

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HAILEY CREEK, DIVISION NO. 1
JEFFERSON COUNTY, IDAHO**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAILEY CREEK, DIVISION NO. 1, an Addition to the City of Rigby, Jefferson County, Idaho, (this "Declaration") is made as of the 16th day of October, 2009, by Hailey Creek, LLC, an Idaho limited liability company (the "Declarant").

RECITALS:

A. The Declarant is the owner of certain real property located in Hailey Creek, Division No. 1, an Addition to the City of Rigby, Jefferson County, Idaho.

B. The Declarant has filed with the Recorder of Jefferson County, Idaho, as Instrument No. 378658, a subdivision plat (the "Plat") for Hailey Creek, Division No. 1, an Addition to the City of Rigby, Jefferson County, Idaho.

C. The Property as hereinafter defined is hereby made subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens contained or provided for in this Declaration, all of which shall be enforceable equitable servitudes and shall run with the land.

D. The Property shall generally be known as "Hailey Creek", and by such other or additional names as may be designated by the Declarant from time to time.

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, transferred, used and occupied subject to the provisions of this Declaration, including the covenants, conditions and restrictions contained or provided for herein, which are for the purpose of protecting the value and desirability of the Property as a first-class residential real estate project, and which shall be construed as covenants of equitable servitude and shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

ARTICLE I DEFINITIONS

Section 1. “Property” shall mean the real property located in Jefferson County, Idaho, particularly described as follows: Lots 2-7 and 9-21 of Block 1, Lots 1-16 of Block 3 and Lots 1-14 of Block 4, Hailey Creek, Division No. 1, an Addition to the City of Rigby, Jefferson County, Idaho.

Section 2. “Lot” shall refer to each of the single-family residential lots shown on the Plat.

Section 3. “Owner” or “Ownership” shall mean the record owner, whether one or more persons and/or entities, of a fee simple title to each Lot, including contract buyers of record, but excluding mortgagees, contract sellers or others having such interest merely as security for the performance of an obligation unless and until said mortgagee or other holder of a security interest has acquired title to a Lot which is part of the Property pursuant to forfeiture, foreclosure or a proceeding in lieu thereof. An “Owner” shall mean all of the owners of a particular Lot collectively and shall be jointly regarded as a single Owner for purposes of this Declaration. Any owner of an equity interest of record in a Lot, and any partner, officer or shareholder of an entity which is an Owner of record, may be treated as the representative of all the Ownership of such Lot for purposes of giving notices, voting and other matters.

Section 4. “Declarant” shall mean Hailey Creek, LLC, an Idaho limited liability company.

Section 5. “Architectural Control Committee” shall refer to a committee initially composed of one (1) member. The initial member of the Architectural Control Committee shall be Jaramie Magera (the “Initial Member”). The Initial Member may at any time appoint another party to succeed him as the Initial Member. In the event of death or resignation of the Initial Member without a successor Initial Member having been appointed, then the Declarant shall designate a successor Initial Member. At any time after the Declarant no longer owns at least two (2) Lots, the Architectural Control Committee shall be composed of three (3) members and the Owners shall have the right by a majority vote to elect the members of the Architectural Control Committee.

Section 6. The “City” shall refer to the City of Rigby, Jefferson County, Idaho.

ARTICLE II
PURPOSE OF THE PROPERTY, AND
CERTAIN RESTRICTIONS ON USE

Section 1. General Purpose. The general purpose of this Declaration is to provide for the maintenance, administration and control of the Property as a first class residential community.

Section 2. No Further Subdividing. No Lot may be further subdivided, provided, however, that nothing herein shall prevent the transfer or sale of any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

Section 3. Land Use. The Lots may only be occupied and used for residential purposes, and for such incidental purposes as may be approved by the Architectural Control Committee. Provided, however, notwithstanding anything contained herein to the contrary, Owners may rent the residences on the Lots to third parties for a term of one month or longer and the usage of the residences by such third party tenants shall be considered as occupancy and use for residential purposes and such usage by tenants under any such rental agreements with Owners shall not be deemed a violation of the covenants, conditions and restrictions set forth herein. The Lots and residences thereon may not be rented on lease terms for less than one month. No Lot shall be used for the conduct of any home occupation, trade, business or professional activity; provided, however, that a home occupation, or trade or professional activities may be carried on within a residence so long as all of the following conditions are satisfied: (i) the Lot is used primarily for single-family residential use; (ii) the Lot Owner first applies for, and obtains, any required approval, permit, conditional use permit, and/or any other approval or permit necessary from any applicable federal, state, county or local municipality or agency; (iii) the Lot Owner first applies in writing to and obtains the written approval of the Architectural Control Committee for such use; and (iv) that there exists no meaningful external evidence of any such trade, professional or administrative occupation carried on in the residence on any such Lot. At no time shall an Owner of any Lot be required to construct any improvement or dwelling upon any Lot; however, once construction of a dwelling is commenced, the dwelling must be completed within twelve (12) months, unless the Architectural Control Committee in its discretion approves an extension for good cause. Notwithstanding the foregoing, the Architectural Control Committee may, in its discretion, after request by an Owner, allow an Owner of a Lot to place a detached structure upon the Lot that the Architectural Control Committee determines to be architecturally and aesthetically compatible with the dwelling on the Lot.

Section 4. Quality. All dwellings and improvements constructed upon any Lot shall be of high quality workmanship and materials and built in accordance with professional

building standards in addition to complying with all applicable building codes.

Section 5. Certain Additional Restrictions. The following additional restrictions are applicable to Lots. Each reference to “Owners” includes their tenants and invitees.

5.1 Keeping Outside Areas Clean and Sightly. All Owners shall keep their residences and their Lots in a reasonably clean, safe, sightly and tidy condition, except for reasonable activities permitted by the Architectural Control Committee during the construction of an authorized improvement. Refuse, garbage and trash shall be kept at all times in a covered container, and such covered container shall be screened from view at all times.

5.2 Signs and Lighting. No signs of any character shall be placed or maintained on any Lot, except:

- (a) one sign advertising the premise for sale or rent, which sign shall not exceed six (6) square feet;
- (b) one sign identifying the name and/or address of the Owner's or occupant's Lot, which sign shall not exceed two (2) square feet;
- (c) one signed used by the builder to advertise the project during the construction period.
- (d) up to three (3) signs supporting or opposing political candidate or issues which are subject to a pending public vote as long as each such sign does not exceed six (6) square feet and such signs are not on any Lot longer than four (4) weeks before the applicable voting date and one (1) week after the applicable voting date.

Any light used to illuminate signs, parking areas or for any other purposes shall be so arranged as to reflect the light away from, and not be obtrusive to, other Lots and away from the vision of passing motorists.

5.3 Animals. Except as is hereinafter set forth, no animals of any kind shall be raised, bred or kept, except that dogs, cats, and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. There shall be no more than three (3) dogs and cats or similar household pet kept on any Lot. All Owners of animals shall exercise such proper care and control of their animal or animals to prevent them from becoming a nuisance. “Nuisance” means any noisy animal, any vicious

animal or any animal which destroys, or in any other manner injures clothing, washing, garbage containers, gardens, flowerbeds, lawns, trees, shrubbery, or any other items on the Property. Excessive, continued or untimely barking, molesting passersby, chasing vehicles, habitually attacking other animals, trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. "Noisy animal" means any animal which habitually, constantly or frequently disturbs the sleep, peace, or quiet of any person.

5.4 Limitations on Certain Activities. Owners shall not permit any obnoxious or offensive activity or nuisance to be carried on, in or around their Lot. No light shall be emitted or reflected from any Lot which is unreasonably bright or causes unreasonable glare for any adjacent Owner. No unreasonably loud or annoying noises, or noxious or offensive odors, shall be emitted from any Lot.

5.5 Repair of Buildings. No improvement upon any Lot shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.

5.6 No Hazardous Activities. No activities shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property.

5.7 No Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

5.8 Fencing. No wire mesh, chain link or barbed wire fences will be allowed on any Lot. All fences shall be approved by the Architectural Control Committee. All wood fences shall be stained and/or painted annually and maintained in good condition.

5.9 Parking and Driveways. Sufficient driveways and parking areas shall be provided by the Owner of each Lot, to permit off-street parking, in order that the flow of traffic may not be obstructed or impeded and that snow removal may be facilitated. The driveways running from each Lot to the adjoining Public Road are to be paved. The driveway for each Lot shall be completed prior to the issuance of a Certificate of Occupancy for any residence completed on the applicable Lot.

5.10 Sidewalks. The Owner of each Lot shall be responsible for the initial construction and continuing maintenance of sidewalks on each Lot in accordance with applicable City standards and requirements. The Owner shall be required to complete construction of the sidewalk on the Owner's Lot prior to the issuance of a Certificate of Occupancy for any residence constructed on the applicable Lot.

5.11 Utility Lines. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located below ground.

5.12 Water Supply. No individual water supply system shall be permitted on any Lot.

5.13 Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

5.14 Antenna and Satellite Receiver. No outside television antennas, radio aerials, satellite dishes, or similar devices or structures shall be installed on any Lot or the exterior of any structure located thereon, except that such devices smaller than ten (10) feet in total perimeter dimension shall be permitted only if located behind the front plane of the dwelling structure (toward the rear of the Lot) not within building set-back areas, and if appropriately screened from view from any direction.

5.15 Landscaping. All Lots with dwellings shall be landscaped prior to the issuance of a Certificate of Occupancy for the residence located on the applicable Lot with landscaping approved by the Management Committee. Landscaping on a Lot must be of uniform nature and must consist primarily of grass in the landscaped area around the Residence, unless a different landscaping scheme is approved by the Management Committee. The landscaping for each Lot shall include at least one tree in the front yard and one tree in the back yard. The landscaped area around the Residence shall not be “desert” type landscaping.

Section 6. Requirement of Development Approval. No structure or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on or under the surface of any Lot, and no construction activities shall be commenced, until any such activity has been approved by the Architectural Control Committee. Duplicate sets of plans and specifications for any proposed Lot improvement or alteration shall be submitted to the Architectural Control Committee. Sufficient information shall be submitted to demonstrate compliance with all of the requirements of these covenants. The Architectural Control Committee shall review the complete plans and specifications as soon as practicable, and determine if the proposed use or development conforms to the requirements of these covenants and the rules and guidelines adopted by the Architectural Control Committee. The Architectural Control Committee may, in its reasonable discretion, approve or disapprove such structure or alterations and the location thereof based upon all relevant factors, including without limitation: design and style, mass and form, value, topography, setback requirements, views, exterior color and materials and such improvements, physical or aesthetic conformity to surrounding terrain and the other structures and improvements on the Lot, and adjacent Lots. Said requirements as to the

approval of the architectural design shall apply only to the exterior appearance of structures. This Declaration is not intended to serve as authority for the Architectural Control Committee to control the interior layout or design of any structure except to the extent incidentally necessitated by use and size requirements. The Architectural Control Committee may approve plans and specifications subject to any conditions or modifications which the Architectural Control Committee determines to be necessary in order to ensure conformity with the requirements of these covenants and such rules. The Architectural Control Committee shall retain one set of plans and specifications. The Architectural Control Committee shall set forth in writing, its reasons for rejecting any proposed structure or other improvement, promptly after written request by the applicable Owner for a statement of such reasons.

Section 7. Variances. The Architectural Control Committee may authorize variances from compliance with any of the architectural provisions of this Declaration and of any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the Architectural Control Committee, and shall become effective upon recordation in the Office of the County Recorder of Jefferson County, Idaho. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance.

Section 8. Other Development and Use Restrictions. All development on and use of Lots shall conform to the following requirements:

8.1 Provisions in Addition to County Land Use Regulations. Conformity with any and all applicable land use regulations of the City and/or Jefferson County, Idaho, shall be required, in addition to the requirements of these covenants. In cases of any conflict, the more stringent requirements shall govern.

8.2 Authorized Use. Only residential use shall be permitted on Lots, as provided in Article II, Section 3 above.

8.3 Authorized Structures. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling and a private garage and other outbuildings approved by the Architectural Control Committee. Each

residence constructed on a Lot shall include a garage of sufficient size to shelter at least two full-size automobiles in an enclosed garage as an attached, integral part of the residence structure.

8.4 Construction. No pre-cut, pre-fabricated or modular structures of any kind shall be permitted for the residence, or any other Structure. The roofs of all structures shall be constructed of architectural grade shingle, tile or shale materials and shall have a pitch of at least 4/12 unless otherwise approved by the Architectural Control Committee. The exterior finish of each residence shall be of brick, stucco or pre-finished siding, such as steel, aluminum or rock. Twenty-five percent (25%) of the front elevation must be brick, stone or stucco. No hardboard or other wood sidings shall be permitted unless authorized by the Architectural Control Committee. All construction shall be completed within one year from the commencement date of construction, unless the Architectural Control Committee in its discretion approves an extension for good cause. All construction work shall be subject to full regulation at all times by the Architectural Control Committee, as to access to the site, site and work conditions (including temporary structures, hours of operations, cleanliness and other matters), and scheduling of construction work.

8.5 Height Limitations, Setbacks, Floor Area Requirements. All structures and improvements (other than driveways, utility installations and similar improvements) shall be set back from all Lot lines as required by the applicable ordinances and regulations of the City of Rigby, Idaho. Provided, however, detached garages or other approved outbuildings which are not attached to the main residence shall be located behind the main residence. No one-story residence shall be constructed on any Lot having an interior ground floor area, exclusive of any basement, porches and garage, of less than 1,000 square feet. No one-and-a-half-story, split level or two-story residence shall be constructed on any Lot having an interior combined floor area, exclusive of any basement, porches and garage, of less than 900 square feet above ground level. No residence shall be constructed higher than two stories and no other structure shall be taller than one story.

8.6 Utilities. Connections from Lots to the underground utility lines shall be completed at the applicable Lot Owners' expense, and shall be underground.

8.7 Temporary Structures Prohibited. No temporary structures, such as trailers, tents, shacks or other similar buildings shall be permitted on any Lot, except during construction as authorized by the Architectural Control Committee. Provided, however, recreational vehicles, campers and other similar vehicles may be kept on a Lot only if they are located either to the side of or behind a residence constructed on a Lot. Such recreational vehicles, campers and other similar vehicles may not be kept in the area between the front of the residence and the street. The driveway space shall not be used for purposes other than parking and operating usable/drivable vehicles. In no case shall a Lot be used for the storage

or maintenance of heavy equipment, non-operable vehicles or tractor-trailer trucks.

8.8 Maintenance. Each Lot and all structures thereon shall be maintained in a clean, safe and sightly condition. Refuse garbage and trash shall be kept at all times in a covered container, and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.

ARTICLE III DESTRUCTION, DAMAGE OR OBSOLESCENCE

Each Owner of a Lot is solely responsible for any damage, destruction, obsolescence, condemnation or abandonment of any improvements thereon, and for repair and reconstruction of such Lot and all improvements thereon.

ARTICLE IV LEASING OF LOTS

All leases of Lots shall be subject in all respects to the provisions of this Declaration and failure of the lessee to comply with the terms of this Declaration shall be a default under the lease and shall be enforceable against the lessee.

ARTICLE V NOTICES

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered forty-eight (48) hours after a copy of the same has been deposited in the U.S. mail, postage prepaid.

ARTICLE VI NO WAIVER

The failure of the Architectural Control Committee or its agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect.

**ARTICLE VII
ENFORCEMENT**

Each Owner shall strictly comply with the provisions of the Declaration. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, or any other remedy allowed by law, maintainable by the Architectural Control Committee or its designee or by Declarant or, in an appropriate case, by an aggrieved Owner. Any violation of the provisions of the Declaration is declared to be and shall constitute a nuisance and may be abated by Declarant or the Architectural Control Committee or an aggrieved Owner.

**ARTICLE VIII
INSURANCE**

Each Owner is solely responsible for obtaining their own insurance covering any and all improvements on their Lot.

**ARTICLE IX
AMENDMENTS**

The provisions of this Declaration, other than this Article, may be amended by an instrument in writing signed and acknowledged by the Owners at the time in question of at least two-thirds ($\frac{2}{3}$) of the Lots and such amendment shall be effective upon its recordation with the Jefferson County Recorder. The provisions of this Declaration, other than this Article, may also be amended as long as the Declarant, or an Assignee of the Declarant, owns at least ten (10) Lots by an instrument in writing signed and acknowledged by the Declarant or the Assignee of the Declarant and such amendment shall be effective upon its recordation with the Jefferson County Recorder.

**ARTICLE X
GENERAL PROVISIONS**

Section 1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

Section 2. Captions, Gender and Grammar. The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Declaration or any provision hereof. The singular

wherever used herein shall be construed to mean the plural whenever applicable or vice versa and necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, etc., shall be assumed in each case as though made.

Section 3. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Idaho.

**ARTICLE XI
EFFECTIVE DATE**

This Declaration shall take effect when recorded with the Recorder of Jefferson County, Idaho.

IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument as of the date first above written.

HAILEY CREEK, LLC

By: Jaramie Magera, Manager

STATE OF IDAHO)
)ss.
County of _____)

On the _____ day of _____, 2009, before me the undersigned, a notary public in and for said State, personally appeared Jaramie Magera, known or identified to me to be the manager for the limited liability company of Hailey Creek, LLC, and the manager who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such manager executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(seal)

Notary Public for Idaho
Residing at _____
My Commission Expires: _____