



DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIDGE TOWNHOMES SUBDIVISION No. 2

THIS DECLARATION is made and effective as of the 24th day of March, 2022, by Surfer's Paradise Two, LLC, an Idaho Limited Liability Company ("Grantor").

ARTICLE I
RECITALS

1. **Property Covered.** The real property subject to this Declaration of Covenants, Conditions and Restrictions for Bridge Townhomes Subdivision No. 2 ("Declaration") is Lot 1, Block 1, Waterfront District Subdivision, Garden City, Ada County, Idaho, as the same is bounded and described in the plat of said Waterfront District Subdivision, recorded in the Office of the Recorder, Ada County, Idaho, now subdivided as Bridge Townhomes Subdivision, Garden City, Ada County, Idaho, as the same is bounded and described in the plat of same, recorded in the Office of the Recorder, Ada County, Idaho, attached and incorporated herein by reference as Exhibit A.
2. **Planned Unit Development.** The Bridge Townhomes Subdivision No. 2 is a subdivision of sixteen (16) residential Building Lots and common area in Garden City's Mixed Use zoning district, approved as a Planned Unit Development ("PUD") and granted final plat approval by Garden City Council (In the Matter of: Bridge Townhomes Subdivision II Final Plat, SUB FY 2017-5, "Findings of Fact and Conclusions", dated October 9, 2017, hereby incorporated herein by reference). The provisions of this Declaration are intended to be generally compatible with the PUD regulatory framework, but as non-governmental, private provisions, this Declaration has a separate origin, duration, administration and amendment mechanism, among other things. The restrictions contained in this Declaration may be more or less restrictive than restrictions imposed by zoning, land use or other governmental regulatory requirements.
3. **Purpose.** The purpose of these provisions is to establish a primarily residential neighborhood along the Boise River and Greenbelt, and protect the primarily residential quality, while at the same time acknowledging and accommodating re-development and variety of uses in the surrounding area, including: the pedestrian and bicycle traffic associated with the proximity of the Greenbelt, the kayak and surfing wave and other recreational use in the Boise River, Esther Simplot public park, the footbridge connecting Garden City and Boise, and the specialized small commercial uses tied to those features. Accordingly, some live-work use is permitted and home office and accessory dwellings are permitted in some residences. Motor vehicle access is by way of a common driveway. All of the Building Lots take access to the common driveway, and

function as a means to ensure the proper maintenance, use, repair and reconstruction of the common landscaping and common driveway. Finally, as townhouses, all Building Lots share at least one exterior wall and roof edge which, while structurally independent and not a common wall, immediately abuts the wall of a neighboring Building Lot, on the property line and without setback. All Building Lots are to be improved according to a single harmonious architectural design and constructed with coordinated standards and finish. Accordingly, provisions of this Declaration are intended to require maintenance that meets a uniform standard, and to protect the architectural integrity and appearance and value of the Owner's homes.

4. **Supplemental Declaration.** Grantor reserves the right to combine this Association with any abutting or adjacent real property by filing of a Supplemental Declaration.

ARTICLE II DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance its value, desirability and attractiveness. The provisions set forth herein shall run with the land constituting the Property and with each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein, whether held or used for residential or commercial purposes or otherwise, and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each grantee or Owner and his respective successors in interest, and may be enforced by Grantor, by any Owner or his successors in interest, or by the Association as hereinafter described.

Notwithstanding the foregoing, no provision of this Declaration shall be construed to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon pursuant to the Bridge Townhomes Subdivision Plat as the same may be modified at Grantor's option hereunder, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, nor Grantor's right to post signs incidental to construction sales or leasing, and to deliver, store, operate, use and remove, construct, demolish, alter, excavate and fill, as necessary any and all construction materials, supplies, underground and above-ground facilities, equipment, earth, contractors and workmen, toilets and things of all kinds. No delay or interference or loss of time or access shall be imposed on Grantor hereby, nor shall any charge, fee, cost, or Assessment of any kind be imposed on Grantor, except such as may be suffered by Grantor in its sole discretion.

ARTICLE III

DEFINITIONS

1. "Annexed Tract" shall mean any parcel of real property that is annexed pursuant to the annexation procedure described herein and made subject to this Declaration by a particular Supplemental Declaration recorded by Grantor.
1. "Architectural Committee" shall mean the committee created by the Grantor or the Association pursuant to Article X hereof.
1. "Articles" shall mean the Articles of Incorporation of the Association.
1. "Assessments" shall mean those payments required of Owners, Association Members, including Regular, Special and Limited Assessments as further defined in this Declaration.
1. "Association" or "HOA" shall mean the owners' association for the Bridge Townhomes Subdivision No. 2 established in connection with this Declaration.
1. "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations and procedural matters for use in the conduct of business of the Association.
1. "Beneficiary" shall mean a mortgagee under a mortgage or beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgage, beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the Property.
1. "Board" shall mean the Board of Directors of the Association.
1. "Building Lot" shall mean a lot shown on the plat of the Bridge Townhomes Subdivision upon which building Improvements may be constructed but shall not include Common Area held by the Association. Building Lots shall include Lots 27-42.
1. "By-Laws" shall mean the by-laws of the Association.
1. "Common Area" shall mean the parcel of Bridge Townhomes Subdivision No. 2 (Lot 26) which is designated as landscaped area subject to Greenbelt easement and for use in part as utilities and emergency access lane and for use as common driveway and parking, storm water infiltration and underground utilities and emergency access lane, and landscaped area and other uses, to be conveyed to the Association by deed from Grantor.
1. "Declaration" shall mean this Declaration as it may be amended from time to time.

1. "Dwelling Unit" shall mean a single residence, occupied, and used by a single family or by an unrelated group of not more than five (5) persons, organized around one kitchen and related living and common areas, bedrooms, and bathrooms. An "Accessory" Dwelling Unit shall mean a second Dwelling Unit that is accessory to the principal or first Dwelling Unit, and is used as a rental, guest quarters or in-law suite, located either in the residence or in a permitted accessory building.
1. "Grantor" shall mean Surfer's Paradise Two, LLC, an Idaho limited liability company, or its successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Surfer's Paradise, LLC, or its successors.
1. "Home Office" shall mean an office used by the Lot's Owner or resident lessee within a residence or permitted accessory building. Home Office shall have not more than two employees (other than the Lot's Owner or resident lessee), and only occasional customers, deliveries or other business invitees, the exact number of which may be established by rule adopted by the Association.
1. "Improvement" shall mean any structure, facility, or system, whether permanent or temporary, which is erected, constructed, or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, landscaping, signs, lights, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever.
1. "Institutional Holder" shall mean a mortgagee of a Building Lot which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state law, any corporation or insurance company, or any federal or state agency.
1. "Limited Assessment" shall mean a charge against a particular Owner or the Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association, for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration.
1. "Member" shall mean each person or entity holding a membership in the Association.
1. "Mortgagee" shall mean a mortgage holder or beneficiary under a deed of trust.
1. "Owner" shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

1. "Plat" shall mean the plat of the Bridge Townhomes Subdivision, recorded in the Office of the County Recorder, Ada County, Idaho.
1. "Private Yard" shall mean that portion of a Building Lot outside of the building and related improvements on the Lot which is designated from time to time by the Board as an area of Lot Owner landscaping responsibility, and not within the responsibility of the Association. Such exterior, unbuilt areas on Lots are small, and are generally intended to be patios, flower beds or other similar areas suitable and desirable for individual maintenance and not suitable and desirable for common maintenance through the Association.
1. "Property" shall mean Lot 1, Block 1, Waterfront District Subdivision, Garden City, Ada County, Idaho, bounded and described according to the Waterfront District Subdivision plat, Book 96, page 12061 and following, Ada County, Idaho, Office of the County Recorders, as re-subdivided as Bridge Townhomes Subdivision No. 2, bounded and described according to the plat thereof, recorded in the Office of the County Recorder, Ada County, Idaho, and incorporated herein by reference.
1. "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing, and operating the Common Areas and all improvements and facilities located thereon, and the other costs of the Association which is to be levied against the Building Lots and payable by each Owner to the Association, pursuant to the terms hereof.
1. "Special Assessment" shall mean the portion of the costs of the capital improvements or replacements, or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association, pursuant to the terms hereof.
1. "Supplemental Declaration" shall mean any Supplemental Declaration including covenants, conditions, and restrictions that the Grantor may adopt with respect to any portion of the Property.

ARTICLE IV
GENERAL AND SPECIFIC RESTRICTIONS

1. **Permitted Uses—Building Lots**. The Building Lots and Common Area comprising the Property shall each be used for a single principal use among the following permitted uses, and only for that use, as described herein. The Building Lots shall be used for Single Family, together with permitted accessory uses. The Common Area shall be used as a common driveway, landscaping, recreation, parking, and trash and recycling collection enclosure, as the same is further defined and located herein.

A. Townhouses, Lots 27, 28, 29, 30, 34, 35 & 36.

1. Use. Principal use of Lots 27, 28, 29, 30, 34, 35 & 36 shall be single family residential. Accessory Dwelling Unit shall be permitted. Permitted accessory use shall include a workspace or spaces, subject to the provisions hereof, and subject to the approval of the Association, which shall have the power to regulate, and prohibit or permit, work by rules and regulations, and impose reasonable conditions on any permitted use. Provided, the power to prohibit or permit uses shall be reasonably exercised and shall not extend to the prohibition of uses permitted hereunder, nor the permitting of uses prohibited hereunder. The workspace may be located within the building as the Owner may determine desirable but shall only have an entry and sign on the first floor along 36th or Adams Streets. Permitted workspace uses include commercial retail or office use, or temporary housing. Prohibited uses include auto body or repair, kennels, sexually oriented businesses, and taverns. No work shall be permitted which generates noise, fumes, vibration, dust, or glare outside the building in which it is conducted. No work involving flammable or dangerous chemicals shall be permitted. For commercial purposes, hours of operation shall be 8 o'clock a.m. to 10 o'clock p.m., Monday through Friday, unless otherwise permitted by the Association. The work may include employees, and reasonable traffic by customers, deliveries, and other business invitees. Any use shall comply with applicable fire and other governmental regulations.

2. Garage and parking. Each of Lots 27, 28, 29, 30, 34, 35 & 36 shall have a garage for at least two cars.

3. Dimensional. The maximum height of buildings on Lots 27, 28, 29, 30, 34, & 35 shall be three stories, the total exterior building height to be not more than forty (40) feet. On Lot 29, four stories and a maximum height of fifty-five (55) feet shall be permitted. The greater height on Lot 29 is intended to allow a tower architectural effect and create a visual focal point and landmark.

B. Cottages, Lots 31, 32, 33, 37, 38, 39, 40, 41 & 42.

1. Use. Each of Lots 31, 32, 33, 37, 38, 39, 40, 41 & 42 shall be used as a single-family residence. No Accessory Dwelling Unit shall be permitted. Home Office is permitted as an accessory use.

2. Garage and parking. Each lot shall have a garage for at least two cars.

3. Dimensional. Residences on Lots 31, 32, 33, 37, 38, 39, 40, 41 & 42 shall be not more than three stories tall, not more than forty (40) feet in height, measured from lowest floor to rooftop.

C. Owner occupancy and rental

1. 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 C. For purposes of this Section C 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 this section 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 as of a single housekeeping unit so long as such lease is for a term of twelve (12) months or greater. For purposes of this Section C, the term "single housekeeping unit" shall be one or more individuals (but no more than three (3) unrelated individuals) living together sharing household responsibilities and activities which may include sharing expenses, chores, eating 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.

2. Not used.

3. An Owner may rent an Accessory Dwelling Unit (permitted elsewhere herein only on Lots 27, 28, 29, 30, 34, 35 & 36), to a third party for a term of not more than one month. The Owner shall notify the HOA that the Accessory Dwelling Unit has been rented, the term for which rented, and provide the renter's name and mailing address or other contact information. Short term rental, daily or for any term less than one month (referred to commonly by the name of commercial providers "Airbnb" or "vrbo" or similar), shall be permitted only on Lots 27, 28, 29, 30, 34, 35 & 36 only for the Accessory Dwelling Unit on the said Lots. The Owner of the Lot is required to be present on the Lot on any day the Lot is rented or make other reasonable provision for management or oversight of the rental.

4. Any renter shall be obliged to comply with the provisions of this Declaration, and any rule or regulation adopted by the Association pursuant hereto, as fully as an Owner. The lessor Owner shall be jointly responsible for the actions of the Owner's renter or tenant relating to the provisions of this Declaration, including, without limitation, responsibility to pay any lien or fine for the renter's violation of the Declaration or any rule or regulation adopted by the Association pursuant hereto.

5. An Owner shall be obliged to advise any renter that no parking is available for rental residents of the Accessory Dwelling Units, and that the renter shall be obliged to secure parking at an off-site parking lot, or rely on public street parking where permitted, or on walking, bicycle, public transportation, or ride sharing or other means to have access to and from the Lot. The Board of the Association shall have the power to levy fines equal to the greater of one hundred dollars (\$100.00) or one day's ADU rental fee for each parking violation by a renter, in order to avoid inconvenience to other Owners, to maintain clear emergency access use of the Common Driveway, and to deter further violations. The Board shall have the power to require, as a condition of rental, that the renting Owner establish an escrow of up to one thousand dollars (\$1,000.00) to secure the payment of any fines and other compliance with the requirements of this Declaration, provided that if any renting Owner shall continue without fine and in compliance for a period of one year, the escrow requirement shall be removed.

6. It is required an Owner leasing his/her unit use a professional management company to maintain the integrity and character of the community. This will also allow for accurate tracking and inspections of all units and alleviate neighbor

conflicts. An exception can be granted by the Board if an owner is residing in the community on a full-time basis of no less than 9 months out of the year and provides adequate documentation of vetting of the tenants.

1. **Permitted Uses—Common Area.** The Lots comprising the Common Area shall be owned by the Association, and shall be used only as follows:
 - a. Lot 26, as common driveway, parking, landscaping, and trash/recycling enclosure, with storm water infiltration areas available to the Lot Owners for drainage from roofs and impervious surface, and for underground utilities serving the Lots, and emergency access. The only parking permitted on Lot 26 are those spaces adjacent to Lot 26 at the 36th Street driveway approach, and no other parking shall be permitted. The emergency access portion of the common driveway shall at all times be kept clear. Full driveway width shall be kept clear of vehicles and other obstructions to allow Owners unimpeded turning radius and convenient access to and from garages.
 - b. Owners shall be required to use the common trash and recycling enclosure and services, and not to use curbside or similar individual containers and pick-up services. The common trash and recycling shall be contracted through the Association. All food and other odorous waste shall be bagged before being placed in the common trash, and trash and recycling shall be subject to such additional rules as the Board may adopt from time to time. This provision shall not prohibit composting of waste, in a separate container or location.
 - c. The Common Area may be used for such additional uses, consistent with the foregoing, as the Board may determine from time to time, or as may be required by law or regulation, including, without limitation, directional or other signs, or mailboxes.

1. **Insurance rates.** Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on, or cause the cancellation of insurance on, any other Building Lot, without the approval of the Owner of such other Building Lot, where such insurance is a policy owned by an Owner or the Association for standard fire and/or hazard protection of building and contents.
2. **No further subdivision.** No Building Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the written approval of the Board. Provided, however, that nothing in this section shall be deemed to prevent an Owner from, or require the approval of the Board for, transferring or selling any Building Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.
3. **Signs.** No sign of any kind shall be displayed to public view without the approval of the Architectural Committee, except such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots, and except such signs of customary or reasonable dimensions as prescribed by the Architectural Committee as may be displayed on or from a Building Lot identifying the Owner or resident, the street address, or advertising the

residence for sale or lease. Any customary sign for sale or lease not more than three (3) feet by two (2) feet shall not require Architectural Committee approval. Temporary signs naming the contractor, architect or lending institution for a particular construction operation may not be placed on the Property without approval of the Architectural Committee.

4. **Nuisances**. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere on the Property. No odor, sound, sight, or substance shall be permitted on any Building Lot or Common Area which would render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any Building Lot or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, amplified sound, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes), flashing lights or search lights, shall be located, used, or placed on the Property without the prior written approval of the Board.
5. **Exterior Maintenance; Owner's Obligation**. No Improvement shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair, and the maintenance of all Improvements shall be the obligation of the Owner of the Building Lot on which the Improvement is located. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Property, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost of such correction. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in this Declaration. The Owner of the offending Building Lot shall be personally liable, and the Owner's property may be subject to a mechanic's lien for all cost and expense incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owners as Regular Assessments.
6. **Drainage**. There shall be no interference with the established drainage pattern over any portion of the Property unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. 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, paving, or landscaping is completed by Grantor, or that which is shown on plans prepared in connection with the Grantor's grading, paving, and landscaping.
7. **Water supply systems**. Water for domestic use on the respective Building Lots shall be provided by public water supply. Water for irrigation of landscaping may be provided by the Association, either by City domestic or other irrigation district supply. All water rights vested in the Grantor shall remain vested in the Grantor, subject to the Grantor's conveyance at its discretion. No separate or

individual water supply system shall be permitted on any Building Lot unless such system is designed, located, constructed, and equipped in accordance with the requirements of the Board and all governmental authorities having jurisdiction.

8. **No Hazardous Activities**. No activities shall be conducted on the Property and no improvements constructed on any Building Lot or Common Area which are or might be unnecessarily or abnormally hazardous to any person or property.
9. **Unsightly Articles**. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, and trash shall be kept at all times in such containers and in areas approved by the Architectural Committee or Grantor. No equipment, containers, lumber, bulk material, plant waste, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any Building Lot except within a building.
10. **No temporary structures**. No house trailer, mobile home, tent, shack or other temporary building or Improvement shall be placed on any Building Lot or Common Area, except temporarily as may be required by construction activity undertaken approved on a Building Lot or Common Area.
11. **No Unscreened Boats, Campers, or other Vehicles**. No boats, campers, or other vehicles, no dilapidated, unrepaired, or unlicensed automobiles, vehicles or similar equipment shall be placed upon any portion of the Property (including, without limitation, streets, parking areas or driveways) unless the same are enclosed by a garage or other structure concealing them from view. This requirement shall also apply to kayaks, canoes, rafts or paddleboards or similar smaller non-motorized watercraft used by an Owner and placed seasonally on a Lot.
12. **Sewage Disposal Systems**. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on his Building Lot to the Garden City sewer system and pay all charges assessed therefor.
13. **No Mining or Drilling**. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other minerals, rocks, stones, sand, or material. This paragraph shall not prohibit exploratory drilling or coring which is necessary to construct a permitted Improvement.
14. **Exterior Equipment**. Air conditioners, heat pumps, generators, wind and solar energy devices, antennae, satellite dishes and similar outside equipment shall be shown in the plans approved by the Architectural Committee. The Architectural Committee shall be obliged to make reasonable provision for solar collectors and other solar equipment, whether solar thermal or photovoltaic.
15. **Vehicles**. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles, snowmobiles, aircraft, drones, and boats, shall be subject to all Association Rules, which may prohibit or limit the use thereof on, above and associated with the Property (but shall not prohibit the Owners reasonable access to their respective garages on the Building Lots). No parking shall be permitted except where expressly designated for parking use. No

motorized vehicle or device shall be permitted on any Common Area without the written approval of the Board, unless such vehicle is engaged in an emergency procedure, or is engaged in permitted maintenance of the Common Area.

16. **Animals/Pets**. No animals, birds, insects, or livestock shall be kept on the Property unless the presence of such animal does not constitute a nuisance as determined by the Board. Household pets of an Owner shall be permitted only if they are kept on the Building Lot of the Owner, or on leash and in direct control when on the Common Area, and at no time do they unreasonably annoy or harass any other Owner or resident. Persistent barking dogs are prohibited. All dog and cat or other pet waste shall be picked up and properly disposed of by the Owner. The construction of dog runs, or other exterior pet enclosures is prohibited, and pets when outside the building on a Lot shall be under the Owner's direct control.
17. **Exemption of Grantor**. Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to grant or reserve rights-of-way and easements in Common Areas to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor or the Association, to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot remains unsold by Grantor to a third party. Such rights and exemptions of Grantor shall include, without limitation, erecting, constructing and any other thing or action reasonably necessary for the conduct of its business of completing the work as shown on the Plat and associated plans, and disposing of the Property by sale, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by purchasers from Grantor to grant, establish or reserve on that Building Lot additional reservations and rights-of-way to itself, to utility companies, or to others as may be reasonably necessary to the development and disposal of the Property. Grantor may use any structures owned by Grantor as model homes or real estate sales or leasing offices. Grantor need not seek or obtain Architectural Committee approval of any Improvement. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest to any portion of Grantor's interest in any portion of the Property, by an express written assignment recorded in the Office of the Ada County Recorder. If not so assigned, such exemption shall terminate as to any Building Lot upon conveyance by Grantor to a third party.

ARTICLE V

WATERHOUSE ROW HOMEOWNERS ASSOCIATION

1. **Organization of Waterhouse Row Homeowners Association**. The Waterhouse Row Homeowners Association ("Association") shall be organized by Grantor as an Idaho non-profit corporation to manage the properties and Owners of the Bridge Townhomes Subdivision no. 2 and shall be charged with the duties and

invested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration.

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. Memberships in the Association shall be appurtenant to the Building Lot owned by such Owner. The memberships shall not be transferred, pledged, assigned, or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void.
3. **Voting in the Association shall be directly by the Owner-Members.** Each Building Lot shall represent one vote. If there is more than one Owner of a Building Lot, those Owners shall be responsible for determining how the vote is to be cast. There shall be no fractional votes. In the event of a dispute between co-Owners of a Building Lot, the Board shall have the power to determine the validity of the vote cast or determine that an Owner's vote is void.
4. **Board of Directors and Officers.** The affairs of the Association shall be conducted and managed by a Board of Directors ("Board") and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws. The initial Board shall be appointed by the incorporators and shall hold office until the first annual meeting following completion of construction of the principal building on all Lots, at which time a new Board shall be elected in accordance with the provisions of the By-Laws.
5. **Powers of the Association.** The Association shall have all the powers of an Idaho non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws, and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, the Articles and By-Laws, and to do and perform any and all acts which may be necessary to, proper for or incidental to the property management and operation of the Common Areas and its other assets, including water rights when and if received from Grantor, and affairs and the performance of the other responsibilities herein assigned, including without limitation:
 - a. **Assessments.** The power to levy Assessments on any and all Owners or any Building Lot, and to require and enforce payment of such Assessments, all in accordance with the provisions of this Declaration.
 - b. **Right of Enforcement.** The power and authority from time to time in its own name, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the By-Laws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.
 - c. **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm, or corporation to act as manager, and to contract for the maintenance, repair, replacement, and operation of the common Area. Neither the Association nor the members of

its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

- d. **Association Rules**. The power to adopt, amend, and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may establish rules and regulations governing the use of the Common Area, including but not limited to the use of private driveways, paths, and riverfront, by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners of the particular Common Area or part thereof, and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Association rules and regulations, as they may from time to time be adopted, amended, or repealed, shall be mailed, or otherwise delivered to each Owner and a copy or summary or excerpt may be posted in a conspicuous place within the Common Area. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Rules and any other provisions of this Declaration, or the Articles or By-Laws, the Rules shall be deemed to be superseded by the provisions of the Declaration, Articles or By-Laws to the extent of such inconsistency.
- e. **Emergency Powers**. The power, exercised by the Board or by any person authorized by it, to enter upon any Building Lot (but not inside any building constructed thereon) in the event of any emergency involving illness or 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 reasonable notice when possible, and as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.
- f. **Licenses, Easements and Rights-of-Way**. Upon two-thirds approval of the Board, 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 Common Area and for the preservation for the health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining: (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; (2) public sewers, storm drains, water drains and pipes, water supply systems, irrigation systems, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities. Any such license, easement or right-of-way shall be for the benefit of all Owners as a group, and not for the benefit of an individual Owner, and not for the benefit of any third party.
- g. **Specific Powers and Duties of Association**. In addition to those powers and duties set out above, the Association shall have the following powers and duties:

(1) Driveway. The Association shall have the right and responsibility to maintain, repair and reconstruct the driveway and associated parking areas, any private, non-public common water or sewer lines or other utilities, and other improvements. The driveway shall be maintained with an asphalt, concrete or block pavers surface or other all-weather hard surface in good repair. Also included in the driveway shall be all curbing, inlets, storm drains and underground pipes and seepage beds as shown on the plat, construction plans and as-built plans of Bridge Townhomes Subdivision, which such plans shall be delivered by Grantor to the Association and retained by the Association in its records. All driveway costs shall be allocated equally among the Owners, regardless of distance of a Building Lot from the public road, unless the Board shall determine, at its reasonable discretion, that the maintenance, repair, or reconstruction is related to a particular Lot or Lots, in which case the cost shall be allocated proportionately among the Lots to which it is related.

(2) Landscaping. The Association shall have the right and responsibility to maintain, repair and reconstruct all Landscaped Areas. Landscaped Areas shall include all outdoor areas of the Association, whether on the Common Lot 26 or on Building Lots, excepting only those areas on a Building Lot fenced, at the patio, or otherwise delineated as under the exclusive control of the Lot Owner as Private Yard. Landscaped Area shall include underground pressurized irrigation and associated elements such as sprinklers and timers, except on Private Yards, which shall be the responsibility of the Lot Owner. Association shall provide control, use, maintenance, and operation of the pressurized irrigation system. Association maintenance of the Landscaped Areas (excluding Private Yards) shall include, among other things, maintaining, repairing, and replacing grass, sod, trees, shrubs, and other plantings, in a neat, clean, and attractive condition. The decision as to the nature and extent of maintenance that is required for Landscaping, both within and outside of Private Yards, and the timing of such maintenance, shall be solely within the discretion of the Association Board, and may be set by rule or regulation from time to time.

(3) Building Exteriors. The Association shall have the right and responsibility to maintain, repair and reconstruct all Building exteriors. Association maintenance of Building exteriors shall include all maintenance related to wear and deterioration from general factors such as rain, snow, sun and other weather, oxidation, air pollution, and the passage of time, but shall exclude maintenance due to usage and wear and tear of a specific Owner's residence. Maintenance of the exteriors of Buildings shall include the painting, staining, repairing and replacing of all exterior surfaces, including siding, masonry, exterior trim features, and roof surfaces (but excluding the repair and replacement of exterior doors, door sills and thresholds, windows, hose bibs and garage doors); painting or staining of exterior window casements, sashes, frames; maintaining, repairing and replacing exterior light fixtures, exterior portions of chimneys, rain gutters and downspouts. The maintenance responsibilities of the Association specifically do not include the following duties, which are the sole responsibility of the respective Owners of Lots and the Buildings thereon: Repairing, replacing, restoring or cleaning of: glass, exterior items of hardware, replacing and repairing exterior doors, door sills and thresholds, windows, hose bibs, and garage doors, exterior window casements, sashes and frames (other than painting and staining of the same); window screens; walkways and driveways on Building Lots (including snow and ice removal); electrical

and mechanical doorbells and knockers; and air conditioning and heating equipment and devices.

(4) **Damage.** Any repair or replacement work (distinguished from maintenance) that is required for a driveway, landscaping, or a particular Building exterior (including its Private Yard and underground sprinkler system) as a result of accident, negligence or Act of God shall be the responsibility of the Owner of same, unless such damage was caused by an act or omission of the Association or its agents or employees.

(5) **Reserves.** The Association shall have the right to collect reserve funds for anticipated capital expenses or major maintenance or repair or reconstruction of driveways and Building exteriors. The reserve funds shall be collected as part of the regular assessment. The reserve funds shall be maintained in a separate segregated account and not commingled with annual expenses or other monies. The right to collect reserves shall not mean that the Association is required to collect reserves adequate to fully fund any maintenance, and significant periodic Assessments may be required for larger maintenance costs, such as painting or re-roofing.

(6) **Common utility service.** The Association shall have the right, where deemed desirable by the Board, to enter into contracts or service agreements by which the Lot Owners are provided utility services, if and when available, as a group or in common, including without limitation: water (potable and irrigation), sewer, electric (including solar and net-metering or similar agreements), cable television and internet or similar communications, trash removal and recycling. The cost of the said services shall be divided among the Lot Owners and included in the Regular Assessments.

1. **Duties of the Association.** In addition to duties necessary and proper to carry out the power delegated to it by the Declaration and Articles, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:
 - h. **Operation and Maintenance of Common Areas.** Operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association.
 - i. **Taxes and Assessments.** Pay all real and personal property taxes and assessments separately levied against Common Area or against the Association or property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided, however, that they are paid, or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state, or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax-exempt corporation.
 - j. **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area, and to manage for the

benefit of the Association all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

- k. **Insurance**. Obtain and maintain in effect, from reputable insurance companies authorized to do business in Idaho, any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance: (1) Fire insurance including those risks embraced by coverage known as "All Risk" for the full insurable replacement value of all Improvements within the Common Area; (2) Comprehensive public liability insurance insuring the Board, the Association and the Grantor against any liability incident to the ownership and/or use of the Common Area; (3) Directors and officers liability insurance; and (4) such other insurance to the extent necessary to comply with applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or property. The Board shall be deemed trustee of the interests of all Owners in any insurance proceeds paid to it under such policies and shall have full power to receive their interests in such proceeds and to deal therewith. Insurance premiums shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
 - l. **Rule Making**. Make, establish, promulgate, amend, and repeal such Association Rules as the Board shall deem advisable.
 - m. **Architectural Committee**. Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration.
 - n. **Enforcement of Restrictions and Rules**. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions hereof, or of the Articles or By-Laws.
1. **Limitations on Powers and Duties of the Board and Association**. The powers of the Board and the Association shall be restricted, in order to protect the Members and Owners from financial liability through their obligation to pay Assessments, and in order to balance continuity against flexibility and openness to future changes in the management of the Association's finances. The Board and Association shall have no power nor duty to enter into any management contract of more than three (3) years duration, including renewals; no power to grant or convey, pledge, encumber, mortgage or hypothecate any real property (except the power to grant and convey licenses, easements and rights-of-way as explicitly set forth herein); no power to enter into any long term indebtedness, or indebtedness of any term in any amount greater than one year's average annual budget; no power to acquire nor to receive and own any real property other than the Common Area as it is bounded and described at the time of this Declaration. The Board and the Association shall have no power or duty to construct, own or operate any building or structure, and its powers and duties shall be limited to the

Improvements necessary, in the Board's discretion and liberally construed, for operation, maintenance, repair and reconstruction of the Common Area for common driveways parking and plaza, landscaping, walkways and related outdoor recreation or passage, and storm water infiltration and snow removal, trash and recycling collection, storage and removal, all as shown on the Site Plan and Design Documents.

2. **Personal Liability**. No member of the Board, Association officer, or member of any committee of the Association, or the Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, officer, committee member or manager, if any, or any other representative or employee of the Association, or the Grantor, provided that such person, upon the basis of such information as may be possessed by him, has acted in good faith without willful or intentional misconduct.
3. **Budgets and Financial Statements**. Financial Statements for the Association shall be prepared regularly, and copies shall be distributed to each Member and, upon request, to Mortgagees, as follows: (A) a pro forma operating statement or budget for each fiscal year shall be distributed not less than sixty (60) days before the beginning of each fiscal year; (B) A balance sheet and an operating statement shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the Building Lot number and the name of the Owner or other person or entity assigned; within thirty (30) days after the close of the fiscal year, the Association shall cause to be prepared and delivered to each Owner, a balance sheet as of Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its fiscal year.
4. **Meetings of the Association**. Each year the Association shall hold at least one meeting of all Members, according to the schedule for such meeting established by the By-Laws. Notice for all meetings shall be given by regular mail or electronic mail to all Members not less than ten (10) days nor more than thirty (30) days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board. The presence at any meeting in person of thirty (30) percent of the Members shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. A second meeting may be called as the result of such an adjournment, provided notice is given by regular or electronic mail as provided above. At any such meeting property called, the presence of thirty (30) percent of the Members shall constitute a quorum.

ARTICLE VI

RIGHTS TO COMMON AREA

1. **Use of Common Area.** Every Owner shall have a right and easement to use the Common Area, to the extent and for the uses permitted, which right and easement shall be appurtenant to and shall pass with the title to every Building Lot, subject to the following provisions:
 - o. The right of the Association to levy and increase as necessary the Assessments.
 - p. The right of the Association to suspend the voting rights and rights to use of, or interest in, a Common Area by an Owner for any period during which any Assessment or charge against the Owner's Building Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Associations Rules; and
 - q. The right of the Association to dedicate or transfer licenses, easements and rights-of-way to utility companies or public agencies as elsewhere provided herein.
1. **Designation of Common Area.** Grantor shall designate and grant and convey the Common Area to the Association.
2. **Delegation of Right of Use.** Any Owner may delegate, in accordance any By-Laws and Rules of the Association, the Owner's right of enjoyment and use of the Common Area, to members of the Owner's family, tenants or contract purchasers who reside on such Owner's Building Lot and accompanied guests of the foregoing.
3. **Damages.** Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, the Owner's family, tenant, contract purchaser or guests, both minor and adult. In the case of joint ownership of a Building Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein.

ARTICLE VII ASSESSMENTS

1. **Covenant to Pay Assessments.** By acceptance of a deed to any Building Lot in the Bridge Townhomes Subdivision, each Owner hereby covenants and agrees to pay when due all Assessments or charges made by the Association including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.
 - r. **Assessment Constitutes Lien.** 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 Building Lot or Property Unit against which such Assessment or charge is made.

- s. **Assessment is Personal Obligation.** Each such Assessment, together with interest, costs, and reasonable Attorneys' fees, shall also be the personal obligation of the Owner of the Building Lot beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them but shall remain personal obligations regardless of whether the assessed Owner remains an Owner.
- 1. **Regular Assessments.** All Owners, including the Grantor, are obligated to pay Regular Assessments to the Treasurer of the Association on a schedule of payments established by the Board.
 - i. **Purpose of Regular Assessments.** The proceeds of Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all improvements located on such areas owned and/or managed and maintained by the Association, and an amount allocated to an adequate reserve fund to be used for replacement of those elements of the Common Areas or other property of the Association that must be replaced on a regular basis (collectively, "Expenses"). Trash collection and recycling of material generated in connection with the permitted use of the Building Lots, each for a Single Family use, shall be included as part of the Expenses, but trash and recycling generated by rental of accessory dwelling units or offices, or home office use shall be excluded from Expenses and charged to the Building Lot generating it according to a reasonable allocation as established by the Board, as a Limited Assessment or otherwise.
 - ii. **Computation of Regular Assessments.** The Association shall compute the amount of its Expenses on an annual basis by making advance estimates of the expected Expenses for the coming year. The Board can require, in its discretion or as provided in the Articles or By-Laws, payment of Regular Assessments in monthly, quarterly, semi-annual, or annual installments. The Board shall compute the amount of Regular Assessments owed beginning the first day of the month in which the closing of the first sale of a Building Lot occurred from Grantor to a third party ("Initiation Date"). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced pro rata, based on the percentage of the fiscal remaining after the Initiation Date.
 - 1. **Amounts Paid by Owners.** The Regular Assessment to be paid by any particular Owner, including Grantor, for any given fiscal year, shall be computed as the Association's total estimated Expenses for the year, divided by the number of Building Lots. Thus, since there are sixteen (16) Building Lots, then unless and until this Declaration is amended to include additional Building Lots, each Owner shall pay one-sixteenth of the Expenses.

2. **Special Assessments**. In the event that the Board shall determine that its Regular Assessment in a given calendar year is or will be inadequate to meet the actual Expenses of the Association, for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, then the Board shall determine the approximate amount necessary to cover such inadequacy and levy a Special Assessment against the Property, which shall be divided equally in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty (20) percent of the budgeted gross Expenses for that calendar year without the vote or written assent of the Owners representing a majority of the votes of such Association. The Board shall, in its discretion, determine the schedule according to which such Special Assessment will be paid.
3. **Limited Assessments**. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member-Owner and the Owner's Building Lot as a remedy to reimburse the Association for costs incurred in bringing the Member and/or Building Lot into compliance with the provisions of this Declaration and other governing instruments for Bridge Townhomes Subdivision.
4. **Uniform Rate of Assessment**. Regular and Special Assessments shall be fixed at a uniform rate per Building Lot for all Members of the Association. For example, all administrative costs shall be shared equally, and all landscaping and driveway costs shall be shared equally. Provided, for costs that do not relate to a common expense, the Assessments may be prorated or proportionate to the different Lots respective requirements. For example, painting or re-roofing may be proportionate to the painted surface or roofed surface on each Lot.
5. **Assessment Period**. Unless otherwise provided by the By-Laws of the Association, the Assessment period shall be the calendar year.
6. **Notice and Assessment Due Date**. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto. The due dates for installment payment of Regular and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special assessment shall become delinquent if not paid within thirty (30) days after the mailing of notice thereof. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent shall accrue interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the association. The Association may bring an action against the delinquent Owner and may foreclose the lien against the Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments and no Owner may exempt himself from such liability by a waiver of the use or enjoyment of any of the Common Areas, or by lease or abandonment of his Building Lot.

7. **Estoppel Certificate.** The Association, upon at least five (5) business days prior written request by the Owner, Mortgagee or other interested party, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not to the knowledge of the Association a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such certificates may not extend to any default as to which the signer shall have had not actual knowledge.
8. **Special Notice and Quorum Requirements.** Notwithstanding anything to the contrary contained in either the By-Laws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, shall be sent to all Members not less than thirty (30) days nor more than sixty days before the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60) percent of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (3) days following the preceding meeting.

ARTICLE VIII
ENFORCEMENT OF ASSESSMENTS; LIENS

1. **Right to Enforce.** The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot upon becoming an Owner of such Building Lot shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to Section 9.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.
2. **Assessment Liens.**
 - a. **Lien Created.** There is hereby created a claim of lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied

against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such Building Lots upon recordation of a claim of lien with the Ada County Recorder. Such Lien shall be prior and superior to all other liens or claims created subsequent to the recording of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

- b. **Claim of Lien**. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the Office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot against which the same have been assessed, and the name of the record owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the costs of preparing and recording such release before recording the same.
1. **Method of Foreclosure**. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.
2. **Required Notice**. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot described in such notice of delinquency and claim of lien, and a copy thereof is recorded by the Association in the Office of the Ada County Recorder. Provided additionally, no action may be brought to foreclose the lien unless the Assessment or other charge which is the basis of the lien is at least one (1) year in arrears.
3. **Subordination to Certain Trust Deeds**. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except 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 Building Lot prior to the recording of a claim of lien for the Assessments. Except as expressly provided herein with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recording 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.

4. **Rights of Mortgagees**. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the beneficiary under any deed of trust, or holder of any mortgage, upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust or mortgage, such Building Lot shall remain subject to this Declaration as amended.

ARTICLE IX INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

1. **Member's Rights of Inspection**. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Member of the Association or by his duly appointed representatives, at any reasonable time and for a purpose reasonably related to his interest as a Member at the office of the Association or at such other place as the Board of such Association shall prescribe.
 2. **Rules Regarding Inspection of Books and Records**. The Board shall 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.
 - c. Payment of the cost of reproducing copies of documents requested pursuant to this Article.
- 9.3 **Director's Rights of Inspection**. Every Director of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

ARTICLE X ARCHITECTURAL COMMITTEE

1. **Creation**. Within (30) days after the Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on the

Waterhouse Row HOA Architectural Committee ("Committee"). The Committee thereafter shall consist of three (3) members. Each member shall hold office until such time as he has resigned or has been removed, or his successor has been appointed, as provided herein. Members of the Committee may be removed by the person or entity appointing them at any time without cause.

2. **Grantor's Right of Appointment.** At any time prior to five (5) years after the date of this Declaration that Grantor is the Owner of at least one of the Building Lots, Grantor shall have the exclusive right to appoint and remove all members of the Committee. Thereafter, the Board shall have the right to appoint and remove all members of the Committee. If a vacancy on the Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.
3. **Action by Committee.** The Committee shall consider and act upon any and all proposals or plan and specifications submitted for its approval pursuant to this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. The Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Committee review and approval. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding are of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association, and that the same are in compliance with the Site Plan and Design Documents, or compatible with them.
4. **Conditions on Approval.** The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to the Association for the maintenance thereof, upon the agreement of the Applicant to reimburse an Association for the cost of maintenance, or upon all three, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.
5. **Committee Rules and Fees.** The Committee may issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee shall determine the amount of such fee in a reasonable manner, provided that in no event shall such fee exceed Two Hundred and Fifty Dollars (\$250.00) per Building Lot, per application. Fees shall be used to defray the actual costs and expenses of the Committee, such as payment to a licensed professional

architect or engineer for review of applications, but shall not be paid to, nor inure to the benefit of, committee members, who shall serve without compensation.

6. **Detailed Plans**. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval.
7. **Committee Decisions**. Decisions of the Committee and the reasons therefor shall be transmitted in writing by the Committee to the Applicant at the address set forth in the application within ten (10) days after filing all materials required by the Committee. If the Committee shall fail to act within such ten (10) day period, the Applicant may request appropriate action by the Board, and the Board may then, at its discretion, act upon the application in lieu of action by the Committee.
8. **Meetings of the Committee**. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may make its decisions and deliberations at a meeting, or may deliberate and communicate between members by telephone, electronic mail or otherwise, but in all events shall involve all members in decision-making. The vote of any two (2) members of the Committee, or the written consent of any two (2) members of the Committee taken without a meeting, shall constitute an act of the Committee.
9. **No Waiver of Future Approvals**. The approval of the Committee of any application or of any plans and specifications requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar application, plans or specifications, subsequently or additionally submitted for approval.
10. **Compensation of Members**. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performance of their duties, provided that a member who is an architect may be paid a fee approved by the Board.
11. **Inspection of Work**. Inspection of work and correction of defects shall be as follows:
 - a. Upon completion of any work for which plans, and specifications are required under this Article, the Owner shall give written notice of completion to the Committee.
 - b. Within five (5) days thereafter, the Committee or its duly authorized representative may inspect such work. If the Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such non-compliance within such five (5) day period, specifying the particular non-compliance, and shall require the Owner to remedy the same.
 - c. If upon the expiration of thirty (30) days from the date of such notification or any longer time the Committee determines to be reasonable, the Owner shall

have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon notice and hearing, as provided in the By-Laws, the Board determines whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the announcement of the Board ruling, unless the Board specifies a longer time as reasonable. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying work or improvement, or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

- d. If for any reason the Committee fails to timely notify the Owner of any non-compliance, after receipt of the written notice of completion from the Owner, the work or improvements shall be deemed to be in accord with the approved plans and specifications.
1. **Non-Liability of Committee Members.** Neither the Committee nor any member thereof shall be liable to the Association, or to any Owner, for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee member. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Committee shall take into consideration the aesthetic aspect of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing structural safety, engineering, or conformity with building or other codes, and its approval shall not be interpreted or relied upon as such.
2. **Standards.** After initial construction, any reconstruction or addition or alteration shall maintain conformity and harmony to the initial design, including, without limitation, roof line and type, exterior mass and form, style and size of windows and doors, trim and hardware, and exterior materials. Plans showing initial construction shall be maintained by the Association, or such initial construction may be established by photographs or other reasonable means, and as depicted in the architectural diagrams and drawings attached and made part hereof as **Exhibit B.** (1) Exterior paint and materials color shall be maintained or shall be changed only as to all Lots. Repainting as needed for maintenance from time to time shall be done on all Lots at the same time, or on groups of Lots as the Board may determine, and with the same colors or color scheme. (2) No architectural change shall be permitted which allows additional windows on side walls, or otherwise reduces privacy

- or peaceful enjoyment of an adjacent Building Lot by increasing noise, vibration, glare, or other similar impact on the adjacent Building Lot.
3. **Variances from Requirements of Declaration.** All Committee approvals shall conform to the requirements of this Declaration, and the Committee shall have no power to grant any variance or alteration to the requirements of the Declaration, including without limitation, setback, height, or other dimensional or use provisions.

ARTICLE XI ANNEXATION OF ADDITIONAL PROPERTIES

11.1 **By Grantor.** Grantor intends to develop the Property in accord with the Plat and may develop other adjacent properties and may deem it desirable to annex some or all of such adjacent properties to the Property covered by this Declaration. Annexed Tracts may be annexed to the Property and brought within the provisions of this Declaration as provided herein, by Grantor, its successors, or assigns, at any time, and from time to time, without the approval of any Owner or the Association. The use and development of such Annexed Tracts shall be as determined by the owner thereof and governmental requirements then applicable to the Annexed Tract, all at the discretion of the owner thereof.

11.2 **By Association.** In addition to annexation by Grantor, Annexed Tracts may be annexed, subject to the same conditions, by the Association, upon the approval of seventy-five percent (75%) of the Owners.

11.3 **Rights and Obligations of Owners of Annexed Tracts.** Subject to the approval of the Grantor or of the Association, set forth above, upon recording of a Supplemental Declaration as to any Annexed Tract, all provisions contained in this Declaration shall apply to the Annexed Tract in the same manner as if it were originally covered by this Declaration, subject to such modifications, changes and deletions as specifically provided in such Supplemental Declaration. The Owners of the lots in the Annexed Tract shall become members of the Association and shall become liable for their appropriate share of the Assessments. Title to the Common Areas of any Annexed Tract which are to be owned and managed by the Association, shall be free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions, and restrictions then of record, including those set forth in this Declaration or any Supplemental Declaration applicable to the Annexed Tract.

11.4 **Method of Annexation.** The addition of an Annexed Tract to the Property shall be made by filing of record a Supplementary Declaration of Annexation including Covenants, Conditions and Restrictions, or other similar instrument with respect to the Annexed Tract, which shall be executed by Grantor or the owner thereof and which shall annex such tract to the Property. Thereupon each Annexed Tract shall be a part of the Property, shall be subject to this Declaration and encompassed with the general plan and scheme of Restrictions contained herein as modified by such Supplemental Declaration, and shall be subject to the functions, powers and jurisdiction of the Association and any sub-association established for the area encompassing the Annexed Tract. Such Supplemental Declaration of Annexation or other appropriate document may contain such additions, modifications or deletions of any Restrictions

contained in this Declaration as may be deemed by Grantor or the owner thereof desirable to reflect the different character, if any, of the Annexed Tract, or as Grantor or such owner may deem appropriate in the development of the Annexed Tract. However, in no event shall such Supplemental Declaration of Annexation revoke, modify or add to the Restrictions established by this Declaration as they pertain to the Property as of first filing of this Declaration, and pertain to the Owners. If any Annexed Tract is created, the Association shall have authority to levy assessments against the Owners located within such Annexed Tract, and the Association shall have the obligation to maintain the Common Area located within the Annexed Tract if so specified in the Supplemental Declaration. No annexation shall substantially increase Assessments payable by Owners.

11.5 **Deannexation**. Grantor may delete all or a portion of the Property described on Exhibit A, as well as any Annexed Tracts, from the Property and from coverage of this Declaration and the jurisdiction of the Association, so long as Grantor is the Owner of all such de-annexed property, and provided that a Supplemental Declaration of Deletion of Property is recorded in the Office of the Ada County Recorder in the same manner as a Supplemental Declaration of Annexation. Member Owners other than Grantor as described above, shall not be entitled to de-annex all or any portion of a Tract except on the favorable vote and consent in writing of at least seventy-five percent (75%) of all Members of the Association, which seventy-five percent (75%) super-majority shall be applicable separately to those Owners residing in the portion proposed to be de-annexed, and those not.

ARTICLE XII EASEMENTS

The following easements are hereby declared, granted, and conveyed from the Grantor, for itself, its successors, and assigns, to the Owner of the respective Building Lots, and each of them, and their respective heirs, personal representatives, successors, and assigns. The easements are set forth along with and as a part of the Declaration because of their relation to the Association and its purposes, but are permanent easements appurtenant to the respective Building Lots, and are interests in real property that exist independently of this Declaration, and are not subject to alteration by vote or consent of any majority of the Owners, but only by unanimous agreement, grant and conveyance, and otherwise in accord with Idaho law as it provides for such easements. The easements are permanent and run with the land.

12. 1 **Easements of Encroachment**. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to the good faith mistaken placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid 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; provide, however, that in no event shall a valid easement for encroachment arise or come into existence due to the willful act of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired

or rebuilt, the Owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the destruction may be occupied to the same extent in connection with reconstruction, pursuant to the easement herein granted.

12.2 Easements of Access for Maintenance. Each Building Lot shall have a mutual and reciprocal easement over abutting Building Lots and the Common Area for access, ingress and egress by the Building Lot Owner's repairmen, workmen and contractors, for necessary maintenance and repair of any Improvement that may only be reasonably undertaken with such access, including without limitation, siding and roofing repairs and maintenance and utility connections. Provided, reasonable notice shall be provided, and work shall be undertaken only during normal business hours, and the Building Owner utilizing this easement shall and does hereby, for the Owner and the Owner's said repairmen, workmen and contractors, and all claiming right of access by or through him, indemnify the Owner of the servient Building Lot and hold the said Owner harmless from and of any suit, claim or cause of action arising out of or associated with the exercise of any rights under the easement.

12.3 Drainage and Utility Easements. Notwithstanding anything contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required or useful for the development of the Property. Grantor hereby reserves for itself and for the Association the right to grant additional easements over the Common Area to utility companies and public agencies as necessary or expedient for the proper development of the Property. Each Building Lot shall have an easement over the Common Area for the flow of natural precipitation (rain and snow) from the Building Lot to the Common Area, and its infiltration through landscaping and pervious pavement in the common driveway of the Common Area, into groundwater. Each Building Lot shall have an easement over the Common Area for the installation, re-installation, use, maintenance, and repair of service lines to and from the Building Lot and public water, sewer, and other utilities in and adjacent to the Common Area.

12.4 Driveway Easements and Common Driveway. Each Building Lot shall have an easement over the common driveway portion of the Common Area, described and located according to the plans and specifications accompanying the final Plat, hereby incorporated herein by reference, for ingress and egress by foot and vehicle, to and from the said Building Lot and the public road, in common with the other Building Lots. In the easement area, the following shall apply:

A. The easement may be used by the Owners, in common, to gain access by motor vehicle, on foot, bicycle and other reasonable means, from the public street serving the Building Lot to the garage of the Building Lot, and other reasonable points of access in the case of foot and other non-motorized travel).

B. The cost of maintaining, repairing, and replacing the driveway surface improvements shall be born equally by the Owners, regardless of the different distance of travel over the easement area or other distinctions in use between Owners.

C. The surface shall be maintained as a hard drivable weather-proof surface in accordance with the specifications or details shown on the Plat. Once installed, the same surface shall be maintained, repaired, and replaced except upon majority agreement to substitute some other surface, and without majority agreement shall

remain the same. Any substitute surface shall perform in a substantially similar manner, in carrying vehicle weight and infiltrating rainwater and other precipitation.

D. Decisions regarding maintenance, repair and replacement shall be by majority vote, in conformity with such standards provided herein.

E. The speed limit in the driveway shall be five (5) miles per hour. Conditions may require a lesser speed. Motor vehicles yield to pedestrians and non-motorized vehicles. Vehicles yield to pedestrians.

F. Each Owner, for the Owner and the Owner's guest and invitees, shall have a duty to the co-Owners of the easement to use the common driveway with all due care, and to minimize risks of injury or damage to the driveway surface and to other persons, vehicles, and property lawfully present in the Common driveway easement.

G. The common driveway area shall not be obstructed in any manner by the parking or placement or storage of vehicles or personal property of any kind.

H. Notwithstanding the foregoing, the common driveway is designed and intended to serve for multiple purposes, not dominated by motor vehicle use. For safety, the immediate entry from the public road, for an approximate distance of fifty (50) feet, shall be preserved primarily for vehicle use. The balance of the common driveway shall be primarily for pedestrian and non-motor vehicle use. This area has been designated a plaza within the meaning of currently applicable land use regulation and shall serve Owners and guests as a gathering place for talking, walking and exercise. It may be used for games and play. By majority agreement, or acting through the Board, rules and regulations may be established for pet use, time of day restrictions, noise, or other standards for guidelines of neighborly use. It may be closed temporarily to motor vehicles for parties, games, or other purposes.

ARTICLE XIII MISCELLANEOUS

13.1 **Term.** The covenants, conditions, restrictions, and equitable servitudes of this Declaration shall run until December 31, 2045, unless amended or earlier terminated by super majority vote as herein provided. After December 31, 2045, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) year each, unless amended or extinguished by a written instrument executed by Members holding at least seventy-five percent (75%) of the voting power of the Association and such written instrument is recorded with the Ada County Recorder.

13.2 **Amendment.**

A. The Grantor may amend or terminate the provisions of this Declaration at any time until the close of escrow and recording of a deed for the sale of the first Building Lot to a third party.

B. This Declaration may be amended by the Owners by an instrument in writing signed and acknowledged by the president and secretary of the Association, certifying that such amendment has been approved by the vote and written consent of Owners representing at least seventy-five percent (75%) of the Building Lots. Such amendment shall be effective upon its recording with the Ada County Recorder.

C. No amendment shall be effective to terminate or extinguish any easement established, granted, and conveyed hereunder, unless such amendment is unanimously

agreed to and executed by all Owners. This provision applies, without limitation, to easements in the Common Driveway for access to and from the Lots, and to utility easements serving the Lots.

13.3 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of the Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust or holder of a mortgage upon a Building Lot made in good faith and for value, and recorded prior to the recording of such amendment, provided that after foreclosure of any such first deed of trust or mortgage, such Building Lot shall remain subject to this Declaration as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce banks, mortgage companies and other lending institutions and lenders, whether public or private, to participate in the financing of the sale of Building Lots, the following provisions shall apply, and control over any conflict with other provisions of this Declaration.

A. Each Mortgagee of a mortgage encumbering any Building Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the mortgagor of such Building Lot or Owner thereof in the performance of the mortgagor's obligations under the Declaration, or any Supplemental Declaration, or the Association's Articles or By-Laws (collectively, "Project Documents"), which default is not cured within thirty (30) days after the Association learns of or determines such default.

B. Each holder of a first mortgage lien on a Building Lot who comes into possession of the Building Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take title to such Building Lot free of any claims for unpaid assessments and charges against the Building Lot which accrue prior to the time such holder comes into possession of the Building Lot.

C. Unless all of the first Mortgagees have given prior written approval, neither the Grantor, the Association nor the Owners shall: (1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Improvements thereon which are owned directly or indirectly by the Association; provided, that the granting of Easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association, or the transfer of the Common Area or Improvements to an unincorporated association of the Owners in accordance with the Articles of the Association, shall not be deemed a transfer within the meaning of this clause; or (2) change the ratio of assessments or method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner, or the method of allocating distributions or hazard insurance proceeds or condemnation awards.

D. Except by at least seventy-five percent (75%) majority vote of the first Mortgagees (based upon one vote for each Building Lot subject to a mortgage), neither the Grantor, the Association nor the Owners shall: (1) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwellings or other structures on the Building Lots, the exterior maintenance of the said buildings, or the upkeep of the landscaping and common driveway of the Common Area; (2) fail to maintain Fire and Extended Coverage on insurable Common Area on a current replacement cost basis in an amount

not less than one hundred percent (100%) of the insurable value; (3) use hazard insurance proceeds for losses to any Common Area Improvements for other than the repair, replacement or reconstruction of such Improvements; (4) abandon or terminate the covenants, conditions, and restrictions of this Declaration; (5) make any material amendment to this Declaration or to any Articles or By-Laws of the Association created pursuant to this Declaration; (6) terminate professional management of any portion of the Property and assume self-management thereof.

E. First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of audited annual financial reports and other financial data, (3) receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend any such meetings.

F. All first Mortgagees who have provided a mailing address or other reasonable means of contact to the Association shall be given immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Area or any Building Lot whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board receives notices or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Property.

G. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies for such property, and first Mortgagees making such payments shall be owed immediate reimbursement from the Association.

H. The Board shall contract for professional management of the Property with a bonded professional manager. The agreement between the Association and its agent for such professional management shall provide that the management contract may be terminated for cause on not more than thirty (30) days' written notice, and the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

I. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including but not limited to, employees of the professional manager.

J. Any agreement for the leasing or rental of a Building Lot, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration and all applicable Articles and By-Laws. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Declaration, the Articles or By-Laws shall be a default under the agreement. Any residential lease shall be permissible only as an exemption in writing from the provisions hereof relating to Owner Occupancy.

K. All taxes on the Common Areas must be assessable against those Common Areas only and the Association owning such Common Areas are solely responsible for payment of such taxes.

L. Any provision in this Declaration which requires Owners to indemnify the Association, other Owners, or the Board, against acts of the indemnitor is subject to the

exception that if the liability, damage, or injury is covered by any type of insurance, the indemnitor is relieved of liability to the extent of such insurance coverage.

M. Notwithstanding any provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by Federal National Mortgage Association and Government National Mortgage Association, or their successors or equivalents, so long as either is a Mortgagee of a Building Lot within the project, except to the extent such coverage is not available or has been waived in writing by such lenders.

N. In addition to the foregoing, the Board may enter into such contract or agreements on behalf of the Association as are required in order to satisfy the guidelines of the Federal National Mortgage Association or Government National Mortgage Association, or their successors or equivalents or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Building Lots with residences thereon. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential mortgage borrowers and potential sellers of Building Lots, if such lending entities approve the Property or any portion thereof as a qualifying subdivision under their respective policies, rules, and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Building Lot.

4. **Notices.** Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail, or with the written consent of any party, by electronic mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or the residence of such person or mailing address maintained for real estate tax payments, if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.
5. **Enforcement and Non-Waiver.**
 - a. **Right of Enforcement.** Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof. Enforcement shall initially be through the Board, on its own initiative or upon request of an Owner.
 - b. **Violation and Nuisances.** The failure of any Owner of a Building Lot to comply with any provisions hereof or any provision of the Articles or By-Laws of the Association is hereby declared a nuisance and will give rise to a cause of action in the Grantor, the Association, or any Owner for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help

any of the provisions hereof, and only if such self-help is preceded by reasonable notice to the Owner.

- c. **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the Enforcement procedures set forth in this Declaration.
- d. **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.
- e. **Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision or any other provision hereof.

13.6 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

- a. **Restrictions Construed Together.** All of the articles and provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the preamble of this Declaration.
- b. **Restrictions Severable.** Notwithstanding the provisions of the foregoing paragraph, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions.
- c. **Singular Includes Plural, Gender Neutral.** Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- d. **Captions.** 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.

13.7 **Successors and Assigns.** All references to Grantor, Owners, Association and any person shall be construed to include all successors, assigns, personal representatives and authorized agents of such Grantor, Owners, Association or person.

13.8 **Dissolution.** The Home Owner's Association cannot be dissolved without prior written approval of the City of Garden City.

IN WITNESS WHEREOF, Grantor Surfer's Paradise Two, LLC, has hereunto set its hand and seal this 24th day of March, 2022.

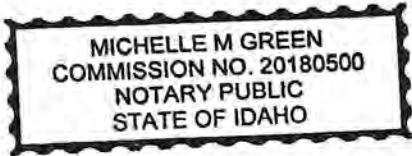
SURFER'S PARADISE TWO, LLC


By: 
Todd A. Weltner, Member

State of Idaho :
 : ss.
County of Ada :

On this 24th day of March, 2022, before me, the undersigned, a Notary Public in and for the said State, personally appeared Todd A. Weltner, known or identified to me to be a member of Surfer's Paradise, LLC, an Idaho limited liability company, that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written.





Notary Public
Residing at: Canyon County
My commission expires: 3/19/2024