

# BYLAWS

## OF

### THE PRESERVE HOMEOWNERS ASSOCIATION, INC.

#### ARTICLE 1 - GENERAL PLAN OF OWNERSHIP

Section 1.1 Name. The name of the corporation is the THE PRESERVE HOMEOWNERS ASSOCIATION, INC. (the “**Association**”). The principal office of the Association shall be located at 1859 S. Topaz Way, Suite 200, Meridian, Idaho 83642, in Ada County, Idaho.

Section 1.2 Bylaws Applicability. The provisions of these Bylaws are applicable to the The Preserve Subdivision, located in the City of Eagle, County of Ada, State of Idaho, and designated in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the The Preserve Subdivision, recorded in the official records of Ada County, Idaho, as Instrument No. 111049099, and within any amendments or supplements thereto (the “**Declaration**”).

Section 1.3 Personal Application. All present and future Owners and Occupants, and their employees and any other person that might use the facilities owned and/or managed by the Association in any manner, are subject to the regulations set forth in these Bylaws and the Declaration. The mere acquisition or rental of any Lot within the The Preserve Subdivision or the mere act of occupancy of any such Lot will signify that the Owner or Occupant has accepted, ratified, and will comply with these Bylaws.

#### ARTICLE 2 - MEMBERS

Section 2.1 Members. All Owners of Lots within the The Preserve Subdivision, including Grantor, shall be Members of the Association.

Section 2.2 Voting. The Association shall have two classes of memberships:

(a) Class A Members. Class A Members shall be the Owners of Lots excluding Grantor for so long as Grantor is the Class B Member. Upon the Class B Member Termination Date (defined below), at all meetings of the Association each Class A Member will be entitled to one (1) vote for each Lot owned by such Member. Upon the Class B Member Termination Date, to the extent Grantor owns a Lot, Grantor shall become a Class A Member and shall be entitled to one (1) vote for each Lot owned by Grantor.

(b) Class B Member. Grantor, by and through Grantor’s designated representative (hereinafter “**Grantor’s Delegate**”), shall be the Class B Member, and shall be the sole voting member of the Association entitled to vote the collective voting power of all Lots until the Class B Member Termination Date. The Class B Member shall be entitled to one (1)

vote for each Lot, whether or not such Lot is owned by the Class B Member. The Class B Member shall cease to be a voting Member in the Association upon the earlier to occur of the following: (i) the date upon which Grantor no longer owns any Lot; (ii) the date Grantor informs the Board in writing that Grantor no longer wishes to exercise its rights as the Class B Member, or (iii) June 1, 2020. This date may be referred to herein as the **“Class B Member Termination Date.”**

Section 2.3 Annual Meetings of Members. The Association shall hold an annual meeting of Members each year and the first annual meeting shall be held within twelve (12) months following the close of the first sale of a Lot within the The Preserve Subdivision, and each subsequent regular annual meeting shall be determined by the Board of Directors. The Members may transact such business of the Association as may properly come before them at any such annual meeting at which a quorum is present.

Section 2.4 Special Meetings. It shall be the duty of the Association’s president to call a special meeting of the Association as directed by resolution of the Board or upon request of the Class B Member. The notice of all special meetings shall be given as provided in Section 2.7 of these Bylaws, and shall state the nature of the business to be undertaken. No business shall be transacted at a special meeting except as stated in the notice, unless by consent of the Members representing more than fifty percent (50%) of the total voting power in the Association, either in person or by proxy.

Section 2.5 Order of Business. The order of business at all meetings shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of committees; (e) unfinished business; and (f) new business.

Section 2.6 Place of Meetings. Meetings of the Association shall be held within the The Preserve Subdivision or such other suitable place as close thereto as practicable, as may be designated by the Board, and shall be conducted in accordance with Robert’s Rules of Order.

Section 2.7 Notice of Meetings. Notice of annual or special meetings of the Association shall be delivered, mailed or faxed to all Members and shall be given not less than five (5) days nor more than thirty (30) days prior to the time of said meeting and shall set forth the place, date and hour of the meeting, and the nature of the business to be undertaken at any special meeting, by the acting chairman of the previous annual meeting, or, in such person’s absence, by the Association’s secretary of the previous annual meeting, or, in both persons’ absence, by the Members having one-quarter (1/4) of the total voting power in the Association. The mailing of a notice, postage prepaid, in the manner provided in this Section 2.7, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Association’s secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Property.

Section 2.8 Quorum. Except as otherwise provided in these Bylaws, the Articles or the Declaration, prior to the Class B Member Termination Date, the presence in person or by proxy of the Class B Member shall constitute a quorum. After the Class B Member Termination Date, the presence in person or by proxy of the Members representing at least fifty percent (50%) of the total votes of the Association shall constitute a quorum. The Members present at a duly

called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was scheduled, without notice other than announcement at the meeting. At such second meeting, the presence of Members representing no less than fifty percent (50%) of the quorum required at the preceding meeting shall constitute a quorum. Except as otherwise provided in the Declaration, decisions and resolutions of the Association shall require an affirmative vote of the Members representing a majority of the total voting power present at an annual or special meeting of the Association at which a quorum is present.

Section 2.9 Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Association's secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable at the pleasure of the Member who executed the proxy and shall automatically cease after completion of the meeting for which the proxy was filed, if filed for a particular meeting. In no event shall a proxy be valid after eleven (11) months from the date of its execution.

Section 2.10 Action Without Meeting. Any action, which under the provisions of the Idaho Nonprofit Corporation Act may be taken at a meeting of the Association, may be taken without a meeting if authorized in writing signed by all of the Members who would be entitled to vote at a meeting for such purpose, and filed with the Association's secretary. Any action so approved shall have the same effect as though taken at a meeting of the Members.

### ARTICLE 3 - BOARD OF DIRECTORS

Section 3.1 Number and Qualification. The Property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of not less than three (3) and no more than seven (7) Directors, who, prior to the Class B Member Termination Date, shall be appointed by the Class B Member in the Class B Member's discretion. The Directors shall serve until the next annual meeting of the Members unless earlier removed by the Class B Member with or without cause and in the Class B Member's discretion, or until death, resignation or judicial adjudication of mental incompetence. Following the Class B Member Termination Date, the Board shall consist of those Directors who shall be elected by a majority vote of the Members at the annual meeting of Members, and shall serve until the next annual meeting, or until a successor has been elected or until death, resignation, removal or judicial adjudication of mental incompetence. Directors shall not receive any salary or other compensation for their services as Directors; provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation therefor.

Section 3.2 General Powers and Duties. The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association, as more fully set forth in the Declaration, and may do all such acts and things as are not by law, the Declaration, the Articles or by these Bylaws directed to be exercised and done exclusively by the Owners, Members and/or Grantor.

Section 3.3 Specific Powers and Duties. Without prejudice to such foregoing general powers and duties, and such powers and duties as set forth in the Declaration, the Board of Directors is vested with, and responsible for, the following powers and duties:

(a) To select, appoint and remove all officers, agents, and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, with the Articles, the Declaration and these Bylaws; to fix their compensation, if any; and to require from them security for faithful service when deemed advisable by the Board of Directors;

(b) To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles, the Declaration and these Bylaws, as the Board of Directors may deem necessary or advisable;

(c) To change the principal office for the transaction of the business of the Association from one location to another within the State of Idaho; to designate any place within said State for the holding of any annual or special meeting of the Association consistent with the provisions hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time as the Board of Directors in its judgment may deem best, provided that such seal shall at all times comply with the provisions of law;

(d) To borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidence of debt and securities therefor; subject, however, to the limitations set forth in the Articles and the Declaration;

(e) To fix and levy from time to time Regular Assessments, Special Assessments and Limited Assessments upon the Owners as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the payment of the expenses of the Association, and of the taxes and assessments upon real or personal property owned, leased, controlled or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of the Owners and/or Members, in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided adequate reserves for replacements as the Board of Directors shall deem to be necessary or advisable in the interest of the Association or for the welfare of the Owners and/or Members. The funds collected by the Board of Directors from the Owners, attributable for replacement reserves, for maintenance recurring less frequently than annually, and for capital improvements, shall at all times be held in trust for the Owners and shall not be commingled with other Assessments collected from the Owners. Such Regular Assessments, Special Assessments and Limited Assessments shall be fixed in accordance with the provisions of the Declaration. Should any Owner fail to pay such

Assessments before delinquency, the Board of Directors in its discretion, is authorized to enforce the payment of such delinquent Assessments as provided in the Declaration;

(f) To enforce the provisions of the Declaration, the Articles, these Bylaws or other agreements of the Association;

(g) To contract for and pay for, casualty, blanket, liability, malicious mischief, vandalism and other insurance, insuring the Owners, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board of Directors deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area, and to bond the agents and employees of any management body, if deemed advisable by the Board of Directors;

(h) To operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area, and to contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, if any, and to employ personnel necessary for the operation of the Common Area, including legal and accounting services, and to contract for and pay for Improvements and any recreational facilities on the Common Area;

(i) To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Property;

(j) To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association may be distributed upon liquidation or dissolution according to the Articles unless such assets shall be distributed to Owners of Lots as more particularly provided in the Articles. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts;

(k) To adopt, amend, and repeal by majority vote of the Board of Directors, rules and regulations of the Association deemed reasonable and necessary; and

(l) To pay all real and personal property taxes and assessments levied against the Common Area owned or managed by the Association.

Section 3.4 Organizational Meeting. The first organizational meeting of a newly elected Board of Directors shall be held within forty-five (45) days of the election of the Board of Directors, at such place as shall be fixed and announced by the Directors subsequent to said Directors' election, for the purpose of organization, election of officers, and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a quorum of the Board of Directors shall be present.

Section 3.5 Other Regular Meetings. Regular meetings of the Board of Directors may be held without notice, at such times, in such place and at such hour as may be fixed from time to

time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 3.6 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place whether within or without the State of Idaho, as the place for holding any special meeting of the Board of Directors called by them. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given in the manner provided in Section 3.7 shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

Section 3.7 Notice. Notice of any special meetings of the Board of Directors shall be delivered, mailed or faxed to all Directors at least three (3) days previous thereto and shall set forth the place, date and hour of the meeting, and the nature of the business to be undertaken. The mailing of a notice, postage prepaid, in the manner provided in this Section 3.7, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. Notices sent by facsimile shall be considered notice served upon confirmation of delivery.

Section 3.8 Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be waiver of notice by that Director of the time and place thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though transacted at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

Section 3.9 Quorum. A majority of the number of Directors fixed by Section 3.1 shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Any act taken by a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.10 Voting. For purposes of voting at Board of Directors meetings and for or against Board of Directors' actions, each Director shall have one (1) vote.

Section 3.11 Action Without a Meeting. Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors.

Section 3.12 Vacancies. Vacancies on the Board prior to the Class B Member Termination Date shall be filled by the Class B Member. Vacancies on the Board after the Class B Member Termination Date may be filled by the majority of votes of the Members of the

Association, if any, at the next Association annual meeting, or special meeting called for that purpose. Until such time as a new Director is selected by Association, the Board of Directors may continue to conduct business as if no vacancy existed. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in the case the full number of authorized Directors are not elected at any meeting at which such election is to take place.

Section 3.13 Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the Association or its manager.

Section 3.14 Committees. The Board of Directors, by resolution, may from time to time designate such committees as the Board of Directors shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing a committee shall provide for the appointment of its members, as well as a chairperson, shall state the purpose of the committee, and shall provide for reports, termination, and other administration matters as deemed appropriate by the Board of Directors.

Section 3.15 Books, Financial Statements and Audit. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be made available to each Member of the Association as follows:

(a) A pro forma operating statement or budget representing the Association for each fiscal year shall be made available to the Members not less than sixty (60) days after the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

(b) Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and made available to each Member, a balance sheet as of the last day of the Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year.

## ARTICLE 4 - OFFICERS

Section 4.1 Designation. The principal officers of the Association shall be a president, a vice president, secretary, and a treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer and an assistant secretary, and such other officers as in the Board's judgment may be necessary. One person may hold two or more offices, except those offices of president and secretary.

Section 4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board, and each officer shall hold office for one (1) year unless such officer shall sooner resign or shall be removed or otherwise disqualified.

Section 4.3 Removal of Officers. Upon an affirmative vote of a majority of the Board of Directors, any officer may be removed, either with or without cause, and a successor elected at any regular meeting of the Board of Directors, or any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board of Directors or to the president or secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board of Directors shall not be necessary to make it effective. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 4.4 Compensation. Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board of Directors. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such an officer, agent or employee. No officer, employee, Member or affiliate of Grantor may receive any compensation.

Section 4.5 Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 4.6 President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Association and of the Board of Directors. The president shall have all of the general powers and duties which are usually vested in the office of the president of a nonprofit corporation, including, but not limited to, the power, subject to the provisions of Section 3.14, to appoint committees from among the Members and Owners from time to time as the president alone may decide are appropriate to assist in the conduct of the affairs of the Association. The president shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The president shall be ex officio a member of all standing committees, and the president shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 4.7 Vice President. The vice president shall take the place of the president and perform such duties whenever the president shall be absent, disabled or unable to act. If neither the president nor the vice president is able to act, the Board of Directors shall appoint a member of the Board of Directors to do so on an interim basis. The vice president shall also perform such other duties as shall from time to time be imposed by the Board of Directors or these Bylaws.

Section 4.8 Secretary. The secretary shall record the votes and keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association or such other place as the Board of Directors may order. The secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct, and the secretary shall, in general, perform all the duties incident to the office of secretary. The secretary shall give, or cause to be given, notices of meetings of the Association and of the Board of Directors required by these Bylaws or by law to be given. The secretary shall maintain a book of record Owners, and any



person in possession of a Lot that is not an Owner, listing the names and addresses of the Owners, and any person in possession of a Lot that is not an Owner, as furnished to the Association and such book shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the secretary. The secretary shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 4.9 Treasurer. The treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts of the Common Area, Restricted Area, Maintenance Property, any tax records and business transactions of the Association including accounts of all assets, liabilities, receipts and disbursements, all in books belonging to the Association. The treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with the Declaration, shall render to the president and Directors upon request, an account of all transactions as treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

## ARTICLE 5 - OBLIGATIONS OF MEMBERS

### Section 5.1 Assessments.

(a) All Members are obligated to pay, in accordance with the provisions of the Declaration, all Assessments levied by the Association to meet all expenses of the Association which may include, without limitation, a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of fire, earthquake or other hazard, as more fully provided in Section 3.3 of these Bylaws. Except as otherwise provided in the Declaration, the Assessments shall be made equally per Lot for all Members of the Association obligated to pay such Assessment.

(b) All delinquent Assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

### Section 5.2 Maintenance and Repair.

(a) Every Member must perform promptly, at the Member's sole cost and expense, all maintenance and repair work on such Member's Lot as required under the provisions of the Declaration.

(b) As further provided in the Declaration, each Member shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of Common Area which is damaged through the fault of a Member or a Member's Occupant, and each Member shall promptly reimburse the Association for the costs of repairing, replacing and/or maintaining that portion of the Common Area which the Association has repaired, replaced or maintained pursuant to the Declaration. Such expenditures shall include all court costs and reasonable attorneys' fees and costs incurred in enforcing any provision of these Bylaws, the Articles or the Declaration.

## ARTICLE 6 - AMENDMENTS TO BYLAWS

These Bylaws may be amended by the Association at an annual meeting or at a duly constituted special meeting of the Association for such purpose as provided in the Articles. No amendment to these Bylaws shall take effect unless by the affirmative vote of sixty-five percent (65%) of the total voting power of the Association as cast by the Members.

## ARTICLE 7 - MEANING OF TERMS

Except as otherwise defined herein, all terms herein initially capitalized shall have the same meanings as are ascribed to such terms in the Declaration.

## ARTICLE 8 - CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provisions of the laws of the State of Idaho, such conflicting Bylaws shall be null and void upon final court determination to such effect, but all other Bylaws shall remain in full force and effect. In case of any conflict between the Articles and these Bylaws the Articles control; and in the case of any conflict between the Declaration and these Bylaws the Declaration shall control.

## ARTICLE 9 - INDEMNIFICATION AND INSURANCE

Section 9.1 Definitions. For the purposes of this Article, “agent” means any person who is or was a director, officer, employee or other agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, or was a director, officer, employee or agent of a corporation which was a predecessor corporation of the Association; “proceeding” means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and “expenses” includes, without limitation, attorneys’ fees and costs and any expenses of establishing a right to indemnification under Section 9.3 or paragraph (c) of Section 9.4.

Section 9.2 Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association to procure a judgment in its favor) by reasons of the fact that such person is or was an agent of the Association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal proceeding that the person had reasonable cause to believe that the person’s conduct was unlawful. However, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association in the performance of such person’s duty to the Association, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon

application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall deem proper.

Section 9.3 Expenses in Successful Defense. To the extent that an agent of the Association has been successful on the merits in defense of any proceeding referred to in Section 9.2 or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 9.4 Determination of Standard of Conduct. Except as provided in Section 9.3, any indemnification under this Article shall be made by the Association only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 9.2, as determined by:

- (a) A majority vote of Directors who are not parties to such proceeding;
- (b) Approval or ratification by the affirmative vote of a majority of the total voting power of the Association as cast by the Members at a duly held meeting of the Association at which a quorum is present;
- (c) The court in which such proceeding is or was pending, upon application made by the Association or the agent or the attorney or other persons rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the Association; or
- (d) Independent legal counsel in written opinion, engaged at the direction of a majority of disinterested Directors.

Section 9.5 Advancing Expenses. Expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

Section 9.6 Extent and Limitations of Indemnifications. No indemnification or advance shall be made under this Article, except as provided in Section 9.3 or paragraph (c) of Section 9.4, in any circumstance where it appears:

- (a) That it would be inconsistent with a provision of the Articles, these Bylaws, a resolution of the Board of Directors or Members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

This Article shall create a right of indemnification for each agent referred to in this Article, whether or not the proceeding to which the indemnification relates arose in whole or in

part prior to adoption of this Article; and in the event of the death of such agent, whether before or after initiation of such proceeding, such right shall extend to such agent's legal representatives. In addition, to the maximum extent permitted by applicable law, the right of indemnification hereby given shall not be exclusive of or otherwise affect any other rights such agent may have to indemnification, whether by law or under any contract, insurance policy or otherwise.

Section 9.7 Liability Insurance. The Association may purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under the provisions of this Article.

## ARTICLE 10 - MISCELLANEOUS

Section 10.1 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

Section 10.2 Execution of Documents. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have the power or authority to bind the Association by any contract or engagement or to pledge the Association's credit or to render the Association liable for any purpose or in any amount.

Section 10.3 Inspection of Bylaws, Books and Records. The Association shall keep in the Association's office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Association's secretary, which shall be open to inspection by the Members at all reasonable times during office hours. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and the Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 10.4 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year except that the first fiscal year shall begin on the date of incorporation.

Section 10.5 Membership Book. The Association shall keep and maintain in the Association's office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Lot by an Owner shall be recorded in the books together with the date on which such ownership was transferred, and the new Owner shall be incorporated into the book in accordance with the provisions of the Declaration and the Articles.

## ARTICLE 11 - INCORPORATION BY REFERENCE

The Declaration and Articles are incorporated herein in their entirety by this reference and made a part of these Bylaws as if set out in full herein.

**CONSENT OF DIRECTORS OF  
THE PRESERVE HOMEOWNERS ASSOCIATION, INC.  
IN LIEU OF MEETING**

The undersigned, constituting all of the Directors of The Preserve Homeowners Association, Inc., an Idaho nonprofit corporation (the “**Association**”), do hereby consent to, adopt and approve in writing the following corporate action without a meeting in accordance with the provisions of the general nonprofit corporation laws of the State of Idaho:

RESOLVED, that the above and foregoing Bylaws are hereby duly adopted as the Bylaws of the Association and that the same do now constitute the Bylaws of the Association.

RESOLVED, all previously adopted bylaws of the Association are hereby repealed and shall no longer be of any force or effect.

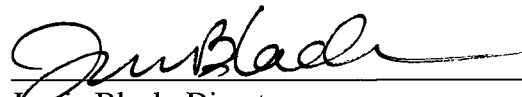
This Consent of Directors of the The Preserve Homeowners Association, Inc. in Lieu of Meeting shall be effective as of the 8<sup>th</sup> day of June, 2011.



Thomas M. Coleman, Jr., Director



Ryan Hammons, Director



Jessie Black, Director

## CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting secretary of the The Preserve Homeowners Association, Inc., an Idaho nonprofit corporation; and

2. The foregoing Bylaws comprising 15 pages, including this page, constitute the Bylaws of the The Preserve Homeowners Association, Inc., and were duly adopted by the Board of Directors pursuant to that "Consent of Directors of the The Preserve Homeowners Association, Inc., in Lieu of Meeting," dated effective the 8<sup>th</sup> day of JUNE, 2011.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and attest the act of the Association effective the 8<sup>th</sup> day of JUNE, 2011.

  
\_\_\_\_\_  
Jessie Black, Secretary