

Instrument # 688400

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**DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WARM SPRINGS RANCH RESIDENCES**



**DECLARATION ESTABLISHING
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WARM SPRINGS RANCH RESIDENCES**

This Declaration (“Declaration”) is made this 9th day of November, 2021 by BRENNAN HOLDINGS NO. 300, LLC, an Idaho limited liability company, (hereafter referred to as “Declarant”), with reference to the following facts:

RECITALS

- A. The Declarant is the owner of all that real property described in Section 1.08; and
- B. The Declarant proposes to develop said real property in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the City of Ketchum, Idaho and per the statutes of the State of Idaho; and
- C. The subdivision plat map for said real property was filed in the office of the Recorder of the County of Blaine, State of Idaho on Nov. 3, 2021 as Instrument Number 688399.

NOW THEREFORE, it is hereby declared that the Warm Springs Ranch Residences and all real property, parcels, lots, and common area now or hereafter situated, and all other real property made subject to this Declaration shall all be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions and equitable servitudes set forth or provided for, which shall run with the land and be binding upon, and benefit, all parties now having or acquiring any right, title or interest in and to Warm Springs Ranch, or to any part.

**Article 1
DEFINITIONS**

- 1.1 “**Association**” shall mean the Warm Springs Ranch Residences Owners’ Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho and composed of the Owners of the Lots as may be annexed hereto in accordance with the provisions of this Declaration.
- 1.2 “**Building Envelope**” shall refer to the designated buildable area in each Lot shown on the Subdivision Map.
- 1.3 “**Common Area**” shall refer to an area, including easements shown on the Subdivision Map herein referred to or shown on a recorded instrument and such additional area as may be annexed hereto in accordance with the provisions of this declaration.
- 1.4 “**Declarant**” shall mean Brennan Holdings No. 300, LLC, an Idaho limited liability company, and its successors and assigns.



- 1.5 “**Committee**” shall mean the Design Review Committee established under Article 4 hereof.
- 1.6 “**Lot**” shall mean the numbered Lots shown on the subdivision plat map, whether improved or unimproved
- 1.7 “**Owner**” shall mean and refer to the record owner, whether one or more persons, of the fee simple title of any of the numbered Lots above described and includes contract buyers but excludes those having such interest merely as security for the performance of an obligation.
- 1.8 “**Period of Declarant Control**” shall mean the period of time during which the Declarant is entitled to special rights to exercise its control over the Property.
- 1.9 “**Property**” shall mean all of the land described in Exhibit A attached hereto and any property which may hereafter be subject to this Declaration by execution and recordation of a supplemental declaration.
- 1.10 “**Residence**” shall mean a single-family dwelling constructed on a Lot.
- 1.11 “**Subdivision Map**” or “**Plat**” shall mean the map or plat for the Warm Springs Ranch Residences recorded in the office of the Blaine County, Idaho recorder.

Article 2 USE REGULATIONS AND RESTRICTIONS

- 2.1
- (a) No use whatsoever shall be made of any Lot except its use and improvement for a single-family private residence. Lots owned by Declarant, or its nominee may be used as offices for the purpose of developing or selling the Lots.
- (b) No more than one Residence shall be erected or maintained on any one Lot together with no more than one detached outbuilding per Lot. One outbuilding per Lot may contain a temporary dwelling for guests. Two or more adjoining Lots, which are under the same ownership, may be combined and developed as one Lot. Setback lines along the common boundary line of the combined parcels may be removed with the written consent of the Committee, if the Committee finds and determines that any improvements to be constructed within these setback lines will not cause unreasonable diminution of the view from other Lots. If setback lines are removed or easements changed along the common boundary lines of combined Lots, the combined Lots shall be deemed one Lot and may not thereafter be split and developed as two Lots but shall be developed as, and remain, a single Lot. All structures must be erected within the designated Building Envelope.
- (c) No trailer or garage shall be used as a temporary or permanent residence, nor shall any residential structure be moved onto a Lot from any other location. When the erection of any



structure is begun, the work thereon must be prosecuted diligently, and said structure must be completed within eighteen months.

- (d) Every Owner of a Lot shall at all times keep the exterior of any Residence and appurtenant exterior decks, sidewalks, porches and patios in good condition and repair, and shall not let the condition thereof deteriorate to the point where the Board of Directors of the Association, in its sole judgment, deems it to have a negative impact on the value, use or enjoyment of other residences or the Common Area. For the common good of all Owners, it is the intent of this provision to keep all residences and related improvements in a first-class manner, consistent with the condition and character of similar residential developments. Upon the failure of any Owner to complete needed exterior maintenance and repairs after notice to do so by the Association, every Owner, by accepting a deed to a Lot, is deemed to grant unto the Association the necessary permission and access to said Lot and residence to permit the Association, or its designated agents, to complete the necessary exterior repairs and maintenance, and to consent to assessment by the Association to recover any costs reasonably incurred therefor. Further, unless otherwise agreed to in writing by the Board of Directors of the Association, maintenance of all landscaping in the Common Area and on Lots, including watering, replacement and maintenance of lawns, shrubs, trees, flowers and other vegetation and landscaping features and facilities, shall be within the sole responsibility and jurisdiction of the Association as set forth more particularly in Article 5, Section 6.
- (e) The Association shall have no obligation to insure any Lot, Residence or other improvement on a Lot or appurtenant to it or any contents of it, against any casualty, loss, damage or liability. Each Owner shall be solely responsible to determine, obtain and pay for any desired fire insurance, casualty insurance, liability insurance, or other coverage relating to their respective Lots, Residence, and other improvement on a Lot, and any contents or personal property situated on it, and all activities conducted or otherwise occurring on it.
- (f) Every Owner, by accepting a deed to a Lot, has granted to the Association an easement over all portions of said Lot that front the street, not improved with a Residence, structure or driveway, exclusively for the purpose of permitting the deposit on a Lot of snow removed from the roads that front lots.
- (g) Every Owner understands and agrees that any third-party rental of any Residence must be for a duration of 30 days or longer. Third-party rental of any Residence of less than 30 days is specifically prohibited.
- (h) No trailer, boat or camper shall be kept on a Lot except within an enclosed building or screened from public view from outside the Lot.
- (i) No sign of any kind, including real estate for sale signs, except political signs as defined in Idaho Code Section 55-115(5) shall be displayed to the public view on any Lot or Common Area except as permitted by the Declarant. The Declarant may adopt reasonable rules, subject to applicable law or ordinances, regarding the time, size, place, number and manner of display of political signs.



- (j) Should delivery conditions or regulations dictate that there be free standing newspaper receptacles or mailboxes, the type of box and/or cluster arrangement shall be determined and/or approved by the Committee and rules for maintenance established by the Association.
- (k) No Lot shall be used or maintained as a dumping ground for rubbish, machinery, equipment or motor vehicles. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators, trash cans, garbage containers or other equipment for temporary storage and disposal of such material shall be kept in a clean and sanitary condition and shall not be exposed to public view.
- (l) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become hazardous, an annoyance or nuisance to the neighborhood. All Lots and improvements thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and repair.
- (m) Easements for installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- (n) No commercial or industrial trucks, trailers or vehicles shall be stored or parked on any Lot or on any of the streets fronting on any Lot except within the garage or in conjunction with residential deliveries.
- (o) Domestic pets may be kept on each Lot subject to the limitations of applicable law. No livestock or farm animals or livestock may be kept on any Lot. Dogs when outside must at all times be in an enclosed yard, kennel, leashed, or under the Owner's supervision. Any household pet will be subject to expulsion from the Property upon complaint of three (3) or more Association members, and upon a determination by the Board of Directors of the Association that said animal created a nuisance.
- (p) All utilities upon any Lot for the transmission of utilities, telephone service, the reception or audio or visual signals or electricity, and all pipes for water, gas, sewer, drainage, or other utility purposes, shall be installed and maintained below the surface of the ground.
 - (q) No activities shall be conducted on any Lot and no improvements constructed thereon which are or might be unsafe or hazardous to any person or property, without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot. No open fires shall be lighted or permitted on any Lot, except while under the direct supervision, control and surveillance of the Lot owner; provided, however, burning trash, garbage and other refuse is prohibited.



- 2.2 Nothing in this Declaration shall limit the right of Declarant to complete excavation, grading and construction of improvements to any Common Area, or any other area or property within the Property owned or controlled by Declarant, or to alter the foregoing or to construct such additional improvements as Declarant deems advisable in the course of development of the Property so long as any Lot owned by Declarant remains unsold, or to use any structure as a model home or real estate sales or leasing office. The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant.

Article 3 COMMON AREA

- 3.1 Except for Bald Mountain Road, all roads as shown on the recorded plat shall be private non-public roads title to which shall be conveyed by Declarant to the Association as Common Area on or before the date of recordation of the final plat. Parcels A, B, C and D are designated as Common Area and title to each shall be conveyed by Declarant to the Association on or before the date of recordation of the final plat.
- 3.2 All operational, maintenance and improvement expenses connected with the Common Area shall be shared on an equal basis by the members of the Association. Each Lot owner's share of Common Area expenses shall be computed by the total number of Lots in the subdivision, divided by the number of Lots owned by the Owner.
- 3.3 Subject to following provisions and limitations, each Owner shall have a non-exclusive right and easement of enjoyment, in common with all other Owners, in and to any Common Area, and such right and easement shall be appurtenant to and pass with the title to each Lot:
- a) The right of the Association to charge or assess reasonable fees for the use and maintenance of any Common Area or other property owned by the Association.
 - b) The right of the Association to suspend the voting rights and right to use Common Area by an Owner for any period during which said Owner remains in violation of this Declaration, including without limitation being delinquent in the payment of any assessment duly levied by the Association against any Lot or Owner.
 - c) The right of the Association to promulgate reasonable rules and regulations governing the use and enjoyment of Lots and Common Area by Owners, their family members, guests and invitees.
 - d) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of further improving Common Area and related facilities; and to place a mortgage, deed of trust or other security instrument upon the Common Area in order to secure such a loan for that purpose.
 - e) The right of the Association to dedicate or transfer all or any part of the Common Area, or any interest in it, to any person, entity, public agency, authority or utility for such purposes



and subject to such conditions as the Board of Directors of the Association may deem appropriate, consistent with the requirement that the Association hold, manage, use, convey and hypothecate the Common Area solely for the benefit of the Owners. Notwithstanding the foregoing, no conveyance of any portion of the Common Area in excess of 10,000 square feet shall be conveyed in fee simple by the Association without the prior written consent of two thirds of its Members, nor shall the Association be entitled to re-subdivide any portion of the Common Area for the purpose of establishing any additional residential or commercial lots or development parcels.

- 3.4 The Association may, from time to time, further modify, improve or equip the Common Area for the benefit of the Owners, and make such Assessments or borrow such funds therefor as may be reasonably necessary, subject to the provisions and limitations set forth in this Declaration.
- 3.5 In the event of damage to or destruction of the property of the Association, or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a special assessment in accordance with the provisions of this declaration, to cover the additional cost of the repair or replacement not covered by the insurance proceeds. Such special assessment is not in addition to any other regular assessments made against Owners and is subject to the rules herein relating to Special Assessments. If any damage or destruction is caused by a casualty not insured against, then the repair or reconstruction shall be accomplished in the manner provided by a written agreement approved by the Owners representing more than fifty percent (50%) of all the Lots after the plans for any repairs or reconstruction have been approved by the Association.

Article 4 DESIGN CONTROL

- 4.1 No improvement, alteration or change to the exterior of any Lot or residence, or any appurtenant exterior appurtenance, such as decks, porches, patios, and exterior colors shall be constructed, installed or completed (collectively referred to as "Proposed Development") until the plans and specifications have been submitted to, and approved in writing by, the Warm Springs Ranch Design Review Committee (the "Committee"). All plans and specifications for Proposed Development shall be evaluated as to compliance with this Declaration, harmony and compatibility with the external design of other residences and the location of any Proposed Development in relation to surrounding structures, topography and neighborhood design characteristics.
- 4.2 Appointments to the Committee shall be made by the Board of Directors of the Association, and members shall serve at the pleasure of said Board of Directors. Members may, but need not, be Owners. A majority of the Committee shall constitute a quorum for the transaction of business



at any duly called meeting thereof, and the action of a majority present at any such meeting at which a quorum is present shall constitute the action of the Committee.

4.3 The Committee shall have the following powers and duties:

- a. To make rules that are consistent with this Declaration, including without limitation the following criteria for review of a Proposed Development:
 1. The Proposed Development conforms to the Declaration,
 2. The Proposed Development is in harmony with the surrounding development on Lots
 3. The Proposed Development will not adversely impact surrounding Lots,
 4. The Proposed Development will not unduly or unnecessarily obstruct existing view corridors from other Lots.
 5. The Proposed Development will not unduly interfere with the privacy of surrounding Lots,
 6. The Proposed Development will be adequately served by either improvements to existing infrastructure or proposed infrastructure within Warm Springs Ranch Block 1 to be paid for solely by the Owner of a Lot, such as roads and utility services,
 7. The proposed plan provides for pedestrian access, parking on a Lot, allows for snow removal and/or storage, provides for safe and convenient circulation and is designed to minimize adverse impact upon Lots with regard to noise, lights and visual impact.
 8. Landscaping provides relief and screening as necessary, and
 9. The Proposed Development meets any and all other reasonable standards, criteria and factors deemed appropriate in the Committee's sole discretion given the nature, character and location of the Proposed Development.
- b. The Committee shall establish guidelines for the submission to the Committee of complete sets of plans and specifications and samples of building materials and any other materials reasonably necessary to evaluate any Proposed Development.
- c. The Committee shall establish procedures for the review of any Proposed Development. All decisions of the Committee shall at the very least be submitted in writing to the applicant and signed by all members of the Committee participating in such decision. In the event that the Committee fails to approve or disapprove any plans or specifications requested within 60 days after Final Plan Submittal, together with all additional information, plans or specifications requested by the Committee as outlined in the Warm Springs Ranch Design Review Guidelines, approval of the Committee shall conclusively be deemed to have been given.
- d. The Committee, within the Warm Springs Ranch Design Review Guidelines, has instituted a fee structure, as necessary from time-to-time amended by the Committee, in amounts



reasonably calculated to defray the costs incurred in reviewing Proposed Development plans, including the costs incurred for the services of any architects, engineers or other professional consultants retained by the Committee to assist it in the review process.

e. The Committee may obtain, and pay for, the services of architects, engineers or other professional consultants which the Committee deems necessary or appropriate to assist in the review process.

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

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



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

Article 5

ESTABLISHMENT AND ORGANIZATION OF ASSOCIATION

- 5.1 The Warm Springs Ranch Residences Owner's Association, Inc., shall be incorporated as an Idaho nonprofit corporation. The purposes and powers of the Association and the rights and obligations inherent in membership are set forth in its Articles of Incorporation, and the provisions of this Declaration with respect thereto are for general descriptive purposes only. The Association is and shall be obligated (a) to accept title to and maintain Common Areas, and (b) to assure the functions and obligations imposed on it or contemplated for it under this Declaration.
- 5.2 The Association shall be governed by a Board composed of at least three and not more than five Directors, all of whom shall be elected at the first annual meeting.
- 5.3 Regular meetings of the Association will be held at the time and in the place prescribed by the Bylaws. The first annual meeting shall be held within ninety (90) days after the closing of the sale of the Lot representing the fifty-first (51st) percentile interest of the Lots described herein but in no event later than twelve (12) months after sale of the first Lot.
- 5.4 Each Owner of each Lot is subject to assessment by the Association and shall be a member of the Association. Said membership shall be appurtenant to and shall not be severed from the Lot.
- 5.5 The Association shall have two classes of voting membership:

Class A.

Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.



Class B.

The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the occurrence of the later of any of the following events:

- a. when the total votes outstanding in the Class A membership in the Association equal the total votes outstanding in the Class B membership in said Association;
 - b. the tenth anniversary of the recording of this Declaration.
- 5.6 All elections shall be by secret ballot. Cumulative voting procedures shall be prescribed at all elections at which more than one position on the governing body is to be filled.
- 5.7 So long as there are two classes of membership, not less than twenty percent (20%) of the membership in the governing body shall be elected solely by the votes of the Class A members.
- 5.8 Regular meetings of the Directors shall be held at least quarterly.
- 5.9 Any vote may be cast by an Owner in person or by proxy. All proxies shall be in writing, dated and signed by the Owners and filed with the Board of Directors before commencement of any meeting. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the Owners of his or their Lot or upon death or incapacity of the member executing the proxy statement.
- 5.10 Where the vote or written assent of the membership is required for any action contemplated herein, such action shall require the prescribed percentage of each class of voters during the time there are two classes of membership.
- 5.11 The Association shall obtain, pay for and maintain in force the following types of insurance:
- a. Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent the Association has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements.
 - b. Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage; provided, however, that should additional



- coverage and higher limits be available at reasonable cost as reasonably determined by the Association, the Association shall obtain the same.
- c. Workers compensation insurance and employers' liability insurance, if and to the extent required by law.
 - d. Directors' and officers' liability coverage, as determined by the Board.
 - e. Fidelity insurance covering all persons who handle or are responsible to handle the funds of the Association, in an amount determined by the Board. Such insurance shall contain a waiver of all defenses bases upon the exclusion of persons serving without compensation.
 - f. Such additional insurance as the Board, in the exercise of its business judgment, determines advisable or necessary.
- 5.12 Notwithstanding anything to the contrary contained in this Declaration, the Association shall have the exclusive right and obligation to maintain and care for all landscaping and lawn areas on all Lots. Further, the Association shall have the right and duty to remove snow from all roads, driveways, sidewalks and walkways, or portions thereof, which may be situated on any Lots. The Declarant, for the benefit of the Owners and the Association, hereby grants a Landscape and Snow Removal Easement over those portions of each Lot which are not improved with a building, patio, porch or deck, to permit the Association to carry out the duties imposed by this section, and each Owner, by accepting a deed to a Lot, shall be deemed thereby to acquiesce in, confirm and ratify said Landscape and Snow Removal Easement.

Article 6 ASSESSMENT LIENS

- 6.1 The Declarant, for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the respective Association:
- a. Annual assessments or charges; and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, 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 is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
- 6.2 The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the Common Area owned by the Association and including, but not limited to, the payment of taxes and insurance for the common properties, and repair, replacement and additions hereto and for the cost of labor, equipment, materials, management and supervision of the Common Area.



- 6.3 In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement to be performed on the Lots or Common Area or of a capital improvement upon the Association's Common Area, including fixtures and personal property related thereto and for the purpose of performing any unanticipated maintenance, provided that any such assessment in excess of five percent (5%) of the annual budgeted expense of the Association shall have the assent of fifty-one percent (51%) of the votes of all of the Class A members and fifty-one (51%) of all the Class B members, if any, of the Association. Such votes shall be cast in person or by proxy at a meeting duly called for this purpose as provided in Section 6.04 next following.
- 6.4 Written notice of any meeting of the members of the Association shall be sent to all members at their address shown in the books of the Association, by regular mail, not less than ten (10) days nor more than thirty (30) days in advance of the meeting or of proxies entitled to cast twenty-five percent (25%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. Such adjournment shall be for not less than five (5) days and not more than thirty (30) days from the original meeting date. In the absence of a quorum, no other business may be conducted at any such meeting.
- 6.5 Annual and special assessments shall be fixed on a pro rata basis for each Lot and shall be collected by the Association on a monthly basis. The directors of the Association shall estimate the charges required to be paid by the Association during the calendar year. The total annual assessments against all Owners shall be based upon advance estimates of cash requirements.
- 6.6 The annual assessments provided for herein shall commence on the first day of the month following the closing of the first sale of a Lot to a purchaser.
- 6.7 Without written consent or a majority vote by the members of the Association residing in members, the annual assessment may not be increased more than twenty percent (20%) over that of the last preceding annual assessment.
- 6.8 Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. Each of the Owners do hereby grant and appoint the Board of Directors as trustee to enforce such lien and to foreclose such lien by private power of sale, and the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, for lawful money of the United States to the highest bidder. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Owner and the Board of Directors may have to enforce the provisions hereof.



- 6.9 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect any assessment lien. However, the sale of any Lot pursuant to a mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.
- 6.10 In addition to the remedies stated above, the Association upon violation or breach of any covenant, restriction or condition contained in this declaration, may enter upon any Lot where such violation or breach exists and may abate or remove the thing or condition causing the violation or breach or may otherwise cure the violation or breach. The costs incurred shall be billed to and paid by the Owner of the Lot. If the Owner of any Lot fails, after demand, to pay such costs then the Association shall have a lien, from and after the time a notice of such failure to pay is recorded in the records of Blaine County, Idaho, against the Lot of such Owner or Owners for the amount due and not paid, plus interest from the date of demand for payment at the statutory rate, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees.
- 6.11 In the event of a breach, or failure to comply with, any of the covenants, restrictions or conditions contained in this declaration or any supplemental declaration, then the Association shall have the right, immediately or at any time during the continuation of such breach or failure, to re-enter and take possession of the above-described Lot and, upon the exercise of this right of re-entry, title to said Lot shall thereupon vest in the Association. If court proceedings are required to enforce the rights of the Association, the Association shall be entitled to recover its costs including reasonable attorneys' fees. The right of re-entry and for vesting of title provided under this Section shall be subject to the provisions of this Declaration entitled Lender's Regulations.

Article 7 LENDER'S REGULATIONS

In order that residential units erected on the Property may qualify for existing subsidized lending programs, it is declared that the following rights exist in favor of any first mortgagee, notwithstanding contrary or conflicting provisions contained herein.

- 7.1 The first mortgagee of any dwelling unit may, by written notice to the Association, request written notice of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under this declaration within thirty (30) days. Such request shall state the name and mailing address of the mortgagee, and the official records book and page number, file number or other reference identifying such recording, and the Lot number encumbered by said mortgage, and a reference to this declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgagee at the address stated in such request. Following the elapse of two (2) years from the date of receipt of the



written request last given by any mortgagee pursuant to this Article, the Association shall have no further duty to notify such mortgagee if mortgagor defaults.

- 7.2 First mortgagees shall have the right to examine the books and records of the Association, upon reasonable advance request in writing.
- 7.3 First mortgagees of Lots in the subdivision, may jointly or singly, pay taxes which are in default, and which may or have become a charge against Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on lapse of a policy, for such property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.
- 7.4 The terms “mortgage”, “mortgagor” and “mortgagee” as used in this Article shall include respectively a deed of trust and the trustor and beneficiary thereunder.

Article 8 MISCELLANEOUS PROVISIONS

- 8.1 **Term.** The covenants, conditions and restrictions of this Declaration shall run until December 31, 2060, unless amended as herein provided. After December 31, 2060, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by at least three-fourths (3/4ths) of the Owners, and such written instrument is recorded with the Blaine County Recorder.
- 8.2 **Amendment.**
 - a. Subject to the other applicable provisions of this Declaration, this Declaration may be amended as follows:
 - i. Until such time as there is a Class A Membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records of Blaine County, Idaho. Thereafter, unless a higher percentage is specifically required by a section of this Declaration, any amendments shall require the affirmative written consent or vote of not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the Class A Members and the consent of the Class B Member, for so long as there is a Class B Member.
 - ii. An amendment or modification that requires the vote and written consent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records of Blaine County, Idaho. The notarized signatures of the Members shall not be required to effectuate an Amendment of this Declaration.



- iii. Notwithstanding the foregoing, any provision of this Declaration, or the Articles, Bylaws or Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written consent of not less than the same percentage of the voting power of the Association.
 - iv. Notwithstanding the foregoing, no amendment may remove, revoke or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Member, respectively (or the successors to or assigns of such right or privilege).
- b. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the Beneficiary under any recorded Deed of Trust upon a Lot made in good faith and for value, provided that after the foreclosure of any such Deed of Trust, such Lot shall remain subject to this Declaration, as amended.
- 8.3 **Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered by personal service or United States mail. If delivery is made by mail, it shall be effective upon the earlier of: (i) when received; (ii) five (5) days after its deposit in the United States mail, as evidenced by sworn affidavit or postmark, if mailed correctly addressed, with first class postage affixed; or (iii) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Such notice shall be deemed correctly addressed if addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.
- 8.4 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.
- 8.5 **Enforcement and Non-Waiver.**
- a. Except as otherwise provided herein, any Owner of any Lot within the Property shall have the right to enforce any or all of the provisions of the Restrictions upon any property within the Property and the Owners thereof.
 - b. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant, the Association, or any Owner or Owners of Lots within the Property. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board or the duly authorized agents of any of them, may enforce by self-help any of the provisions of the Restrictions, and only if such self-help is preceded by notice, as required under the Restrictions, to the Owner.



- c. Every violation of a law or ordinance relating to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Restrictions and subject to any or all of the enforcement procedures set forth in said Restrictions.
- d. Each remedy provided by the Restrictions is cumulative and not exclusive.
- e. The failure to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of said Restrictions.

8.6 Construction.

- a. All of the provisions of the Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Property as set forth in the preamble of this Declaration.
- b. Notwithstanding the provisions of the foregoing Paragraph (a), each of the provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- c. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- d. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

8.7 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit, including on appeal.

8.8 Effect of Declaration. This Declaration is made for the purpose set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.



DATED this 2nd day of November, 2021.

BRENNAN HOLDINGS, NO. 300, LLC

By: Robert M. Brennan
Robert M. Brennan, Manager

STATE OF IDAHO)
) ss.
County of Blaine)

On this 2ND day of NOV, 2021, before me, CURTIS S. CHAMBERS, a Notary Public in and for said State, personally appeared ROBERT M. BRENNAN, known or identified to me to be the Manager of BRENNAN HOLDINGS NO. 300 LLC, an Idaho limited liability company, and the person who executed the instrument on behalf of said limited liability company as Manager of said limited liability company, and acknowledged to me that he executed the same in said limited liability company's 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.

[Signature]
Notary Public for FB
Residing at HAILEY
My commission expires 5-18-22

CURTIS S. CHAMBERS
COMMISSION NO. 29919
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 05/18/22



EXHIBIT A
Description of the Property

Warm Springs Ranch Residences, as shown on the official plat recorded November 3, 2021 as Instrument No. 688399, records of Blaine County, Idaho.

