

INSTRUMENT NO. 90346

A 1 of 35

DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HIGHLAND ESTATES SUBDIVISION

THIS DECLARATION is made this 31<sup>st</sup> day of January, 1996 by PAYETTE RIVER DEVELOPMENT COMPANY, INC., an Idaho corporation. (herein "Declarant"). This Declaration of Covenants, Conditions and Restrictions for Highland Estates is a statement in its entirety of the covenants, conditions and restrictions for the Highland Estates Subdivision and is as follows:

ARTICLE 1  
RECITALS

1.1 **Property Covered.** Declarant is the owner of certain real property (the Property") described as: Highland Estates Subdivision, formerly known as Phase IV of the MeadowCreek Subdivision, Adams County, Idaho. The legal description of the Property is provided in Exhibit A attached hereto.

1.2 **Purpose.** Declarant hereby subjects all of the Property to certain protective covenants, conditions and restrictions for the benefit of the Property and present and future owners thereof. This Declaration of Covenants, Conditions and Restrictions ("Declaration") is intended to preserve the value, desirability and attractiveness of the Property, to create and protect the highest quality development of the Property and to ensure proper maintenance thereof.

1.3 **Goals.** The project is being developed to provide a limited number of recreational residential sites within the 200+ acre Highland Estates Subdivision. The Property provides many unique natural resources including its meadows, forests and wildlife populations. The project has been designed and will be managed to preserve and enhance these natural resources for the benefit of all Lot owners.

ARTICLE 2  
DECLARATION

2.1 **Scope of Declaration.** Declarant hereby declares that all of the Property and each Lot therein, is and shall be held, sold and conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements and

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equitable servitudes which are for the purpose of protecting the value and desirability of, and which shall run with, the Property. The covenants, conditions and restrictions contained in this Declaration shall:

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

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

C. Inure to the benefit and be binding upon Declarant and his successors and assigns and each grantee and his/her respective successors in interest; and

D. Be enforced by Declarant or its agent, by any Owner or grantee or his/her successors in interest or by the Highland Estates Homeowners Association ("Association").

**2.2 Rights of Declarant.** Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit Declarant's right to complete development of the Property and to construct improvements thereon, nor Declarant's right to maintain construction, sales or similar facilities on any portion of the Property, nor Declarant's right to post signs incidental to construction, sales or leasing on any portion of the Property.

**2.3 Other Restrictions.** The covenants, conditions and restrictions contained in this Declaration are IN ADDITION to any other land use restrictions, zoning ordinances, laws, rules and decisions of other governmental authorities, including judicial authorities. This Declaration does not supersede or replace any such land use restrictions which are in force and must be satisfied independent of this Declaration.

### ARTICLE 3 DEFINITIONS

Unless the context requires otherwise, the following words and phrases, when used in these Restrictions, shall have the meanings hereinafter specified:

**3.1 ACCESSORY DWELLING** shall mean a dwelling not exceeding 800 square feet in Net Floor Area located in an Outbuilding for use by domestic help or occasional guests.

**3.2 AGRICULTURAL** shall mean the harvesting of crops and timber. It shall also

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mean feeding, breeding, management and sale of livestock and any other agricultural or horticultural use.

3.3 **ARTICLES** shall mean the Articles of Incorporation of the Association which have been or shall be filed in the office of the Secretary of the State of Idaho, and as may be amended from time to time.

3.4 **ASSESSMENTS** shall mean those payments required of the Highland Estates Homeowners Association, Inc., including regular and special assessments as further defined in this Declaration.

3.5 **ASSOCIATION** shall mean the Highland Estates Homeowners Association, Inc., the non-profit Idaho corporation described in this Declaration, its successors and assigns.

3.6 **ASSOCIATION EASEMENTS** shall mean, collectively, all roads shown on the recorded plats of Highland Estates Subdivision and all easements granted to Owners and the Association for the benefit of its members in this Declaration and in recorded conveyances or as established by the Board over the Common Areas designated for use by the Members.

3.7 **ASSOCIATION RULES** shall mean the rules and regulations of the Association and as may be amended from time to time.

3.8 **BARN** shall mean an Outbuilding for the storage of vehicles, farm equipment and feed and for the housing of farm animals.

3.9 **BASEMENT** shall mean a building floor below natural grade by an average of at least 4 feet on three or more sides.

3.10 **BENEFICIARY** shall mean a mortgagee under a mortgage or a beneficiary or holder under a deed of trust, which mortgage or deed of trust encumbers parcels of real property on the Property.

3.11 **BOARD** shall mean the Board of Directors of the Highland Estates Homeowners Association, Inc.

3.12 **BUILDING FOOTPRINT** shall mean that area of a Lot covered by any part of a building, including porches, decks and overhangs.

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3.13 BYLAWS shall mean the Bylaws of the Association which have been or shall be adopted by the Board, as such Bylaws may be amended from time to time.

3.14 COMMON or COMMON AREAS shall mean available for use by all Owners and their guests, or by the general public.

3.15 DECLARANT shall mean PAYETTE RIVER DEVELOPMENT CO., INC., or any person, persons, entity or entities to whom the rights of the Declarant under this Declaration are specifically transferred by the Declarant.

3.16 DECLARATION shall mean this instrument and as it may be amended and supplemented from time to time.

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

3.18 DESIGN REVIEW COMMITTEE RULES OR RULES shall mean the rules adopted by the Design Review Committee ("DRC") pursuant hereto recorded July 17, 1996 as Instrument No. 90347, and incorporated herein by reference. Said Rules may be modified from time to time by the Board.

3.19 HEIGHT shall mean the limit to the vertical extent of a building, fence or other Improvement that is measured in feet relative to the natural grade of the Lot. Height limits do not apply to chimneys, lightning rods and weather vanes which may be of any height approved by the Design Review Committee.

3.20 HOMESITE shall mean that portion of each Lot as shown on the Regulating Plan within which the house and up to three Outbuildings must be located.

3.21 HOUSE shall mean a single family residential structure designed to accommodate no more than a single family, domestic help and occasional guests.

3.22 IMPROVEMENT shall mean all things constructed upon, above, or below the Property and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, barns, garages, carports, roads, driveways, parking areas, fences, corrals, walls, stairs, decks, landscaping, windbreaks, poles, signs, site grading, underground utilities, timber removal, irrigation devices, drain fields, antennae, sport courts, satellite dishes, or equipment, whether temporary or permanent, fixed or removable. Improvement shall also mean any alteration, excavation or fill for any purpose to any Lot, vegetation, diversion dam, stream, spring, seep,

ditch, fill, or other device.

3.23 **INDEPENDENT BUILDING** shall mean a building having no interior passage to an adjacent building.

3.24 **LOT** shall mean each of Lots 1 through 23, as shown on the official plat for Highland Estates Subdivision, recorded in the office of the recorder of Adams County, Idaho.

3.25 **MEMBER** shall mean any person who is a member of the Association as described in section 6.2 of the Declaration.

3.26 **MORTGAGE** shall mean any mortgage or deed of trust or other conveyance or hypothecation of a Lot to secure the performance of an obligation which will be void and reconveyed upon the completion of such performance.

3.27 **NATURAL GRADE** shall mean the natural elevation at a point on a Lot existing prior to any site preparation or improvement.

3.28 **NET FLOOR AREA** shall mean the enclosed area of a building, excluding unglazed porches, colonnades and balconies.

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

3.30 **OUTBUILDING** shall mean an Independent Building in addition to and to the rear or side of the House.

3.31 **OWNER** shall mean the person or persons or other legal entity or entities, including Declarant, holding a fee simple interest in a Lot or, as the case may be, the purchaser of a Lot under an executory contract of sale (but excluding those having such interest merely as security for the performance of an obligation). For the purposes of Articles 4 and 5 only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner. Notwithstanding anything in this section to the contrary, the Association, as owner of the private road system within Highland Estates and the Common Areas, shall not be deemed an "Owner" for the purposes of this Declaration.

3.32 **PERSON** shall mean an individual or other entity with the legal right to hold

title to real property.

3.33 RESTRICTIONS shall mean this Declaration, as said Declaration may be amended from time to time, and the Rules from time to time in effect.

3.34 REGULATING PLAN shall mean the Subdivision Plat attached hereto as Exhibit B.

ARTICLE 4  
GENERAL AND SPECIFIC RESTRICTIONS

Except upon prior written approval of the Design Review Committee, the Property shall be held, used and enjoyed subject to the following limitations and restrictions:

4.1 Design Review Committee. There shall be no excavation or alteration of any Lot, no action to construct, place or erect any Improvement or structure on any Lot (or which in any way alters the exterior appearance of any Improvement or Lot or removal of any Improvement) without the prior written approval of the Design Review Committee in accordance with this Declaration and the Exhibits to the Declaration, all of which are incorporated herein by reference as if restated in full. These requirements shall apply only to the exterior appearance of said Improvements and not the interior thereof.

4.2 Insurance Rates. Nothing shall be done or kept on any Lot or the Property which shall increase the rate or result in the cancellation of insurance payable by any Owner, the Association or Declarant, or which would be in violation of any Association Rule or Adams County Regulation.

4.3 No Further Subdivision. No Lot may be further subdivided, nor may any easement or other interest therein, less than the whole, be conveyed by the Owner thereof other than for underground utilities and underground drainage facilities.

4.4 Animals. No more than 4 dogs and 4 cats (and other indoor household pets) may be kept except with the approval of the Board, and provided that they are not kept, bred or maintained for any commercial purpose and not allowed to run at large, chase wildlife or bark excessively. Owners with farm animals shall maintain pasture grasses and fence pastures according to the alignment shown on the Regulating Plan. Farm animals (other than pigs, chickens and other burrowing animals) shall not exceed 2 animals per 5 acres owned unless approved by the Board; including, but not limited to, horses, cattle, llamas, sheep, deer, elk, etc. No farm animals shall be

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allowed on any Lot unless contained by fencing. No pigs, chickens and/or burrowing animals shall be allowed on any Lot within the Property.

4.5 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. No noise, including, but not limited to, noise created by people, animals, equipment, electronic device, audio receiver, television, stereo, musical instrument and/or machinery, or any other audible nuisance, shall be permitted which is offensive or detrimental to any other Lot in the vicinity thereof or to its occupants.

4.6 Maintenance of Improvements. 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.

4.7 Disrepair. If any Owner permits any Improvement of which he is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon 15 days prior written notice to such Owner, may correct such condition and enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall create a lien in the same manner as other assessments, as set forth in this Declaration. Such Owner shall be personally liable, and his property may be subject to a mechanic's or other lien, for all costs and expenses incurred by the Association in taking such corrective actions, plus all costs incurred in collecting the amounts due. Each such Owner shall pay all amounts due for the work within 10 days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to amounts payable by such Owner as a regular Assessment.

4.8 Watercourses, Irrigation Ditches and Drainage. All watercourses, irrigation ditches and drainage shall be managed in the best interest of the Association. There shall be no alteration, improvement, or interference with any established watercourse, irrigation ditch or drainage pattern over any Lot within the Property unless approved in writing by the Design Review Committee and the Board. Any alteration, improvement, or interference with any watercourse, ditch, or drainage shall also comply with applicable local, state and federal regulations.

For purposes of this Declaration, "alterations" shall mean to obstruct, diminish, fill, pond, dredge, destroy, alter, modify, relocate or change. "Watercourses" (either natural or made) shall include streams (both perennial and intermittent), wetlands, lakes and ponds, springs, seeps, dry washes and any associated culverts, ditch or water control structures. Irrigation ditches shall include any ditch, canal and any associated culvert or water control structure used to convey water



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for irrigation purposes. "Established" is defined as the watercourse, ditch or drainage which exists at the time of the grading of the Lot or Property, or as shown on any plans approved by the Design Review Committee or the Regulating Plan of the Property.

4.9 **Common Areas.** The Common Areas, if any, shall be managed by the Association, and no alterations within said areas shall be allowed except by approval of the Association's Board of Directors.

4.10 **Sewage and Water Supply Facilities.** All residential structures on Lots other than those specifically identified herein shall be provided, at the Owner's expense, with a water well(s). All residential structures on all Lots shall be provided, at the Owner's expense, with adequate sewage treatment facilities, including septic tank and drain field. Individual sewage and water systems shall be permitted on any Lot, provided such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Design Review Committee and is approved by the Adams County Health District and all other applicable governmental authorities. Individual Lots may require additional sewage treatment facilities based on soil types and hydrology conditions, the determination of which shall be the responsibility of the Lot Owner. All such facilities shall be adequately maintained so as to cause no offensive odors or aboveground discharge.

4.11 **Fire Protection.** The Regulating Plan currently requires Declarant, as Owner, to install a fire hydrant system for fire protection for the Property. To enable access by the local fire protection agency, all private driveways which extend more than 150-feet from the nearest access road must be a minimum of 20-feet wide and have a maximum 7% grade. Adams County Fire and Building Codes may require a Lot Owner to install additional fire protection measures on said Owner's Lot or within the Improvements on said Lot. Construction of all Improvements must comply with Adams County Fire and Building Codes.

4.12 **No Hazardous or Offensive Activities.** No activities shall be conducted on the Property and no Improvements constructed on any Lot which might be unsafe or hazardous to any person or property. No firearms shall be discharged upon any Lot or the Property. No hunting shall be allowed at any time. Hunting on neighboring lands is allowed according to applicable local, state and federal regulations. No open fires shall be lighted or permitted on any portion of any Lot, except those controlled and attended fires required for clearing or maintenance of land, and previously approved in writing by the Board and applicable regulatory agencies, or those within a contained and safe area for cooking and recreational purposes.

4.13 **Unightly Articles.** Trailers, motor homes, trucks (other than pickups), boats,

tractors, vehicles (other than automobiles), campers (on or off a vehicle), snowmobiles, snow removal equipment, garden or maintenance equipment, camping and recreational equipment, dilapidated or unrepaired vehicles and similar equipment shall be stored in a neat and orderly fashion at all times. All vehicles must be operational and must have current licenses.

Refuse, garbage and trash shall be kept in a covered container and appropriately screened from view at all times. No lumber, grass, shrub or tree clippings, compost piles or plant waste, metals, bulk materials, unused building materials, or refuse or trash or other materials shall be kept, stored or allowed to accumulate on any Lot unless appropriately screened from view. Firewood shall be stored in a neat and orderly fashion.

**4.14 Temporary Structures.** No temporary structure or Improvement shall be placed upon any Lot. However, a well-built temporary structure or trailer will be permitted to be used during construction of Improvement(s) on a Lot, provided it is located on the Lot on which construction of Improvement(s) is occurring, and it shall be removed within 14 days of substantial completion of the Improvement, but in no event shall any temporary structure or trailer remain on any Lot for more than 1 year.

**4.15 No Mining or Drilling.** Except as provided in paragraph 4.10, no property 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, except that the Association may, by appropriate permit, grant, license or by easement, allow the drilling of wells for the extraction of water for domestic use and gardening and landscape irrigation if such use is in accordance with applicable governmental authorities.

**4.16 Vehicles.** The use of all on and off-road vehicles, including, but not limited to, trucks, automobiles, motorcycles, snowmobiles, ATV's, "dirt bikes" and other "off-road" type recreational vehicles shall be confined to designated roadways only. Ingress and egress to adjacent lands shall be allowed only through existing private and County roads. The Board shall have the right to adopt further rules and regulations concerning the use of on and off-road vehicles on the Property.

Unless otherwise posted, the speed limit on all Association roads is 25 miles per hour. The Board may, from time to time, establish additional rules concerning the use of Association roads, including the posting of signs and street name signs.

The Idaho Vehicle Code shall be enforced on all Association roads, Improvements, easements and Common Areas.

**4.17 Building Footprints.** Building Footprint(s) of the House and up to 3 Outbuildings shall be wholly contained within the Homesite of each Lot as designated on the Regulating Plan.

**4.18 Landscaping.** Within 180 days after substantial completion of an Owner's residence (unless such time is extended by the Design Review Committee), such Owner shall install the landscaping as provided for the Landscape Plan as approved by the Design Review Committee or shall restore all areas disturbed by construction to their pre-existing condition and shall thereafter maintain the landscaping in a weed-free and well-maintained condition. Landscaping is limited to the Homesite. All areas outside the Homesite disturbed during construction shall be re-established with native vegetation. Trees, shrubs, and grasses for landscaping and re-vegetation shall be selected from the Landscape Materials List as provided by the Design Review Committee. Sod will be allowed only in the Homesite. Pastures shall be planted and maintained with native grasses. Vegetation shall be maintained in accordance with local fire protection recommendations.

Every Owner, whether or not his Lot contains any Improvements, shall take all action necessary to restrict the growth of, and to remove, noxious weeds and grasses in accordance with all applicable local, state and federal requirements. Whenever practical, weed control actions shall not be chemically dependent, but shall utilize plantings and other means of control. The control and maintenance of noxious weeds using chemical control methods shall be in accordance with United States EPA label restrictions.

The Board may adopt additional rules regulating landscaping, including maintenance. If any Owner shall fail to install and maintain landscaping in conformance with these rules or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, or shall fail to remove noxious weeds and grasses as required above, the Board, upon 30 days prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall create a lien enforceable in the same manner as other Assessments, as set forth in this Declaration.

**4.19 Construction Debris.** No Owner shall allow any person or persons constructing Improvements upon his Lot (or providing similar services) to deposit rubbish or debris of any kind or to allow litter to accumulate in excess of normal construction practices.

**4.20 Violation of Property Restrictions.** There shall be no violation of the Association Rules or the Design Review Committee Rules. If any Owner, his family, or any licensee, lessee or