Association.** Sign, acknowledge and deliver written instruments as may be necessary or desirable in the exercise of the powers granted herein.
- 2.6.21 **Elect Officers.** The Board shall annually elect Officers. There shall be a President, Vice-President, Secretary and Treasurer. No Officer may hold more than one office except one Officer may be both Secretary and Treasurer. The duties of office shall be expressed in the Bylaws. An Officer may be removed by the Board of Directors upon the vote of a majority, excluding the vote of the Officer subject to removal.
- 2.6.22 **Number of Officers.** The Officers of the Association shall be a President, Vice-President, Secretary and a Treasurer, each of whom shall be elected by the Board of Directors. No Officer may hold more than one office except one Officer may be both Secretary and Treasurer.
- 2.6.23 **Election and Term of Office.** The Officers of the Association shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the Members, or as soon thereafter as practicable. Each Officer shall serve a three-year term and hold office until his term is ended, or his successor shall have been duly elected and shall have qualified, or until his death, or until he shall resign or shall have been removed as an Officer or Director.
- 2.6.24 **President.** The President shall be the principal executive officer of the Association and, subject to the control of the Board, shall supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members and of the Board. He may sign, with the Secretary or any other proper Officer of the Association who is so authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other Officer or agent of the Association, or shall be required by law to be otherwise signed or executed. In addition, and in general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.
- 2.6.25 **Vice-President.** In the absence of the President or in event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board.

- 2.6.26 **Secretary.** The Secretary shall: (a) Keep the minutes of the proceedings of the Members and of the Board in one or more minute books provided for that purpose; (b) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) Be custodian of the corporate records; (d) Keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; and (e) In general perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him by the President or by the Board.
- 2.6.27 **Treasurer.** The Treasurer shall: (a) Have charge and custody of and be responsible for all funds and securities of the Association; (b) Send notices of assessments due to all Lot Owners; (c) Receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such funds in the name of the Association in such banks, trust companies or other depositories; and (d) In general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board. If required by the Board, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such sureties as the Board of Directors shall determine.
- 2.6.28 **Compensation of Officers.** The officers shall not receive compensation but may be reimbursed for expenses incurred in the performance of their respective duties.
- 2.6.29 **Checks and Internal Controls.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by the President or Vice-President, as determined by resolution of the Board. The Treasurer or designee shall have exclusive control and possession of blank checks and shall fill out the payee and issue the check to the authorized signatory for execution. A signatory shall not possess blank checks.
- 2.6.30 **Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.
- 2.6.31 **Contracts.** The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.
- 2.6.32 **Loans.** No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.
- 2.6.33 **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the thirty-first day of December.

**2.6.34 Indemnity.** The Association shall indemnify its Directors, Officers and employees as follows: (a) Every Director, Officer, or employee of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be made a party, or in which he may become involved, by reason of his being or having been a Director, Officer, employee or agent of the Association or any settlement thereof, whether or not he is a Director, Officer, employee or agent at the time such expenses are incurred, except in such cases wherein the Director, Officer, or employee is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. (b) The Association shall provide to any person who is or was a Director, Officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, Officer, employee or agent of the Association, partnership, joint venture, trust or enterprise, the indemnity against expenses of suit, litigation or other proceedings which is specifically permissible under applicable law. (c) The Board may, in its discretion, direct the purchase of liability insurance by way of implementing the provisions of this Article.

**2.7 Membership.**

- 2.7.1 Compensation of Officers.** The officers shall not receive compensation but may be reimbursed for expenses incurred in the performance of their respective duties.
- 2.7.2 Annual Meeting.** The annual meeting of the Members shall be held on a duly noticed date each year falling in the month of October, at which time the Members shall elect Directors. The Members may consider an annual budget for the calendar year beginning on January 1<sup>st</sup> of the succeeding year. In the alternative, the Members shall adopt an annual budget prior to the beginning of next fiscal year at a special meeting of the Members called for the purpose of adopting the annual budget.
- 2.7.3 Special Meetings.** Special meetings of the Members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the petition of no less than twenty-five percent (25%) of the Members.
- 2.7.4 Place of Meeting.** Meetings shall be held in the designated Association office or as otherwise designated by the Board and set forth in the notice of meeting. The Association may recess a meeting and reassemble in any location to which a majority of Members shall agree. A Member may attend by telephone conference or other communications whereby all persons participating in the meeting can hear one another.
- 2.7.5 Notice of Meeting.** Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall unless otherwise prescribed by statute, be delivered not less than fourteen (14) nor more than twenty-eight (28) days before the date of the meeting, to each

Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the Member at his address as it appears in the Association records, or served on the Member's person. Where lots are held in joint or common tenancy, each Lot Owner shall be entitled to notice. A Member's attendance at a meeting, other than to register an objection to proper notice, shall constitute a waiver of notice.

2.7.6 **Quorum.** The presence in person or by proxy of Members representing thirty percent (30%) of the lots shall constitute a quorum at a meeting of Members. If less than a quorum is represented at such meeting, a majority of the Members entitled to vote may adjourn the meeting from time to time without further notice.

2.7.7 **Proxy Voting.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact, conservator or trustee. Such proxy shall be voted by the designee. The Member or designee shall file the proxy with the Association Secretary and shall be effective upon filing. The proxy shall be effective for one (1) year unless a different term is set forth in the proxy, in which case the stated term shall apply. A Member may terminate a proxy at any time by filing a written notice of termination with the Association Secretary. The termination shall be effective upon receipt by the Secretary.

2.7.8 **Agents and Trustees.** A Member's agent under a power of attorney, trustee or conservator may cast the Member's vote and participate in a meeting, but shall not hold office in the Association.

2.7.9 **Manner of Acting.** Except as otherwise provided herein or in the Articles of Incorporation, the act of the majority of the Members present at a duly convened meeting shall be the act of the Association.

2.7.10 **Action of Members without a Meeting.** Any permitted or required action may be taken without a meeting if all Members who are entitled to vote consent to the action by signature on a writing that sets forth the action so taken.

2.7.11 **Record of Membership.** The Association Secretary shall maintain a record of Membership. Such record shall contain the name(s) of the Lot Owner(s), notice address(es), and the name of the owner who cast the vote for the lot.

2.8. **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. 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:

2.8.1 **Fire Insurance.** Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement

- value of all Improvements, equipment and fixtures located within the Common Area.
- 2.8.2 **Liability Insurance.** Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area in such amounts as the Board shall determine.
- 2.8.3 **Directors and Officers.** Full coverage directors' and officers' liability insurance with limits in such amounts as the Board shall determine.
- 2.8.4 **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.
- 2.8.5 **Association as Trustee.** The Association shall be deemed trustee of the interests of all Lot Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Lot Owner's interests in such proceeds and is required to distribute such proceeds as it deems appropriate to the individuals.

### 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 Second Restated 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 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 Second Restated Declaration. Such assessment or charge, together with interest, costs and reasonable attorney 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 such as Internet bandwidth and television. In addition, the Association may include in any assessment the cost of (a) general liability insurance; (b) insuring its officers and Directors; (c) insuring its property against loss; (d) the costs of enforcement of this

Second Restated Declaration including reasonable attorney fees; (e) property and other taxes levied against the Association; (f) debt service for monies borrowed for the improvement of the Common Roadways and other Common Area; 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 including but not limited to Common Area and Common Road maintenance. The Association may, through its Board, levy special assessments disproportionately for particularized services provided to certain Lot Owners or to Lot Owners in a disproportionate manner. The Association may, but shall not be required to make available special services to Lot Owners at a specified cost such as concierge, vacation security, and property maintenance.
- 3.4 **Initial Assessment Upon Purchase from Declarant.** The Initial Assessment shall be \$400.00, due upon conveyance of the lot from the Declarant or its successor to the initial buyer and payable at closing. The Initial Assessment shall be used for the purpose of providing initial capitalization of the Association. The initial assessment is in addition to the Annual Assessment.
- 3.5 **Rate of Annual Assessments.** The initial Annual Assessment for the year 2013 shall be \$1,200.00 (\$100.00/month), with the Annual Assessment thereafter set by the Board, but said rate shall not increase more than 10% per year without a two-thirds majority (67%) approval of the Lot Owners. The Annual Assessment shall be payable semi-annually on January 1 and July 1 of each year for each Lot commencing upon the conveyance from the Declarant or its successor Declarant. For each semi-annual assessment not paid within 10 days of its due date, an additional late fee of five percent (5%) shall be due. The Board shall annually set the rate of assessment.
- 3.6 **Transfer Assessment.** The Association shall levy a transfer assessment in the amount of one month of membership dues (annual assessment) upon the transfer of a lot subsequent to the initial conveyance from the Declarant. The purpose of the transfer assessment is to defray the costs of administration in documenting the ownership change in Association records, providing the new homeowner a current set of governing documents including the rules and regulations, and providing an orientation to the Common Area and facilities, if offered.
- 3.7 **Special Assessments.** Upon authorization of a majority of Members, voting at a duly noticed meeting of the Members, the Board may levy a special assessment from time to time when the current assessment is deemed insufficient for the Association to carry out its obligations under this instrument and the Bylaws.
- 3.8 **Remedies for Non-Payment.** The Association shall have authority to apply any and all rights and remedies at law and in equity to collect delinquent assessments, fees, dues, fines, and interest not paid within thirty (30) days of 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 Owners may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of the Common Area, or abandonment of a lot.

- 3.9 **No Assessment on Declarant.** Notwithstanding the provisions of this article, the Declarant shall not be assessed for any Lot it owns. The Declarant may make up any budget shortfalls in the operating budget through direct contribution to the Association, but the Declarant shall not be required to contribute to any capital fund or future reserve.

**ARTICLE IV.  
DWELLINGS, STRUCTURES AND IMPROVEMENTS**

- 4.1 **Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall an exterior addition to or change or alteration therein be made until the plans and specifications have been submitted to and approved by the Association's Board or designee. The Board shall appoint a Design Review Committee (DRC) to review said plans and specifications and shall delegate authority to the DRC for such purposes. The Board may appoint itself as the DRC.
- 4.2 **Design Review Committee.** The DRC shall consist of no less than three (3) members who are Lot Owners EXCEPT, unless and until the Declarant has conveyed ninety percent (90%) of the lots, the Declarant shall exercise the sole authority of the DRC. The initial DRC shall consist of Milton Drake, Tom Puckett, and Teague Mullen. DRC members shall serve staggered three-year terms and no member may serve more than two consecutive terms. The Board may retain an architect or an individual with substantial residential design experience to serve as a consultant to the DRC.
- 4.3 **Architectural Considerations.** The DRC shall consider the nature, kind, shape, height, materials and location of the submitted structure. The Committee shall further consider the quality of materials, harmony of external design and location in relationship to surrounding structures and topography.
- 4.4 **Architectural Guidelines:** The Declarant shall publish architectural guidelines (Design Guidelines). The Design Guidelines may be amended by the Board upon recommendation of the DRC but shall be no less restrictive than the building standards set forth herein. In the event of a conflict in interpretation between this Article IV and the Design Guidelines, the Design Guidelines shall control.
- 4.5 **Building Standards.** The following minimum building standards shall apply. The Design Guidelines may exceed these standards. The DRC shall have discretion to grant relief from these minimum standards in particular cases for good cause:
- 4.5.1 **Building Code and Inspection.** All dwellings and structures shall comply with state and local building standards as applicable. All dwellings and structures shall be inspected if a building inspection is required by the State of Idaho and/or Bonner County, Idaho. Electrical and plumbing inspections are required. Absent County inspection, private inspections of foundation and framing are encouraged.
- 4.5.2 **Building Height.** No building, except buildings constructed by the Declarant, shall be more than thirty-five (35) feet in height, from the entry level finished floor to the mid-point of the roof's pitch.

- 4.5.3 **Building Permit.** Construction shall not commence on any structure without an applicable building permit or building location permit issued by Bonner County, Idaho.
- 4.5.4 **Floor Space.** There is no minimum or maximum floor space requirements (square footage), but all dwellings and structures shall be of a size and dimension harmonious with the Lot dimensions and layout.
- 4.5.5 **Mobile and Manufactured Homes Prohibited.** An owner shall not construct or maintain on the property a mobile or manufactured home, as such terms are defined herein.
- 4.5.6 **Modular Homes Prohibited.** An owner shall not construct or maintain on the property a modular home, as such term is defined herein.
- 4.5.7 **Set Backs.** Structures shall comply with the set backs shown on the face of the recorded plat. In the event that setbacks for a lot are not indicated on the face of the plat, the structure shall comply with the minimum setbacks as required by Bonner County Code, as amended, and as modified in Article 2.3.1 herein.
- 4.5.8 **Temporary Structures Prohibited:** Temporary structures are prohibited except for trailers used by contractors while a dwelling is Actively Under Construction as defined in Article XIV.
- 4.6 **Design Standards.** Lot Owners shall comply with the Design Guidelines in effect upon the submission of plans and specifications.
- 4.7 **Procedures for Submission and Approval of Plans.** Lot Owners shall comply with the procedures for submitting plans and specifications as set out in the Design Guidelines in effect at the time of submission.
- 4.8 **Grounds for Disapproval.** The DRC shall have the right to disapprove any plans and specifications submitted hereunder for any one of the following reasons:
  - 4.8.1 **Failure of Submission.** The plans or specifications submitted are inadequate to fairly evaluate the proposal and/or the Lot Owner has failed to supply information requested by the DRC.
  - 4.8.2 **Violation of Covenants.** The plans or specifications violate a provision of this Second Restated Declaration.
  - 4.8.3 **Incompatible Design or Materials.** The exterior design, appearance, materials, color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of the proposed structure is incompatible with the surrounding structures, topography, or Design Guidelines.
  - 4.8.4 **Incompatible Site Design.** The location of the structure, parking areas, grading, or landscaping is incompatible with the surrounding structures and topography.
  - 4.8.5 **Incompatible with the Development Design.** The structure or proposed uses are incompatible or not in harmony with the general plan of improvement of the subdivision, or with structures or uses located upon other lots in the vicinity.

- 4.9 **Exceptions.** The DRC may modify these standards with respect to the plans and specifications for any particular lot or dwelling unit if the strict application of these standards would create an undue hardship on the Lot Owner, or would create a result inconsistent with the appearance or uses of other lots on the property.
- 4.10 **Cost of Design Review.** The Board may establish a fee for design review. Such fee shall be calculated to defray the costs of the Association of plan review and technical assistance.
- 4.11 **No Waiver of Future Approvals.** The approval of the DRC to the plans and specifications as to one dwelling or phase of construction shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar plans and specifications subsequently or additionally submitted by a Lot Owner.
- 4.12 **Construction of Unapproved Structure.** A structure or site plan that is commenced, altered, erected, placed or maintained upon a Lot without the approval of the DRC shall be deemed a violation and breach of this covenant. Upon written notice from the DRC, the Lot Owner shall remove such structure or otherwise bring the structure or site plan into compliance. 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 borne 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.
- 4.13 **Maintenance and Repair Obligations.** Each Lot Owner shall have a continuing duty to maintain, repair, replace and restore areas under his or her exclusive control in a neat, sanitary and attractive condition. The area of exclusive control means the dwelling unit and lot. After notice and hearing, the Board shall have the right to remove or otherwise remedy any condition found to be (a) dangerous, unsafe, unsightly or unattractive; or (b) that falls out of compliance with approved plans and specifications for any reasons including lack of maintenance; or (c) a prohibited structure or activity. The cost of remedial action shall be born by the Lot Owner. Failure to timely reimburse the Association for such costs of remediation shall be cause for the Board to levy a special assessment on the Lot Owner.
- 4.14 **Non-liability of Board Members.** The Declarant, the Board, and members of the DRC shall not be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of, or in any way connected with the performance of their respective duties hereunder, unless due to willful misconduct or bad faith.

## ARTICLE V. COMMON AREA

- 5.1 **Common Area Designation.** The Common Area consists of the Common Roadway, Trails, Open Spaces, Boat Storage and RV parking, and attendant recreational and

maintenance facilities, and any other areas designated Common Area or recreational easement on the plat map. In addition, the Association may acquire and own in fee simple or by easement additional real property, facilities and structures that shall be maintained by the Association for the benefit of Lot Owners.

- 5.2 **Easement to Common Area.** Every Member of the Association shall have a nonexclusive easement to the designated Common Area, including without limitation the Common Roadway and Trails, for the limited purpose of ingress, egress, and recreation. Such easement shall be appurtenant to and shall pass with title to every lot, subject to the right of the Association to limit and control the use of the Common Area through rules and regulations established by the Board.
- 5.3 **Easement for Declarant.** Notwithstanding the limitation in paragraph 5.2, the Declarant hereby reserves a mutual non-exclusive easement for ingress, egress and utilities including, without limitation, public and private utilities, under, over, across and through the Common Area for additions to the subdivision located within or without the boundaries of the plat map.
- 5.4 **Reservation of Easement for Water Association.** The prior Declarant reserved for the benefit of THE DUFORT WATER ASSOCIATION, INC., an Idaho nonprofit corporation (DWA), an exclusive easement for the acquisition and distribution of potable water on, over, under, across and through the Common Area for pipes, buildings, reservoirs, pumps, storage tanks, and related facilities. Said reservation includes an easement for ingress and egress over the Common Area for the purpose of installation and maintenance of the water facility.
- 5.5 **Water and Sewer Utility Easement for Willow Bay Holdings, LLC.** The prior Declarant reserved for the benefit of Willow Bay Holdings, LLC, its successors, agents, and assigns, a water and sewer utility easement appurtenant to and for property located adjacent to the Property (known as Willow Bay Marina and Resort) and described in a warranty deed recorded on June 2, 2005 as instrument number 678075, records of Bonner County, Idaho.
- 5.6 **Yacht Club Access.** The prior Declarant granted Willow Bay Holdings, LLC, and its lessee, Willow Bay Yacht Club, Inc., and their respective employees, agents, successors, and assigns, a license for ingress, egress and utilities, for the limited purpose of construction, maintenance, and operation of slips, tie downs, moorage and navigational aids. This license shall be limited to construction and maintenance personnel and shall not extend to access for Yacht Club members who are not Lot Owners or are not the Lot Owners' guests, or invitees. The Association may, at its discretion, grant Yacht Club members who are nonresidents a license to enter the Property. The Declarant reserves the right to modify or terminate the license, on such terms solely in the Declarant's discretion.
- 5.7 **Damage to Common Property.** Each Member shall be liable to the Association for any damage to the Common Area or Common Roadway not fully reimbursed to the Association by insurance proceeds arising out of or caused by the willful, negligent or accidental 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.

- 5.8 **Parking and Blocking Roads.** The Association may adopt rules for the use of the Common Area including a schedule of fines and penalties sufficient to achieve enforcement.
- 5.9 **Noxious Weed Control.** The Association shall destroy and control for noxious weeds in Common Area. Weed control shall comply with applicable Bonner County and Idaho state regulations.
- 5.10 **Nuisance Birds.** The Association and its Members shall avoid attracting nuisance birds.

#### **ARTICLE VI. SEPTIC AND SEWER SYSTEM**

- 6.1 **Private Facilities.** Except for Lots designated in Article 6.2, each Lot Owner shall construct a septic system contained entirely within the lot boundaries and within the applicable set back requirements. No dwelling shall be occupied unless there is an operable septic system in compliance with the regulations of Panhandle Health District.
- 6.2 **Common Facility.** Lots 1-8 in Block 1, 1-6 in Block 2, 1-14 in Block 3, Open Space Tract D, and other properties serviced by an easement shall be served by a large soil absorption system (LSAS) owned and maintained by the Association. Lot Owners and others licensed to use the common facility shall share the costs of maintenance and operation proportionately. The Association shall determine proportionality, publish a fee schedule, and establish rules, regulations, and construction standards. The initial connection fee shall be \$2,500.00. The connection fee is payable one-half (50%) upon closing and one-half (50%) upon application for design committee approval. The Association may adopt rules and regulations or separate resolutions by action of the Board. **PERIODIC SERVICE FEES FOR THE COMMON SEWER FACILITY ARE NOT INCLUDED IN THE ASSOCIATION'S ANNUAL ASSESSMENT.**
- 6.3 **Responsibility for Maintenance.** The Association shall maintain the common sewer system and associated sewer facilities to the lot boundary, or to the boundary of any adjacent property using the system. Lot Owners constructing a private septic system shall be solely responsible for construction and maintenance.
- 6.4 **License for Maintenance.** A Lot Owner with a private septic system, and any user of the common sewer facility, by hooking on to said system, shall be deemed to have granted the Association, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties and structures for the purpose of maintaining the sewer facilities. No compensation shall be paid for any use of this license. A Lot Owner shall reimburse the Association for any reasonable costs of repair.
- 6.5 **Documentation.** Lot Owners with private septic systems shall provide the Association with "as built" drawings of the system and relevant operation manuals in order that the Association may maintain the system in an emergency.

**ARTICLE VII.  
WATER SYSTEM**

- 7.1 **Water Association.** Lot Owners shall be served with potable water by the Dufort Water Association, Inc. (DWA), an Idaho non-profit corporation established on August 29, 2006.
- 7.2 **No Individual Wells.** A dwelling shall not be occupied unless under active service by DWA. Lot Owners shall not drill water wells on their lots.
- 7.3 **Deemed Membership.** Upon accepting title to a lot, the Lot Owner shall be deemed a member of the DWA and shall have a duty to execute a membership application at closing.
- 7.4 **Connection Fee.** The initial connection fee shall be \$5,000.00. The connection fee is payable one-half (50%) upon closing and one-half (50%) upon application for design committee approval. The connection fee and terms of payment may be modified as set forth in the DWA's rules and regulations or by separate resolution of its Board.
- 7.5 **Connection Requirement.** A Lot Owner shall be connected to the water system no later than commencement of construction of a dwelling unit. "Commencement" means ground disturbing activities.
- 7.6 **Rules and Regulations.** Membership in the DWA, or its successor, shall be governed by the entity's rules, regulations, bylaws and other governing documents.
- 7.7 **Fees and Assessments.** Lot Owners shall pay the fees and assessments set forth in the governing documents of the DWA and shall abide by its rules and regulations. WATER SERVICE IS NOT INCLUDED IN THE CROSSING HOA, INC.'s ANNUAL ASSESSMENT. FEES FOR WATER SERVICE ARE CONTAINED IN THE RULES AND REGULATIONS OF THE DWA.
- 7.8 **Maintenance License.** Lot Owners and the Association hereby grant the DWA, its successor, agents, employees and assigns, an irrevocable license on, over, under, across and through their respective properties or structures for the purpose of maintaining, expanding, and/or repairing the water system. No compensation shall be paid for any use of this license.

**ARTICLE VIII.  
PROHIBITED USES AND ACTIVITIES**

The following uses and activities are prohibited:

- 8.1 **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.
- 8.2 **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.

- 8.3 **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. Pigs are specifically prohibited.
- 8.4 **Dirt Bikes, All Terrain Vehicles, and Snowmobiles.** Dirt bikes, as defined herein, all terrain vehicles (commonly known as an ATV or UTV or side by side), and snowmobiles shall not be ridden on or in the Common Areas or Trails except for areas or trails as specifically designated by the Board. Such vehicles may be used on the Common Roadways, so long as registered and insured for such under the laws of the State of Idaho.
- 8.5 **Discharge of Firearms.** Owners shall not discharge a firearm on the Property except in defense of self or others. Shooting ranges are expressly prohibited.
- 8.6 **Excavations and Building Materials.** Excavation is prohibited except as necessary for construction of a dwelling and associated landscaping and hardscaping. Storage of building materials, including but not limited to sand, gravel, top soil, lumber, roofing, windows and doors, shall be permitted only while a structure is actively under construction.
- 8.7 **Firewood.** Firewood, manufactured logs, and the like shall be stored within the dwelling unit or garage, or otherwise screened from public view.
- 8.8 **No Hunting.** Hunting on the Property is prohibited.
- 8.9 **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 Section 12-202 of the Bonner County Revised Code and as subsequently amended. A "bed and breakfast" shall be deemed a prohibited commercial activity regardless of Bonner County Revised Code.
- 8.10 **Rental.** Notwithstanding any other limitation herein, a Lot Owner may rent their improved lot as a vacation rental, so long as the term of the rental is not less than seven consecutive days in length and with written notice given to the Association not less than 21 days prior to the occupancy by the tenant, setting forth the tenant's name, address, and length of stay, and proof of liability general insurance and vehicle insurance. The Lot Owner shall be responsible for all conduct of the tenant.
- 8.11 **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 of a lot as defined in the Rules and Regulations.
- 8.12 **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.
- 8.13 **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 located in areas concealed from public view, or appropriately screened. Lot Owners shall control for odors and protect containers from animals. Containers may be placed in public view for the limited

purpose of trash collection for up to twelve (12) hours. Lot Owners shall be responsible for the timely collection of any trash that escapes containment. Containers used for dwelling construction trash shall be subject to the Design Guidelines.

- 8.14 **Recreational Vehicles.** Recreational vehicles, as defined herein, shall be subject to use limitations and restrictions and limited to specific lots and areas within the Property as specifically designated by the Board. Such vehicles may be used on the Common Roadways, so long as registered and insured for such under the laws of the State of Idaho.
- 8.15 **Fireworks.** The ignition of fireworks upon the Lots and Common Area within the subdivision is prohibited, except pursuant to written approval of the Board for a public display in a designated area(s).
- 8.16 **Fires.** Open burning or fires upon the Lots and Common Area within the subdivision shall be subject to Rules and Regulations adopted by the Board for such conduct. This restriction, shall be in addition to, and may be more restrictive than, burning rules imposed by the State of Idaho or other governmental jurisdiction.

#### **ARTICLE IX. NO EASEMENTS IN FAVOR OF THIRD PARTIES.**

Except as otherwise set forth herein or on the plat, the Owners individually or collectively, and the Association, shall not grant an easement for ingress or egress through the Property to a third party that owns a lot or parcel outside the boundaries of the Property. Any such grant made in violation of this provision shall be voidable by any Owner or the Association. The Association, through its Board, may grant a utility easement to one or more owners of property outside the boundaries of the Property.

#### **ARTICLE X. CONDEMNATION**

In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of the improvements to the Property, each Lot Owner agrees, by acceptance of a deed to such lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, each Lot Owner receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners in proportion to their respective

assessment shares. All amounts due to the Association under this article shall constitute a lien against the Lot Owner's property.

## **ARTICLE XI. 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 XII. MODIFICATION OF RESTRICTIONS**

- 12.1 **Covenant.** All of the restrictions contained herein shall be deemed to be covenants running with the land and shall endure and be binding upon all Lot Owners, their successors and assigns.
- 12.2 **Irrevocable Provisions.** Articles 2.1 through 2.5 of this Declaration shall be irrevocable (but are modifiable as to the period of Declarant's Class B shares).
- 12.3 **Declarant Modification.** Except for Articles 2.1 – 2.5 herein, the Declarant may modify this Declaration during the period which it holds Class B shares.
- 12.4 **Homeowner Modification.** Provisions of this Declaration, other than those set out in Articles 2.1 through 2.5, may be modified at any time by a vote of two-thirds (67%) or more of the Lot Owners voting at a duly called membership meeting AND, so long as the Declarant holds Class B shares, the Declarant's approval. This Declaration may be modified commencing on the fifth anniversary of its recordation, and every fifth anniversary thereafter, by a vote of a majority of the Lot Owners, voting at a duly called membership meeting, AND, so long as the Declarant holds Class B Share, the Declarant's approval. The modification period shall expire at 11:59 p.m. on the last day of the sixth month following the anniversary date. The modification must be adopted within the modification period and recorded within 14 days of its adoption. The modification shall reference this Declaration by recording number and all prior modifications thereto.

- 12.5 **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.

### ARTICLE XIII. MISCELLANEOUS PROVISIONS

- 13.1 **Assignment.** The Declarant shall have the right to assign its duties, obligations and interests as set forth herein.
- 13.2 **Conflicts with Government Ordinance.** A Bonner County 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.
- 13.3 **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.
- 13.4 **No Public Dedication.** Except as otherwise shown on the plat, nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Property to or for the general public. The roads within the Property are private.
- 13.5 **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.
- 13.6 **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 XIV. DEFINITIONS

**"Accessory Structure"** means any structure not directly attached to the residence to which it is appurtenant.

**"Actively Under Construction"** means regular, diligent and periodic activity.

**"Association"** means The Crossing HOA, Inc., its successors and assigns.

**"Board"** means the Board of Directors of the The Crossing HOA, Inc. homeowners' association.

**"Bylaws"** means this Restated Bylaws.

**"Common Area"** means property deeded to and/or managed by the Association for the use and enjoyment of the Members of the Association. A Common Roadway is a Common Area.

**"Common Roadway"** means the common roads identified on the Plat and/or deeded to the Association by the Declarant, and/or acquired by the Association and intended for the use and enjoyment of the Members of the Association.

**"Declaration"** means this Second Restated Declaration.

**"Dirt Bike"** means a lightweight motorcycle generally equipped with rugged tires and suspension and designed and/or used for riding over rough or unpaved surfaces.

**"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.

**"Family"** as used in the term "single family residence" means an individual or two or more persons who live together as a single housekeeping unit.

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

**"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.

**"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.

**"Member"** means a member of The Crossing HOA, Inc. when the word is capitalized. Members of other related associations or boards of directors are referenced by the word "member," all in lower case.

**"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.

**"Modest."** The word "modest" as used herein means not dominate in size or color.

**"Modular Home"** or "modular building" means a structure, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, complies with the International Building Code, and does not have a chassis, and is completely disassembled for transportation.

**"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.

**"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.

**“Subdivision”** means The Crossing as depicted on the plat thereof as recorded in the records of Bonner County, Idaho; including subsequent phases thereto.

**“Trails”** are defined on the plat as recreation easements.

EXECUTED BY THE ASSOCIATION AND THE DECLARANT ON THE ATTACHED SIGNATURE PAGE(S)

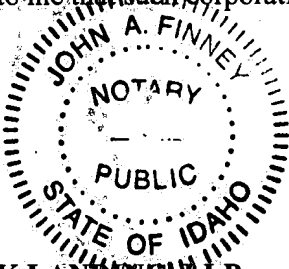
**SIGNATURE PAGE(S)**

**ASSOCIATION:  
THE CROSSING HOA, INC.**

*Milton Drake*  
By: MILTON DRAKE  
Its: President

STATE OF IDAHO )  
                          :        ss.  
County of Bonner )

On this 26 day of July, 2013, before me, the undersigned Notary Public, personally appeared, MILTON DRAKE, proved to me on the basis of satisfactory evidence, to be the President of the corporation The Crossing HOA, Inc., that executed the instrument or the person who executed the instrument on behalf of the corporation and acknowledged to me that such corporation executed the same.



*John A. Finney*  
Notary Public- State of Idaho  
Residing at: Sandpoint  
My Commission Expires: 10-15-2014

**DECLARANT:  
WILLOW BROOK LANDING, LLP  
An Idaho Limited Liability Partnership**

By: 0957352 B.C. LTD  
Its: Partner

By *Milton Drake*  
MILTON DRAKE  
Its: President

By: 0957354 B.C. LTD  
Its: Partner

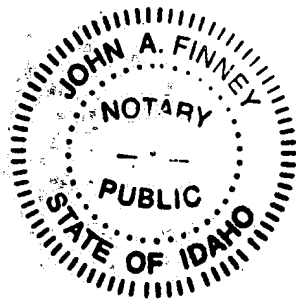
By *Milton Drake*  
MILTON DRAKE  
Its: President

STATE OF IDAHO )

ss.

County of Bonner )

On this 26 day of July, 2013, before me, the undersigned Notary Public, personally appeared, MILTON DRAKE, proved to me on the basis of satisfactory evidence, to be the President of the corporations which are partners in the partnership of Willow Brook Landing, LLP, that executed the instrument or the person who executed the instrument on behalf of the corporations in the partnership name and acknowledged to me that such corporations executed the same in said partnership name.



*John A. Finney*  
Notary Public- State of Idaho  
Residing at: Sandpoint  
My Commission Expires: 10-15-2014

**FILED EFFECTIVE**

**2006 AUG -2 PH 3: 28**

SECRETARY OF STATE  
STATE OF IDAHO

**ARTICLES OF INCORPORATION  
OF  
THE CROSSING HOA, INC.**

The undersigned, in order to form a nonprofit corporation under the provisions of Title 30, Chapter 3, Idaho Code, submits the following articles of incorporation to the Idaho Secretary of State.

**ARTICLE I  
NAME OF CORPORATION**

The name of the corporation shall be The Crossing HOA, Inc. (hereinafter referenced as "Association").

**ARTICLE II  
PURPOSE AND POWERS OF ASSOCIATION**

- 2.1 The purpose of the Association shall be to (a) enforce and carry out the provisions of the Declaration of Covenants, Conditions, Easements and Restrictions of The Crossing at Willow Bay (Declaration) and the bylaws, rules and regulations of the Association; and (b) maintain and protect the real property described in the Declaration (Property).
- 2.2 The Association through its board of directors, shall have the authority to: (a) enforce the Declaration, bylaws and rules; (b) make improvements to the Property; (c) levy and collect assessments from the Members; (d) enter into contracts as may be necessary or desirable to carry out the provisions of the Declaration, these Articles and the Association bylaws; (e) establish procedures and policies necessary or deemed desirable to provide for the general welfare of the Members; (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.
- 2.3 The Association shall have and shall exercise all other rights and powers necessary and convenient to carry out its purpose including, without limitation, those general powers set forth in the Idaho Nonprofit Corporation Act, Title 30, Chapter 3-24, Idaho Code.
- 2.4 The Association shall adopt and maintain bylaws.

IDAHO SECRETARY OF STATE  
08/02/2006 05:00  
CR: 075916 CT: 172099 IN: 960116  
1 @ 30.00 = 30.00 INC MONP # 2  
1 @ 20.00 = 20.00 NON EXPEDI # 3

C168183

- 2.5 This instrument, the Declaration, and the Association bylaws shall be recorded in the records of Bonner County, Idaho.

### **ARTICLE III. REGISTERED AGENT**

The Association shall designate a registered agent. The initial registered agent shall be WILLIAM M. BERG, whose address (registered office) is 316 N. Second Ave., Ste B, Sandpoint ID 83864.

### **ARTICLE IV. BOARD OF DIRECTORS**

- 4.1 The Association shall have a board of directors (Board) consisting of no less than three (3) members, elected by the members of the Association at the annual meeting, and in accordance with the bylaws of the Association.
- 4.2 The initial Directors shall be:
- Jerald D. Hansen, 899 E. Bottle Bay Road, Sagle ID 83860  
James W. Sullivan, 16114 E. Indiana Ave., Spokane Valley WA 99216  
Brett T. Sullivan, 16114 E. Indiana Ave., Spokane Valley WA 99216
- 4.3 The Board shall (a) adopt an annual budget for operations; and (b) establish and enforce assessments, rules and regulations, and a schedule of fines and penalties for violation of rules and regulations, including without limitation penalties for late payment of assessments.
- 4.4 The Board shall carry out other duties as required by the bylaws, Declaration, and resolutions of the Members.

### **ARTICLE V. INCORPORATOR**

The incorporator is WILLIAM M. BERG whose address is 316 N. Second Ave., Ste B, Sandpoint ID 83864.

### **ARTICLE VI. ASSOCIATION OFFICE**

The Association shall maintain an Association office in Bonner County, Idaho. The initial office of the Association shall be located at 316 N. Second Ave., Ste B, Sandpoint ID 83864.

**ARTICLE VII.  
ASSOCIATION MEMBERSHIP**

- 7.1 The Association shall consist of voting members.
- 7.2 Every Lot Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any such Lot. The words "Lot" and "Owner" shall be defined as set forth in the Declaration.
- 7.3 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 Unit. A sale of a Unit by real estate contract shall constitute a valid transfer of membership to the buyer. A prohibited transfer is void.
- 7.4 Each Lot shall have one vote in the Association, such vote to be cast by the Lot Owner, except the Declarant, Crossing Development, Inc., an Idaho corporation, or its successor in interest, shall have ten (10) votes for each Lot it owns. Where co-owners exist, such owners shall designate in writing, with the Secretary of the Association, who among them shall cast the vote of the Lot Owner. A designation shall remain of record until revoked. Any co-owner may revoke a designation in writing and submit it to the Secretary. The Secretary shall not accept a vote by co-owners who fail to properly designate authority to cast the vote.

**ARTICLE VIII.  
ASSESSMENTS**

- 8.1 The Association shall levy assessments on its members. 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 but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Property.
- 8.2 Each Lot, regardless of size, shall bear an equal burden for the general expenses of the Association.
- 8.3 The Association, acting through its Board, may levy a special assessment from time to time when the current assessment is deemed insufficient for the Association to carry out its obligations under this instrument and the bylaws.

**ARTICLE IX.  
AMENDMENTS**

- 9.1 Until such time as the Declarant conveys a Unit, it shall have the right to amend these Articles and require the Board to submit such amendment to the Secretary of State.

9.2 Thereafter, these Articles may be amended upon the consent of 75% of the Lot Owners. An amendment shall be effective upon its filing with the Idaho Secretary of State and the recordation of a certified copy thereof in the records of Bonner County, Idaho.

**ARTICLE X.  
DISSOLUTION**

- 10.1 The Association may be dissolved upon modification of the Declaration to permit dissolution and the consent of 75% of the Lot Owners.
- 10.2 Upon dissolution, the assets of the Association shall be divided pro rata among Lot Owners.
- 10.3 Dissolution shall otherwise be accomplished in compliance with Title 30, Chapter 3-110 et. seq.

**ARTICLE XI.  
INDEMNIFICATION**

The Association shall indemnify and hold harmless its directors, officers, and employees from personal liability for monetary damages for breach of fiduciary duty in accordance with the powers granted in Title 30, Chapter 3-88, Idaho Code.

**ARTICLE XII.  
MISCELLANEOUS**

These Articles are intended to comply with the Declaration. In the event of ambiguity, the Declaration shall be given greater weight.

EXECUTED this 2 day of August, 2006.



William M. Berg  
Incorporator

FILED EFFECTIVE

204



ARTICLES OF AMENDMENT (Non-profit)

2008 APR 29 PM 1:05

SECRETARY OF STATE STATE OF IDAHO

To the Secretary of State of the State of Idaho Pursuant to Title 30, Chapter 3, Idaho Code, the undersigned non-profit corporation amends its articles of incorporation as follows:

- 1. The name of the corporation is: The Crossing HOA, Inc.

If the corporation has been administratively dissolved and the corporate name is no longer available for use, the amendment(s) below must include a change of corporate name.

- 2. The text of each amendment is as follows:

The first sentence of Article 9.2 is amended as follows: Thereafter, these Articles may be amended by a vote of 67% of the Members voting at a duly called meeting of the Association.

- 3. The date of adoption of the amendment(s) was: April 24, 2008

- 4. Manner of adoption (check one):

- Each amendment consists exclusively of matters which do not require member approval pursuant to section 30-3-90, Idaho Code, and was, therefore, adopted by the board of directors. (Please fill spaces below)
a. The number of directors entitled to vote was:
b. The number of directors that voted for each amendment was:
c. The number of directors that voted against each amendment was:

- The amendment consists of matters other than those described in section 30-3-90, Idaho Code, and was, therefore adopted by the members. (Please fill spaces below)

a. The number of members entitled to vote was: 8

b. The number of members that voted for each amendment was: 8

c. The number of members that voted against each amendment was: 0

Customer Acct #:

(if using pre-paid account)

Secretary of State use only

Dated: April 24, 2008

Signature: [Handwritten Signature]

Typed Name: Brett T. Sullivan

Capacity: Secretary-Treasurer

IDAHO SECRETARY OF STATE
04/29/2008 05:00
CK: 187182 CT: 172899 BH: 1112537
1 @ 38.00 = 38.00 NON PROF A @ 2
1 @ 28.00 = 28.00 NON EXPEDI @ 3

C168183

No. <b>C 168183</b>		<b>Due no later than Aug 31, 2013 Annual Report Form</b>		2. Registered Agent and Address <b>(NO PO BOX)</b>		
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080  <b>NO FILING FEE IF RECEIVED BY DUE DATE</b>		1. Mailing Address: Correct in this box if needed. CROSSING HOA, INC. (THE) C/O JOHN A FINNEY ATTORNEY AT LAW 120 E LAKE ST STE 317 SANDPOINT ID 83864		JOHN A FINNEY ATTORNEY 120 E LAKE ST STE 317 SANDPOINT ID 83864		
				3. <u>New</u> Registered Agent Signature:*		
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional).						
Office Held	Name	Street or PO Address	City	State	Country	Postal Code
PRESIDENT	MILTON DRAKE	BOX 5099	BONNYVILLE	ALBERTA	CANADA	T9N2G3
DIRECTOR	MILTON DRAKE	BOX 5099	BONNYVILLE	ALBERTA	CANADA	T9N2G3
SECRETARY	TOM PUCKETT	C/O BOX 5099	BONNYVILLE	ALBERTA	CANADA	T9N2G3
DIRECTOR	TOM PUCKETT	C/O BOX 5099	BONNYVILLE	ALBERTA	CANADA	T9N2G3
5. Organized Under the Laws of:		6. Annual Report must be signed.*				
<b>ID C 168183</b>		Signature: John A. Finney, Attorney		Date: 06/19/2013		
		Name (type or print): John A. Finney, Attorney		Title: Registered Agent		
Processed 06/19/2013		* Electronically provided signatures are accepted as original signatures.				