

CC&Rs

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
FOR MAHOGANY CREEK SUBDIVISION

This Declaration of Covenants, Conditions, and Restrictions is for the purpose of regulating and restricting the use and development of certain real property located in Teton County, Idaho, which is more particularly described as Lots 1 and 2 of Mahogany Creek Subdivision, according to that plat recorded in the Office of the Clerk of Teton County on the day of _____, 2023, as Instrument No. _____ to be effective upon recording hereof, by the undersigned, herein referred to as “Declarant.”

1. Purpose. These covenants, conditions, and restrictions contained herein (referred to as “Covenants”) are made for the purpose of preserving the natural character of the Property and providing for the reasonable use of the Property. The Declarant is adopting the Covenants to preserve and maintain the residential and agricultural character and to provide for the uniform and orderly development and maintenance of the Property for the benefit of all Owners of the Property or any part thereof.

2. Declaration. Declarant hereby declares that the Property and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied, and developed subject to the following Covenants, Conditions, and Restrictions, which are sometimes referred to herein as the “Covenants”. The Covenants shall run with the Property and any portion thereof and shall be binding upon all parties having or acquiring any legal or equitable interest in the Property, or any part thereof, and shall inure to the benefit of every Owner of any part of the Property.

3. Definitions. The following terms and phrases used in these Covenants shall be defined as follows:

a. “Board” shall mean the Board of Directors of the Association; the entity established to administer and enforce the terms and conditions of these Covenants.

b. “Common Roadway” shall mean the private access road within the Property which provides access to both lots.

c. “Common Services” shall mean the operation, maintenance, repair, and replacement of: (1) the Common Roadway; (2) a domestic water supply, storage, and distribution system, if used by more than one lot owner; (3) a sewage collection and common leach field, if used by more than one lot owner, and (4) the utility services (electric, telephone, and cable tv.), if used by more than one Lot Owner.

d. “Owner” shall mean the record owner of a Lot, including a contract purchaser, but excluding anyone having an interest in a Lot as security for the performance of an obligation (e.g., mortgage).

e. “Lot” shall mean one of the lots on the recorded Plat of the Subdivision.

CC&Rs

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
FOR MAHOGANY CREEK SUBDIVISION

This Declaration of Covenants, Conditions, and Restrictions is for the purpose of regulating and restricting the use and development of certain real property located in Teton County, Idaho, which is more particularly described as Lots 1 and 2 of Mahogany Creek Subdivision, according to that plat recorded in the Office of the Clerk of Teton County on the day of _____, 2023, as Instrument No. _____ to be effective upon recording hereof, by the undersigned, herein referred to as “Declarant.”

1. Purpose. These covenants, conditions, and restrictions contained herein (referred to as “Covenants”) are made for the purpose of preserving the natural character of the Property and providing for the reasonable use of the Property. The Declarant is adopting the Covenants to preserve and maintain the residential and agricultural character and to provide for the uniform and orderly development and maintenance of the Property for the benefit of all Owners of the Property or any part thereof.

2. Declaration. Declarant hereby declares that the Property and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied, and developed subject to the following Covenants, Conditions, and Restrictions, which are sometimes referred to herein as the “Covenants”. The Covenants shall run with the Property and any portion thereof and shall be binding upon all parties having or acquiring any legal or equitable interest in the Property, or any part thereof, and shall inure to the benefit of every Owner of any part of the Property.

3. Definitions. The following terms and phrases used in these Covenants shall be defined as follows:

a. “Board” shall mean the Board of Directors of the Association; the entity established to administer and enforce the terms and conditions of these Covenants.

b. “Common Roadway” shall mean the private access road within the Property which provides access to both lots.

c. “Common Services” shall mean the operation, maintenance, repair, and replacement of: (1) the Common Roadway; (2) a domestic water supply, storage, and distribution system, if used by more than one lot owner; (3) a sewage collection and common leach field, if used by more than one lot owner, and (4) the utility services (electric, telephone, and cable tv.), if used by more than one Lot Owner.

d. “Owner” shall mean the record owner of a Lot, including a contract purchaser, but excluding anyone having an interest in a Lot as security for the performance of an obligation (e.g., mortgage).

e. “Lot” shall mean one of the lots on the recorded Plat of the Subdivision.

f. "Access Easement" shall mean that certain fifty (50) foot wide easement described on the Plat providing access to Lots 1 and 2.

g. "Property" shall mean the lands described on the Plat of the Subdivision.

h. "Subdivision" shall mean all lots in the Mahogany Creek Subdivision, according to the recorded plat thereof (the "Plat").

4. The Association. The Association shall be established for the purpose of administering and enforcing these Covenants. The Association shall be formed when there are more than one (1) Lot Owners, excluding joint ownership of individual lots.

a. Membership. Every Owner shall be a member of the Association. Membership in the Association shall be appurtenant to each Lot and shall not be subject to severance from the ownership of such Lot.

b. Voting. The member(s) owning each Lot shall have one vote for each Lot to cast upon any matter to be decided by a vote of such members and shall be cast as determined by the owners of such Lot. In the event of any dispute among joint owners of a Lot, the Board shall have the right to disqualify such members from voting on an issue unless or until the joint owners of such Lot have reached an agreement as to such members' vote.

c. Authority of Board. The Board shall have full power and authority to manage the business and affairs of the Association, as may be more fully set forth in articles of incorporation and bylaws of the Association, and to enforce the provisions of these Covenants.

d. Meetings. The members of the Association and the Board of Directors of the Association shall hold annual meetings as set forth in the bylaws of the Association. Additional regular or special meetings of the members and/or the Board may be held in accordance with the provisions of the bylaws of the Association.

5. Reserved Easements. Subject to the provisions of Section 5.4 below, Declarant hereby reserves to Declarant, its successors and assigns, the Association, and all Owners of the Lots the following easements over, under, and across the Property, which shall pass with the title to every Lot or other land within the Property:

((Place legal description of easement here as obtained from Harmony Design and Engineering.))

6. Use Restrictions. All use of the Property shall conform to the following requirements:

a. Provisions in Addition to County Land Use Regulations. Conformity with any and all applicable land use regulations of Teton County, Idaho shall be required, in addition to the requirements of these Covenants. In case of any conflict, the more stringent requirements shall govern.

f. "Access Easement" shall mean that certain fifty (50) foot wide easement described on the Plat providing access to Lots 1 and 2.

g. "Property" shall mean the lands described on the Plat of the Subdivision.

h. "Subdivision" shall mean all lots in the Mahogany Creek Subdivision, according to the recorded plat thereof (the "Plat").

4. The Association. The Association shall be established for the purpose of administering and enforcing these Covenants. The Association shall be formed when there are more than one (1) Lot Owners, excluding joint ownership of individual lots.

a. Membership. Every Owner shall be a member of the Association. Membership in the Association shall be appurtenant to each Lot and shall not be subject to severance from the ownership of such Lot.

b. Voting. The member(s) owning each Lot shall have one vote for each Lot to cast upon any matter to be decided by a vote of such members and shall be cast as determined by the owners of such Lot. In the event of any dispute among joint owners of a Lot, the Board shall have the right to disqualify such members from voting on an issue unless or until the joint owners of such Lot have reached an agreement as to such members' vote.

c. Authority of Board. The Board shall have full power and authority to manage the business and affairs of the Association, as may be more fully set forth in articles of incorporation and bylaws of the Association, and to enforce the provisions of these Covenants.

d. Meetings. The members of the Association and the Board of Directors of the Association shall hold annual meetings as set forth in the bylaws of the Association. Additional regular or special meetings of the members and/or the Board may be held in accordance with the provisions of the bylaws of the Association.

5. Reserved Easements. Subject to the provisions of Section 5.4 below, Declarant hereby reserves to Declarant, its successors and assigns, the Association, and all Owners of the Lots the following easements over, under, and across the Property, which shall pass with the title to every Lot or other land within the Property:

((Place legal description of easement here as obtained from Harmony Design and Engineering.))

6. Use Restrictions. All use of the Property shall conform to the following requirements:

a. Provisions in Addition to County Land Use Regulations. Conformity with any and all applicable land use regulations of Teton County, Idaho shall be required, in addition to the requirements of these Covenants. In case of any conflict, the more stringent requirements shall govern.

b. No Further Subdivision; Residential Use Only. No Lot within the Property shall be further divided or subdivided.

c. Right to Farm. The Property is subject to provisions of Idaho Code 22-4501 et seq., the Idaho right to Farm Act.

d. Lighting. Exterior lighting fixtures shall not cause excessive glare to any adjacent Lot.

e. Water Rights. All water rights and assessment obligations appurtenant to the Property, as noted on the Plat, shall be transferred by the purchaser of the Lot to which the water rights are appurtenant, or to the Association for the benefit of the Lot Owners as may be appropriate, and shall comply with all requirements set forth in the Idaho Code 31-3805.

f. Maintenance. Each Lot and all improvements thereon shall be maintained in a clean, safe and reasonably uncluttered, and attractive condition. Inoperable vehicles shall be kept at all times within an enclosed structure. Refuse, garbage and trash shall be kept at all times in a covered container, and any such container shall be kept within an enclosed structure or appropriate screened from view. Service areas, storage piles, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view. No lumber, metals, bulk materials, scraps, refuse or trash shall be kept, stored, or allowed to accumulate on any Lot.

g. Pets. No pet shall be kept or maintained on any Lot except as provided herein. Any animals permitted to be kept on a Lot shall be restrained and controlled at all times so that they do not cause a nuisance to neighbor Lot owners or wildlife. Cats or dogs or other domestic animals which are normally kept and maintained indoors shall be permitted on any Lot.

h. Noxious or Offensive Activities. Each Owner shall have a right of quiet enjoyment of their Lot and home and all commonly used areas in and around the subdivision free from harassment or hindrance by other Lot Owners, their guests, pets, and instrumentalities. No noxious or offensive activity shall be permitted on or from any Lot. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare for any adjacent Lot owner. No unreasonably loud or annoying noises or noxious or offensive odors shall be emitted beyond the Lot lines of any Lot.

i. Common Roadway. The Common Roadway on the Property shall be a private drive at all times, and each Lot owner shall be responsible for and pay a pro-rata portion of the snow removal and maintenance costs on the Common Roadway with the other owners of any Lot to which access is provided by said driveway, whether actually used or not. All-access driveways shall be properly graded to assure proper ingress, egress, and drainage.

j. Protection of Wildlife. The Property contains important wildlife habitat so the following restrictions shall be observed by the Owners:

i. Pets should be physically confined or controlled at all times.

ii. Artificial feeding of wildlife by residents is prohibited.

iii. Plants imported to the Property for ornamental/horticultural purposes should be of native species and non-palatable to indigenous wild ungulates.

k. Water and Sewage Systems. Each owner shall obtain all testing, permits and other authorization required by the Eastern Idaho Public Health Department (EIPHD), and all other applicable laws, and any state or local government agencies. This provision of the Declaration is subject to state and local law and cannot be amended in the derogation of such laws.

7. Board of Directors of the Association. The Board of Directors of the Association shall consist of as many members as there are residential Lots in the Subdivision. All Lot Owners, through the purchase of their Lot, agree to serve on the Board.

a. Authority and Duties. The Board shall be responsible for the enforcement and administration of the requirements of these Covenants and shall issue building permits, contract for and supervise common services, enforce the development and use regulations and take all other actions necessary to administer and enforce these Covenants.

b. Meetings. The Board shall call and conduct the annual meeting of Lot owners (which may be effected by written consent or telephonically, as provided in the Bylaws), at which time expiring or vacant Directors' terms shall be filed, and such other business shall be conducted as brought before the meeting by Lot owners, and shall meet from time to time as necessary to administer and enforce these Covenants.

c. Common Services. The Board shall contract for snow removal and for periodic maintenance services on the Common Driveway, as well as for all costs associated with the operation, maintenance, and repair or replacement of a common well and water distribution and common sewer collection and leach field system or commonly used utilities.

d. Assessments. Declarant, for each Lot within the Property, and for and as the Owner of each Lot it owns, hereby covenants and each Owner of any Lot, by the acceptance of instruments of conveyance and transfer of ownership of a Lot (whether or not it be so expressed in said instruments) shall be deemed to covenant and agree with each other and with the Association, to pay the Association all assessments made by the Association for the purpose of providing the Common Services – provided that each Lot owner shall be assessed on a reasonable and pro rata basis only for those Common Services which benefit such owner. The regular assessments shall be due and payable, in advance, on or before the 1st day of each month or on such other reasonable date thereafter as the Association may designate in writing. Each regular assessment shall bear interest at the rate of eighteen percent (18%) from the date declared due and collectible, if not paid by such date. All sums assessed to Owners of any Lot within the Property pursuant to the provisions of this paragraph, together with interest thereon and a reasonable attorney's fee as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this paragraph, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed and acknowledged by the Association and may be recorded in the office of the County Clerk of Teton County, Idaho. No notice of lien shall be recorded until there is a delinquency in payment of the

assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Idaho. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including a reasonable attorney's fee, and the costs and expenses, including attorney's fees, shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Lot. The amount of any regular assessment, special assessment, charge, fine, or individual assessment against any Lot, including interest, costs, and attorney's fees, shall be the personal obligation of the Owner thereof to the Association. Suit to recover a monetary judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. In such event, the Owner shall be obligated to pay not only the interest provided for herein but also all costs and expenses incurred in maintaining such suit, including attorney's fees.

e. **Special Assessments.** On the approval of two (2) of the Lot owners, the Board shall have the authority to establish special assessments to meet unusual or emergency conditions that have arisen with regard to the common access facilities or utilities which service the Property. Special assessments shall be allocated in accordance with the formula established for common services and shall be payable within 30 days of the billing date.

f. **Limitation of Liability.** No member of the Board shall be liable to any party for any action or inaction with respect to any provision to these Covenants, provided that such Board member has acted in good faith. No member of the Board shall have any personal liability in contract to a Lot owner or any other person or entity under any agreement or transaction entered into by a Board member on behalf of the Association.

8. Violations, Enforcement, Liens, and Costs. The limitations, restrictions, and requirements for land use and development established in these Covenants shall be enforceable by the Declarant, by the Board, or by any Owner of a Lot within the Property. Every Owner of a Lot within the Property hereby consents to the entry of an injunction against him or her, or his or her tenants or guests, to terminate and restrain any violation of these Covenants. Any Lot Owner who uses or allows his or her Lot to be used in violation of these Covenants further agrees to pay all costs incurred by the Board or the Declarant or other Lot Owner in enforcing these Covenants, including reasonable attorney's fees.

9. Conditions Precedent to Issuing Building Permits. Prior to the issuance of a building permit by Teton County for any of the Lots an Idaho DEQ approval for a small wastewater system shall be secured.

10. Amended and Variances. These Covenants may be modified by the Association or amended with the written consent of the Owners of two (2) of the Lots within the Property, except that the easement created herein for access may not be withheld from a Lot Owner. A variance shall be allowed from the requirements of these Covenants upon approval of two (2) Lot Owners.

11. Duration of Covenants. The Covenants shall continue and remain in full force and effect at all times against the Property. If required by law, these Covenants shall be deemed to remain in full force and effect for twenty (20) year periods and shall be automatically renewed for additional consecutive twenty (20) year periods, unless all the Lot Owners otherwise agree in writing.

12. Severability. Any decisions by a court of competent jurisdiction invalidating any part or paragraph of these Covenants shall be limited to the part or paragraph affected by the decision of the court, and the remainder of these Covenants shall remain in full force and effect.

13. Acceptance of Covenants. The undersigned Declarant and Owners, and every subsequent Owner or purchaser of a Lot within the Property shall be bound by and subject to all of the provisions of these Covenants, and every Lot Owner or purchaser, through his or her purchase or ownership, expressly accepts and consents to the enforcement of all of the provisions of these Covenants.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Conditions and Restrictions effective the date set forth above.

Barrett Slade

By: Barrett Slade,
Member, Mahogany Creek, LLC

STATE OF IDAHO

ss

COUNTY OF

On this day of _____ 2023 Barrett Slade personally appeared before me and being personally known by me acknowledged that he executed the foregoing instrument as an Owner and Member of Mahogany Creek, LLC.

Witness my hand and official seal.

Notary Public

My Commission Expires: