

THIRD EDITION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HIDDEN TRAILS ESTATES

Effective September 7, 2021

COVENANTS, CONDITIONS, and RESTRICTIONS

OF

HIDDEN TRAILS ESTATES

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SECOND EDITION OF DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDDEN TRAILS ESTATES:

THIS DECLARATION is **made** this 7<sup>th</sup> day, of September 2021, by Kris Wright, owner (Declarant).

ARTICLE 1 • GENERAL

Section 1.1: Name of Subdivision: The name of the subdivision created by this Declaration is "Hidden Trails Estates", located in Valley County, Idaho.

Section 1.2: Property Affected: Declarant owns certain real property in Valley County, Idaho, which is described on the attached Exhibit "**A**". Such property, together with any property which is annexed thereto by Declarant, pursuant to the terms of this Declaration, shall be referred to in this Declaration as "the Property". The "Existing Property", when used in this Declaration, refers to only that property identified in the attached Exhibit "**A**".

Section 1.3: Purpose of Declaration: This Declaration is executed and recorded (a) to provide for an Architectural Committee to perform certain functions for the benefit of Owners of land within the Property; (b) to define the duties, powers and rights of the Architectural Committee; and (c) to define certain duties, powers and rights of Owners.

Section 1.4: Declaration: Declarant hereby declares that each lot, parcel or portion of Hidden Trails Estates is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: (a) shall run with the land constituting the Property, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; (2) shall inure to the benefit of every lot, parcel or portion of the Property and interest therein; (3) shall inure to the benefit of and be binding upon Declarant, Declarant's successor in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest; and, (4) may be enforced by Declarant, by any Owner or such Owner's successors in interest, or by the Architectural Committee as hereinafter described.

ARTICLE 2 • DEFINITIONS

Section 2.1: Architectural Committee: "Architectural Committee" shall mean the committee created pursuant to Article 4.

Section 2.2: Committee: "Committee" shall mean the Architectural Committee.

Section 2.3: Declarant: "Declarant" shall mean Kris Wright and any successor bulk purchaser of the subdivision lots who is designated in writing recorded with the Office of Recorder of Valley County, Idaho by the owner Kris Wright as a successor Declarant.

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Section 2.4: Declaration: "Declaration" shall mean this Declaration of Covenants.

Section 2.5: Existing Property: "Existing Property" shall mean the real property described on Exhibit "A". "The Property" or "the Subdivision" shall mean the Existing Property, together with any additional properties which are annexed to the Existing Property pursuant to Section 8.2(A) herein. Either term shall include any improvements now or hereafter made on such real property and appurtenances and rights to such real property.

Section 2.6: Improvements: "Improvements" shall include buildings, outbuildings roads, driveways, parking areas, fences, screening walls, retaining walls stairs, decks, edges, windbreaks, plantings, planted trees and shrubs, poles, signs, ana all other structures or landscaping improvements of every type and kind.

Section 2.7: Lot: "Lot" shall mean a parcel of land subject to this Declaration which is identified as a Lot in any plat subsequently recorded against the Existing Property or the Property. A lot may also be referred to herein as a "parcel".

Section 2.8: Member: "Member" shall mean a member of the Architectural Committee, who must be an owner. Membership In the Committee shall be appurtenant to and may not be severed from ownership of a Lot.

Section 2.9: Owner: The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot as shown on the records of the County Recorder, Valley County, Idaho; such term shall also include any person, persons, entity, or entities who succeed to such recorded interest by any means, including buyers under executory contracts of sale and excluding those holding an interest merely as security for the performance of an obligation.

Section 2.10: Person: "Person" shall mean a natural person, a corporation, a partnership, or any other entity recognized as being capable of owning real property under Idaho law.

Section 2.11: Plat: "Plat" shall mean the final plat, filed of record with the Valley County Recorder's Office.

Section 2.12: Record. Recorded: "Record" and "Recorded" shall mean, with respect to any documents, the recordation of said document in the Office of the County Recorder, Valley County, Idaho.

Section 2.13: Rules and Regulations: "Rules and Regulations" shall mean the rules and regulations **adopted** by the Architectural Committee concerning the operation of the Architectural Committee.

Section 2.14: Structure: "Structure" shall include buildings, outbuildings, fences, walls, stairs, decks and poles.

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## ARTICLE 3 -LAND USES AND IMPROVEMENTS

Section 3.1: Land Use and Living Units: Building is not required. However, once construction commences, must be completed within one year. All of the subject lots in the Existing Property shall be used and occupied solely for single-family residential purposes. Lots 9, 14, 15, 17 and 18 may be split into equal area parcels, upon approval of the Central District Health Department. None of the remaining lots or parcels shall be split, divided or subdivided into a smaller lot or parcel than indicated on the Final Plat of Hidden Trails Estates, as filed with the office of the County Recorder of Valley County, Idaho; such term shall also include any person, persons, entity or entities who succeed to such recorded interest by any means, including buyers under executory contracts of sale and excluding those holding an interest merely as security for the performance of an obligation.

A. No buildings other than one residence, an attached or detached garage (i.e. either incorporated into the primary residence or freestanding, but not both) and associated accessory buildings incidental and appurtenant to a private residence, shall be erected or maintained on any lot, provided, (1) a garage sufficient in size for Owner's vehicles must be constructed either as part of the primary residence or, if detached, within one year after the construction of the residence; (2) no more than a total of five (5) buildings shall be allowed on any lot, and, (3) one (1) of the accessory buildings may be an enclosed metal shop. No use whatsoever shall be made of any parcel herein other than as the site and grounds of a private residence. The term "private residence" as used herein is intended to exclude every form of multi-family dwelling, boarding or lodging house, and the like. All building exteriors must be of similar materials and colors as others located on the same Lot. There is no requirement as to the sequence of construction, i.e., a garage or shop may be built prior to the residence.

An owner may rent or lease their residence - provided: the Owner shall assure that the renters/lessees are aware of these Covenants and shall incorporate these Covenants into any rental or lease agreement; the Owner shall be responsible for any violations by renter/lessees of any of the provisions of the covenants.

B. No mobile home, **garage**, barn or other outbuilding shall be used on any lot at any time as a permanent residence, except during the period of construction as defined and limited by Section 3. 1. A.; nor shall any residential structure be moved on to any lot from any other location unless the prior written approval of the Architectural Committee is obtained, such approval to be written in the same manner as for new construction.

Manufactured or Modular homes will be considered. Plans must be submitted for review by the Architectural Committee to be granted approval. Only new units to be placed on a foundation would be allowed.

C. Visitors and guests may camp, or park and use a camper, motor home, or trailer on a Lot for a reasonable term, or not more than a total of one hundred eighty (180) days each calendar year. An Owner shall have the same rights, prior to the commencement of construction.

D. A residence shall contain no less than 1,400 square feet on the main level of heated floor area devoted to living purposes (i.e., exclusive of roofed or unroofed porches, terraces, basements or garages); a second level is allowed, not to exceed a total height of 35 feet. Daylight basements shall be allowed at sloped building sites. All construction must be of good quality and done in a good workmanlike manner.

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E. No Improvements which will be visible above ground, or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specification, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee, and the same have been approved in writing. The procedures to review are as more fully set forth in Article 4.

F. The planting of trees shall not require prior approval by the Architectural Committee. Existing trees shall be managed according to best management silviculture practices and according to the following principles:

1. Trees may be cleared for preparation of building sites, driveway construction, or to meet fire regulations.
2. Otherwise, removal of trees shall require prior approval of the Architectural Committee.
3. Timber management goals within the subdivision shall be to preserve healthy timber stands; to thin and remove diseased, **dead** or dying trees, except where essential to wildlife habitat, to maintain appropriate crown spacing for fire prevention purposes, and to maintain the visual aesthetic forest appearances.

In the event that overcrowding or excessive fuel load on a Lot create a clear and present danger to the safety of other Lot Owners and/or their structures, then the Committee shall have authority to remove such trees as follows:

1. The Committee shall secure a written opinion from an independent forester confirming the clear and present danger as aforesaid.
  - a. The opinion, together with a written demand from the Committee, must be served on the Lot Owner, personally or by certified mail.
2. The Lot Owner must be allowed a reasonable period of time to remove the trees which shall, in no case, be less than thirty (30) days during the snow-free season; and,
3. The Lot Owner shall be entitled to the net proceeds from the timber, which is removed, after deduction by the Committee of all actual costs incurred by the Committee associated with the removal of the trees.

G. Detached garages, barns, outbuildings and storage sheds shall be allowed if in conformity with the provisions of this Declaration and the applicable ordinances of Valley County. Garages, storage sheds, patio covers, and all other structures shall be constructed of, and roofed with, the same or compatible materials, and with similar colors and design, as the residential structure on the applicable Lot, or as otherwise approved by the Architectural Committee.



H. All access driveways shall be constructed with an all-weather wearing surface approved by the Architectural Committee and shall be constructed to assure proper drainage. The foregoing is not a requirement that driveways be paved. Surface material shall not be required until construction of a structure so long as it does not appear to materially affect the development.

I. Exterior lighting shall be part of the architectural concept of the improvements on a Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design and shall be as approved by the Architectural Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided. For instance, flood light and other similar bright lights shall not be allowed; and all lighting shall be shielded and directed downward. Exterior lighting shall conform to the Valley County Lighting Ordinance.

J. The maximum height of any building shall be in compliance with the applicable Valley County land use or zoning ordinances but shall not exceed thirty-five (35) feet in height, measured from the grade which pre-existed construction at the highest point of any roofline. Height shall be measured as provided in the 1997 Uniform Building Code or any subsequent re-codification or replacement thereof.

K. Roofs shall be required to be of pitched design. No galvanized metal roofs shall be allowed. Metal roofs shall be of earth tone colors which are compatible with the Property. Owners desiring to use non-metal roofs must demonstrate to the Architectural Committee that the desired material is fire resistant.

L. The color and type of the exterior surfaces of any structure shall be subject to approval by the Architectural Committee. Exteriors must be of natural materials (i.e., wood or stone); provided, the Architectural Committee may, upon petition from an Owner, allow a non-natural material if, after reviewing samples, the Committee is convinced that the appearance of the material is indistinguishable from natural materials (as viewed from the nearest lot line) and is consistent with these covenants. Earth tone colors shall be preferred.

M. No TV Satellite dishes larger than thirty-six inches (36") in diameter shall be allowed.

Section 3.2: In Home Business: "In home business," which involves the coming and going of clients or customers or the parking or storage on a Lot of vehicles, machinery, equipment or materials shall not be allowed, except by permission of the Committee granted following the process for variances specified in Section 6.10 below. The Committee shall not grant the request from an Owner to conduct an in-home business which involves the coming and going of customers or clients or the parking or storage on the Lot of which vehicles, machinery, equipment or materials unless the **Board** determines that the impacts on other Lot Owners will be negligible.

Section 3.3: Storage of Building Materials: No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

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Section 3.4: Storage of Owners' Vehicles and Equipment: All Owners' automobiles, trucks, snowmobiles, boats, boat trailers, travel trailers, camper trailer, motor home, automotive campers, or other vehicles or equipment shall be parked/stored in a garage or other enclosed building. Parking said vehicles for a period of less than ninety (90) consecutive days shall not violate this covenant.

Section 3.5: Wild Game: Nothing shall be done or kept on any Lot which will inhibit, interfere with, or endanger the wild game which enter onto any Lot, or anywhere in the Subdivision. All Lot Owners must understand and accept the fact that the wild game will eat landscaping, plants and trees. Lot Owners may use only game-friendly means of protecting their landscaping. Wild game shall not be fed within the Property.

Section 3.6: Animals: No animals, of any kind, except for household pets, (it is specifically noted that livestock, poultry and wild animals are not to be considered household pets) shall be raised, bred, or kept on any portion of the property.

A. Pets: Household pets may be kept for personal or non-commercial recreational purposes only if the presence of such pets does not constitute a nuisance. Pets must be kept within the boundaries of the Lot unless accompanied by and under the control of the Owner.

B. Dogs: Consistent and/or chronic barking by dogs shall be considered a nuisance. Owners understand and acknowledge that the Property is bordered by private and public grazing land and that dogs leaving the Property and harassing livestock may be killed, as allowed by law.

C. Large Animals: Horses, llamas and mules shall be allowed to be kept on any Lot for use by an Owner; provided, such animals may be allowed on a Lot for up to, but not exceeding, one hundred twenty (180) days within any calendar year, and not left unattended longer than 48 hours, as long as such animals are kept in an enclosure which has been approved by the Architectural Committee. The enclosure cannot be constructed of barbed wire or chain link. Fencing shall be constructed in accordance with Section 3.7 below. No other large animal, to include cattle, sheep, pigs, goats and comparable sized animals, shall be allowed to be kept on any Lot except by temporary variance (i.e., 4-H project).

Section 3.7: Fences: All fencing shall first be approved by the Architectural Committee. No fence, wall or hedge higher than five (5) feet shall be erected or maintained on the perimeter of any Lot, save and except, however, with the previous written consent of all adjoining Lot Owners and the Architectural Committee. The Architectural Committee shall have complete control over the allowance of a fence over the five-foot height limit. Perimeter fencing on any Lot shall not restrict travel by native animals. Small, fenced areas within a lot, such as a dog run, or garden fencing may be constructed so as to limit access by native animals. The Subdivision perimeter fence may be constructed of wire, barbed wire, or metal, only when necessary to exclude livestock, other metal fencing shall not be allowed, and wood fencing shall be preferred. Fencing on a Lot perimeter may not be solid wood or other solid material.

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Section 3.8: Rebuilding or Restoration: Any dwelling unit or other improvement which may be destroyed in whole or in part must be rebuilt, or all debris must be removed, and the Lot restored to a slightly condition. Such rebuilding, restoration or removal shall be completed within reasonable promptness and in any event within two (2) years from the same time the damage occurred.

Section 3.9: Drainage: There shall be no interference with the established drainage pattern over any portion of the Property. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time that road construction and installation of utility lines is completed by Declarant.

Section 3.10: Utilities:

A. Telephone, Electrical: The Declarant shall provide underground electrical power and telephone service to the Subdivision. The purchaser and owner of each Lot agrees to use the service so provided. Private electrical generating systems shall be permitted for domestic electrical service as a backup system in case of primary electrical service failure. All electrical power lines, telephone lines and other utility service lines shall be underground from each individual parcel line to the point of use on each parcel. Overhead lines and utility poles shall not be permitted, except during the construction phase.

B. Water: Water for each Lot shall be supplied by means of individual wells, installation and maintenance of which shall be the sole and exclusive responsibility of Lot Owners.

C. Septic: Sewage disposal for each Lot shall be supplied by means of individual septic/drainage systems. Permits therefore shall be required from the Central District Health Department.

D. Solar Panels: With the prior approval of the Architectural Committee, solar panels shall be allowed, provided that they are unobtrusive and do not detract from the architectural appearance and features of the residence.

Section 3.11: Obstructions on Common Easements: No gates or obstructions shall be placed upon or block any access road unless the access road terminates on the Lot Owner's property, and the gate or obstruction is placed within the Lot Owner's property. Under no circumstances shall any acts be taken by any Lot Owner which unreasonably degrade or impair the rights possessed by any third parties to traverse any roads or easements on or across the Property.

Section 3.12: Snow Machines, Motorcycles, and All Terrain Vehicles: All terrain vehicles, snow machines, motorcycles and other similar motorized vehicles may not be operated within the Subdivision, except for direct ingress/egress to the Owner/Operator's Lot.

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Section 3.13: Prohibited Lot Uses:

A. There shall be no mining, smelting, or milling of ores or similar mineral operations within The Property.

B. No outdoor privy or any common cesspool shall be installed on any lot at any time, with the exception of portable toilets during construction, to be removed upon installation of the septic system.

C. Nothing shall be done or kept on any Lot by any person which will increase the rate of insurance on any other Lot, or which will result in the cancellation of any insurance, or which constitutes a violation of any law.

D. No excavation shall be made on any Lot except as is necessary for the construction of approved structures, and of a driveway. Excavation which is not covered by a structure shall be properly filled within thirty (30) days of the completion of the underground work.

E. No hunting or discharging of firearms shall be allowed within The Property.

Section 3.14: Building and Grounds Conditions: Each Owner shall maintain the exterior of his or her dwelling unit and all other improvements in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall maintain his or her Lot in good appearance at all times.

Section 3.15: Landscaping: Of critical concern with regard to landscaping in the Subdivision is the preservation of the stability of hill sides and the prevention/control of wildfires. Native, drought resistant plant species shall be preferred; however, lawns and other landscaping shall be allowed. Landscaping plans will be reviewed by the Architectural Committee concurrently with the house plans.

Section 3.16: Refuse: No unsightly objects or materials, including but not limited to abandoned or inoperative vehicles, trash, rubbish, garbage, grass or shrub clippings, construction debris, scrap material or other refuse, or receptacles or containers, therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street except during refuse collections. In the event that any owner shall permit the accumulation of such materials, aforesaid, so as to create a dangerous, unsafe, unsightly or unattractive condition, or damage to property or facilities on or adjoining their Lot, the Committee, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, by removing such materials, and to enter upon such Owner's Lot for the purpose of doing so. Such Owner shall promptly reimburse the Architectural Committee for the cost thereof. Such cost shall be an Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Articles 7 and 8 of this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a lien for all costs and expenses incurred by the Committee in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after the receipt of written demand, therefore.

Trash shall at all times be stored in bear resistant garbage cans. Owners may avail themselves of existing garbage collection services or transport refuse themselves to the County Landfill.

Section 3.17: Burning: No burning of any household garbage, trash or other noxious refuse shall be permitted within the Subdivision. Burning of natural materials such as grass/tree trimmings shall take place only with the required permits from the Southern Idaho Timber Protective Association and the Valley County Rural Fire District. The policies, practices and instructions of these entities shall be strictly followed.

Section 3.18: Nuisances: No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any dwelling unit.

Section 3.19: Inoperative Vehicles: No unused, stripped down, partially wrecked or otherwise inoperative motor vehicles or parts thereof shall be permitted to be parked on any common easement or road within the Property, nor shall such vehicles be allowed to be parked openly on any Lot. Vehicles being restored or repaired must be kept in a garage or shed or otherwise shielded from view of adjoining Lots.

Section 3.20: Signs: The only signs permitted on any Lot or improvement shall be:

A. One sign of customary size for identification of the occupant and the address of any dwelling.

8. Signs for sale and administration purposes installed by the Declarant during development

C. Standard Real Estate signs advertising a lot for sale, not to exceed 9 square feet in surface size.

D. Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and,

E. Such signs as may be required by law.

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Section 3.21: Exemption of Declarant: Nothing contained herein shall limit the right of Declarant to complete excavation, grading and construction of improvements to and on any portion of the Property owned by Declarant or to construct such additional improvements as Declarant deems advisable in the course of development of the Property, so long as any Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing, and maintaining on the Property, such structures and displays as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall have the right at any time prior to acquisition of title to a Lot by a purchaser from Declarant to grant, establish and/or reserve on that Lot additional licenses, reservations and rights- of-way to Declarant, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant need not seek or obtain Architectural Committee approval of any such improvements constructed or placed by Declarant on any portion of the Property owned by Declarant or an affiliate of Declarant. The rights of Declarant hereunder may be assigned by Declarant to any successor interest in connection with Declarant's interest in any portion of the Property by an express written assignment recorded in the Office of the Valley County Recorder.

Section 3.22: Noxious Weeds: Any Lot disturbed as a result of grading or construction shall be regenerated to at least its original state no later than one construction season after being disturbed. Additionally, each Owner shall follow the guidelines provided in the Valley County Comprehensive Noxious Weed Management Plan.

Section 3.2: Fire Hazards Mitigation: All lots shall be maintained in accordance with the Wildland-Urban Interface Fire Code, as it now exists or may be subsequently modified. Should the Lot Owner fail to do so, then, after thirty (30) days prior written notice to the Owner, the Committee shall have the authority to perform the necessary work and collect all expenses or fees related thereto as a limited assessment. The Committee may, in addition, use its enforcement powers provided in Section 7 following.

#### ARTICLE 4 - ARCHITECTURAL COMMITTEE

Section 4.1: Purpose and Theme of Controls: It is the desire of the Declarant that design controls be implemented for all building and landscaping improvements to ensure that the overall excellence of Hidden Trails Estates shall be maintained throughout its development. To this end, an Architectural Committee (hereafter referred to as the "Committee") will be established pursuant to Section 4.2 of this Article 4 to guide the site development and design of all structures and to aid the residential home builders to discover the opportunities and limitations of their building sites. All of the residential improvements will be encouraged to offer a diversity of types, sizes and styles of architecture and yet will be required to conform to a total visual homogeneity.

The discretion hereinafter invested in the Architectural Committee will be exercised towards the end that high standards of workmanship and quality of materials will be maintained throughout the Development and that all improvements will be in harmony with and complement the natural landscape, topography and flora.

Section 4.2: Architectural Committee: No building, fence, wall, structure, or other improvement shall be commenced, erected, altered, placed or maintained upon any lot nor shall any exterior addition to or change or alteration thereon be made, until plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing by the Architectural Committee, which shall be composed initially of the Declarant or Declarants' appointed representative. If any member of the Committee resigns or is unable to act, the remaining members shall discharge the functions of the Committee. The Committee shall be comprised of no less than three (3) nor more than (5) members, who shall be appointed annually by the Declarant/representative. A majority of the members shall constitute a quorum. Meetings may be held by telephone or other electronic conference. The Committee shall designate a chairperson. The Declarant may elect to act as the Committee.

The Committee will be responsible for maintaining the entrance gate and perimeter fence of the Subdivision. The Declarant acting as Committee shall be responsible for said maintenance until Declarant transfers control of the Architectural Committee, as stated in Section 4.12.

Section 4.3: Documentation Required for Architectural Approval: No Structure or improvement shall be considered or approved by the Committee until the parcel owner has submitted the following information to the Committee:

- A. Two (2) sets of architectural plans and specifications for the proposed improvements, including proposed landscaping.
- B. A site plan of the lot showing the location of all existing and proposed improvements, and which also identifies the location, size and type of all trees proposed to be removed.
- C. Drawings showing all exterior building elevations.
- D. A schedule of exterior materials and colors to be used on the proposed improvement.
- E. The owner's proposed construction schedule.

Section 4.4: Basis for Approval or Disapproval: The Committee shall give its approval for the requested improvement only if:

- A. The owner or applicant shall have strictly complied with the requirements of Section 4.3 hereof.
  - B. The Committee finds that the plans and specifications conform to the requirements of Article 3 of this Declaration, and furthermore that the owner or applicant is in compliance with all of the provisions and requirements of this Declaration in its entirety.
  - C. The Committee, in its sole and reasonable discretion, finds that the proposed improvement is compatible with the theme of this Development and with the purposes and intent of this Declaration as a whole as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to topography and finished grade elevations.
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The Committee may waive submission of plans and specifications for approval where minor construction of a minor addition to an existing structure is involved which does not appear to materially affect the Development.

Section 4.5: Form of Approval or Disapproval:

A. All approvals given under Section 4.4 shall be in writing; provided, however, that as to any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Committee, such approval will not be required, and the provisions of this Section will be deemed to have been fully complied with.

8. In disapproving any plans and specifications or other documents the Committee shall specify, in writing, the deficiencies it has relied upon in rendering such disapproval and shall give the applicant the right and opportunity to resubmit his plans and specifications or other documents in amended form. The Committee shall thereafter reconsider such documents as if they were being submitted for the first time.

C. One set of plans and specifications as finally approved or disapproved shall be retained by the Committee as a permanent record.

D. Nothing contained in this Section shall be deemed to relieve the owner of any parcel from complying with all of the provisions of this Declaration or with the provisions of all applicable building codes, zoning regulations, or other governmental regulations or laws governing the lands within this Development.

Section 4.6: Arbitration: In the event an owner or applicant disputes the decision of the Committee, said dispute shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the Committee and the owner or applicant mutually agree otherwise. The Arbitrator shall be governed and guided in their decision by this Declaration. If so, the award rendered by the Arbitrator shall be final, non-appealable and binding upon the parties, to the same extent as if it had been finally rendered by a court of proper jurisdiction. The owner or applicant shall file demand for arbitration with the Committee and with the American Arbitration Association. Such demand shall be made within a reasonable time after the dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings on such dispute would be barred by the applicable statute of limitations. The cost of arbitration shall be divided equally between the parties, unless the Arbitrator finds that one party has prevailed in arbitration. In such case, the non-prevailing party shall pay the cost of arbitration, which shall be limited to the Arbitrator's fee.

Section 4.7: Proceeding with Work: Upon receipt of approval from the Committee pursuant to Section 4.5 above, the owner shall, as soon as practicable, satisfy all the conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations authorized by such approval, said commencement to be in all cases within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section, the approval given pursuant to Section 4.5 shall be deemed revoked, unless the Committee upon written request of the Owner made prior to the expiration of said one (1) year period extends the time for such commencement. No such extensions shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

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Section 4.8: Completion of Construction: The Owner shall complete all exterior elements of the construction within one (1) year after the commencement of construction thereof; except and only for so long, as such completion is rendered impossible or would result in great hardship to the owner due to strikes, fires, acts of God, unusual wintertime conditions, actual inability of the owner to procure deliveries of necessary material, or by other forces or persons beyond the control of the Owner; and, except as otherwise permitted by the Architectural Committee in writing. Financial inability of the Owner or his contractor to secure labor or materials or to discharge liens or attachments shall not be deemed a cause beyond his control. For the purposes of this Section 4.8, "Commencement of Construction" for new improvements is defined as the obtaining of the necessary building permits and the excavation of earth for a foundation, and for more than one (1) additional year.

Section 4.9: Failure to Complete Work: Any construction which is not completed in a good and workmanlike manner, or in substantial conformity to the plans and specifications approved for it by the Committee, within the time limits provided by this Article, and where such failure is not excused by the provisions hereof, shall be deemed a nuisance, and the Committee shall have the right, at its sole option, to enter upon the premises and to have such incomplete construction removed or to carry such construction forward to completion. In such case, the costs and expenses incurred in such removal or completion shall constitute a lien upon the property under the Mechanic's Lien Law of the State of Idaho, such lien to attach as of the time of the commencement of the work involved in removing or completing the incomplete construction. Such lien may be enforced in the same manner as provided for the enforcement of mechanic's liens.

Section 4.10: Variances: The Committee may grant a variance from any of the other provisions of Article 3, except those limiting land use in the Subdivision to single-family residential uses, upon written request from an Owner, as follows:

A. The request shall be submitted to each Committee member and must explain the precise nature of and reason for the requested variance.

B. At least fifteen (15) days prior to the Committee's review of the variance request, at the Applicant's expense, written notice of the request and the time and place at which the Committee will consider the request shall be mailed, via certified mail, to all record Owners of Lots in the Subdivision.

C. The Committee's review of the request shall be open to all Owners, who shall be entitled to comment.

D. The request shall **be denied** unless the Applicant establishes compelling reasons for the request. Neither the cost of compliance with these Covenants, nor the convenience of the Applicant shall in and of themselves be grounds for variance.

E. If a Committee review of building/improvement plans involves a variance request, then the thirty (30) day time frame contained in Section 4.5 A. above shall be extended to sixty (60) days.

F. The decision of the Committee can be overruled or modified only by a vote of sixty-seven percent (67%) of those members who are present or represented by proxy at a meeting of the Committee, scheduled for the purpose of considering such decision, at which a quorum is present.

Section 4.11: Enforcement: The provisions of this Declaration may be enforced by Declarant, by Successor Declarant, by the Committee, or by any Lot Owner. The prevailing party in such enforcement action shall be entitled to recover his/her fees under Section 7. In addition, to specific enforcement judicially, the Committee shall be entitled to impose a fine for violations of this Declaration of not to **exceed** \$500.00 per incident or \$50.00 per **day**, in the case of a continuing violation. The fine may be assessed only against the Owner, and only if the violator is the Owner or a member of the Owner's family or a guest, invitee, leasee, contractor, subcontractor, employee or agent of the Owner. In the case of a continuing violation, the fine may not be assessed unless the Owner has failed to abate the violation within the time allowed therefore by the Committee in written notice to the Owner. In the case of a single incident, the fine may not be assessed unless the Owner has received at least one prior written notice from the Committee that the violation may subject the Owner to fine(s). Fines imposed pursuant to this Section may be collected as provided in Section 7 below. Non-payment of assessments shall not subject an Owner to fines; rather, the remedy therefore shall be as provided in Article 7, below.

Section 4.12: Declarant's Transfer of Control of Architectural Committee: Declarant's right to control the Architectural Committee and the selection of Committee Members shall terminate upon the occurrence of the *first* of the following events:

A. By written notice from the Declarant to the Chairman of the Architectural Committee of the Declarant's intention to terminate its right to appoint the majority of the members of the Committee.

B. Upon that date which is sixty (60) days after eighty percent (80%) of all lots within the Property (including any property which is annexed into the Property pursuant to the terms of this Declaration) have been sold to persons other than Declarant. Such date is herein referred to as "the Transfer of Control Date".

Section 4.13: Non-Liability of Committee Members: Neither the Committee nor any member thereof shall be liable to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and Hidden Trails Estates generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

## ARTICLE 5 - EASEMENTS

Section 5.1: Easements for Access Roads: The Declarant shall construct the roads depicted on the plat of the Property in conformity as provided in Section 3.23, above. Satisfaction of such specifications shall fulfill Declarant's responsibility to the Committee and Owners.

Section 5.2: Declarant's Reservations: Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Property (including any property annexed hereto pursuant to the Declaration) to an Owner other than the Declarant, and thereafter, to the Committee: perpetual, alienable, divisible and releasable easements and the right from time-to-time to grant such easements to others over, under, in and across all roads conveyed or to be conveyed pursuant to Section 5.1, or otherwise by deed or plat map, for use of all or part of such areas for utility lines (ex: telephone, electricity, cable television, gas), for water and waste water lines, for drainage and for other similar or dis-similar facilities and purposes, and for any one or more such purposes.

A. Declarant reserves the following easements:

1. A fifteen-foot (15') easement along the outer exterior boundary of the **Property**, for purposes of installation of fencing.
2. The seventy (70') foot easement on Lot 41 as shown on the Final Plat.
3. All such additional easements as are depicted on the Final Plat map for the Subdivision.

B. If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Committee shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Property to the first Owner thereof other than Declarant. The easement(s) provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property.

## ARTICLE 6- DECLARANT'S DEVELOPMENT RIGHT, SPECIAL RIGHTS AND RESERVATIONS

Section 6.1: Period of Declarant's Rights and Reservations: In addition to those easements and rights reserved by Declarant in Article 5 above, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Committee. The rights and reservation reserved above and hereinafter set forth shall be deemed accepted and reserved in each conveyance of the Property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights reservation and easements reserved above and hereinafter set forth shall be prior and superior to any other provisions and may not, without Declarant's written consent, be modified, amended or rescinded. Declarant's said rights shall survive the Transfer of Control Date, as defined at Section 4.12.

Section 6.2: Declarant's Future Development Rights: for a period of twenty (20) years after the date on which this Declaration is first recorded with the Office of Recorder of Valley County, Idaho, Declarant shall have the following development rights: Declarant may add or annex any real property owned by Declarant to the Existing Property. The additions authorized under this Section shall be made by filing of record a Supplementary Declaration or Protective Covenants with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications, or the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as not inconsistent with the scheme of this Declaration. Upon recordation of such Supplementary Declaration, the additions authorized under this Section shall thereafter be treated in all respects as Existing Properties. No permission shall be necessary from the owners of Existing Property before the Declarant may bring such lands within the scheme of this Declaration.

Section 6.3: Successor Declarant: For purposes of the rights, reservations and easements reserved and created in favor of Declarant herein, Declarant shall notify the Committee in writing of an assignee or successor who will hold and exercise Declarant's aforesaid rights and whom the Committee shall notify as required by this Declaration.

#### ARTICLE 7 - CHARGES ASSESSED BY ARCHITECTURAL COMMITTEE

Section 7.1: Covenant to Pay Charges Assessed: By acceptance of a deed to any Lot in the Property each Owner of such Lot hereby covenants and agrees to pay when due all Assessments or charges made by the Committee.

A. Assessment and Charges Constitutes Lien: Such Assessments and charges together with interest as a rate established by the Committee, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the lot against which each such Assessment or charge is made.

B. Assessment and Charges is Personal Obligation: Each such Assessment, together with interest at a rate established by the Committee, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall remain such Owners personal obligation regardless of whether he remains an Owner.

Section 7.2: Charges and Assessments: Charges and assessments may include, and shall be limited to, the following expenses:

- A. Expenses incurred in curing an Owner's obligation under Article 3 and Article 4.
  - B. Legal and accounting fees if incurred by the Committee.
  - C. Expenses incurred in maintaining the gate at the entry to the Property and the perimeter fence around the Property under Article 4.2.
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Section 7.3: Declarant's Obligations: Prior to the transfer of control date, the Declarant shall have the following options regarding assessments on Lots owned by Declarant: Declarant may pay such assessments; or, Declarant shall be deemed to have met its obligation regarding assessments by the contribution of such funds and/or services to the Committee as are necessary to permit the Committee to perform its responsibilities and meet its financial needs. After the transfer of control, Declarant shall be subject to the Committee's assessment on any Lots owned by Declarant and located within the Existing Property or property which has been annexed and made subject to the Association documents.

Section 7.4: Enforcement of Charges and Assessments: Each Owner is and shall be deemed to consent and agree to pay to the Committee each and every charge and assessment provided for in this Declaration; and agrees to the enforcement of all such charges/assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any charge/assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due to any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Committee or its authorized representative, may enforce the obligations of the Owners to pay the charges/assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit: By commencement of a suit at law against any Owner or Owners personally obligated to pay assessments, for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

B. Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Committee of any and all assessments levied against any and all Owners, together with interest thereon as provided for in this Declaration, fines imposed for violation of these Covenants, and all costs of collection which may be paid or incurred by the Committee in connection therewith, including reasonable attorney's fees. The Committee or its duly authorized representative may file and record a Notice of Delinquent Assessment on behalf of the Committee against the Lot of the defaulting Owner who has not cured the default, as provided in Section 7.4 above. The amount of the assessment, plus any costs of collection, expenses, attorney's fees and interest assessed in accordance with this Declaration shall be a lien on the owner's Lot from and, after the time the Committee records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Committee and shall contain substantially the following:

1. The claim of lien made pursuant to this Declaration.
2. The name of the record Owner.

3. The legal description of the Lot against which claim of lien is made.

4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorney's fees (with any proper offset allowed); and,

5. The name and address of the Committee Member authorized to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Committee as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in court (in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law). The Committee is hereby authorized to appoint an attorney, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the **date** of recordation of said Notice. The Committee shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of assessment liens in this manner. Upon the timely curing of any default for which a Notice is filed by the Committee, the Committee shall cause a member of the Committee to file and record an appropriate release of such Notice in the Office of the County Recorder of Valley County, Idaho. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his Lot.

#### ARTICLE 8- GENERAL PROVISIONS

Section 8.1: Binding Effect: The various restrictive measures and provisions of these covenants and restrictions are declared to constitute mutual equitable servitudes for the protection and benefit of each parcel in the Subdivision and of the owners thereof and for the benefit of the Subdivision as a whole. Each grantee of a conveyance or purchaser under a contract of sale, by accepting a deed or contract of sale, accepts such subject to all of the covenants, conditions and restrictions set forth in this Declaration and specifically agree to be bound by each and all of them.

Section 8.2: Term of Declaration: Unless amended as herein provided, all provision covenants, conditions and restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date upon which this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners as provided for herein below.

Section 8.3: Amendment of the Declaration: Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

Section 8.4: Amendment of Declaration by Owners: Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time, upon approval of the amendment or repeal by at least sixty-seven percent (67%) of those Owners present or represented by proxy at a meeting of the Owners, scheduled for the purpose of considering such amendments, at which quorum is present; provided:

- A. This Declaration may not be terminated except upon approval by at least ninety percent (90%) of the Owners of Lots within Hidden Trails Estates Subdivision; and, in case of termination, all rights, reservations, and easements granted to or reserved by Declarant herein shall survive any such termination; and,
- B. The provisions of this Declaration which limit the allowable land uses in the Subdivision to single-family residential use may be amended only with the approval of ninety percent (90%) of the Owners and the approval, as required, by Valley County, in the same manner as would be required for an approval of a material change to the Conditional Use Permit Preliminary Plat for the Subdivision.

Section 8.5: Required Consent of Declarant to the Amendment: None of the rights, reservations, or easements granted to or reserved by Declarant herein may ever be modified or amended without the prior written consent of Declarant or Declarant's successor as identified in Section 8.3 above, which consent may be withheld by Declarant for any reason whatsoever. For the period specified in Section 8.2 above, any proposed amendment or repeal of any other provision of this Declaration (i.e., a provision not involving any of the rights, reservations or easements granted to or reserved by Declarant) shall require the prior written consent of Declarant, or Declarant's aforesaid successor.

Section 8.6: Priority of First Mortgage Over Assessments: Each lender who recorded its mortgage or deed of trust before assessments have become delinquent and who obtains title to the Lot encumbered by the first mortgage whether pursuant to remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such first mortgage acquires title.

Section 8.7: Remedies Cumulative: Each remedy provided under these Declarations is cumulative and not exclusive.

Section 8.8: Costs and Attorney's Fees: In any action or proceeding under these Declarations of Covenants, the party which seeks to enforce the Declaration and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees and expert witness fees. "Action or proceeding" as herein stated shall include, without limitation, any arbitration, mediation, or alternative dispute resolution proceeding.

Section 8.9: Limitation of Liability: The Architectural Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Committee to the fullest extent permissible by the laws of Idaho, including without limitation, circumstances in which indemnification is otherwise

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discretionary under Idaho law, in accordance with and subject to the terms and limitations contained in these Declaration of Covenants.

Section 8.10: Governing law: The Declaration of Covenants shall be construed and governed under the laws of the State of Idaho.

Section 8.11: Severability: Invalidation of any one or more of the covenants, conditions and restrictions contained herein by judgment or otherwise shall in no way affect the validity of any of the other provisions, which shall remain in full force and effect.

Section 8.12: Number and Gender: Unless the context requires a contrary construction, as used in the Declaration of Covenants, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 8.13: Captions for Content: The titles, headings and captions used in these Declaration of Covenants are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

Kris Wright, Owner of Hidden Trails Estates

By: \_\_\_\_\_ Date: \_\_\_\_\_