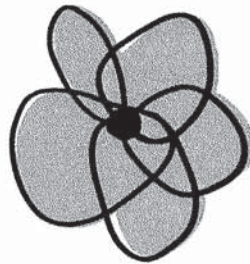


ACCOMMODATION  
RECORDING



**PARKWAY  
STATION**  
-GARDEN CITY-

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND  
EASEMENTS  
FOR THE  
PARKWAY STATION COMMUNITY**

# WELCOME!

We are pleased that you have decided to become a member of the Parkway Station Community. The following document is the Declaration of Covenants, Conditions, Restrictions and Easements that will govern the Community. The purpose of the Declaration is to:

- Set forth basic use residential restrictions to protect you and your neighbors from undesirable or noxious uses by others in the Community.
- Set forth the rules by which the Community will govern itself through the Parkway Station Community Association, Inc.
- Set forth the procedure for budgets and assessments for Community expenses.
- Provide for the maintenance and improvement of the Community common areas.
- Set forth the rules by which the Community will resolve problems and disputes in a fair, impartial and expeditious manner.

Please read this entire Declaration carefully. It sets forth the rights and obligations of you and the other Community members. We make no representations of any kind (express or implied) through any agent, realtor, employee or other person regarding the Community except as set forth in this Declaration. We expressly disclaim any representations, warranties, statements or information about the Community not set forth herein.

As an equal opportunity housing provider, the Parkway Station Community provides housing opportunities regardless of race, color, national origin, religion, sex, physical or mental disability, familial status or any other classification protected by applicable federal, state or local law.

## DECLARATION HIGHLIGHTS

**Please read this entire Declaration carefully**, but we would like to highlight a few key provisions that may be of interest to you:

- Regular Assessments: Regular Assessments will be established by the Association in accordance with Article 5, and may be adjusted from time-to-time. A Special Assessment may not be issued without the Association giving each Owner prior notice and opportunity to object at an Association meeting. See Section 5.5.
- Association Management: The Association will be managed by the Grantor during the Initial Development Period (when the homeowners would find the management to be unduly burdensome). See Section 10.2. Thereafter, the Community governs itself as desired. See Article 2.
- Landscape Maintenance: The Association will provide ordinary care and maintenance for landscaping on each Lot as a common expense (subject to the right to opt-out). See Section 2.6.4.
- Irrigation System: The Association will provide pressurized irrigation water to each Lot as a common expense. See Section 2.6.5.
- Pets: Owners may have up to two household pets. See Section 3.8.
- Yard Signs: Customary "For Sale", open house, construction and political signs are permitted, but with strict limitations. No other signs are permitted. See Section 3.17.
- Leasing: Owners may lease to their family at any time, and may lease to others provided the lease term is six (6) months or longer. See Section 3.2.
- Holiday Lights: Permitted from November 15 to January 15. See Section 3.21.
- Basketball Hoops: Basketball hoops and poles are not allowed except as the same may be installed by the Association. See Section 3.4.
- Fencing: Fences shall require approval of the Architectural Review Committee. See Section 4.4.
- Trash Cans: Trash cans and other trash receptacles, including recycling cans and receptacles, shall not be visible except between 5:00 AM and 8:00 PM on the day selected by the trash collector for trash and recycling pick-up. See Section 3.4.

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR THE PARKWAY STATION COMMUNITY**

This Declaration of Covenants, Conditions, Restrictions, and Easements for the Parkway Station Community (this “**Declaration**”) is made effective as of this 11<sup>th</sup> day of April, 2018, (the “**Effective Date**”) by Parkway Station, LLC, an Idaho limited liability company, its successors and/or assigns (“**Grantor**”). Capitalized terms not otherwise defined in the text of this Declaration are defined in Article 1.

Grantor owns those certain residential and common area lots legally described as follows (collectively, the “**Community**”):

Lots 1 through 49 in Block 1, of the Twotown Parkway Subdivision, according to the Plat.

Grantor desires to execute and record this Declaration to set forth the basic restrictions, covenants, limitations, easements, conditions, and equitable servitudes that will apply to the Community, which are for the purpose of protecting, enhancing, and preserving the value, amenities, desirability, and attractiveness of the Community and to ensure a well-integrated, high quality development.

NOW, THEREFORE, Grantor hereby declares that the Community, and each Lot or portion therein, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved in accordance with this Declaration, which is hereby declared to be in furtherance of the general purpose of protecting, enhancing, and preserving the value, amenities, desirability, and attractiveness of the Community and to ensure a well-integrated, high quality development. This Declaration shall (a) run with the land and shall be binding upon any person or entity having or acquiring any right, title or interest in any lot, parcel or portion of the Community; (b) inure to the benefit of every Lot or portion of the Community; and (c) inure to the benefit of and be binding upon Grantor and each Owner having or holding an interest in any Lot or portion of the Community, and their successors-in-interest.

**ARTICLE 1  
DEFINITIONS**

“**Articles**” mean the Articles of Incorporation of the Association.

“**Assessments**” mean the Regular Assessments, Special Assessments, and Limited Assessments, and together with any late charges, interest, and costs incurred in collecting the same, including without limitation attorneys’ fees.

“**Association**” means the Parkway Station Community Association, Inc., an Idaho nonprofit corporation.

“**Board**” means the Board of Directors of the Association.

“**Bound Party**” shall have the meaning set forth in Section 9.1.

“**Building Envelope**” means the area within a Lot where a residential structure and accessory structures may be located, always subject to the Committee’s approval. Unless otherwise designated by

Grantor, the Building Envelope shall be that portion of the Lot not located within easements or setback required by this Declaration or applicable law.

“**Bylaws**” mean the Bylaws of the Association.

“**Claims**” shall have the meaning set forth in Section 9.1.

“**Commercial Parcel**” shall mean Lot 50 of Block 1 of the Twotown Parkway Subdivision, according to the Plat, as may be further subdivided. For the avoidance of any doubt, this Declaration does not apply to and does not encumber the Commercial Parcel, except as provided in Article 8 and Section 2.6.5 of this Declaration.

“**Committee**” means the Architectural Review Committee identified in Section 4.1.

“**Common Area**” means (a) Lots 1, 2, 11, 20, 25, 31, 36 and 45 in Block 1 of the Twotown Parkway Subdivision, according to the Plat; (b) any real or personal property held by or for the benefit of the Association, including storage facilities, recreational facilities, and open spaces (including pathways, greenbelts, and other areas that may also be open to the public and/or to owners and users of an adjacent community); and (c) any lease, license, use rights, or agreement rights for amenities or facilities held by the Association from time-to-time.

“**Common Driveway**” has the meaning set forth in Section 8.1.

“**Common Driveway Owners**” has the meaning set forth in Section 8.1.

“**Common Driveway Users**” has the meaning set forth in Section 8.1.

“**Common Expenses**” has the meaning set forth in Section 8.4.

“**Common Walls**” has the meaning set forth in Section 3.22.

“**Community**” shall have the meaning set forth in the first recital.

“**Community Documents**” shall mean this Declaration, the Articles, the Bylaws, the Community Rules, the Design Requirements, and any other procedures, rules, regulations, or policies adopted under such documents by the Association or the Committee. In the event of any conflict between this Declaration and any other of the Community Documents, this Declaration shall control.

“**Community Rules**” shall have the meaning set forth in Section 2.6.1.

“**Declaration**” means this Declaration of Covenants, Conditions, Restrictions and Easements for the Parkway Station Community.

“**Design Requirements**” has the meaning set forth in Section 4.2.

“**Expenses**” shall have the meaning set forth in Section 5.2.

“**Fine**” shall mean a sum imposed by the Board as punishment for any violation of the Community Documents. A Fine shall not include any sums to be recovered as reimbursement for expenses incurred to cure or remedy any violation of the Community Documents.



“**Grantor**” shall have the meaning set forth in the introductory paragraph of this Declaration.

“**Home Occupation**” shall have the meaning set forth in Section 3.1.

“**Household Pets**” shall have the meaning set forth in Section 3.8.

“**Initial Development Period**” shall have the meaning set forth in Section 10.1.

“**Improvement**” shall mean any structure, facility, system, or object, whether permanent or temporary, which is installed, constructed, placed upon or allowed on, under, or over any portion of the Community, including residential structures, accessory buildings, club houses, pump or lift stations, fences, streets, drives, driveways, parking areas, sidewalks, pathways, bridges, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction, utility improvements, trees, and the Irrigation System or any part thereof.

“**Irrigation System**” means the system, if any, for delivering irrigation water to the Community or neighboring properties that exists separate and apart from the potable water system, as further described in Sections 2.6.5 and 3.13 hereof. The Irrigation System includes the pipes, lines, sprinklers, boxes, controls, and other related equipment on any Lot, such as the same are maintained by the Association.

“**Landscape Care Standards**” shall have the meaning set forth in Section 2.6.4.

“**Limited Assessment**” shall mean a charge against a particular Owner for an expense directly attributable to such Owner, equal to the cost incurred by the Association in connection with corrective action or maintenance, repair, replacement, and operation activities performed pursuant to the provisions of this Declaration, including damage to or maintenance, repair, replacement, and operation activities performed for any Common Area or the failure of an Owner to keep the Owner’s Lot in proper repair, and including interest thereon as provided in this Declaration or for any goods or services provided by the Association benefiting less than all Owners.

“**Lot**” shall mean, individually or collectively as the context may require, any of Lot 1 through Lot 49 of Block 1 as depicted on the Plat. For voting, membership, and Assessment purposes herein, the term Lot shall not include any real property owned by the Association as Common Area.

“**Mortgage**” shall mean any mortgage, deed of trust, or other document pledging any portion of the Community or interest therein as security for the payment of a debt or obligation.

“**Occupant**” means any resident or occupant of a Lot.

“**Owner**” means the record owner, whether one or more persons or entities, holding fee simple interest of record to a Lot, and buyers under executory contracts of sale, but excluding those persons or entities having such interest merely as security for the performance of an obligation, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

“**Plat**” shall mean the plat for the Twotown Parkway Subdivision covering any portion of the Community as recorded in the Ada County Recorder’s Office.

“**Regular Assessment**” shall mean the portion of the cost of maintaining, improving, repairing, managing, and operating the Common Area, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association pursuant to the terms of this Declaration.

“**Shared Area**” has the meaning set forth in Section 8.3.

“**Shared Area Owners**” has the meaning set forth in Section 8.3.

“**Shared Area Users**” has the meaning set forth in Section 8.3.

“**Shared Pathway**” has the meaning set forth in Section 8.2.

“**Shared Pathway Owners**” has the meaning set forth in Section 8.2.

“**Shared Pathway Users**” has the meaning set forth in Section 8.2.

“**Single Family Lot**” shall mean, individually or collectively as the context may require, the residential dwellings constructed on Lots 21 through 24 and 26 through 30 in Block 1 of the Plat.

“**Special Assessment**” shall mean that portion of the costs of the capital improvements or replacements, equipment purchases, and replacements or shortages in Regular Assessments which are authorized to be paid to the Association pursuant to the provisions of this Declaration.

“**Townhouse Lot**” shall mean, individually or collectively as the context may require, the residential dwellings constructed on Lots 3 through 10, 12 through 19, 32 through 35, 37 through 44, and 46 through 49 in Block 1 of the Plat.

## ARTICLE 2 THE PARKWAY STATION COMMUNITY ASSOCIATION

**2.1 Organization of the Association.** Grantor has organized the Association to manage the business and affairs of the Community in accordance with applicable law and the Community Documents.

**2.2 Membership.** Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a member of the Association, and no Owner shall have more than one membership per Lot in the Association. Memberships in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Membership in the Association shall not be transferred, pledged, assigned, or alienated in any way except upon the transfer of the Lot that such membership is appurtenant to. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

**2.3 Membership Meetings; Voting.** The Association shall hold an annual member’s meeting and periodic special meetings as set forth in the Bylaws. Each Owner shall be entitled to one vote as a member in the Association for each Lot owned by that Owner (subject to Grantor’s rights during the Initial Development Period).

**2.4 Board of Directors.** The business and affairs of the Association shall be managed by the Board. The Board shall consist of not less than three (3) directors and no more than five (5) directors.

Directors need not be Owners. During the Initial Development Period, Grantor shall have the exclusive right to appoint, remove, and replace directors at anytime and from time-to-time in Grantor's sole discretion. After the Initial Development Period, the Owners shall have the right to appoint, remove, or replace directors as provided in the Bylaws. Any vacancy on the Board may be filled by majority vote of the remaining Directors, through a special election at any meeting of the Board.

**2.5 Delegation of Authority.** The Board may at any time (and from time-to-time) delegate all or any portion of its powers and duties to committees, officers, employees, or to any person or entity to act as manager. The Association shall employ or contract for the services of a professional manager or management company to manage the day-to-day affairs of the Association. No such employment or contract shall have a term of more than one (1) year. If such manager is Grantor or Grantor's affiliate, such contract shall be subject to cancellation by the Association with or without cause and without payment of a termination fee so long as the Association provides at least thirty (30) days' prior notice of termination.

**2.6 Duties of the Association.** The Association shall have all the powers of a nonprofit corporation organized under Idaho law and all of the powers and duties set forth in the Community Documents, including the power to perform any and all acts which may be necessary to, proper for, or incidental to the foregoing powers. The Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform the following duties:

2.6.1 *Community Rules.* Adopt, amend, and repeal such rules and regulations as the Association deems reasonable and appropriate to govern the Community or certain portions thereof (the "**Community Rules**"), which may include rules and regulations regarding, without limitation: (a) the use of the Common Area (including as to storage and parking) and the Irrigation System; (b) imposition of fines for violation of Community Rules (subject to applicable law, such as Idaho Code § 55-115); and (c) procedures in the conduct of business and affairs of the Association. Except when inconsistent with this Declaration, the Community Rules shall have the same force and effect as if they were set forth in and were made a part of this Declaration.

2.6.2 *Common Area.* Acquire, dispose of, manage, operate, maintain, repair, and replace the Common Areas for the benefit of the Community; provided, however, except as permitted under Section 2.7.3 hereof, no interest in the Common Area shall be disposed of without the approval by the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association. The Association shall also be obligated to comply with its duties pursuant to Article 8 hereof with respect to the Common Driveway and Shared Pathway.

2.6.3 *Exterior Maintenance.* Maintain the exterior of the residential dwellings on the Townhouse Lots and Single Family Lots in good condition and repair, and charge each Townhouse Lot Owner and Single Family Lot Owner for such maintenance work as Regular Assessments.

2.6.4 *Common Landscape Maintenance.* Maintain some or all of the landscaping upon any Lot in accordance with the landscape care and maintenance standards promulgated by the Board from time-to-time ("**Landscape Care Standards**"), and subject to the Community Rules. "Care and maintenance" shall include, as necessary: (a) weeding, cutting, trimming, aerating, and fertilizing ordinary landscaping, as well as removing and replacing diseased and dead landscaping; and (b) operating, maintaining, repairing, and replacing an automatic sprinkler

system for ordinary landscape maintenance. The Landscape Care Standards shall take into account any provisions regarding landscaping in the Findings of Fact, Conclusions of Law and Recommendation of the Garden City Council for the Twotown Parkway Subdivision dated as of March 28, 2016. Landscape Care Standards do not include the repair or replacement of any landscaping or sprinkler system that is damaged or destroyed by abuse, misuse, or vandalism. For purposes of this Declaration, unusual or excessive damage or death of landscaping shall be presumed to be “abuse, misuse, or vandalism.” The Association may charge the Owner of any Lot for the cost of repairing or replacing any landscaping, sprinkler system or other improvement damaged by abuse, misuse, or vandalism. Any Owner may, by request to the Board and upon the Board’s subsequent approval in the Board’s sole discretion, elect to have its Lot (or any portion thereof) removed from the Association’s common landscape care and maintenance program. In such event such Owner shall: (a) maintain, at its own expense, the landscaping on its Lot in accordance with Landscape Care Standards; and (b) not be entitled to any reduction of any Assessments on such Lot.

2.6.5 Irrigation System. Construct, install, maintain, repair, replace, and operate the Irrigation System, including that portion of the Irrigation System within each Lot. The Association may operate the Irrigation System as part of a common irrigation water supply arrangement with neighboring properties, including other properties in Twotown Parkway Subdivision, and each Owner shall be entitled to use the Irrigation System in accordance with, and subject to, the Community Rules. The Commercial Parcel shall be entitled to use water from the Irrigation System, and shall pay reasonable charges in connection therewith.

2.6.6 Storm Water Disposal System. Maintain, repair, and replace the storm water disposal system located in Common Areas, including any repair of the storm water disposal system necessary due to pipeline maintenance or replacement undertaken by the City of Garden City.

2.6.7 Taxes. Pay all real and personal property taxes and assessments (if any) levied against the Common Area, the Association, and any other property owned by the Association. In addition, the Association shall pay all taxes, including income, revenue, corporate, or other taxes (if any) levied against the Association.

2.6.8 Insurance. Obtain such bonds and insurance as may be required by applicable law and such further insurance as the Board deems necessary or prudent, including casualty insurance for any property or Improvements owned or maintained by the Association, public liability insurance related to the Association’s operations and the use of the Common Area, directors and officers liability coverage, automobile insurance, worker’s compensation insurance, and fidelity bonds. Unless otherwise authorized by Grantor, the Association shall procure at least the following insurance policies to the extent such policies are available on commercially reasonable terms:

2.6.8.1 Casualty insurance on all insurable personal property and Improvements owned by the Association or for which the Association bears risk of loss, which insurance shall be for the full replacement cost thereof without optional deductibles;

2.6.8.2 Worker’s compensation insurance and employer’s liability coverage as required by law;

2.6.8.3 Broad form comprehensive public liability insurance insuring the Association, the Board, the Committee and their respective agents and employees against any liability incident to the ownership or use of the Common Area; which insurance shall be for not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury/sickness/death and One Million Dollars (\$1,000,000) per occurrence with respect to property damage; and

2.6.8.4 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

2.6.8.5 A policy of homeowners' insurance for all Townhouse and Single Family Lots in such amount as shall provide for full replacement thereof, including, but not limited to, those costs associated with rebuilding, design, any required permits, legal fees and any other fees associated with the replacement of such Lot(s), in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire and extended coverage, vandalism and mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The premium for such policies shall be charged to Townhouse and Single Family Lot Owners as Regular Assessments. Notwithstanding the foregoing, each Townhouse and Single Family Lot Owner must obtain insurance at such Owner's expense providing coverage upon such Owner's personal property, personal liability, and covering such other risks as such Owner may deem appropriate, but each policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this section. Furthermore, each Owner, and not the Grantor or the Association, is responsible for determining whether their respective Lot is located within a floodplain (as determined, from time-to-time, by FEMA or other comparable state, local or federal organization) and for taking reasonable and appropriate action based on such classification, including but not limited to purchasing flood insurance.

The proceeds of any insurance collected pursuant to Section 2.6.8.5 shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. All of the Lot Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the their Lot upon the Lot's damage or destruction. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Lot Owners, and no consent or other action by any such Owner shall be necessary in connection therewith.

2.6.9 Entitlement Obligations. Fulfill any duties imposed by any governmental or other quasi-governmental agencies as part of the entitlements for the development of Community, including any requirements or obligations identified in such entitlements as the responsibility of the community association or homeowners' association, such as plat notes, development agreements, or conditions of approval.

**2.7 Powers of the Association.** In addition to the duties described in Section 2.6 above, the Association shall also have the power to perform any and all acts which may be necessary to, proper for, or incidental to its duties and/or the foregoing powers:

2.7.1 Improvements. The power and authority to construct, install, maintain, repair, replace, and operate any Improvements in any Common Area, any public right-of-way serving the Community, or any other location deemed by the Board to benefit the Community, including any fences, signs, or other Improvements at Community entrances or otherwise in the vicinity of the Community, and any berms, retaining walls, fences, and water amenities within or abutting any Common Area.

2.7.2 Entry onto Lots. The power and authority to enter upon any Lot (but not inside any building constructed thereon) in the event of any emergency involving potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such Lot as practical under the circumstances, and any damage caused thereby shall be repaired by and at the expense of the Association.

2.7.3 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, and rights-of-way in, on, or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation, and enjoyment of the same, and for the preservation of the health, safety, convenience, welfare of the Community or neighboring properties, for the purpose of constructing, erecting, operating, or maintaining any of the following:

2.7.3.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above-ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

2.7.3.2 Public and other sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

2.7.3.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting Common Areas, public and private streets or land conveyed for any public or quasi-public purpose including pedestrian and bicycle pathways.

2.7.4 Amenity Agreements. The power and authority to enter into any lease, license, use, or other agreements as the Board deems proper or convenient to secure the use of off-site amenities or facilities for the benefit of the Community. Without limiting the generality of the foregoing, and only by way of example, the Association may enter into such agreements with others for the use of any recreational amenities or facilities, including clubhouses and swimming pools, by the Owners on such terms as the Association deems reasonable or prudent. In such event, any costs incurred by the Association related thereto shall be Expenses, and such Expenses shall be included in the Regular Assessments.

2.7.5 Reserves. The power and authority to establish and fund such operating and capital reserves as the Board deems necessary or prudent.

2.7.6 Financing. The power and authority to enter into any agreements necessary or convenient to allow Owners to take full advantage of, or secure the full availability of, any financing programs offered or supported by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), or any similar entity.

2.7.7 Estoppel Certificates. The power and authority to execute a written statement stating (a) whether or not, to the knowledge of the Association, a particular Owner or Owner's Lot is in default of this Declaration; (b) the dates to which any Assessments have been paid by a particular Owner, and (c) such other matters as the Board deems reasonable. Any such certificate may be relied upon by a bona-fide prospective purchaser or mortgagee of such Owner's Lot, but only to the extent such prospective purchaser or mortgagee has no knowledge to the contrary. The Association may charge a reasonable fee for such statements.

2.7.8 Enforcement. The power and authority at anytime and from time-to-time, on its own behalf or on behalf of any consenting Owners, to take any action, including any legal action, to prevent, restrain, enjoin, enforce, or remedy any breach or threatened breach of the Community Documents. The power of enforcement includes:

2.7.8.1 The right to remove, alter, rebuild, or restore any Improvements constructed, reconstructed, refinished, added, altered, or maintained in violation of the Community Documents. If such Improvements are located on a Lot, the Association shall first provide the Owner thereof with a notice specifying the default and a reasonable opportunity to cure (not to exceed ten (10) days), and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred with such notice and enforcement action.

2.7.8.2 The right to impose Assessments, fines and charges upon the Owners, and the right to enforce the obligations of the Owners to pay each and every Assessment, fine or charge provided for in the Community Documents, all in accordance with applicable laws.

2.7.8.3 The right to perform any duty or obligation of an Owner under the Community Documents if such duty or obligation is not timely performed by such Owner. In such event, the defaulting Owner shall immediately reimburse the Association for all costs reasonably incurred by the Association in performing such duty or obligation. Except in the event of an emergency, the Association shall provide the defaulting Owner with a notice specifying the default and a reasonable period (no less than five (5) days and no more than thirty (30) days) to cure prior to exercising its power and authority hereunder.

2.7.8.4 The right to authorize variances from the requirements of this Declaration when required by applicable law (such as the Fair Housing Act) or when needed to prevent the requirements would impose an undue hardship on an Owner that would be inequitable for such Owner to bear. The granting of a variance shall not waive any element of the Declaration for any purpose except as to the particular Lot and the particular provision covered by the variance. Approval of a variance shall not affect the Owner's obligation to comply with the other elements of this Declaration or applicable law.

If the Association employs attorneys to collect any Assessment or charge, whether by suit or otherwise, or to otherwise enforce compliance with the Community Documents, the Association shall be entitled to recover its reasonable attorneys' fees in addition to any other relief or remedy obtained.

2.7.10 *Improvements in the Public Right-of-Way.* The power and authority to enter into license agreements with the Ada County Highway District (or assume the duties and obligations under any such license agreement entered into by Grantor) to install, maintain, improve, irrigate, trim, repair, and replace improvements and landscaping in the public rights-of-way (including sidewalk easements and planter strips).

2.7.11 *Open Space Corridors.* The power and authority to enter into agreements with any governmental entity, utility provider, irrigation company, conservation organization, or any other public or private entity (or assume any such agreement entered into by Grantor) to improve, operate, maintain, repair, or replace any wildlife, open space, recreation, pathway, greenbelt, or trail spaces, either for the benefit of the Community or the general public.

2.7.12 *Professional Management.* The power and authority to hire a professional management company(ies) to manage the day-to-day affairs of the Association, to provide landscape, maintenance and other services for the Common Areas, Shared Areas, and the Lots as provided hereunder, and for such other matters as the Association deems necessary or appropriate.

2.7.13 *Other.* Such other and further powers as the Board deems reasonable and appropriate, it being the intent of Grantor that the Association have broad power and authority consistent with the Community Documents and applicable law.

**2.8 Association Records; Owner Inspection.** The Association shall keep such records of its business and affairs as is customary for community or homeowner associations, including a membership register, accounting records, financial statements, operating budgets, balance sheets, and minutes of meetings of the Board, members, and committees. Such records shall be available at the Association's regular offices for inspection and copying by any Owner at such Owner's expense. The Board may establish reasonable rules with respect to: (a) notice to be given to the custodians of the records by persons desiring to make the inspection; (b) hours and days of the week when such an inspection may be made; and (c) payment of the cost of reproducing copies of documents requested pursuant to this Section 2.8. The Association's obligations hereunder may be fulfilled by making the records available to an Owner electronically, including delivery by electronic mail or the posting of such records on a website.

**2.9 Immunity; Indemnification.** Each Owner understands and agrees that Grantor, the Association, the Association's manager (if any), the Committee, and the directors, officers, agents, employees, and committee members of any of them (each individually a "**Released Party**") shall be immune from personal liability to such Owner or any other person, and such Owner hereby knowingly and voluntarily waives and releases each Released Party, for such Released Party's actions or failure to act with respect to the Community Documents that does not constitute gross negligence or willful misconduct on the part of such Released Party. The Association shall indemnify, defend and hold each Released Party harmless from any action, expense, loss, or damage caused by or resulting from such Released Party's actions or failure to act with respect to the Community Documents; provided, however, the Association shall not be obligated to indemnify, defend, and hold harmless any Released Party for their own gross negligence or willful misconduct.



**2.10 Waiver of Consequential Damages.** The Association shall not be liable to any Owner, and each Owner releases the Association from any form of indirect, special, punitive, exemplary, incidental or consequential or similar costs, expenses, damages or losses.

### **ARTICLE 3 GENERAL AND SPECIFIC OBLIGATIONS AND RESTRICTIONS**

**3.1 Residential Use.** All Lots shall be used exclusively for residential purposes and other uses incidental thereto as permitted under any applicable law (provided that it is understood and agreed that Lot 1 will provide access to the Commercial Parcel). Except for Home Occupations permitted pursuant to this Section, no Lot shall be used at any time for commercial or business activity. A **“Home Occupation”** shall be any gainful occupation conducted on a Lot by an Occupant of the Lot. A Lot may be used for a home office or studio of not more than 500 square feet in size and that is entirely within a dwelling or accessory structure, provided that such Home Occupation is conducted in accordance with the other terms and limitations of the Community Documents and applicable law. A Lot may be used for other Home Occupations only upon the specific approval of the Association, which approval may be subject to such requirements and conditions as the Association deems appropriate, and such Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. No Home Occupation may: (a) involve highly combustible materials; (b) involve retail operations; (c) use equipment or tools where the dimensions, weight, or power rating are beyond normal household equipment or tools; (d) cause abnormal automotive or pedestrian traffic in the Community, (e) be, in the reasonable opinion of the Association, objectionable due to unsightliness, odor, dust, smoke, noise, glare, heat, vibration, or similar disturbances, (f) involve dispatch activities where employees meet in the Community and are sent to other locations; (g) be in violation of any applicable federal, state, or local law, rule, regulation, or ordinance; or (h) involve other uses that, in the reasonable opinion of the Association, would detract from the residential character of the Community. It shall not be a violation of this Section for an Owner to lease its Lot and the Improvements thereon in accordance with Section 3.2.

**3.2 Leasing.** In order to foster and maintain the stable, residential character of the Community and to preserve the Community values, no Owner may lease, in whole or part, such Owner’s Lot or the primary residential dwelling located thereon to any person or entity except as expressly permitted in this Section 3.2. For purposes of Section 3.1 and this Section 3.2, the term “lease” as applied to a Lot shall be deemed to include, without limitation, any rental, letting, subletting, demising, or assignment of any interest, estate or right of use, enjoyment, occupancy, or possession of any Lot (or portion thereof) to any entity or a person who is not a member of such Owner’s family. For purposes of Section 3.1 and this Section 3.2, a “member of such Owner’s family” shall be defined as any person who is related to the Owner by blood, legal marriage, or legal adoption. An Owner may lease its entire Lot to any tenant comprised of a single housekeeping unit so long as such lease is for a term of six (6) months or greater. For purposes of this Section, the term “single housekeeping unit” shall be one or more individuals (but no more than five (5) unrelated individuals) living together sharing household responsibilities and activities which may include, sharing expenses, chores, eating evening meals together, and participating in recreational activities and having close social, economic, and psychological commitments to each other. An Owner who leases a Lot shall be fully responsible for the conduct and activities of such Owner’s tenant as if such Owner were the tenant. Any Owner who leases a Lot shall comply with the Fair Housing Act to the extent it applies to such Owner.

**3.3 Residential Maintenance.** The Association shall be responsible for the maintenance of the exterior Improvements on the Townhouse Lots and Single Family Lots, except for those portions of

the Townhouse Lots and Single Family Lots designated to be maintained by a Townhouse Lot Owner or Single Family Lot Owner (as applicable) in the Community Rules, as may be established from time to time. In the event that any Lot Owner negligently, recklessly, or intentionally destroys all or any portion of an Improvement upon their Lot (including, without limitation, the Irrigation System and landscaping) the Association may, upon thirty (30) days' prior notice to the Owner of such Lot, enter upon such Owner's Lot and take such action as the Association deems necessary or appropriate to correct such condition, regardless of whether the Owner has opted to be removed from the Association's common landscape care and maintenance program. The Owner shall pay all amounts due for such work within ten (10) days after receipt of the Association's demand therefor and such amounts shall be a Limited Assessment against such Owner and such Lot. Each Owner hereby designates the Association as the Owner's agent for purposes of Idaho's mechanic's lien statute (i.e., Idaho Code § 45-501 *et seq.*), and each laborer, material supplier, or other person who performs work on such Owner's Lot at the direction of the Association shall have a mechanic's lien against the Owner's Lot for such work.

**3.4 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Community, including the Common Area or vacant Lots, and no odor shall be permitted to arise from any portion of the Community so as to render the Community or any portion thereof unsanitary, unsightly, offensive, or detrimental to the Community, or to any other property in the vicinity of the Community. No business or Home Occupation, no noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness, and no other nuisance shall be permitted to exist or operate upon any portion of the Community so as to be offensive or detrimental to the Community or to its occupants or residents or to other property in the vicinity, as determined by the Association, in its reasonable judgment, or in violation of any federal, state, or local law, rule, regulation, or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells, or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Committee), flashing lights or search lights shall be located, used, or placed on the Community without the Committee's approval. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Community. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers and in areas approved by the Committee. Trash cans and other trash receptacles, including recycling cans and receptacles, shall not be visible except between 5:00 AM and 8:00 PM on the day selected by the trash collector for trash and recycling pick-up. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Community. No basketball hoops or poles, whether permanent or moveable, are permitted within the Community except as the same are installed by the Association in the Common Areas. No major appliances (such as clothes washers, dryers, refrigerators, or freezers) may be kept, stored, or operated on any balcony, patio, porch, or other exterior area of any Improvement. Window air-conditioning units are not allowed. Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard, sheets, or similar materials.

**3.5 No Hazardous Activities.** No activities shall be conducted on the Community, and no Improvements shall be constructed in the Community which are or might be unsafe or hazardous to any Occupant.

**3.6 Insurance Rates.** Nothing shall be done or kept on any Lot which will increase the rate of or cancel any insurance on any other portion of the Community without the approval of the Owner of such other portion, nor shall anything be done or kept on the Community or a Lot which would result in

the cancellation of insurance on any portion of the Community owned or managed by the Association or which would be in violation of any law.

**3.7 Vehicles and Equipment.** All on-street parking shall be limited to those specific areas where on-street parking is not expressly prohibited by the governmental or quasi-governmental agencies with responsibility therefor. Vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, or pedestrian path unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Community Documents. No motor homes, motor coaches, recreational vehicles, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (defined as any vehicle which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer), oversized vehicles (defined as vehicles which are too high or too wide to clear the entrance of a standard residential garage door opening), dilapidated, unrepaired and unsightly vehicles, or similar equipment such as snow removal equipment, garden maintenance equipment, and/or any other unsightly equipment or machinery shall be placed upon any portion of the Community, including but not limited to streets, parking areas and driveways, unless the same are located on a concrete pad and enclosed by a structure concealing them from view in a manner approved by the Committee. To the extent possible, garage doors shall remain closed at all times. Electric, gas, or other fuel operated gardening, yard, or snow removal equipment shall only be operated from 7:00 a.m. to 9:00 p.m., subject to applicable law.

**3.8 Animals/Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that Household Pets (defined below) may be kept for an Owner's personal use provided that (a) such Household Pets are not bred or maintained for any commercial purpose, (b) no more than two (2) of any combination of domesticated dogs or domesticated cats may be kept on a Lot, and (c) any such Household Pets shall be properly restrained and controlled at any time they are within the Community. "**Household Pets**" shall mean generally recognized household pets that are customarily kept as indoor pets, such as domesticated dogs, domesticated cats, fish, birds (excluding hens and chickens), rodents, and non-poisonous reptiles. Household Pets shall not include livestock, poultry (including hens and chickens), swine, or waterfowl. Household Pets shall not be kept which unreasonably bother or constitute a nuisance to other Owners. Any Noisy Animal (defined below), any vicious animal, any non-domestic household pet or any animal which damages or destroys property shall be deemed a nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, pursuing or attacking other animals, including wildlife, and trespassing upon private property in such a manner as to damage the Community shall also be deemed a nuisance. A "**Noisy Animal**" means any animal which habitually or frequently disturbs the sleep, peace, or quiet of any Occupant. Owners shall contact the local animal control agency regarding Noisy Animals prior to complaining to the Board about such animals. Any costs associated with responding to complaints of a Noisy Animal or nuisance pet may be levied against an Owner as a Limited Assessment. The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the Household Pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of any Common Area, roads, or other property necessitated by such Household Pet.

**3.9 Assistance Animals.** Assistance animals are welcome in the Community in accordance with the Fair Housing Act (42 U.S.C. § 3601 *et seq.*, as amended) and the implementing regulations promulgated thereunder. An assistance animal shall be as defined in the Fair Housing Act, which is currently any animal needed by a disabled individual to have an equal opportunity to use and enjoy a dwelling. Examples of assistance animals are guide animals, animals that alert people who are deaf, animals that pull a wheelchair, animals that alert and protect a guest who is having a seizure, animals that remind an individual with mental illness to take prescribed medications, animals that calm an individual

with Post Traumatic Stress Disorder (PTSD) during an anxiety attack and animals that provide comfort or emotional support. Assistance animals in training are to be treated as assistance animals, even if the handler is not disabled. An assistance animal need not be licensed or certified by any government. Individuals with assistance animals shall not be treated less favorably than other residents or charged fees that are not charged to other residents without animals. The Association shall have the right, to the extent permitted under the Fair Housing Act, to prohibit or restrict any assistance animal that: (a) is out of control and the handler does not take effective action to control it; or (b) the animal's behavior poses a threat to the health or safety of others. Any individual who brings an assistance animal on the Community is financially and legally responsible for any injury or damage caused by such assistance animal, and for any clean-up of Common Areas, roads or other property necessitated by such assistance animal.

**3.10 Construction and Temporary Structures.** During the course of construction, no trailer houses or similar mobile units designed for overnight accommodations shall be parked on any street. No trailer, tent, shack, garage, barn, or other unattached structure erected on a Lot shall, at any time, be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No building of any kind shall be erected or maintained on a Lot prior to the construction of the Improvements thereon. The construction of Improvements shall be prosecuted diligently and continuously from the time of commencement thereof until such Improvements are fully completed and painted. The construction site shall be cleaned of trash and debris nightly and maintained in a non-nuisance condition.

**3.11 Drainage.** No Owner shall interfere with the established drainage pattern over any portion of the Community, unless adequate alternative provisions for proper drainage have first been approved by the Committee and properly installed. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Community is completed by Grantor, or that drainage which is shown on any plans approved by the Committee, which may include drainage from Common Area over any Lot in the Community. Any proposed changes to the drainage system must be approved by the City of Garden City. The drainage system is not to be modified from the drainage plan approved by the City of Garden City, as may be modified and amended from time to time.

**3.12 Grading.** Except as provided in Section 3.11, no Lot shall drain onto, over, across or under the Common Area or an adjacent Lot. The Owner of any Lot within the Community in which grading or other work has been performed pursuant to a grading plan approved by any public agency, or by the Committee, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public agency, and plantings and ground cover installed or completed thereon.

**3.13 Irrigation System.** The Association shall own, operate and maintain the Irrigation System for the Community, which system may be part of a joint irrigation system with neighboring properties. Each Owner shall connect its Lot(s) to the Irrigation System, if available, upon the earlier to occur of the issuance of a certificate of occupancy or nine (9) months after the issuance of a building permit to ensure that all required landscaping is maintained in a high quality and first class condition in accordance with the Community Documents. Each Owner acknowledges that Irrigation System water may be inadequate, particularly during low water years and seasons, and that each Owner is not guaranteed any specific amount of water for use on such Owner's Lot. No Owner shall modify any portion of the Irrigation System, including that portion of the Irrigation System on the Owner's Lot. The Association may promulgate rules and regulations, including water use schedules, controlling the allocation, distribution and flow of water among the various Lots. Each Owner hereby agrees to comply with such rules and regulations. In addition, each Owner acknowledges and agrees that it is the obligation

of Owner to determine the amount of water needed to irrigate Owner's homesite, and to ensure that the grading and drainage pattern established on such homesite is adequate to drain irrigation water away from the residential dwelling improvements located on such homesite. Water from the Irrigation System is unfit for human consumption. It contains untreated surface water that may contain disease causing organisms and/or other contaminants. Surface water can also contain agricultural chemicals that can be hazardous to health. Drinking the water from the Irrigation System will likely result in sickness, and in some cases, death or permanent disability. It is Owner's responsibility to ensure that all irrigation water faucets and risers are adequately marked and/or identified for Owner's safety. It is also Owner's responsibility to ensure that no cross-connections between the Irrigation System and the potable water system were made by previous Owner(s), if any

**3.14 Water Supply Systems.** No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Lot unless such system is approved by all government authorities having jurisdiction and designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of the Committee.

**3.15 Sewage Disposal Systems.** No individual sewage disposal system shall be used on the Community. Each Owner shall connect the appropriate facilities on such Owner's Lot to the public sewer system and pay all charges assessed thereon.

**3.16 Energy Devices, Outside.** No energy production devices or generators of any kind (such as solar energy devices or windmills) shall be constructed or maintained on any portion of the Community without the Committee's approval, except for mechanical equipment shown in the plans approved by the Committee. This Section shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

**3.17 Signs.** No more than one (1) sign shall be allowed on any Lot at the same time to advertise the Lot for sale or to advertise the Lot during the course of construction. No sign of any kind shall be displayed to the public view more than six (6) square feet in size and not more than three (3) feet above grade. The Association may erect and maintain identification signs, street signs, and other appropriate informational signs upon the Common Area or upon utility easements of a size and design approved by the Committee. No other signs shall be placed or maintained upon the Common Area. Directional and open house signs may be used during open house time periods only. All Lot signs must be removed within thirty (30) days after occupancy. Signs advertising a Lot for rent or lease are not allowed anywhere within the Community. Political signs are permitted for up to thirty (30) days prior to a primary or general election, and shall be removed within two (2) days after an election.

**3.18 Flags.** No flags, banners, windsocks or similar items are permitted within the Community except for a standard American flag that is no larger than three (3) feet in length.

**3.19 Antenna; Satellite Dishes.** All exterior radio antenna, television antenna, satellite dishes, or other such devices of any type shall be installed on the rear of the residential structure on the Lot, or within four (4) feet of the rear of the structure on any such structure's side walls. All such devices shall be screened by a fence, landscaping, or similar structures in accordance with the Design Requirements, or as otherwise required to ensure the safety of the residents of the Community, except that screening shall not be required where it would unreasonably delay installation or unreasonably increase the cost of installation, maintenance, or use thereof, or preclude the reception of an acceptable quality signal. No such device may be installed until after an Owner has received Committee approval for construction of residential Improvements on the Owner's Lot

**3.20 No Further Subdivision.** No Lot may be further subdivided unless the subdivision is approved by the Board, and then only in accordance with applicable law.

**3.21 Holiday Lights.** Winter holiday decorations and lighting displays are permitted starting on November 15 of each year and must be removed by January 15 of the following year. Any other holiday decorations or lighting displays (such as Halloween) are permitted up to fifteen (15) days prior to the holiday and must be removed within three (3) days after the holiday.

**3.22 Common Walls.** The Townhouse Lots shall be townhouses separated by common wall assemblies that meet the requirements for townhouses under applicable laws, including the International Residential Code (“**Common Walls**”). Each townhouse dwelling shall be constructed such that all of its structural elements are located entirely on its Townhouse Lot, including the portions of the Common Wall that such townhouse dwelling uses for structural and lateral support (provided, however, lateral ties are allowed as permitted by law). Each Owner shall be responsible for maintaining, repairing, and replacing that portion of the Common Wall that is located on such Owner’s Townhouse Lot such that it remains in good condition free of structural defects. If such Owner’s portion of the Common Wall is damaged by any cause (casualty or otherwise), then such Owner shall promptly restore such portion of the Common Wall in a safe and lawful condition. Subject to the Community Rules, there shall be reciprocal easements of ingress and egress for each Owner of a Townhouse Lot over the adjacent ten (10) feet of adjoining Townhouse Lots (but not inside of any townhouse dwelling) for reasonable and necessary maintenance and repair of the Common Walls.

**3.23 Window Treatments.** All window treatments that are visible from the exterior of a Lot shall not cause the exterior of the Lot to be unsightly, and the Association has the authority to adopt reasonable rules with respect thereto so as to provide for a consistent and aesthetically pleasing appearance.

**3.24 Consent to Development of Commercial Parcel.** Each Owner understands and agrees that the Parkway Station Community is planned to be a mixed use commercial and residential development, and that the mixed use portion of the community, to be located on the Commercial Parcel, is an integral part of the project. Neither the Association nor the Grantor makes any guaranties, representations or warranties as to the type of businesses that may be located on the Commercial Parcel. Each Owner expressly consents to the development of the Commercial Parcel in accordance with applicable development approvals obtained from the City of Garden City, as such approvals may be amended or changed from time to time, and each Owner waives its right to contest the development of the Commercial Parcel in any local or administrative proceeding.

#### **ARTICLE 4 ARCHITECTURAL REVIEW COMMITTEE**

**4.1 Creation.** The Board shall appoint no less than three (3) and no more than five (5) individuals to serve on the Architectural Review Committee (the “**Committee**”). The Board shall have the exclusive right to appoint, remove, and replace Committee members at any time with or without cause. If a vacancy on the Committee occurs and the Board has not yet appointed a replacement, the remaining Committee members may appoint an acting member to serve until the Board appoints a replacement. Committee members need not be an Owner.

**4.2 Design Requirements.** The Committee shall have the power and authority to adopt, amend, and repeal such rules and regulations as the Committee deems reasonable and appropriate to ensure that all Improvements in the Community conform and harmonize as to external design, quality and

type of construction, architectural character, materials, color, location in the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping, and other design or aesthetic considerations, and are in substantial compliance with the architectural schematics and landscape plan as approved by the Garden City Design Review Committee, as may be modified and amended from time to time (the “**Design Requirements**”). The Design Requirements may include rules and regulations to: (a) protect the special qualities of the Community; (b) encourage creative design; (c) provide general architectural, design and construction guidelines; (d) landscape guidelines (including a description of existing, natural conditions and vegetation); (e) submittal and review procedures; (f) fees and charges for review; and (g) penalties for noncompliance. The Design Requirements shall be drafted to conform to this Declaration, and in the event of a conflict between the Design Requirements and this Declaration, this Declaration shall govern. In the event that any provision of the Design Requirements are deemed ambiguous on any matter, the Committee’s interpretation of such provision shall be given deference so long as the interpretation is a permissible construction of such provision.

**4.3 Design Review Required.** No Owner shall construct, reconstruct, alter, install, or remove any Improvements except with the Committee’s approval. The Committee shall review, study, and either approve or reject the proposed Improvements in the Community, all in compliance with the Declaration and the Design Requirements. Except as otherwise set forth herein, any action or decision made by a majority of the Committee shall be the binding decision of the entire Committee. The Committee is authorized to retain the services of one or more consulting architects, landscape architects, engineers, designers, and other consultants to advise and assist the Committee on a single project, on a number of projects, or on a continuing basis. The actions of the Committee in the exercise of its discretion by its approval or disapproval of the proposed Improvements on the Community, or with respect to any other matter before it, shall be conclusive and binding on all interested parties. The Committee shall not direct or control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size, and height restrictions.

**4.4 Landscaping.** No fences, hedges, or retaining walls shall be installed or maintained on any Lot unless approved by the Committee. No Owner shall modify any portion of the Irrigation System, including that portion of the Irrigation System on the Owner’s Lot. Each Owner shall install landscaping on such Owner’s Lot in accordance with the Design Requirements. After installation, the landscaping on each Owner’s Lot is subject to the terms of Section 2.6.4. If fences are installed adjacent to Riverfront Park, they shall be wrought iron or other similar transparent material, with the exception of areas that are adjacent to rear or side yards of single-family homes which may use any material allowed by the City Code of Garden City to provide for the obscuring of stored items. Any significant changes to landscaping may require the prior approval of the Garden City Design Review Committee.

**4.5 Expenses.** All expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge reasonable fees for applications submitted to it for review, in amounts which may be established by the Committee from time-to-time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee’s operation, including reasonable payment to each member of the Committee for their services as provided herein. Each Owner, by submitting a design review application to the Committee, agrees to pay any additional reasonable fees based on costs incurred by the Committee in retaining consultants for the review and approval of the Owner’s application(s).

**4.6 Variances.** The Committee may authorize variances from any of the Design Requirements on a case-by-case basis when the Committee deems it desirable to address special circumstances, such as topography, natural obstructions, hardship, aesthetic considerations, or other

circumstances. The granting of a variance shall not waive any element of the Design Requirements for any purpose except as to the particular Lot and particular provision covered by the variance. Approval of a variance shall not affect the Owner's obligation to comply with this Declaration and applicable law.

**4.7 Committee Approvals.** The Committee's approval of any Improvement does not mean the Improvements will be permitted by applicable law, approved by the applicable governmental authorities or others. The Committee shall not be responsible in any way for any defects or errors in any plans or specifications submitted, revised, or approved, nor for any structural or other defects in any work done according to such plans and specifications.

**4.8 Immunity; Indemnification.** The Committee's members, agents and employees shall be immune from liability and entitled to indemnification as set forth in Section 2.9 hereof.

## **ARTICLE 5 ASSESSMENTS**

**5.1 Covenant to Pay Assessments.** Each Owner covenants and agrees to pay when due (without deduction, setoff, abatement, or counterclaim of any kind whatsoever) all Assessments or charges made against such Owner or such Owner's Lot pursuant to the Community Documents. Assessments against a Lot shall be a continuing lien on such Lot until paid, whether or not ownership of such Lot is transferred. Assessments against a Lot are also the personal obligation of the Owner of the Lot when the Assessment becomes due and payable. Such personal obligation shall remain with such Owner regardless of whether such Owner remains the owner of the Lot. Delinquent Assessments related to a Lot shall not pass to such Owner's successors in title unless expressly assumed by them. Such Assessments and charges, together with interest, costs, and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Community against which each such Assessment or charge is made.

**5.2 Regular Assessments.** Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs or the exercise of any of the Association's powers, duties, or obligations under the Community Documents (collectively, the "**Expenses**"). Without limiting the generality of the foregoing, the Expenses shall include:

5.2.1 The cost and expenses incurred by the Association for professional management of its business and affairs;

5.2.2 The costs and expenses incurred by the Association in the exercise of any of its duties and/or powers under Section 2.6 or Section 2.7, including but not limited to the procurement and maintenance of homeowners' insurance for the Single Family Lots and Townhouse Lots;

5.2.3 The costs and expenses of construction, improvement, protection, insurance, maintenance, repair, management, and operation of the Common Area and all Improvements located in other areas that are owned, managed, or maintained by the Association;

5.2.4 The costs and expenses of incurred by the Association for the exterior maintenance of the Townhouse Lots and Single Family Lots in accordance with Section 3.3;

5.2.5 An amount to fund adequate reserves for extraordinary operating expenses, contingent risks or liabilities (such as indemnification and defense expenses), capital repairs,



capital replacements and any other expenses for which the Board deems prudent to fund a reserve.

The Association may, in its discretion or as provided in the Community Documents, require payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. Each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the number of Lots owned by such Owner by the total number of Lots not then exempt from Assessment.

**5.3 Special Assessments.** If the Board determines that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses for such calendar year for any reason, the Board may levy a Special Assessment to collect the additional funds needed to meet the Expenses for such calendar year. Special Assessments shall be levied and paid upon the same basis as Regular Assessments; provided, however, the Association shall, in its discretion, set the schedule under which such Special Assessment will be paid, which schedule may be different than Regular Assessments.

**5.4 Limited Assessments.** Notwithstanding the above provisions with respect to Regular Assessments and Special Assessments, the Association may levy a Limited Assessment against a particular Owner: (a) for any Fines, fees, or charges levied against the Owner under the Community Documents; (b) to reimburse the Association for any costs incurred to bring the Owner's Lot or any Improvements thereon into compliance with the Community Documents; (c) to reimburse the Association for any damages caused by an Owner or its tenants, Occupants, guests, invitees, or contractors to any Common Area or Improvements owned or maintained by the Association; and (d) for the cost of providing any goods or services under the Community Documents that benefit such Owner or Owner's Lot, but less than all Owners or all Owners' Lots.

**5.5 Assessment Procedures.** The policies and procedures for Assessments (such as notices, payment methods, installment options, late fees, interest charges, collection fees, payments on sale of Lots, and other matters) shall be as set forth in the Bylaws or Community Rules; provided, however, the Association shall provide Owners with not less than thirty (30) days of prior notice before any Board meeting for the purpose of levying a Special Assessment or increasing the Regular Assessment by more than ten percent (10%). No Fine shall be imposed in violation of Idaho Code § 55-115. Once a Fine is imposed in accordance with Idaho Code § 55-115, the Association may levy a Limited Assessment against the Owner therefor in accordance with this Section 5.5. In the event of an amendment to Idaho Code § 55-115, this Declaration shall deemed automatically amended to reflect the same to the extent necessary to ensure compliance therewith.

### **5.6 Assessment Liens.**

**5.6.1 Creation.** There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to the Community Documents, together with interest thereon at the legal rate in Idaho and all collection costs and attorneys' fees which may be paid or incurred by the Association in connection therewith. Upon default of any Owner in the payment of any Assessment related to a Lot, the Association may record a claim of lien against such Lot in accordance with applicable law (currently, Idaho Code § 45-810). Each delinquency shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. Such claim of lien may be foreclosed in any manner permitted by applicable law. Upon payment of such lien in full, the Association shall prepare and record a release of such claim of lien.

5.6.2 *Subordination to First Trust Deeds.* Upon recordation of a claim of lien for delinquent Assessments in accordance with applicable law, such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the claim of lien except for: (a) liens which, by law, would be superior thereto; and (b) the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Section 5.6.2, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

**5.7 Exemptions.** All Common Area and any Lots owned by the Association shall be exempt from Assessments. Grantor shall be exempt from Assessments as set forth in Section 10.5.

## **ARTICLE 6 RIGHTS TO COMMON AREAS**

**6.1 Use of Common Area.** Every Owner shall have a right to use the Common Area as set forth in this Declaration subject to:

6.1.1 The Community Documents;

6.1.2 The right of the Association to suspend the right of an Owner to use the Common Area for any period during which any Assessment or charge against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Community Rules; and

6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility or other party for such purposes and subject to such conditions as may be permitted by the Community Documents.

**6.2 Delegation of Right to Use.** An Owner may delegate its right to use the Common Area to the Occupants of such Owner's Lot; provided, however, each Owner shall be liable to the Association for any damage to any Common Area sustained by reason of the negligence or willful misconduct of such Occupants. The cost of correcting such damage shall be a Limited Assessment against such Owner's Lot.

**6.3 Association's Responsibility.** The Association shall maintain and keep the Common Area and any other Improvements owned, managed, or maintained by the Association in good condition and repair.

## **ARTICLE 7 EASEMENTS**

**7.1 Recorded Easements.** The Community shall be subject to any easements that are established or of record, including, without limitation, (i) easements set forth on the Plat, (ii) the Common Driveway and Shared Pathway easements described in Article 8, and (iii) a License and Easement Agreement by and between Fairview Acres Lateral Water Users Association, Inc, and Grantor, recorded as Instrument No. 2017-029059 in the official records of Ada County, Idaho. The Common Driveway shall also be subject to that certain Declaration of Easement made by the Association for the benefit of the

properties bounded by East 42<sup>nd</sup> Street, East 43<sup>rd</sup> Street and North Adams Street and generally to the west, north and south of the Community, for the limited purpose of ingress and egress by the tenants, licensees, invitees, employees and agents of those properties to and from those properties to East 42<sup>nd</sup> Street.

**7.2 Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between adjacent Lots and between Lots and adjacent portions of the Common Area due to the unwillful placement or settling or shifting of the Improvements (including Common Walls) constructed, reconstructed, or altered in accordance with the Community Documents. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling, or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith acts or omissions of an Owner. If an Improvement is partially or totally destroyed, such Improvement may be repaired or rebuilt within such minor encroachments that existed prior to the encroachment and may be reconstructed pursuant to the easement granted by this Section 7.2.

**7.3 Easements of Access.** There shall be reciprocal appurtenant easements of ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services and for necessary maintenance and repair of any Improvement, such as fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, and landscaping.

**7.4 Improvements in Drainage and Utility Easements.** No Owner shall construct or alter any Improvements in any drainage or utility easement areas which would interfere with the easement being used for its intended purpose. Such Owners may install and maintain Improvements on such easement areas as permitted by the Community Documents so long as such Improvements are permitted by the terms of the easement and such Improvements will not interfere with or prevent the easement areas from being used for their intended purposes. No lawful user of the easement shall incur any liability to such Owner for the damage or destruction of such Improvements.

**7.5 Easements Deemed Created.** All conveyances of Lots made after the date of the recording of the Declaration, whether by Grantor or otherwise, shall be construed to grant and reserve the easements contained in this Article 7, even though no specific reference to such easements or to this Article 7 appears in the conveyance instrument.

**7.6 Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies to enter upon the Community in the proper performance of their duties.

**7.7 Maintenance Easement.** An easement is hereby reserved to the Association upon, across, over, in and under the Lots and a right to make such use of the Lots as it may deem necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Community Documents, including the right to enter upon any Lot for the purpose of performing maintenance to sidewalks, pathways, landscaping, the Drainage System, the Irrigation System, and the exterior of Improvements to such Lot. Nothing herein shall relieve each Owner's obligation to maintain Improvements on such Owner's Lot. In addition, an easement is hereby reserved to the Association upon, across, over, in and under the Lots and a right to make such use of the Lots as it may deem necessary or appropriate to make emergency repairs or undertake regular maintenance of public utility facilities or devices, or other service lines, facilities and equipment which are a part of the as-built construction plans for the Community (including, but not limited to, electrical transformers and meter banks).

**7.8 Sanitary Sewer and Water System Easements.** There is hereby granted to the City of Garden City a perpetual, non-exclusive easement for the purpose of accessing, maintaining, repairing, and replacing those portions of the sanitary sewer system and water system for the Community that runs on, over, across, under, or through the Community; provided, however, in the event the City of Garden City disturbs such easement area, the City of Garden City shall promptly restore the easement area (including without limitation the paving, concrete, grass, Irrigation System, and landscaping) to the condition existing immediately prior to such disturbance. The Association shall restore any improvements or landscaping (if any) that is not the obligation of the City of Garden City to restore.

## **ARTICLE 8 COMMON DRIVEWAY AND SHARED PATHWAY**

**8.1 Common Driveway.** There is hereby established a perpetual ingress/egress easement over, under, upon and through Lot 1 in Block 1 of the Plat (the “**Common Driveway**”) as a common driveway for vehicular and pedestrian ingress and egress to the Commercial Parcel and the Lots for the benefit of (i) the Commercial Parcel owner(s) and the Owners of the Lots (collectively, the “**Common Driveway Owners**”), (ii) the tenants, employees, invitees and licensees of such Common Driveway Owners; (iii) the employees, invitees and licensees of any of the foregoing, and (iv) any other person who uses the Common Driveway for access to and from a Lot or the Commercial Parcel, with a Common Driveway Owner’s express or implied permission, whether granted directly or indirectly (collectively, the “**Common Driveway Users**”). The Common Driveway shall also be for the installation, use, operation, maintenance, repair and replacement of utility services, including without limitation, sanitary sewer, domestic water, irrigation water, drainage, gas, electricity, telephone, cable, fiber-optics and other utilities, and emergency vehicle access. All Common Driveway Users shall take access to the public street through the Common Driveway; provided that Common Driveway Users as to the Commercial Parcel may take access to the public street through the Common Driveway or through other means of access to and from the Commercial Parcel as may be provided on the Plat.

**8.2 Shared Pathway.** There is hereby established a perpetual, non-exclusive easement on, over, across, under and through Lots 25, 36, and 45 in Block 1 of the Plat (the “**Shared Pathway**”) for the purpose of providing pedestrian and non-vehicular ingress and egress to Riverside Park (which abuts the northern edge of the Community) for the benefit of (i) the Commercial Parcel owner(s) and the Owners of the Lots (collectively, the “**Shared Pathway Owners**”), (ii) the tenants, employees, invitees and licensees of the Shared Pathway Owners; (iii) the employees, invitees and licensees of any of the foregoing, and (iv) any other person who uses the Shared Pathway for access to and from the Riverside Park with a Shared Pathway Owner’s express or implied permission, whether granted directly or indirectly (collectively, the “**Shared Pathway Users**”). The Shared Pathway shall also be for the installation, use, operation, maintenance, repair and replacement of utility services, including without limitation, sanitary sewer, domestic water, irrigation water, drainage, gas, electricity, telephone, cable, fiber-optics and other utilities, and emergency vehicle access.

**8.3 Operation and Maintenance** The Association shall hire a professional management company to operate, maintain, repair and replace the Common Driveway and Shared Pathway (collectively, the “**Shared Areas**”) in a first class, clean and orderly condition, in a manner consistent with first class commercial properties in Ada County, and in compliance with all governmental requirements (including the Garden City Municipal Code or its successor) and the terms of this Declaration, including but not limited to:

- (a) Maintaining (including without limitation snow and ice removal), repairing, replacing, striping, striping, seal coating, and cleaning the Shared Areas (including without limitation all paved and drainage areas) to the extent necessary to keep the Shared Areas in a first-class, clean, and orderly condition (consistent with first class commercial properties in Ada County), and keeping the paved surfaces in a level, smooth, and evenly-covered condition with the type of surfacing material originally installed or such substitute material as shall in all respects be equal or superior in quality, use, and durability;
- (b) Maintaining, repairing, and replacing all utilities within the Shared Areas except to the extent such maintenance, repair, and replacement obligations are the obligation of the utility providers;
- (c) Maintaining, repairing, and replacing all landscaping (if any) within the Shared Areas;
- (d) Removing all papers, debris, filth, and refuse, and thoroughly sweeping, to the extent reasonably necessary to keep the Shared Areas in a clean and orderly condition;
- (e) Operating, maintaining, repairing, and replacing all signs, lighting (including the cost of electricity), directional signage, speed calming devices, and any other improvements in the Shared Areas;
- (f) Maintaining, repairing and replacing (as necessary) the storm water disposal system located in Shared Areas; and
- (g) If deemed necessary or appropriate: (a) maintain casualty insurance for all improvements in the Shared Areas in an amount not less than the replacement cost thereof; and (b) providing public liability insurance for the Shared Areas in an amount not less than \$1,000,000 per occurrence and annual aggregate.

The Association may promulgate such reasonable and nondiscriminatory rules with respect to the Shared Areas as it deems necessary from time-to-time; provided, however, the Association may not establish any rule which would unreasonably interfere with the normal, customary and legal use of the Commercial Parcel. Each Common Driveway Owner and Shared Pathway Owner (collectively, the “**Shared Areas Owners**”) shall comply with such rules and strictly enforce such rules on its respective Common Driveway Users and/or Shared Pathway Users (collectively, the “**Shared Area Users**”), as applicable.

**8.4 Common Expenses.** Any and all expenses incurred by the Association in performing its obligations under this Declaration with respect to the Shared Areas, including the operation, maintenance, repair and replacement of the Shared Areas pursuant to Section 8.3, shall be referred to herein as “**Common Expenses**.” The Common Expenses shall also include (a) the Association’s reasonable estimate for expenses to be incurred (it being understood that the Association is not required to extend any credit for Common Expenses, but may collect an estimate for Common Expenses prior to incurring such Common Expenses) and (b) reasonable reserves for emergency and capital Common Expenses.

8.4.1 The Common Expenses incurred by the Association with respect to the Common Driveway shall be allocated: (a) 12.5% to the Commercial Parcel owner(s); and (b) 87.5% to the Association; provided, however, each Common Driveway Owner shall be solely responsible for paying the entirety of any Common Expenses caused by the negligent acts or omission of that Common Driveway Owner or its respective Common Driveway User.

8.4.2 The Common Expenses incurred by the Association with respect to the Shared Pathway shall be allocated 100% to the Association; provided, however, each Shared Pathway Owner shall be solely responsible for paying the entirety of any Common Expense caused by the negligent acts or omissions of that Shared Pathway Owner or its respective Shared Pathway User.

8.4.3 In the event that the Association fails to maintain a Shared Area in accordance with the requirements of Section 8.3, in the judgment of the Commercial Parcel owner(s), the Commercial Parcel owner(s) may, upon giving the Association thirty (30) days' prior written notice and opportunity to cure, either (i) take such steps so as to cause the Association to perform its obligations hereunder with respect to such Shared Area, or (ii) enter upon such Shared Area and take such action as the Commercial Parcel owner(s) deems necessary or appropriate to correct such condition. In such event, the Commercial Parcel owner(s) shall submit to the Association an invoice for reimbursement for reasonable expenses incurred in connection with such corrective action, and the Association shall be obligated to promptly pay its share of such expense in accordance with the allocations of Section 8.4.1 or Section 8.4.2 above, as applicable. The Commercial Parcel owner(s) may record and foreclose on a lien against the Lots for unpaid expenses under this Section 8.4.3 in accordance with applicable law.

**8.5 Construction.** Except in the case of emergency maintenance or repairs, or as otherwise provided in this Declaration, no Shared Area User shall install, construct, remove, maintain, or repair any improvement or utility in a Shared Area without the Association's prior written consent. If such prior written consent is granted, such Shared Area User shall conduct such activity so as to minimize any disruption to other Shared Area Users' use of the Shared Area. Except in the event of an emergency, no Shared Area User shall block reasonable ingress or egress through a Shared Area unless a reasonable alternate route is provided (with the Association's prior written approval). Such Shared Area User shall, at its sole cost and expense, restore (or cause to be restored) any displacement, damage or disfigurement to the Shared Area as necessary to restore it to the same condition existing prior to such activities. If a Shared Area User fails to immediately restore the Shared Area, then the Association shall have the right to take or complete any action it deems appropriate to cure or remedy such failure. The defaulting Shared Area User shall reimburse the Association for all costs and expenses incurred in remedying or curing such failure.

## ARTICLE 9 RESOLUTION OF DISPUTES

**9.1 Agreement to Avoid Litigation.** Grantor, the Association, and the Owners agree that it is in their mutual best interests to provide a fair, impartial, and expeditious procedure for the resolution of disputes related to the Community Documents instead of costly, lengthy, and unpredictable litigation. Accordingly, Grantor, the Association (including its officers, directors and committee members), each Owner, and any party claiming a right or interest under the Community Documents (each, a “**Bound Party**”) agree to encourage the efficient resolution of disputes within the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Community Documents or the rights, obligations, and duties of any Bound Party under the Community Documents (“**Claims**”) shall be subject to the provisions of Section 9.3 unless exempt under Section 9.2. All Claims shall be subject to resolution pursuant to this Article 9 as a condition precedent to the institution or continuation of any legal or equitable proceeding; provided, however, any Bound Party may proceed in accordance with applicable law to comply with any notice or filing deadlines prior to resolution of the Claim.

**9.2 Exemptions.** The following Claims shall not be subject to this Article 9 unless all Bound Parties thereto agree to submit such Claim to these dispute resolution procedures:

9.2.1 Any Claim by the Association against any Bound Party to enforce the obligation to pay any Assessment to the Association under the Community Documents;

9.2.2 Any Claim by Grantor or the Association to obtain injunction or equitable relief to enforce any provision of the Community Documents;

9.2.3 Any Claim between Owners where the Grantor or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Community Documents;

9.2.4 Any Claim in which any indispensable party is not a Bound Party;

9.2.5 Any Claim against a Released Party that would be barred by Section 2.9;

9.2.6 Any Claim which otherwise would be barred by any applicable law (such as, for example, the applicable statute of limitations); and

9.2.7 Any Claim arising out of or relating to the interpretation, application, or enforcement of any purchase, sale, or construction agreement with Grantor or any builder related to the construction of Improvements within the Community, or the rights, obligations, and duties of any Bound Party under such agreements, it being understood that applicable law and the provisions of such agreements shall control the resolution of any claims or disputes related thereto.

### **9.3 Dispute Resolution.**

9.3.1 Direct Discussions. Any Bound Party having a Claim against any other Bound Party shall notify such party(ies) of the Claim in writing, stating plainly and concisely the following: (a) the nature of the Claim; (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (c) the basic facts supporting the allegations in the Claim; (d) the other persons involved in the Claim or with personal knowledge of the facts alleged; and (e) the claimant’s proposed remedy, including the specific monetary amounts (if any) demanded. The

Bound Parties to the Claim shall make reasonable efforts to meet in person to resolve the Claim by good faith discussions and negotiations – it being understood that the best opportunity to achieve a fair and satisfactory resolution to a Claim is ordinarily through early discussions and negotiations held in good faith.

9.3.2 Dispute Resolution. If the Bound Parties to a Claim are unable to resolve the Claim through direct discussions within a reasonable time, either Bound Party may submit the Claim to the Board for assistance in resolving the Claim. In such event, the Board may, by notice to each Bound Party to the Claim within thirty (30) days of its receipt of a request for assistance:

9.3.2.1 Order the Bound Parties to continue direct discussions and negotiations for a period of up to thirty (30) days. If the Claim is not resolved in such period, any Bound Party may request the Board's assistance to resolve the Claim;

9.3.2.2 Order the Bound Parties to mediate the Claim with an independent real estate attorney, real estate professional, or judge selected by the Association. The mediator shall set the rules of the mediation. Any party to the mediation can invite additional parties to the mediation if the presence of such additional party is required for a complete resolution of any Claim. The parties shall share the mediator's fee and any filing fees equally. Unless otherwise agreed, the mediation shall be held within thirty (30) days of the order for mediation and shall be held in a neutral location near the Community selected by the mediator. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the mediation does not resolve the Claim, the Bound Parties may proceed to litigation of the Claim in any court of competent jurisdiction;

9.3.2.3 Order the Bound Parties to settle the Claim through arbitration by a single arbitrator conducted in accordance with the Idaho Uniform Arbitration Act (Idaho Code, Title 7, Chapter 9) except as otherwise provided herein. The arbitrator shall be any independent real estate attorney or judge appointed by the Association. The arbitrator shall set the rules of the arbitration. The arbitrator may, in its discretion, order parties to produce documents relevant to the dispute and may order written discovery and depositions (but with care to avoid burdensome discovery or depositions). The arbitrator shall endeavor to hold the arbitration at mutually convenient times and locations; provided, however, the arbitrator shall endeavor to complete the arbitration within forty-five (45) days after appointment of the arbitrator. The parties shall bear their own attorneys' fees (if any) and share the arbitrator's fees equally; provided, however, the arbitrator may award costs, arbitrator's fees, and attorneys' fees to the substantially prevailing party. The arbitrator's award shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof;

9.3.2.4 If the Claim is within the jurisdiction of the Small Claims Department of the Magistrate Division (currently, monetary claims for \$5,000 or less), order a Bound Parties to file such Claim exclusively therein; or

9.3.2.5 Elect to exempt the Claim from this Article 9, at which time the Bound Parties are free to exercise any right or remedy in accordance with applicable law.



9.3.3 If the Board fails to notify the Bound Parties within thirty (30) days of its receipt of a request for assistance, the Board shall be deemed to have elected to exempt the Claim from this Article 9.

9.3.4 If the Bound Parties resolve any Claim through mediation or arbitration pursuant to this Article 9 and any Bound Party thereafter fails to abide by the terms of such resolution (i.e., settlement agreement or arbitrator's award), then any other Bound Party may take any legal or other action to enforce such settlement agreement or arbitrator's award without the need to comply again with the procedures set forth in this Article 9. In such event, the Bound Party taking action to enforce the resolution shall be entitled to recover from any non-complying Bound Party all costs and attorneys' fees reasonably incurred in such enforcement.

## **ARTICLE 10 INITIAL DEVELOPMENT PERIOD**

**10.1 Initial Development Period.** The "Initial Development Period" shall commence on Effective Date of this Declaration and terminate on the day Grantor (or the assignee of Grantor's rights hereunder) no longer owns any Lots (including Lots annexed into the Community in the future) or on the day Grantor terminates its rights by notice to the Association.

**10.2 Community Management.** Each Owner recognizes that the Community will require a high level of knowledge, effort, judgment, diligence, and attention during the Initial Development Period, and that level is beyond what can reasonably be expected from Community volunteers. Accordingly, each Owner agrees that it is in the best interest of the Community for Grantor to have full management authority for the Community during the Initial Development Period, including the sole and exclusive right to appoint remove and replace directors of the Board and members of the Committee at anytime and from time-to-time in Grantor's sole discretion. In furtherance thereof, each Owner hereby appoints Grantor as its proxy with respect to its membership interest in the Association (including voting rights), which proxy shall be coupled with Grantor's interest in the Community and shall be irrevocable during the Initial Development Period.

**10.3 General Exemptions.** Grantor may, from time-to-time in Grantor's discretion and without first seeking or obtaining the approval of Association or Committee:

10.3.1 Make modifications or Improvements on any Lot or the Common Area as Grantor deems appropriate, including the further subdivision of the Community or other changes as Grantor desires;

10.3.2 Place or authorize signs of such size, design, and number as Grantor deems appropriate for the initial development of the Community, including signs to identify the Community, display information pertaining to the Community, display information or instructions to builders, to advertise Lots and homes for sale (including sale events and open houses), and to advertise of Community elements or events;

10.3.3 Authorize any developer or contractor to use any Lot as a model home, sales office, construction office, or construction storage yard;

10.3.4 Place or authorize portable or temporary structures upon any Lot or the Common Area; and

10.3.5 Establish or reserve such additional covenants, conditions, restrictions or easements on any Lot prior to conveyance thereof as Grantor deems necessary or convenient for the development of the Lot or the Community.

**10.4 Water Rights Appurtenant to Community Lands.** Grantor owns certain water rights which are appurtenant to the Community and which may be utilized in the Irrigation System. Grantor hereby reserves unto itself any and all water rights appurtenant to the Community, and Owners of any and all Lots accordingly shall have no right, title, or interest in any of said water or water rights. Grantor shall transfer to the Association sufficient water rights to enable the Association to operate the Irrigation System.

**10.5 Grantor's Exception from Assessments.** If Grantor owns any Lots during the first two (2) years following the date assessments are first assessed against the Owners of Lots, Grantor shall not be assessed any Regular Assessments or Special Assessments for any Lots owned by Grantor. If Grantor owns at least one Lot during such period, Grantor shall pay the shortfall, if any, in the Operating Expenses of the Association; provided, however, such obligation shall not exceed the amount that the Regular Assessments and Special Assessments that Grantor would otherwise be assessed as an Owner multiplied by the total number of Lots owned by Grantor on the date Regular Assessments or Special Assessments are assessed against the Owners of Lots. After the foregoing period, Grantor shall be assessed Regular Assessments and Special Assessments for each Lot owned by Grantor.

**10.6 Assignment of Grantor's Rights.** Grantor may assign any or all of its rights under the Community Documents to any person or entity in a written instrument that contains the assignee's acceptance of such assignment and agreement to assume any of Grantor's obligations pertaining to the rights assigned, which acceptance and assumption shall be effective upon the recordation of such written instrument recorded in the real property records of Ada County, Idaho. Grantor shall promptly provide a copy of the recorded instrument to the Association and, thereupon, be released from Grantor's obligations pertaining to the rights assigned.

## **ARTICLE 11 TERM**

The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The remainder of this Declaration shall run until December 31, 2040 and thereafter shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument signed and acknowledged by the president and secretary of the Association certifying and attesting that such instrument has been approved by the vote or written consent of Owners representing sixty-five percent (65%) or more of the total voting power in the Association and such written instrument is recorded with the Ada County Recorder's Office.

## **ARTICLE 12 ANNEXATION AND DEANNEXATION**

Grantor may annex additional lands into the Community from time-to-time by recording a supplement to this Declaration declaring such additional lands to be part of the Community and subject to this Declaration. Such supplement may add or delete covenants, conditions, restrictions, and easements applicable to the annexed lands as Grantor may deem appropriate, so long as such additions or deletions do not place an undue burden on the Association or the Community. Upon annexation, Owners within the annexed lands shall become Owners in the Community on equal footing with the then-current Owners in the Community, and shall have the same rights, privileges, and obligations (except as may otherwise be

set forth in the annexing supplement). Grantor shall have the right to de-annex any property owned by Grantor from the Community upon Grantor's recordation of a supplement identifying the de-annexed lands and declaring that such lands shall no longer be subject to this Declaration.

### **ARTICLE 13 AMENDMENTS**

**13.1 Prior to First Deed.** Except as otherwise provided in this Article 13, until the recordation of Grantor's first deed to a Lot, Grantor may amend or terminate this Declaration by recording a written instrument setting forth such amendment or termination.

**13.2 By Association.** Except as otherwise provided in this Article 13 and subject to Grantor's rights during the Initial Development Period as provided in Article 10, any amendment to or termination of this Declaration shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment or supplement has been approved by the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association. Any amendment with respect to the provisions of Article 8 shall require the prior consent of the Commercial Parcel owner(s).

**13.3 Lender Requirements.** Because the availability of government supported financing is key to the success of the Community and to the ability of Owners to finance and refinance their homes, Grantor shall have the right, power, and authority during the Initial Development Period and the Association shall have the right thereafter, to amend this Declaration or any of the Community Documents by written instrument, at any time and at its sole discretion, as may be reasonably necessary to comply with any requirements or conditions necessary to take full advantage of, or secure the full availability of, any financing programs offered or supported by the organizations identified in Section 2.7.6; provided, however, nothing herein shall authorize an amendment in violation of Section 13.6 as otherwise provided in this Article 13.

**13.4 Government Requirements.** Because compliance with governmental requirements, as they change from time-to-time, is key to the success of the Community, Grantor shall have the right, power, and authority during the Initial Development Period and the Association shall have the right thereafter, to amend this Declaration or any of the Community Documents by written instrument, at any time and at its sole discretion, as it may deem reasonably necessary to comply with any governmental requirement that is or may become applicable to the Community; provided, however, nothing herein shall authorize an amendment in violation of Section 12.6.

**13.5 Effect of Amendment; Mortgage Protection.** Any supplement, amendment, or termination of this Declaration shall be effective upon its recordation with the Ada County Recorder's Office and shall be binding on and effective as to all Owners, whether or not such Owners voted for or consented to such supplement, amendment, or termination. Any supplement or amendment may add to and increase the covenants, conditions, restrictions, and easements applicable to the Community; provided, however, notwithstanding any other provision of this Declaration, no supplement or amendment shall operate to defeat or render invalid the rights of the beneficiary under any Mortgage made in good faith and for value, and recorded prior to the recordation of such amendment or supplement, provided that after foreclosure of any such Mortgage, such Lot shall remain subject to this Declaration as supplemented or amended.

**13.6 No Amendment of Required Provisions.** Unless the express written and recorded consent of the City of Garden City has been obtained, this Declaration may not be amended,

supplemented, or terminated with respect to the following: (a) any provision of this Declaration which has been required by the City of Garden City in its approval of the Community; (b) any provision of this Declaration which affects, recognizes, conveys, and/or confers upon the City of Garden City any easement, right, or power; or (c) any material provisions relating to easements, access, operation, repair, maintenance, or replacement of public works systems.

#### **ARTICLE 14 NOTICES**

Any notices, consents, approvals, or other communications required or permitted by this Declaration shall be in writing and may be delivered personally, by electronic mail, or by U.S. mail. Each Owner shall be responsible for ensuring that the Association has such Owner's then-current mailing address, physical address, electronic mail address, and telephone numbers. Each Owner shall be deemed to have received any notice when such notice is actually received by such Owner (regardless of the method of delivery) or when such notice is delivered to any of the addresses then currently on file with the Association. Notices delivered by U.S. Mail shall not be deemed received until three (3) business days after depositing in the U.S. Mail. The Association shall provide the notices addresses of all Owners to Grantor or any other Owner promptly upon request.

#### **ARTICLE 15 MISCELLANEOUS**

**15.1 Interpretation.** This Declaration shall be liberally construed to effectuate its purpose of protecting, enhancing, and preserving the value, amenities, desirability, and attractiveness of the Community and to ensure a well-integrated, high quality development. As used herein, the word "including" shall be deemed to be followed by "but not limited to" unless otherwise indicated. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof. *In the event that any provision of this Declaration is deemed ambiguous on any matter, the Board's interpretation such provision shall be given deference so long as the interpretation is a permissible construction of such provision.*

**15.2 Governing Law.** This Declaration shall be governed by the laws of the State of Idaho without regard to its conflicts of law principles. Any legal action to interpret or enforce this Declaration shall be filed exclusively in the state or federal courts situated in Ada County, Idaho.

**15.3 Severability.** Each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

**15.4 Entire Agreement.** This Declaration and the other agreements described herein (including without limitation the Community Documents) together constitute the sole agreement between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements with respect to the subject matter hereof. To the extent there is a conflict between the terms of this Declaration and the Community Documents, this Declaration shall control.

**15.5 No Third Party Beneficiaries.** Except as otherwise set forth herein, this Declaration and each and every provision herein is for the exclusive benefit of Grantor, the Association and the Owners and not for the benefit of any third party.

**15.6 No Waiver.** No waiver by the Association hereunder may be oral. No waiver, forbearance, delay, indulgence or failure by the Association to enforce any of the provisions of this Declaration shall in any way prejudice or limit the Association's right thereafter to enforce or compel strict compliance with the provision hereof, any course of dealing or custom of the trade notwithstanding. No delay or omission on the part of the Association shall operate as a waiver thereof, nor shall any waiver by the Association of any breach of this Declaration operate as a waiver of any subsequent or continuing breach of this Declaration.

**15.7 Enforcement; Remedies.** The failure of any Owner or Occupant to comply with applicable law pertaining to the ownership, use, or occupancy of any Lot or the Community, or to comply with any provision of the Community Documents, is hereby declared a nuisance and gives rise to a cause of action (subject to Article 9) in Grantor, the Association (on its own and/or on behalf of any consenting Owners) and any affected Owner for recovery of damages or for negative or affirmative injunctive relief or both to enforce the provisions hereof only as set forth in this Declaration. Each remedy provided herein is cumulative and not exclusive. If any party initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the substantially prevailing party shall be entitled to recover any costs and attorneys' fees reasonably incurred therein.

**15.8 Consents and Approvals.** Any consents or approvals required or contemplated herein must be in a writing executed by the party whose consent or approval is required or contemplated. No Owner unreasonably withhold, condition, or delay its consent or approval of any matter requested by Grantor, the Association, the Committee or another Owner.

**15.9 Limited License Agreement.** Grantor is entering into a licensing agreement with the Association as of the date hereof, pursuant to which Grantor will grant to the Association a limited license to use Seller's right, title and interest in and to certain trademarks, service marks, brands, promotional materials, logos and the like for "Parkway Station" in connection with the Association's governance of the Community, on the terms set forth in the licensing agreement.

*[ end of text; signature page follows ]*

DATED effective as of the Effective Date

GRANTOR:

PARKWAY STATION, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Name: Bill Truax  
Its: Manager

STATE OF IDAHO     )  
                                  )ss.  
County of Ada        )

On this 11<sup>th</sup> day of April, 2018, before me a Notary Public, personally appeared Bill Truax, known or identified to me to be the manager of Parkway Station, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Sharon Neupert  
NOTARY PUBLIC FOR IDAHO  
Residing at BOISE ID  
My Commission Expires FEB 22, 2019